

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.

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

SECTION 1. Sections 223.208(b) and (h), 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 comprehensive development agreement,~~

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

9 (2) ~~[(4)]~~ permitting the private participant to
10 pledge its rights under the comprehensive development agreement;

11 (3) ~~[(5)]~~ concerning the private participant's right
12 to operate and collect revenue from the project; and

13 (4) ~~[(6)]~~ restricting the right of the commission or
14 the department to terminate the private participant's right to
15 operate and collect revenue from the project unless and until any
16 applicable termination payments have been made.

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

1 ~~constructed, operated, or maintained under the agreement.]~~

2 SECTION 2. Section 228.0055(a), Transportation Code, is
3 amended to read as follows:

4 (a) Payments, project savings, refinancing dividends, and
5 any other revenue received by the commission or the department
6 under a comprehensive development agreement shall be deposited into
7 a separate subaccount for the project from which the commission or
8 the department receives those monies and be used by the commission
9 or the department to finance the construction, maintenance, or
10 operation of transportation projects or air quality projects in the
11 region.

12 SECTION 3. Section 228.006(a), Transportation Code, is
13 amended to read as follows:

14 (a) The commission shall authorize the use of surplus
15 revenue of a toll project or system to pay the costs of a
16 transportation project, highway project, or air quality project
17 within a region [~~department district~~] in which any part of the toll
18 project is located.

19 SECTION 4. Section 284.004(b), Transportation Code, is
20 amended to read as follows:

21 (b) In addition to authority granted by other law, a county
22 may use state highway right-of-way and may access state highway
23 right-of-way in accordance with Sections 228.011 and 373.102
24 [~~228.0111~~].

25 SECTION 5. Section 284.061(d), Transportation Code, is
26 amended to read as follows:

27 (d) Subject to the reimbursement requirements of Section

1 373.102, a [A] county has full easements and rights-of-way through,
2 across, under, and over any property owned by this state that are
3 necessary or convenient to construct, acquire, or efficiently
4 operate a project under this chapter.

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

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

18 SECTION 7. Sections 366.407(b) and (g), Transportation
19 Code, are amended to read as follows:

20 (b) A comprehensive development agreement entered into
21 under this subchapter must [~~may~~] include [~~any provision the~~
22 ~~authority considers appropriate, including~~] a provision[~~+~~

23 [~~(1)~~] providing for the purchase by the authority[~~+~~
24 ~~under terms and conditions agreed to by the parties,~~] of the
25 interest of a private participant in the comprehensive development
26 agreement as required by Section 371.101 and may include any other
27 provision the authority considers appropriate, including a

1 provision:

2 (1) [~~and related property, including any interest in a~~
3 ~~turnpike project designed, developed, financed, constructed,~~
4 ~~operated, or maintained under the comprehensive development~~
5 ~~agreement;~~

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

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

19 (2) [~~(4)~~] permitting the private participant to
20 pledge its rights under the comprehensive development agreement;

21 (3) [~~(5)~~] concerning the private participant's right
22 to operate and collect revenue from the turnpike project; and

23 (4) [~~(6)~~] restricting the right of the authority to
24 terminate the private participant's right to operate and collect
25 revenue from the turnpike project unless and until any applicable
26 termination payments have been made.

27 (g) A [~~Except as provided by this subsection, a~~]

1 comprehensive development agreement with a private participant
2 that includes the collection by the private participant of tolls
3 for the use of a toll project may be for a term not longer than 50
4 years from the later of the date of final acceptance of the project
5 or the start of revenue operations by the private participant, not
6 to exceed a total term of 52 years. [~~The contract must contain an
7 explicit mechanism for setting the price for the purchase by the
8 department of the interest of the private participant in the
9 contract and related property, including any interest in a highway
10 or other facility designed, developed, financed, constructed,
11 operated, or maintained under the contract.~~]

12 SECTION 8. Section 370.169(c), Transportation Code, is
13 amended to read as follows:

14 (c) An authority has full easements and rights-of-way
15 through, across, under, and over any property owned by the state or
16 any local government that are necessary or convenient to construct,
17 acquire, or efficiently operate a transportation project or system
18 under this chapter. This subsection does not affect the obligation
19 of the authority under other law, including Section 373.102, to
20 compensate or reimburse this state for the use or acquisition of an
21 easement or right-of-way on property owned by or on behalf of this
22 state. An authority's use of property owned by or on behalf of this
23 state is subject to any covenants, conditions, restrictions, or
24 limitations affecting that property.

25 SECTION 9. Section 370.311(b), Transportation Code, is
26 amended to read as follows:

27 (b) A comprehensive development agreement entered into

1 under Section 370.305 must include a provision authorizing the
2 authority to purchase, under terms agreed to by the parties, the
3 interest of a private equity investor in a transportation project
4 as required by Section 371.101.

5 SECTION 10. Section 371.002, Transportation Code, as added
6 by Section 11.01, Chapter 264 (S.B. 792), Acts of the 80th
7 Legislature, Regular Session, 2007, is amended to read as follows:

8 Sec. 371.002. APPLICABILITY. This chapter does not apply
9 to:

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

12 (2) a publicly owned and operated toll project, as
13 defined by Section 373.001.

14 SECTION 11. The heading to Section 371.052, Transportation
15 Code, as added by Section 11.01, Chapter 264 (S.B. 792), Acts of the
16 80th Legislature, Regular Session, 2007, is amended to read as
17 follows:

18 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD [~~AND~~
19 ~~STATE AUDITOR~~].

20 SECTION 12. Section 371.101, Transportation Code, as added
21 by Section 11.01, Chapter 264 (S.B. 792), Acts of the 80th
22 Legislature, Regular Session, 2007, is amended to read as follows:

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

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

27 (1) the interest of a private participant in the toll

1 project that is the subject of the agreement; and

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

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

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

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

13 (2) the then fair market value of the private entity's
14 interest, which may include the amount of outstanding debt at that
15 time, as authorized in the comprehensive development agreement.

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

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

27 (f) A toll project entity must notify the private entity of

1 ~~the toll project entity's intention to purchase the private~~
2 ~~entity's interest under this section not less than six months~~
3 ~~before the date of the purchase. [A toll project entity having~~
4 ~~rulemaking authority by rule and a toll project entity without~~
5 ~~rulemaking authority by official action shall develop a formula for~~
6 ~~making termination payments to terminate a comprehensive~~
7 ~~development agreement under which a private participant receives~~
8 ~~the right to operate and collect revenue from a toll project. A~~
9 ~~formula must calculate an estimated amount of loss to the private~~
10 ~~participant as a result of the termination for convenience.~~

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

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

22 SECTION 13. Section 371.102, Transportation Code, as added
23 by Section 11.01, Chapter 264 (S.B. 792), Acts of the 80th
24 Legislature, Regular Session, 2007, is amended to read as follows:

25 Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE
26 DEVELOPMENT AGREEMENTS. (a) If a toll project entity elects to
27 terminate a comprehensive development agreement under which a

1 private participant receives the right to operate and collect
2 revenue from a project, the entity may:

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

5 (A) make any applicable termination payments to
6 the private participant; or

7 (B) purchase the interest of the private
8 participant in the comprehensive development agreement or related
9 property; or

10 (2) provide for the payment of obligations of the
11 private participant incurred pursuant to the comprehensive
12 development agreement.

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

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

1 (d) This section shall be liberally construed to effect its
2 purposes.

3 SECTION 14. Sections 371.103(b) and (c), Transportation
4 Code, as added by Section 11.01, Chapter 264 (S.B. 792), Acts of the
5 80th Legislature, Regular Session, 2007, are amended to read as
6 follows:

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

18 (c) A comprehensive development agreement may not require
19 the toll project entity to provide compensation for the
20 construction of:

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

25 (2) work on or improvements to a highway project
26 necessary for improved safety, or for maintenance or operational
27 purposes;

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

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

7 (5) a highway designated an interstate highway.

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

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

11 PROJECT ENTITY

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 373.001. DEFINITIONS. In this chapter:

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

18 (A) a regional tollway authority under Chapter
19 366;

20 (B) a regional mobility authority under Chapter
21 370; or

22 (C) a county acting under Chapter 284.

23 (2) "Privately operated or controlled toll project"
24 means a toll project that is primarily commercial in nature and is
25 designed and constructed by a private entity that holds a leasehold
26 interest in or the right to operate and retain revenues from the
27 toll project, regardless of whether the private entity operates the

1 toll project or collects the revenue itself or engages a
2 subcontractor or other entity to operate the toll project or
3 collect the revenue. The term does not include a toll project for
4 which the department or a toll project entity contracts with a
5 private entity only for engineering, design, construction,
6 finance, operation, maintenance, or other services.

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

14 (A) engineering, design, construction, finance,
15 operation, maintenance, or other services; or

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

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

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

22 (B) subject to the jurisdiction of the
23 department.

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

26 (b) This chapter does not apply to:

27 (1) any project for which the department has issued a

1 request for qualifications or request for competing proposals and
2 qualifications before May 1, 2007, except for the State Highway 161
3 project in Dallas County;

4 (2) the eastern extension of the President George Bush
5 Turnpike from State Highway 78 to IH 30 in Dallas County;

6 (3) the Phase 3 and 4 extensions of the Dallas North
7 Tollway in Collin and Denton Counties from State Highway 121 to the
8 Grayson County line, and the planned future extension into Grayson
9 County, regardless of which local toll project entity develops the
10 extension into Grayson County;

11 (4) the Lewisville Lake Bridge and portions of FM 720
12 widening projects in Denton County; or

13 (5) the Southwest Parkway (State Highway 121) in
14 Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

15 Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll
16 project is sold or otherwise transferred to another toll project
17 entity in accordance with applicable law, including Sections
18 228.151, 284.011, 366.036, 366.172, and 370.171, a toll project
19 procured by the department or a local toll project entity
20 determined by the process under Subchapter B is owned by that entity
21 in perpetuity.

22 Sec. 373.004. GOVERNMENTAL AND NOT COMMERCIAL
23 TRANSACTIONS. A transaction involving a local toll project entity
24 under Section 228.011 or this chapter is not primarily commercial
25 in nature but is an inherently governmental transaction whose
26 purpose is to determine governmental jurisdiction, ownership,
27 control, or other responsibilities with respect to a project.

1 Sec. 373.005. VALUATION DETERMINATION. Any determination
2 of value, including best value, under this chapter or other
3 applicable federal or state law for a comprehensive development
4 agreement or other public-private partnership arrangement
5 involving a toll project located in the jurisdiction of a local toll
6 project entity must take into consideration factors the entity
7 determines appropriate, including factors that are significant,
8 but not quantifiable, such as factors related to:

- 9 (1) oversight of the toll project;
10 (2) maintenance and operations costs of the toll
11 project;
12 (3) the structure and rates of tolls;
13 (4) economic development impacts of the toll project;
14 and
15 (5) social and environmental benefits and impacts of
16 the toll project.

17 Sec. 373.006. LEGAL CHALLENGES CONCLUDED. For the purposes
18 of this chapter, all legal challenges to development of a toll
19 project are considered concluded when a judgment or order of a court
20 with jurisdiction over the challenge becomes final and
21 unappealable.

22 [Sections 373.007-373.050 reserved for expansion]

23 SUBCHAPTER B. PROCESS TO DETERMINE ENTITY TO DEVELOP, FINANCE,
24 CONSTRUCT, AND OPERATE TOLL PROJECT

25 Sec. 373.051. INITIATION OF PROCESS. (a) At any time after
26 a metropolitan planning organization approves the inclusion of a
27 toll project to be located in the territory of a local toll project

1 entity in the metropolitan transportation plan, the local toll
2 project entity may notify the department in writing of the local
3 toll project entity's intent to initiate the process described in
4 this subchapter.

5 (b) At any time after a metropolitan planning organization
6 approves the inclusion of a toll project to be located in the
7 territory of a local toll project entity in the metropolitan
8 transportation plan and all necessary environmental approvals for
9 the toll project have been secured, the department may notify the
10 local toll project entity in writing of the department's intent to
11 initiate the process described in this subchapter.

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

13 (a) A local toll project entity has the first option to develop,
14 finance, construct, and operate a toll project as a publicly owned
15 and operated toll project. A local toll project entity has not more
16 than 180 days after the date on which notification under Section
17 373.051(a) is provided or notification under Section 373.051(b) is
18 received to decide whether to exercise the option. The option
19 period under this subsection may be extended an additional 90 days
20 by agreement of the department and the local toll project entity.

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

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

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

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

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

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

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

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

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

18 (b) If the local toll project entity exercises its option
19 under Subsection (a), the local toll project entity after
20 exercising the option must:

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

27 (2) within two years after the date on which all

1 environmental approvals necessary for the development are secured
2 and all legal challenges to development are concluded, enter into a
3 contract for the construction of the toll project.

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

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

19 (1) within 180 days after the later of the date of
20 exercising its option or the date on which all environmental
21 approvals necessary for the development of the toll project are
22 secured and all legal challenges to development are concluded,
23 advertise for the initial procurement of required services,
24 including, at a minimum, design services, for the project; and

25 (2) within two years after the date on which all
26 environmental approvals necessary for the development are secured
27 and all legal challenges to development are concluded, enter into a

1 contract for the construction of the toll project.

2 Sec. 373.056. RE-INITIATION OF PROCESS. If the process
3 described by Sections 373.051, 373.052, 373.053, 373.054, and
4 373.055 concludes without the local toll project entity or the
5 department entering into a contract for the construction of the
6 toll project, either entity may re-initiate the process under this
7 subchapter by submitting notice to the other entity in the manner
8 provided by Section 373.051.

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

12 (b) The department and the applicable toll project entity
13 may, by written agreement, extend any time limit under this
14 subchapter.

15 Sec. 373.058. SHARING OF PROJECT-RELATED INFORMATION. (a)
16 If a local toll project entity or the department fails or declines
17 to exercise an option or fails or declines to advertise for
18 procurement or enter into a construction contract under Section
19 373.052, 373.053, 373.054, or 373.055, the local toll project
20 entity or the department, as applicable, must make available its
21 traffic estimates, revenue estimates, plans, specifications,
22 surveys, appraisals, and other work product developed for the toll
23 project to the other entity.

24 (b) On entering into a contract for the construction of the
25 toll project, the department or the local toll project entity, as
26 applicable, shall reimburse the other entity for shared project
27 work product that it uses.

1 Sec. 373.059. QUARTERLY PROGRESS REPORTS. After the
2 department or a local toll project entity exercises an option under
3 this subchapter, the department or local toll project entity, as
4 applicable, shall issue a quarterly report on the progress of the
5 development of the toll project. The report shall be made available
6 to the public.

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

11 (b) If a local toll project entity initiates the process for
12 development of a toll project under Section 373.051(a) and has not
13 begun the environmental review of the project, the local toll
14 project entity shall begin the environmental review within 180 days
15 of exercising the option.

16 [Sections 373.061-373.100 reserved for expansion]

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

18 Sec. 373.101. USE OF STATE HIGHWAY RIGHT-OF-WAY. (a)
19 Consistent with federal law, the commission and the department
20 shall assist a local toll project entity in the development,
21 financing, construction, and operation of a toll project for which
22 the local toll project entity has exercised its option to develop,
23 finance, construct, and operate the project under Subchapter B by
24 allowing the local toll project entity to use state highway
25 right-of-way and to access the state highway system as necessary to
26 construct and operate the toll project.

27 (b) Notwithstanding any other law, the toll project entity

1 and the commission may agree to remove the toll project from the
2 state highway system and transfer ownership to the local toll
3 project entity.

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

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

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

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

22 (c) In lieu of reimbursement, the local toll project entity
23 may agree to pay to the department, for an agreed period of time, a
24 portion of the net revenues of the project.

25 (d) Money received by the department under this section
26 shall be deposited in the state highway fund and, except for
27 reimbursement for costs owed to a third party, used to fund

1 additional projects in the department district in which the toll
2 project is located.

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

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

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

20 (b) An agreement entered into by a local toll project entity
21 and the department in connection with a toll project that is
22 financed, constructed, or operated by the local toll project entity
23 and that is on or directly connected to a highway in the state
24 highway system does not create a joint enterprise for liability
25 purposes.

26 Sec. 373.105. COMPLIANCE WITH FEDERAL LAW. Notwithstanding
27 an action taken by a local toll project entity under this

1 subchapter, the commission or department may take any action that
2 in its reasonable judgment is necessary to comply with any federal
3 requirement to enable this state to receive federal-aid highway
4 funds.

5 SECTION 16. The following sections are repealed:

6 (1) Sections 228.0111 and 228.012, Transportation
7 Code; and

8 (2) Section 371.052(c), Transportation Code, as added
9 by Section 11.01, Chapter 264 (S.B. 792), Acts of the 80th
10 Legislature, Regular Session, 2007.

11 SECTION 17. This Act takes effect September 1, 2009.