

By: Nichols

S.B. No. 1730

A BILL TO BE ENTITLED

AN ACT

relating to comprehensive development agreements of the Texas Department of Transportation or a regional mobility authority.

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

SECTION 1. Sections 223.201(a), (b), (f), (g), (i), (j), (k), and (l), Transportation Code, are amended to read as follows:

(a) Subject to Section 223.202, the department may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

(1) toll project;

(2) state highway improvement project that includes both tolled and nontolled lanes and may include nontolled appurtenant facilities;

(3) state highway improvement project in which the private entity has an interest in the project; ~~or~~

(4) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986; or

(5) nontolled state highway improvement project authorized by the legislature.

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the design and construction, reconstruction, rehabilitation,

1 expansion, or improvement of a project described in Subsection (a)  
2 and may also provide for the financing, acquisition, maintenance,  
3 or operation of a project described in Subsection (a).

4 (f) The department may enter into a comprehensive  
5 development agreement only for all or part of:

6 (1) the State Highway 99 (Grand Parkway) project;

7 (2) the Interstate Highway 35E managed lanes project  
8 in Dallas and Denton Counties from Interstate Highway 635 to U.S.  
9 Highway 380;

10 (3) the Interstate Highway 35W project in Tarrant  
11 County from Interstate Highway 30 to State Highway 114 [~~North~~  
12 ~~Tarrant Express project in Tarrant and Dallas Counties, including:~~

13 [~~(A) on State Highway 183 from State Highway 121~~  
14 ~~to State Highway 161 (Segment 2E),~~

15 [~~(B) on Interstate Highway 35W from Interstate~~  
16 ~~Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C), and~~

17 [~~(C) on Interstate Highway 820 from State Highway~~  
18 ~~183 North to south of Randol Mill Road (Segment 4)];~~

19 (4) the State Highway 183 managed lanes project in  
20 Tarrant and Dallas Counties [~~County~~] from State Highway 121 [~~161~~]  
21 to Interstate Highway 35E;

22 (5) the Interstate Highway 35/U.S. Highway 67 Southern  
23 Gateway project in Dallas County, including:

24 (A) Interstate Highway 35E from 8th Street to  
25 Interstate Highway 20; and

26 (B) U.S. Highway 67 from Interstate Highway 35E  
27 to Farm-to-Market Road 1382 (Belt Line Road) [~~State Highway 249~~

1 ~~project in Harris and Montgomery Counties from Spring Cypress Road~~  
2 ~~to Farm-to-Market Road 1774];~~

3 (6) the State Highway 288 project from U.S. Highway 59  
4 to south of State Highway 6 in Brazoria County and Harris County;  
5 [~~and~~]

6 (7) the U.S. Highway 290 [~~Hempstead~~] managed lanes  
7 project in Harris County from Interstate Highway 610 to State  
8 Highway 99;

9 (8) the Interstate Highway 820 project from State  
10 Highway 183 to Randol Mill Road;

11 (9) the State Highway 114 project in Dallas County  
12 from State Highway 121 to State Highway 183;

13 (10) the Loop 12 project in Dallas County from State  
14 Highway 183 to Interstate Highway 35E;

15 (11) the Interstate Highway 35E project in Dallas  
16 County from State Highway 183 to the Dallas North Tollway;

17 (12) the Loop 9 project in Dallas and Ellis Counties  
18 from Interstate Highway 20 to U.S. Highway 67; and

19 (13) the U.S. Highway 181 Harbor Bridge project in  
20 Nueces County between U.S. Highway 181 at Beach Avenue and  
21 Interstate Highway 37.

22 (g) The department may combine in a comprehensive  
23 development agreement under this subchapter:

24 (1) a toll project and a rail facility as defined by  
25 Section 91.001; or

26 (2) two or more projects described by Subsection (f).

27 (i) The authority to enter into a comprehensive development

1 agreement expires:

2 (1) August 31, 2017, for a project described by  
3 Subsection (f), other than the State Highway 99 (Grand Parkway)  
4 project and the State Highway 183 managed lanes project; and

5 (2) [~~expires~~] August 31, 2015, for the State Highway  
6 183 managed lanes project.

7 (j) Before the department may enter into a comprehensive  
8 development agreement under Subsection (f), the department must:

9 (1) for a project other than the State Highway 99  
10 (Grand Parkway) project, obtain, not later than August 31, 2017  
11 [~~2013~~], the appropriate environmental clearance:

12 (A) for the project; or

13 (B) for the initial or base scope of the project  
14 if the project agreement provides for the phased construction of  
15 the project [~~for any project other than the State Highway 99 (Grand~~  
16 Parkway) project]; and

17 (2) present to the commission a full financial plan  
18 for the project, including costing methodology and cost proposals.

19 (k) Not later than December 1, 2014 [~~2012~~], the department  
20 shall provide [~~present~~] a report to the commission on the status of  
21 a project described by Subsection (f). The report must include:

22 (1) the status of the project's environmental  
23 clearance;

24 (2) an explanation of any project delays; and

25 (3) if the procurement is not completed, the  
26 anticipated date for the completion of the procurement.

27 (1) In this section, "environmental clearance" means:

1 (1) a finding of no significant impact has been issued  
2 for the project or, as applicable, for the initial or base scope of  
3 the project; or

4 (2) for a project for which an environmental impact  
5 statement is prepared, a record of decision has been issued for that  
6 project or, as applicable, for the initial or base scope of the  
7 project.

8 SECTION 2. Sections 223.2011(a), (c), (e), and (f),  
9 Transportation Code, are amended to read as follows:

10 (a) Notwithstanding Sections 223.201(f) and 370.305(c), the  
11 department or an authority under Section 370.003 may enter into a  
12 comprehensive development agreement relating to improvements to,  
13 or construction of all or part of:

14 (1) the Loop 1 (MoPac Improvement) project from  
15 Farm-to-Market Road 734 to Cesar Chavez Street;

16 (2) the U.S. 183 (Bergstrom Expressway) project from  
17 Springdale Road to Patton Avenue; [~~or~~]

18 (3) a project consisting of the construction of:

19 (A) the Outer Parkway Project in Cameron County  
20 from U.S. Highway 77/83 to Farm-to-Market Road 1847; and

21 (B) the South Padre Island Second Access Causeway  
22 Project from State Highway 100 to Park Road 100;

23 (4) the Loop 49 project from Interstate 20 to U.S.  
24 Highway 69 (Lindale Relief Route) and from State Highway 110 to U.S.  
25 Highway 259 (Segments 6 and 7).

26 (c) Not later than December 1, 2014 [~~2012~~], the department  
27 or the authority, as applicable, shall provide [~~present~~] a report

1 to the commission on the status of a project described by Subsection  
2 (a). The report must include:

3 (1) the status of the project's environmental  
4 clearance;

5 (2) an explanation of any project delays; and

6 (3) if the procurement is not completed, the  
7 anticipated date for the completion of the procurement.

8 (e) In this section, "environmental clearance" means:

9 (1) a finding of no significant impact has been issued  
10 for the project or, as applicable, for the initial or base scope of  
11 the project; or

12 (2) for a project for which an environmental impact  
13 statement is prepared, a record of decision has been issued for that  
14 project or, as applicable, for the initial or base scope of the  
15 project.

16 (f) The authority to enter into a comprehensive development  
17 agreement under this section expires August 31, 2017 [~~2015~~].

18 SECTION 3. Section 371.101, Transportation Code, is amended  
19 to read as follows:

20 Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A  
21 comprehensive development agreement under which a private  
22 participant receives the right to operate and collect revenue from  
23 a toll project must contain a provision authorizing the toll  
24 project entity to terminate the agreement for convenience and to  
25 purchase, under terms agreed to by the parties:

26 (1) the interest of the private participant in the  
27 comprehensive development agreement; and

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

4           (b) A comprehensive development agreement described by  
5 Subsection (a) must include a price breakdown stating a specific  
6 price for the purchase of the private participant's interest at  
7 specified intervals from the date the toll project opens, of not  
8 less than two years and not more than five years, over the term of  
9 the agreement.

10          (c) The provision must authorize the toll project entity to  
11 terminate the comprehensive development agreement and to purchase  
12 the private participant's interest at any time during a specified  
13 interval at the lesser of:

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

15                   (2) the greater of:

16                           (A) the then fair market value of the private  
17 participant's interest, plus or minus any other amounts specified  
18 in the comprehensive development agreement; or

19                           (B) an amount equal to the amount of outstanding  
20 debt specified in the comprehensive development agreement, plus or  
21 minus any other amounts specified in the comprehensive development  
22 agreement.

23          (d) A toll project entity shall include in a request for  
24 proposals for an agreement described by Subsection (a) a request  
25 for the proposed price breakdown described by Subsection (b) and  
26 shall assign points and score each proposer's price breakdown in  
27 the evaluation of proposals.

1       (e) If a project requires expansion or reconstruction in a  
2 manner that differs from the manner provided in the original  
3 project scope or schedule, the price for terminating the  
4 comprehensive development agreement may be adjusted to reflect the  
5 changes in the agreement.

6       (f) Subsections (b), (c), and (d) do not apply to a project  
7 for which a request for proposals was issued before January 1, 2013.

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

14       (h) A toll project entity must notify the private entity of  
15 the toll project entity's intention to purchase the private  
16 entity's interest under this section not less than six months  
17 before the date of the purchase. [~~A toll project entity having~~  
18 rulemaking authority by rule and a toll project entity without  
19 rulemaking authority by official action shall develop a formula for  
20 making termination payments to terminate a comprehensive  
21 development agreement under which a private participant receives  
22 the right to operate and collect revenue from a toll project. A  
23 formula must calculate an estimated amount of loss to the private  
24 participant as a result of the termination for convenience.

25       ~~[(b) The formula shall be based on investments,~~

26 ~~expenditures, and the internal rate of return on equity under the~~

27 ~~agreed base case financial model as projected over the original~~



1 ~~term of the agreement, plus an agreed percentage markup on that~~  
2 ~~amount.~~

3 ~~[(c) A formula under Subsection (b) may not include any~~  
4 ~~estimate of future revenue from the project, if not included in an~~  
5 ~~agreed base case financial model under Subsection (b).~~  
6 ~~Compensation to the private participant upon termination for~~  
7 ~~convenience may not exceed the amount determined using the formula~~  
8 ~~under Subsection (b).]~~

9 SECTION 4. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2013.