

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1929  
By: Carona  
Transportation & Homeland Security  
5/1/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3588, 78th Legislature, Regular Session, 2003, and H.B. 2702, 79th Legislature, Regular Session, 2005, enacted sweeping changes to the fundamental laws governing transportation financing and development. These bills created many new tools for the Texas Department of Transportation to use, including comprehensive development agreements and the ability to enter into public-private partnerships.

Many issues have created need to reform various transportation laws. Texans are concerned about the quantity of toll projects in this state as a whole, and more specifically, there is concern regarding the stipulations placed on toll project agreements with private companies, such as buyback provisions and non-compete clauses. There are also concerns regarding the Trans-Texas Corridor and the process the state has used in determining the path of that corridor.

C.S.S.B. 1929 places restrictions on comprehensive development agreements, increases the state's transportation infrastructure financing tools by limiting diversion and increasing bonding capabilities, and addresses eminent domain provisions and planning for the Trans-Texas Corridor. This bill also expands the capabilities of local toll entities and addresses metropolitan planning organization and regional mobility authority governance.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to a toll project entity is modified in SECTION 4.01 (Section 371.101, Transportation Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Transportation and the Texas Transportation Commission is modified in SECTION 17.03 (Section 284.004, Transportation Code), SECTION 18.04 (Section 366.038, Transportation Code), and SECTION 21.01 (Section 370.040, Transportation Code) of this bill.

Rulemaking authority is expressly granted to a regional tollway authority in SECTION 18.02 (Sections 366.402, 366.404, and 366.408, Transportation Code) and SECTION 18.06 (Section 366.185, Transportation Code) of this bill.

Rulemaking authority is expressly granted to the board of directors of the Texas Public Finance Authority in SECTION 28.02 (Section 1232.253, Government Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 31.10 (Section 201.9731, Transportation Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. SHORT TITLE

SECTION 1.01. Requires this Act to be known as The Transportation Reformation Act.

#### ARTICLE 2. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS

SECTION 2.01. Amends Subchapter E, Chapter 223, Transportation Code, by adding Section 223.210, as follows:

Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) Defines "toll project" and "toll project entity."

(b) Prohibits a comprehensive development agreement (CDA) entered into with a private participant by a toll project entity on or after the effective date of this section for the acquisition, design, construction, financing, operation, or maintenance of a toll project from containing a provision permitting the private participant to operate the toll project or collect revenue from the toll project, regardless of whether the private participant operates the toll project or collects the revenue itself or engages a subcontractor or other entity to operate the toll project or collect the revenue.

(c) Provides that Subsection (b) does not apply to a CDA in connection with a project associated with the highway designated as the Trinity Parkway in the City of Dallas or a project that includes one or more managed lane facilities to be added to an existing controlled-access highway, a project the major portion of which is located in a nonattainment or near nonattainment air quality area as designated by the United States Environmental Protection Agency (EPA), and a project for which the Texas Department of Transportation (TxDOT) has issued a request for qualifications before the effective date of this section.

(c-1) Provides that Subsection (b) does not apply to a CDA in connection with a project associated with any portion of the Loop 9 project that is located in a nonattainment air quality area as designated by the EPA that includes two adjacent counties that each have a population of one million or more.

(c-2) Provides that Subsection (b) does not apply to certain CDAs, notwithstanding the TxDOT/NTTA Regional Protocol entered into between TxDOT and the North Texas Tollway Authority and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by TxDOT. Sets forth the CDAs to which Subsection (b) does not apply.

(c-3) Provides that Subsection (c) does not apply to any toll project or managed lane facility project located on any portion of U.S. Highway 281 that is located in a county with a population of more than one million in which more than 80 percent of the population lives in a single municipality.

(d) Defines "managed lane facility" for purposes of this section.

(e) Prohibits TxDOT from entering into a CDA in connection with a certain project described by Subsection (c)(2) unless the commissioners court of the county in which the majority of the project is located passes a resolution in support of the CDA stating that the commissioners court acknowledges that the CDA may contain penalties for the construction of future competing transportation projects that are acquired or constructed during the term of the CDA and, knowing of these potential penalties, agrees that TxDOT should execute the CDA.

(f) Prohibits a toll project entity from selling or entering into a contract to sell the entity's toll project to a private entity on or after the effective date of this section.

(g) Creates a nine-member legislative study committee (committee) and sets forth the composition of the committee.

(h) Requires the committee to select a presiding officer from among its members and conduct public hearings and study the public policy implications of including in a CDA entered into by a toll project entity with a private participant in connection with a toll project a provision that permits the private participant to operate and collect revenue from the toll project. Requires the committee to

examine the public policy implications of selling an existing and operating toll project to a private entity. Requires the House Transportation Committee and the Senate Committee on Transportation and Homeland Security to provide staff and support for the committee.

(i) Requires the committee, not later than December 1, 2008, to prepare a written report summarizing certain information and deliver a copy of the report to certain elected officials.

(j) Abolishes the committee on December 31, 2008.

(k) Provides that this section expires September 1, 2009.

(l) Provides that Subsections (b)-(e) do not apply to a project that is located in a county with a population of 575,000 or more and is adjacent to an international border.

SECTION 2.02. Effective date of this article: upon passage or September 1, 2007.

### ARTICLE 3. COMPREHENSIVE DEVELOPMENT AGREEMENT SUNSET DATE

SECTION 3.01. Amends Section 223.201(f), Transportation Code, to provide that the authority to enter into CDAs provided by this section (Authority) expires on August 31, 2009, rather than 2011.

SECTION 3.02. Amends Section 370.305(d), Transportation Code, to provide that this section (Comprehensive Development Agreements) expires on August 31, 2009, rather than 2011.

### ARTICLE 4. GENERAL COMPREHENSIVE DEVELOPMENT AGREEMENT PROVISIONS

SECTION 4.01. Amends Subtitle G, Title 6, Transportation Code, by adding Chapter 371, as follows:

#### CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY TOLL PROJECTS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. DEFINITIONS. Defines “toll project” and “toll project entity.”

[Reserves Sections 371.002-371.050 for expansion.]

##### SUBCHAPTER B. OVERSIGHT

Sec. 371.051. ATTORNEY GENERAL REVIEW. Prohibits a toll project entity from entering into a CDA unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND STATE AUDITOR. (a) Requires a toll project entity, not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, to provide the Legislative Budget Board (LBB) with the name of qualifying or shortlisted proposers and their team members.

(b) Requires a toll project entity to provide the LBB with certain information at least 30 days before entering into a CDA.

(c) Requires a toll project entity, before entering into a CDA, to provide the state auditor with the traffic and revenue report prepared by the toll project entity or its consultant for the project. Prohibits the entity from entering into the CDA before

the 30th day after the date that the state auditor receives the report so that the state auditor may review and comment on the report and the methodology used to develop the report.

(d) Provides that before the CDA is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), Government Code.

[Reserves Sections 371.053-371.100 for expansion.]

### SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 371.101. **TERMINATION FOR CONVENIENCE.** (a) Requires a toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action to develop a formula for making termination payments to terminate a CDA under which a private participant has paid a concession payment for the right to operate and collect revenue from a toll project. Requires a formula to calculate an estimated amount of loss to the private participant as a result of the termination for convenience that is based on investments, expenditures, and rate of return associated with the project.

(b) Prohibits a formula under Subsection (a) from being based on an estimate of future revenue from the project.

Sec. 371.102. **TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS.** Authorizes a toll project entity, if the entity elects to terminate a CDA under which a private participant has paid a concession fee for the right to operate and collect revenue from a project, to issue bonds to make any applicable termination payments to the private participant or to purchase the interest of the private participant in the CDA or related property if authorized to issue bonds for that purpose, or to provide for the payment of obligations of the private participant incurred pursuant to the CDA.

Sec. 371.103. **PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS.** (a) Prohibits a CDA from containing a provision that limits or prohibits the construction, reconstruction, expansion, rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003 (Definitions), by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity.

(b) Authorizes a CDA, except as provided by Subsection (c), to contain a provision authorizing the toll project entity to compensate the private participant in the CDA for the loss of toll revenues attributable to the construction by the entity of certain limited access highway projects, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

(c) Prohibits a CDA from requiring the toll project entity to provide compensation for construction of certain projects.

(d) Provides that the private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Subsection (b).

(e) Requires a CDA that contains a provision described by Subsection (b) to require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private participant that is attributable to the construction of a highway project described by Subsection (b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

[Reserves Sections 371.104-371.150 for expansion.]

#### SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a) Requires a toll project entity, before the entity enters into a contract for the construction of a toll project, to publish, in the manner provided by Section 371.152, certain information regarding the financing of a toll project, whether the toll project will continue to be tolled after the debt is repaid, a description of the method used to set toll rates, a description of any contract terms relating to termination for convenience provisions, the initial toll rates, the methodology for increasing toll rates, the projected toll rates at the end of the contract, and the projected total amount of concession payments.

(b) Prohibits a toll project entity from entering into a contract for the construction of a toll project before the 30th day after the date of publication of the information under Section 371.152.

Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Requires the information under Section 371.151 to be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before entering into the contract and in two other newspapers the entity may designate.

(b) Authorizes the information to be published in two successive issues of a newspaper published in the county in which the project is to be constructed, rather than as required by Subsection (a), if the toll project entity estimates the contract to involve an amount less than \$300,000.

(c) Requires notice to be published in a newspaper published in a particular county if a newspaper is not published in the county in which the improvement is to be made.

Sec. 371.153. HEARING. (a) Requires a toll project entity to hold a public hearing on the information published under Section 371.152 not later than the 10th day after its publication and not less than 10 days before it enters into the contract.

(b) Requires a hearing under this section to be held in the county seat of the county in which the toll project is located.

(c) Requires a hearing under this section to include a formal presentation and a mechanism for responding to comments and questions.

#### ARTICLE 5. LENGTH OF CERTAIN TOLL OR FEE COLLECTION CONTRACTS WITH PRIVATE ENTITIES

SECTION 5.01. Amends Section 223.203, Transportation Code, by adding Subsection (f-1), to authorize a private entity responding to a request for detailed proposals issued under Subsection (f) to submit alternative proposals based on CDAs having different terms, with the alternative terms in multiples of 10 years, ranging from 10 years to 40 years or any lesser term provided in a CDA.

SECTION 5.02. Amends Section 223.208(h), Transportation Code, as follows:

(h) Authorizes the term of a CDA with a private participant that includes the collection by the participant of tolls for the use of a toll project to be for a term not longer than 40, rather than 50, years. Requires the CDA to contain an explicit mechanism for setting the price for the purchase by TxDOT of the interest of the private participant in the CDA and related property. Deletes the provisions and conditions authorizing a CDA to be for a term not longer than 70 years.

SECTION 5.03. Amends Section 227.023(f), Transportation Code, as follows:

(f) Prohibits a contract with a private entity that includes the collection by the private entity of a fee for the use of a facility from being for a term longer than 40, rather than 50, years. Requires the contract to contain an explicit mechanism for setting the price for the purchase by TxDOT of the interest of the private participant in the contract and related property, including any interest in a certain highway or other facility under the contract.

SECTION 5.04. Amends Section 370.302(i), Transportation Code, to prohibit an agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project from being for a term longer than 40, rather than 50, years. Requires the agreement to contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private participant in the contract and related property, including any interest in a certain highway or other facility under the agreement.

SECTION 5.05. Makes application of this article prospective.

#### ARTICLE 6. BILL OF RIGHTS FOR OWNERS OF PROPERTY THAT MAY BE ACQUIRED FOR TRANSPORTATION PURPOSES

SECTION 6.01. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.031, as follows:

Sec. 402.031. PREPARATION OF LANDOWNER'S BILL OF RIGHTS STATEMENT. (a) Requires the attorney general to prepare a written statement that includes a bill of rights for a property owner whose real property may be acquired by a governmental or private entity through the use of the entity's eminent domain authority under Chapter 21 (Eminent Domain), Property Code, for transportation purposes.

(b) Requires the landowner's bill of rights to notify each property owner that he or she has certain rights as set forth in this subsection.

(c) Requires the statement to include certain language and information.

(d) Requires the office of the attorney general to write the statement in plain language designed to be easily understood by the average property owner and to make the statement available on the attorney general's Internet website.

SECTION 6.02. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0112, as follows:

Sec. 21.0112. PROVISION OF LANDOWNER'S BILL OF RIGHTS STATEMENT REQUIRED. (a) Requires a governmental or private entity with eminent domain authority, before it begins negotiating with a property owner to acquire real property for transportation purposes, to send or provide a landowner's bill of rights statement provided by Section 402.031, Government Code, to the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property.

(b) Requires the statement to be printed in an easily readable font and type size and, if the entity is a governmental entity, to be made available on the Internet website of the entity if technologically feasible.

SECTION 6.03. Amends Section 21.012(b), Property Code, to require the condemnation petition, if applicable, to state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112.

SECTION 6.04. Requires the office of the attorney general to prepare the landowner's bill of rights statement required by Section 402.031, Government Code, as added by this article, not later than August 31, 2007.

SECTION 6.05. Makes application of this article prospective.

#### ARTICLE 7. ROUTE SELECTION FOR TRANS-TEXAS CORRIDOR

SECTION 7.01. Amends Section 227.012, Transportation Code, as follows:

Sec. 227.012. ROUTE SELECTION. (a) Creates this subsection from existing text.

(b) Requires the Texas Transportation Commission (commission), to the extent possible, to select a route for the Trans-Texas Corridor (TTC) that lies on the Texas Highway Trunk System (system).

(c) Requires the commission, before the 11th day after making a determination under Subsection (b) that it is not possible to select a route for a segment of TTC that lies on the system, to file a written report with each member of the legislature that includes the reasons supporting this determination.

SECTION 7.02. Effective date of this article : upon passage or September 1, 2007.

#### ARTICLE 8. GIFTS TO CERTAIN TEXAS TRANSPORTATION COMMISSION EMPLOYEES PROHIBITED

SECTION 8.01. Amends Section 201.001(a), Transportation Code, by adding Subdivision (4), to define "senior employee."

SECTION 8.02. Amends Subchapter B, Chapter 201, Transportation Code, by adding Sections 201.060 and 201.061, as follows:

Sec. 201.060. GIFT TO COMMISSIONER OR SENIOR EMPLOYEE; OFFENSE. (a) Defines "benefit."

(b) Provides that it is an offense for a commissioner of the commission (commissioner) or a senior employee of TxDOT (senior employee) to solicit, accept, or agree to accept any benefit from certain persons.

(c) Authorizes a commissioner or senior employee who receives an unsolicited benefit that is prohibited by this section to donate the benefit to a governmental entity that is authorized to accept the gift or to donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

(d) Sets forth certain fees and benefits to which this section does not apply.

(e) Provides that an offense under this section is a Class A misdemeanor.

(f) Authorizes an offense under this section which also constitutes an offense under Section 36.08 (Gift to Public Servant by Person Subject to His Jurisdiction), Penal Code, to be prosecuted under either section.

Sec. 201.061. OFFERING GIFT TO COMMISSIONER OR SENIOR EMPLOYEE; OFFENSE. (a) Provides that a person commits an offense by offering, conferring, or agreeing to confer any benefit on a commissioner or senior employee that the person knows the commissioner or senior employee is ineligible to accept under Section 201.060.

(b) Provides that an offense under this section is a Class A misdemeanor.

(c) Authorizes an offense under this section which also constitutes an offense under Section 36.09 (Offering Gift to Public Servant), Penal Code, to be prosecuted under either section.

SECTION 8.03. Makes application of this article prospective to September 1, 2007.

#### ARTICLE 9. DESIGNATION OF EXCLUSIVE HIGHWAY LANES

SECTION 9.01. Amends Section 224.1541(b), Transportation Code, to authorize the commission to designate a lane as an exclusive lane under Subsection (a) only if the commission determines that the use or operation of the exclusive lane is likely to enhance safety, mobility or air quality and two or more lanes adjacent to the proposed exclusive lane are available for the use of vehicles other than vehicles for which the lane is restricted, a multilane facility adjacent to the proposed exclusive lane is available for the use of vehicles other than vehicles for which the lane is restricted, or the proposed exclusive lane is to be used only by commercial motor vehicles as defined by commission order.

SECTION 9.02. Effective date of this article: upon passage or September 1, 2007.

#### ARTICLE 10. ENVIRONMENTAL REVIEW

SECTION 10.01. Amends Subchapter H, Chapter 201, Transportation Code, by adding Section 201.605, as follows:

Sec. 201.605. STATEMENT OF PURPOSE AND NEED. Requires TxDOT to publish the proposed Statement of Purpose and Need of a draft environmental impact statement in the Texas Register and receive comment for at least 30 days after the date of first publication.

#### ARTICLE 11. REPORTS AND INFORMATION BY TEXAS DEPARTMENT OF TRANSPORTATION

SECTION 11.01. Amends Subchapter J, Chapter 201, Transportation Code, by adding Section 201.805, as follows:

Sec. 201.805. REPORTS AND INFORMATION. (a) Requires TxDOT to annually publish, in appropriate media and on TxDOT's Internet website in a format that allows the information to be read into an electronic database, a statistical comparison of TxDOT districts, and certain information calculated on a per capita basis considering the most recent census data and listed for each county and for the state for each fiscal year.

(b) Requires TxDOT to include information from all TxDOT contracts in the statistical comparison and information reports required under Subsection (a).

#### ARTICLE 12. TOLL COLLECTION

SECTION 12.01. Amends Section 228.054(a), Transportation Code, to make a conforming change.

SECTION 12.02. Amends Subchapter B, Chapter 228, Transportation Code, by adding Section 228.0545, as follows:

Sec. 228.0545. ALTERNATIVE TOLLING METHODS. (a) Authorizes TxDOT, as an alternative to requiring payment of a toll at the time a vehicle is driven or towed through a toll collection facility, to use video billing or other tolling methods to permit the registered owner of the vehicle to pay the toll at a later date. Authorizes the toll charged for video billing or other tolling methods to be different from the toll paid at the time the vehicle is driven or towed through a toll collection facility.

(b) Authorizes TxDOT to use automated enforcement technology authorized under Section 228.058 (Automated Enforcement Technology) to identify the registered owner of the vehicle for purposes of billing, collection, and enforcement activities.

(c) Requires TxDOT to send by first class mail to the registered owner of the vehicle a written notice of the total amount due. Requires the notice to specify the date by which the amount due is required to be paid and prohibits the date from being earlier than the 15th day after the date the notice is mailed. Requires the registered owner to pay the amount due on or before the date specified in the notice.

(d) Requires TxDOT to send the notice required under Subsection (c) and subsequent notices to certain addresses of the registered owner of the vehicle.

(e) Authorizes the commissioners court of a county operating under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties) or an operating board appointed by the commissioners court of the county, the board of directors of a regional tollway authority (RTA) under Chapter 366 (Regional Tollway Authorities), or the board of directors of a regional mobility authority (RMA) under Chapter 370 (Regional Mobility Authorities), to adopt by official action the alternative tolling methods authorized by this section. Provides that if the alternative tolling methods authorized by this section are adopted by the commissioners court or operating board of a county or by the board of directors of an authority a reference in this section to TxDOT, other than in Subsection (d)(1), means the county or the authority, as applicable, and each provision of Sections 228.055 (Administrative Fee; Notice; Offense) and 225.056 (Presumptions; Prima Facie Evidence; Defenses) that is necessary or convenient for the implementation or enforcement of the alternative tolling methods also applies to the county or the authority, as applicable.

SECTION 12.03. Amends Sections 228.055(a), (b), (d), (e), and (h), Transportation Code, as follows:

(a) Makes conforming and nonsubstantive changes.

(b) Authorizes TxDOT, if it determines that the owner's address as shown in the vehicle registration records is inaccurate, to send the notice of nonpayment to an alternative address provided by the owner or derived through other reliable means. Authorizes TxDOT to use the alternate address in lieu of the address of record on all subsequent notices of nonpayment. Makes a conforming change.

(d) Provides an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to TxDOT a copy of the rental, lease, or other contract document covering the vehicle on the date the vehicle was driven or towed through a toll collection facility that results in a notice issued under Section 228.0545, with the name and address of the lessee clearly legible.

(e) Provides an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle transferred ownership of the vehicle to another person before the date the vehicle was driven or towed through a toll collection facility that results in a notice issued under Section 228.0545, submitted written notice of the transfer to TxDOT in accordance with Section 520.023 (Powers and Duties of Department on Transfer of Used Vehicle), and, before the 30th day after the day the notice of nonpayment is mailed, provides to TxDOT the name and address of the person to whom the vehicle was transferred. Authorizes TxDOT to send all subsequent notices of nonpayment associated with the vehicle to the person to whom ownership of the vehicle was transferred at the address provided by the former owner or an alternate address provided by the subsequent owner or derived through other reliable means. Makes conforming and nonsubstantive changes.

(h) Makes a conforming change.

SECTION 12.04. Amends Section 228.056(b), Transportation Code, to make conforming changes.

ARTICLE 13. CONVERSION OF NONTOLLED STATE HIGHWAY OR SEGMENT OF  
STATE HIGHWAY SYSTEM TO TOLL PROJECT

SECTION 13.01. Amends Section 228.201(a), Transportation Code, to delete an expired exception to the prohibition of TxDOT from operating a nontolled state highway or a segment of a nontolled state highway as a toll project provided for in Section 228.2015 (Limited Transition; expired September 1, 2006). Makes nonsubstantive changes.

SECTION 13.02. Repealer: Sections 228.207 (County and Voter Approval) and 228.208 (Election to Approve Conversion), Transportation Code.

SECTION 13.03. Effective date of this article: upon passage or September 1, 2007.

ARTICLE 14. PUBLIC ACCESS TO TRANS-TEXAS CORRIDOR INFORMATION

SECTION 14.01. Amends Subchapter A, Chapter 227, Transportation Code, by adding Sections 227.005-227.008, as follows:

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) Requires TxDOT to provide, to the greatest extent possible, public access to information collected, assembled, or maintained by TxDOT relating to the TTC, and to make public in a timely manner all documents, plans, all updates to the master development plan, and contracts related to the TTC, including financial plans.

(b) Requires TxDOT to send electronic versions of all updates to the master development plan for the TTC to certain entities in a timely manner.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) Requires TxDOT to post on its Internet website, in a timely manner, the costs incurred by TxDOT in connection with the financing, design, construction, maintenance, or operation of the TTC.

(b) Requires TxDOT, not later than the 10th day after the date TxDOT enters into a contract relating to the TTC, to post a copy of the contract on TxDOT's Internet website.

(c) Requires TxDOT to post each financial forecast prepared in connection with a segment of the TTC on its Internet website and update that forecast at least quarterly.

(d) Requires TxDOT to require each person with whom TxDOT has entered into a construction contract under this chapter to provide semiannual percentage of construction completion reports to the department and post each report received on its Internet website.

(e) Requires TxDOT, before the 10th day of each month, to post a report of its expenditures in connection with that segment during the preceding month that sets out the object of each expenditure for each segment of the TTC.

Sec. 227.007. REVENUE PROJECTIONS. Prohibits TxDOT from using TxDOT personnel to make projections of the revenue to be generated by a tolled segment of the TTC and requires TxDOT to enter into an interagency contract with the comptroller of public accounts (comptroller) under which the comptroller makes the projections for TxDOT and projects the toll revenue for each geographic region of a tolled segment before TxDOT enters into an agreement for the financing, design, construction, or operation of that segment.

Sec. 227.008. AUDITS BY STATE AUDITOR. Requires the state auditor to audit each annual financial statement prepared for a tolled segment of the TTC or a combination of segments of the TTC.

SECTION 14.02. Amends Section 227.023, Transportation Code, by adding Subsection (c-1), to prohibit TxDOT from entering a CDA with a term of more than four years or requiring a total expenditure of more than \$250 million unless TxDOT submits the proposed CDA to the attorney general and obtains the attorney general's approval of the contract.

#### ARTICLE 15. DISPOSITION OF REVENUE FROM TRANS-TEXAS CORRIDOR

SECTION 15.01. Amends Section 227.083, Transportation Code, as follows:

Sec. 227.083. DISPOSITION OF FEES. (a) Creates this subsection from existing text. Requires the revenue received by TxDOT under this chapter to be deposited to the credit of the state highway fund and authorizes the revenue to be used for any purpose authorized by this chapter, subject to Subsection (b).

(b) Defines "surplus toll revenue."

SECTION 15.02. Effective date of this article: upon passage or September 1, 2007.

#### ARTICLE 16. INVOLVEMENT OF METROPOLITAN PLANNING ORGANIZATIONS AND LOCAL ENTITIES IN CERTAIN TOLL PROJECTS

SECTION 16.01. Amends Chapter 228, Transportation Code, by adding Subchapter G, as follows:

##### SUBCHAPTER G. METROPOLITAN PLANNING ORGANIZATION AND LOCAL ENTITY INVOLVEMENT

Sec. 228.301. FINANCIAL REPORT. (a) Requires TxDOT and a metropolitan planning organization (MPO) that serves an area to appoint a committee to review the financial data on planned and existing toll projects located within the MPO's planning area. Sets forth the composition of the committee, including certain elected officials, and requires the chair of the MPO to chair the committee.

(b) Requires TxDOT, not later than March 31 of each year, to file with the commissioners court of each county in which TxDOT operates a toll project a written report on the findings of the committee established under Subsection (a). Requires representatives of the MPO policy board and the administrative head of TxDOT to appear before the commissioners court to present the report and receive questions and comments, at the invitation of the court.

Sec. 228.302. METROPOLITAN PLANNING ORGANIZATION APPROVAL REQUIRED. (a) Requires the MPO policy board's approval, for each toll project of TxDOT that is located within the area served by an MPO, before TxDOT is authorized to proceed with certain actions set forth in this subsection, including refinancing the project for the purpose of extending the time before the discharge of bonded indebtedness on the project, continuing to impose tolls after the discharge of bonded indebtedness on the project, unless the imposed tolls are to pay for the maintenance and operation of the project, and spending surplus revenue from the project on other transportation projects.

(b) Prohibits TxDOT from conducting preliminary engineering or environmental studies for a toll project located in an area served by an MPO unless the MPO policy board specifically authorizes TxDOT to do so.

Sec. 228.303. TOLL PROJECTS IN CERTAIN COUNTIES. (a) Provides that this section applies only to a county acting under Chapter 284.

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

(c) Requires the commission and TxDOT, to the extent authorized by federal law or authorized or required by this title, to assist the county in the financing, construction, and operation of a toll project in the county by allowing the county to use highway right-of-way owned by TxDOT and to access the state highway system.

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

(e) Requires the commission or TxDOT, before those entities are authorized to enter into a contract for the financing, construction, or operation of a proposed or existing toll project any part of which is located in the county, to provide the county the first option to finance, construct, or operate, as applicable, the portion of the toll project located in the county on certain terms and in a certain manner.

(f) Provides that a county's right to exercise the first option under Subsection (e) is effective for six months following the date of receipt by the county of written notification from the commission or TxDOT meeting the requirements of Subsection (e) and describing certain information in detail. Requires the county, if it exercises the first option with respect to a toll project, to enter into one or more contracts for the financing, construction, or operation of the toll project within 18 months of the date of exercising the option. Authorizes a contract to include agreements for design of the project, acquisition of right-of-way, and utility relocation. Authorizes the commission or TxDOT, if the county does not enter into a contract within the 18-month period, to enter into a contract for the financing, construction, or operation of the toll project with a different entity.

(g) Prohibits, except as provided by Section 284.004(a), an agreement entered into by the county and the commission or TxDOT in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to the state highway system from requiring the county to make any payments to the commission or TxDOT.

(h) Provides that an agreement entered into by the county and the commission or TxDOT in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

**Sec. 228.304. TOLL PROJECTS IN TERRITORY OF LOCAL OR REGIONAL TOLL PROJECT ENTITY. (a) Defines "local toll project entity."**

(b) Requires the MPO policy board to notify each local toll project entity located within the boundaries of that entity by mail that the entity has the first option to develop, finance, construct, and operate the project. Requires the toll project entity to decide whether to exercise the option before the 90th day after the date the notice sent under this subsection is received by the local toll project entity.

(c) Requires the MPO, if the local toll project entity does not exercise the option to develop, finance, construct, and operate a toll project under Subsection (d), to allow TxDOT to develop, finance, construct, and operate the project.

(d) Requires a request for proposal to include the terms and conditions approved by the MPO policy board if TxDOT determines that a toll project offered to TxDOT under Subsection (e) should be developed, financed, constructed, and operated under a CDA.

(e) Requires a local toll project entity that exercises the option under Subsection (d) or submits a binding commitment under Subsection (h) to begin the

environmental phase of the project within 18 months of the action taken by the entity under Subsection (d) or (h), as appropriate.

(f) Require the commission or TxDOT, if a local toll project entity does not exercise the right to first option under Subsection (d) and after five years after the date of the notice under Subsection (d) the commission or TxDOT has not issued a request for proposal or taken any other action to begin the toll project, to provide the toll project entity the right to first option under Subsection (d) before taking such an action.

(g) Requires a local toll project entity to provide customer service and other toll collection and enforcement services for a toll project, regardless of whether the toll project is developed, financed, constructed, and operated under a CDA or an agreement with the toll project entity.

(h) Provides that, for the purposes of this section, a notice is considered received on the third business day after the date that the notice is mailed.

Sec. 228.305. DETERMINATION OF APPLICABLE METROPOLITAN PLANNING ORGANIZATION. Requires a toll project that is located within the boundaries of more than one MPO and within whose boundaries a majority of the project is located to exercise, with respect to that project, the powers granted to an MPO under this subchapter.

Sec. 228.306. LOCAL GOVERNMENT APPROVAL OF COMPREHENSIVE DEVELOPMENT AGREEMENT. Requires the commissioners court for the county in which the largest portion of project involving a CDA is located to pass a supporting resolution before the commission or TxDOT is authorized to finally execute a contract for the project.

SECTION 16.02. Amends Chapter 370, Transportation Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. METROPOLITAN PLANNING ORGANIZATION PARTICIPATION

Sec. 371.401. FINANCIAL REPORT. (a) Requires an RMA and the MPO that serves the area within the boundaries of the RMA to appoint a committee to review the financial data on planned and existing turnpike projects located within the MPO's planning area. Sets forth the composition of the committee, including certain elected officials, and requires the chair of the MPO to chair the committee.

(b) Requires an RMA, not later than March 31 of each year, to file with the commissioners court of each county in which the RMA operates a turnpike project a written report on the findings of the committee established under Subsection (a). Requires representatives of the board of directors and the administrative head of an RMA to appear before the commissioners court to present the report and receive questions and comments, at the invitation of the court.

(c) Authorizes the required report to be given in conjunction with other reports required by Section 370.261 (Strategic Plans and Annual Reports).

Sec. 370.402. METROPOLITAN PLANNING ORGANIZATION APPROVAL REQUIRED. (a) Requires the MPO policy board's approval before an RMA may proceed with certain actions set forth in this subsection, including refinancing the project for the purpose of extending the time before the discharge of bonded indebtedness on the project, continuing to impose tolls after the discharge of bonded indebtedness on the project, unless the imposed tolls are to pay for the maintenance an operation of the project, and spending surplus revenue from the project on other transportation projects.

(b) Prohibits an RMA from conducting preliminary engineering or environmental studies for a project located in an area served by an MPO unless the MPO policy board specifically authorizes the RMA to do so.

(c) Provides that an RMA that is located within an area served by two MPOs is not subject to Subsections (a)(3), (4), and (5) or Subsection (b).

ARTICLE 17. COUNTY AUTHORITY IN CONNECTION WITH CAUSEWAYS, BRIDGES, TUNNELS, TURNPIKES, FERRIES, AND HIGHWAYS

SECTION 17.01. Amends Section 284.001(3), Transportation Code, to redefine "project."

SECTION 17.02. Amends Section 284.003, Transportation Code, as follows:

Sec. 284.003. PROJECT AUTHORIZED; CONSTRUCTION, OPERATION, AND COST. (a) Creates this subsection from existing text. Authorizes a county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, to, in connection with a project and on adoption of an order, exercise the powers of an RMA under Chapter 370 and to enter into a CDA with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a proposed or existing project in the county to the extent and in the manner applicable to TxDOT under Chapter 223 (Bids and Contracts for Highway Projects) or to an RTA under Chapter 366. Makes nonsubstantive changes.

(b) Authorizes the county or a local government corporation to exercise a power of an RMA operating under Chapter 370 only in a manner consistent with the other powers provided by this chapter. Provides that this chapter prevails to the extent of a conflict between this chapter and Chapter 370.

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

(d) Requires a county that constructs, acquires, improves, operates, maintains, or pools a project under this chapter to submit to TxDOT, before December 31 of each even-numbered year, a plan for the project that includes the time schedule for the project and describes the use of project funds. Authorizes the plan to provide for and permit the use of project funds and other money, including state or federal funds, available to the county for roads, streets, highways, and other related facilities in the county that are not part of a project under this chapter. Provides that a plan is not subject to approval, supervision, or regulation by the commission or TxDOT.

(e) Provides that an action of a county taken under this chapter is not subject to approval, supervision, or regulation by an organization, except as provided by federal law.

(f) Authorizes the county to enter into a protocol or other agreement with the commission or TxDOT to implement this section through the cooperation of the parties to the agreement.

SECTION 17.03. Amends Subchapter A, Chapter 284, Transportation Code, by adding Sections 284.0031 and 284.0032 and amending Section 284.004, as follows:

Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS. (a) Authorizes the commissioners court of a county or a local government corporation, without state approval, supervision, or regulation, to authorize the use of surplus revenue of a project for certain purposes and to prescribe terms for the use of the surplus revenue, including for certain purposes.

(b) Authorizes a county to enter into an agreement with the commission, TxDOT, a local government entity, or another political subdivision of this state to implement this section.

(c) Prohibits a county from taking an action under this section that violates or impairs a bond resolution, trust agreement, or indenture that governs the use of the revenue of a project.

(d) Provides that a county has the same powers and is authorized to use the same procedures in certain respects that are available to the county with respect to a project under this chapter, except as provided by this section.

(e) Requires, notwithstanding any other law, a metropolitan rapid transit authority (MRTA) created pursuant to Chapter 451 (Metropolitan Rapid Transit Authorities) that is located primarily in a county with a population of more than 3.3 million to which this chapter applies and in which the voters have authorized the dedication of a portion of its sales and use tax revenue for street improvements and mobility projects within the MRTA's service area to account for the entire amount of that liability on its financial statements in accordance with generally accepted accounting principles.

Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. Provides that the county, in connection with the project and in addition to the other powers granted by this chapter, has all the powers of TxDOT related to the development of a project that has been designated as part of the TTC if a county requests or is requested by the commission to participate in the development of a project under this chapter that has been designated as part of the TTC.

Sec. 284.004. New heading: USE OF COUNTY PROPERTY AND STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Creates this subsection from existing text. Authorizes a county under this chapter, notwithstanding any other law, to use any state highway right-of-way or access to the state highway system, regardless of when or how the right-of-way or access is acquired. Authorizes TxDOT or the commission to require the county to comply with any covenant, condition, restriction, or limitation that affects state highway right-of-way, but prohibits TxDOT or the commission from adopting rules or establishing policies that have certain effects related to the use of right-of-way or access or from requiring the county to pay for the use of the right-of-way or access, except under certain conditions.

(b) Requires the county and the commission or TxDOT, if a project of the county under this chapter includes the proposed use of improved state highway right-of-way, to enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the county and to protect the interests of the commission and TxDOT in the use of the right-of-way for operations of TxDOT.

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

SECTION 17.04. Amends Sections 284.008(c) and (d), Transportation Code, as follows:

(c) Provides that a project becomes a part of the state highway system and requires the commission to maintain the project without tolls when all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the issuer of the bonds or another person with the consent or approval of the issuer or when a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer of the bonds or another person with the consent or approval of the issuer in a trust fund held for the benefit of the bondholders, except as provided by Subsection (d).

(d) Deletes existing text conditioning that a county is authorized to request that the commission adopt an order that a project will not become part of the state highway system under Subsection (c) only before construction on a project under this chapter begins.

SECTION 17.05. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.0092, as follows:

Sec. 284.0092. AUDIT BY FEDERAL HIGHWAY ADMINISTRATION. Provides that the accounts and records of a county relating to a project under this chapter located in a county that has a population of more than 3.4 million and is within 100 miles of the Gulf of Mexico are subject to audit by the Federal Highway Administration as deemed necessary by that agency.

SECTION 17.06. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.010, as follows:

Sec. 284.010. CONTRACTOR CONTRIBUTIONS PROHIBITED. Prohibits a person who enters into a contract with a county under this chapter from making a political contribution to a person who is a commissioner or county judge of the county or who is a candidate for such positions.

SECTION 17.07. Amends Sections 284.065(b) and (c), Transportation Code, as follows:

(b) Authorizes an existing project to be pooled in whole or in part with another existing project.

(c) Authorizes a project to be pooled more than once, rather than prohibiting a project from being pooled more than once.

#### ARTICLE 18. OPERATION OF REGIONAL TOLLWAY AUTHORITIES

SECTION 18.01. Amends Section 366.003, Transportation Code, by adding Subdivision (9-a), to define "surplus revenue."

SECTION 18.02. Amends Chapter 366, Transportation Code, by adding Subchapter H, as follows:

#### SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Authorizes an RTA to use a CDA with a private entity for certain purposes related to a turnpike project.

(b) Provides that a CDA is an agreement with a private entity that, at a minimum, provides for the design, construction, rehabilitation, expansion, or improvement of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.

(c) Authorizes an RTA to negotiate provisions relating to professional and consulting services provided in connection with a CDA.

(d) Authorizes an RTA to authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Requires an RTA that enters into a CDA to use a competitive procurement process that provides the best value for the RTA. Authorizes

an RTA to accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with this section.

(b) Requires an RTA to establish rules and procedures for accepting unsolicited proposals that require the private entity to include certain information in the proposal.

(c) Requires an RTA to publish a notice advertising a request for competing proposals and qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if the RTA takes certain actions.

(d) Requires a proposal submitted in response to a request published under Subsection (c) to contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) Authorizes an RTA to interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). Requires the RTA to evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and authorizes the RTA to qualify or shortlist private entities to submit detailed proposals under Subsection (f). Requires the RTA to qualify or shortlist at least two private entities to submit detailed proposals for a project under Subsection (f) unless the RTA does not receive more than one proposal or one response to a request under Subsection (c).

(f) Requires an RTA to issue a request for detailed proposals from all private entities qualified or shortlisted under Subsection (e) if the RTA proceeds with the further evaluation of a proposed project. Authorizes a request under this subsection to require certain additional information the RTA considers relevant or necessary.

(g) Authorizes an RTA, in issuing a request for proposals under Subsection (f), to solicit input from entities qualified under Subsection (e) or any other person. Authorizes an RTA to also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) Requires an RTA to evaluate each proposal based on the criteria described in the request for detailed proposals and to select the private entity whose proposal offers the apparent best value to the RTA.

(i) Authorizes an RTA to enter into negotiations with the private entity whose proposal offers the apparent best value.

(j) Authorizes an RTA, if at any point in negotiations under Subsection (i) it appears to the RTA that the highest ranking proposal will not provide the RTA with the overall best value, to enter into negotiations with the private entity submitting the next-highest-ranking proposal.

(k) Authorizes an RTA to withdraw a request for competing proposals and qualifications or request for detailed proposals at any time, and to then publish a new request for competing proposals and qualifications.

(l) Authorizes an RTA to require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) Authorizes an RTA to pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. Requires a stipulated amount to be stated in the request for proposals and prohibits it from exceeding the value of any work product

contained in the proposal that can, as determined by the RTA, be used by the RTA in the performance of its functions. Provides that the use by the RTA of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the RTA and does not confer liability on the recipient of the stipulated amount. Sets forth certain effects resulting after payment of the stipulated amount.

(n) Authorizes an RTA to prescribe the general form of a CDA and to include any matter the RTA considers advantageous to the RTA. Requires the RTA and the private entity to finalize the specific terms of a CDA.

(o) Provides that Section 366.185 (Competitive Bidding) and Subchapter A (Competitive Bids), Chapter 223, of this code, and Chapter 2254 (Professional and Consulting Services), Government Code, do not apply to a CDA entered into under this subchapter.

Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) Provides that, to encourage private entities to submit proposals under this subchapter, certain information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract is entered into for a proposed project.

(b) Provides that, after an RTA completes its final ranking of proposals under Section 366.402(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY. (a) Requires an RTA to require a private entity entering into a CDA under this subchapter to provide a performance and payment bond or an alternative form of security in a certain amount, notwithstanding the requirements of Subchapter B (General Requirements; Liability), Chapter 2253, Government Code.

(b) Requires a performance and payment bond or alternative form of security to be in an amount equal to the cost of constructing or maintaining the project.

(c) Requires an RTA to set the amount of the bonds or the alternative forms of security if the RTA determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b).

(d) Provides that a payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) Prohibits the amount of the payment security from being less than the amount of the performance security.

(f) Authorizes the RTA to require certain alternative forms of security, in addition to, or instead of, performance and payment bonds.

(g) Requires an RTA to by rule prescribe requirements for alternative forms of security provided under this section.

Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) Provides that a turnpike project that is the subject of a CDA with a private entity, including the facilities acquired or constructed on the project, is public property and is owned by the RTA.

(b) Authorizes an RTA, notwithstanding Subsection (a), to enter into an agreement that provides the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private

entity to construct, operate, and maintain a turnpike project, including supplemental facilities. Provides that, at the termination of the agreement, the turnpike project, including the facilities, are to be in a state of proper maintenance as determined by the RTA and are required to be returned to the RTA in satisfactory condition at no further cost.

Sec. 366.406. **LIABILITY FOR PRIVATE OBLIGATIONS.** Prohibits an RTA from incurring a financial obligation for a private entity that designs, develops, finances, constructs, operates, or maintains a turnpike project. Provides that the RTA or a political subdivision of the state is not liable for any financial or other obligation of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

Sec. 366.407. **TERMS OF PRIVATE PARTICIPATION.** (a) Requires an RTA to negotiate certain terms of private participation in a turnpike project under this subchapter.

(b) Authorizes a CDA entered into under this subchapter to include any provision the RTA considers appropriate, including certain provisions.

(c) Authorizes an RTA to enter into a CDA under this subchapter with a private participant only if the project is identified in TxDOT's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

(d) Provides that Section 366.406 does not apply to an obligation of an RTA under a CDA, nor is an RTA otherwise constrained from issuing bonds or other financial obligations of a turnpike project payable solely from revenues of that turnpike or from amounts received under a CDA.

(e) Authorizes an obligation of an RTA under a CDA entered into under this subchapter, notwithstanding any other law, and subject to compliance with the dispute resolution procedure set out in the CDA, to make or secure payments to a person because of the termination of the agreement, including the purchase of the interest of a private participant or other investor in a project to be enforced by mandamus against the RTA in a district court of any county of the RTA, and waives the sovereign immunity of the RTA for that purpose. Requires the district courts of any county of the RTA to have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under this subsection. Provides that the remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a CDA.

(f) Requires the private participant to submit certain information for approval to an RTA that enters into a CDA with a private participant that includes the collection by the private participant of tolls for the use of a toll project.

(g) Authorizes a CDA with a private participant that includes the collection by the private participant of tolls for the use of a toll project to be for a term not longer than 30 years, except as provided by this section.

Sec. 366.408. **RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS.** (a) Requires an RTA, for certain purposes, to adopt rules, procedures, and other guidelines governing selection of private participants for CDAs and negotiations of CDAs. Requires the rules to contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) Requires an RTA to have up-to-date procedures for participation in negotiations under this subchapter.

(c) Provides that an RTA has exclusive judgment to determine the terms of an agreement.

Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Requires payments received by an RTA under a CDA to be used by the RTA to finance the construction, maintenance, or operation of a turnpike project or a highway.

(b) Requires the RTA to allocate the distribution of funds received under Subsection (a) to the counties of the RTA based on the percentage of toll revenue from users, from each county, of the project that is the subject of the CDA. Requires each entity responsible for collecting tolls for a project, to assist the RTA in determining the allocation, to calculate on an annual basis the percentage of toll revenue from users of the project from each county within the RTA based on the number of recorded electronic toll collections.

SECTION 18.03. Amends Section 366.033(f), Transportation Code, to authorize an RTA to rent, lease, franchise, license, or otherwise make portions of any property of the RTA, including the tangible or intangible property, rather than its properties, available for use by others in furtherance of its powers under this chapter by increasing the feasibility or efficient operation, rather than revenue, of a turnpike project or system or the revenue of the RTA.

SECTION 18.04. Amends Subchapter B, Chapter 366, Transportation Code, by adding Sections 366.037 and 366.038, as follows:

Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) Authorizes the board of directors of an RTA (RTA board), by resolution, in addition to the powers granted under this chapter and without supervision or regulation by any state agency or local governmental entity, but subject to an agreement entered into under Subsection (c), and on making the findings set forth in this subsection, to authorize the use of surplus revenue of a turnpike project or system for the study, design, construction, maintenance, repair, and operation of a highway or similar facility that is not a turnpike project if the highway or similar facility meets certain criteria.

(b) Authorizes the RTA board in the resolution to prescribe terms for the use of the surplus revenue, including the manner in which the highway or related facility is required to be studied, designed, constructed, maintained, repaired, or operated.

(c) Requires an RTA to enter into an agreement to implement this section with TxDOT, the commission, a local governmental entity, or another political subdivision that owns a street, road, alley, or highway that is directly affected by the RTA's turnpike project or related facility.

(d) Prohibits an RTA from taking certain actions related to revenue and expenditures.

(e) Requires the RTA board to consider certain issues in authorizing expenditures under this section.

(f) Provides that, except as provided by this section, an RTA has the same powers and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, and operation of a highway or similar facility under this section as are available to the RTA with respect to a turnpike project or system.

Sec. 366.038. USE OF STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Authorizes an RTA, notwithstanding any other law, to use any RTA property, state highway right-of-way, or access to the state highway system, regardless of when or how the property, right-of-way, or access is acquired. Authorizes TxDOT or the commission to require the RTA to comply with any covenant, condition, restriction, or limitation that affects state highway right-of-way, but prohibits these entities from:

(1) adopting rules or establishing policies that have the effect of denying the RTA the use of the right-of-way or access that the RTA has

determined to be necessary or convenient for the construction, acquisition, improvement, operation, maintenance, or pooling of a project under this chapter; or

(2) requiring the RTA to pay for the use of the right-of-way or access, except to reimburse the commission or TxDOT for actual costs incurred or to be incurred by a third party, including the federal government, as a result of that use by the RTA.

(b) Requires the RTA and the commission or TxDOT, if a project of an RTA under this chapter includes the proposed use of improved state highway right-of-way, to enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the RTA and to protect the interests of the commission and TxDOT in the use of the right-of-way for operations of TxDOT, including public safety and congestion mitigation on the improved right-of-way.

(c) Provides that the commission and TxDOT, notwithstanding any other law, are not liable for any damages that result from an RTA's use of state highway right-of-way or access to the state highway system under this chapter, regardless of the legal theory, statute, or cause of action under which liability is asserted.

SECTION 18.05. Amends the heading to Section 366.185, Transportation Code, to read as follows:

Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES.

SECTION 18.06. Amends Section 366.185, Transportation Code, by amending Subsection (a) and adding Subsections (c) through (f), as follows:

(a) Authorizes, rather than requires, a contract made by an RTA that requires the expenditures of public funds for the construction or maintenance of a turnpike project to be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the RTA's criteria.

(c) Authorizes an RTA to procure a combination of engineering, design, and construction services in a single procurement for a turnpike project, provided that any contract awarded results in the best value to the RTA.

(d) Requires the RTA to adopt rules governing the award of contracts for engineering, design, construction, and maintenance services in a single procurement.

(e) Authorizes an RTA, notwithstanding any other provision of state law, to let a contract for the design and construction of a turnpike project by a construction manager-at-risk procedure under which the construction manager-at-risk provides consultation to the RTA during the design of the turnpike project and is responsible for construction of the turnpike project in accordance with the RTA's specifications. Requires a construction manager-at-risk to be selected on the basis of criteria established by the RTA, which may include the construction manager-at-risk's experience, past performance, safety record, proposed personnel and methodology, proposed fees, and other appropriate factors that demonstrate the construction manager-at-risk's ability to provide the best value to the RTA and to deliver the required services in accordance with the RTA's specifications.

(f) Requires the RTA to adopt rules governing the award of contracts using construction manager-at-risk procedures under this section.

SECTION 18.07. Amends Subchapter F, Chapter 366, Transportation Code, by adding Sections 366.2521 and 366.2522, as follows:

Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) Defines "benefit."

- (b) Provides that a director of the RTA board (director) commits an offense if the person solicits, accepts, or agrees to accept any benefit from certain persons.
- (c) Authorizes a director who receives an unsolicited benefit that the director is prohibited from accepting under this section to donate the benefit to certain entities.
- (d) Sets forth fees and benefits to which this section does not apply.
- (e) Provides that an offense under this section is a Class A misdemeanor.
- (f) Provides that if conduct that constitutes an offense under this section also constitutes an offense under Section 36.08, Penal Code, the actor is authorized to be prosecuted under either section.

Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE. Provides that a person commits a Class A misdemeanor if the person offers, confers, or agrees to confer any benefit on a director that the person knows the director is prohibited from accepting under Section 366.2521. Provides that if conduct that constitutes an offense under this section also constitutes an offense under Section 36.09, Penal Code, the actor is authorized to be prosecuted under either section.

SECTION 18.08. Amends Subchapter F, Chapter 366, Transportation Code, by adding Section 366.2575, as follows:

Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. Authorizes the commissioners court of a county of an RTA to request the RTA board to vote on whether to build a project that the county requests.

SECTION 18.09. Amends Subchapter G, Chapter 366, Transportation Code, by adding Section 366.305, as follows:

Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. Requires an RTA, if the RTA is requested by the commission to participate in the development of a turnpike project that has been designated as part of the TTC, to have, in addition to all powers granted in this chapter, all powers of TxDOT related to the development of TTC projects.

#### ARTICLE 19. REGIONAL TOLLWAY AUTHORITY BOARD OF DIRECTORS

SECTION 19.01. Amends Section 366.251, Transportation Code, by amending Subsection (c) and adding Subsection (d-1), as follows:

(c) Changes the method by which the commissioners court of a county of an RTA appoints additional members to the RTA board to a direct appointment of one additional director of an RTA, rather than two additional directors of an RTA, for each county that created the authority under Section 366.031 or in which all or part of a turnpike project of not less than 10 centerline miles in length is located that has been open for use by the traveling public for at least three years.

(d-1) Requires, if one or more directors of an RTA are subsequently appointed to the RTA board, the directors of the RTA other than those subsequent appointees to determine the length of the appointees' terms in order to comply with Subsection (d) (regarding the division of the RTA board into groups).

SECTION 19.02. Provides that the change made in law by this article in amending Section 366.251, Transportation Code, does not affect the term of a member of an RTA board serving on the Act's effective date. Requires members of an RTA board appointed to fill vacancies occurring on or after the Act's effective date to be appointed in accordance with Section 366.251, Transportation Code, as amended by this article.

SECTION 19.03. Provides that the change made in law by this article in amending Section 366.251, Transportation Code, does not prohibit a member of an RTA board before the Act's effective date from being appointed as a member of the RTA board under its new composition if the member has the qualifications required for the position under Section 366.251, Transportation Code, as amended by this article, and otherwise under Chapter 366, Transportation Code.

#### ARTICLE 20. REGIONAL MOBILITY AUTHORITY BOARD OF DIRECTORS

SECTION 20.01. Amends Section 370.251, Transportation Code, by adding Subsection (b-1) and amending Subsections (c) and (g), as follows:

(b-1) Requires at least one of the members of the board of directors of an RMA (RMA board) to be an elected official, which may include a member of a commissioners court or another locally elected body.

(c) Provides that directors of an RMA board serve two-year terms, with as near as possible to one-half of the directors' terms expiring on February 1 of each year, rather than providing that, if six-year terms are not permitted under the constitution, directors of an RMA board serve two-year terms, with the terms of not more than one-half of the directors expiring on February 1 of each year. Deletes existing text providing that, if permitted under the constitution of this state, directors of an RMA board serve staggered six-year terms, with the terms of no more than one-third of the directors expiring on February 1 of each odd-numbered year.

(g) Deletes elected officials from the list of persons who are ineligible to serve as a director of the RMA board.

SECTION 20.02. (a) Provides that the change in law made by Section 371.051(b-1), Transportation Code, as added by this article, regarding the composition of the RMA board does not affect the entitlement of a director serving on the RMA board immediately before the Act's effective date to continue such service for the remainder of the director's term.

(b) Makes application of Section 371.051(b-1), Transportation Code, as added by this article, prospective. Requires the first director of the RMA board appointed on or after this Act's effective date to be an elected official if the RMA board does not meet the requirements of that subsection.

#### ARTICLE 21. REGIONAL MOBILITY AUTHORITIES

SECTION 21.01. Amends Subchapter B, Chapter 370, Transportation Code, by adding Sections 370.040 and 370.041, as follows:

Sec. 370.040. USE OF STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Authorizes an RMA, notwithstanding any other law, to use any RMA authority, state highway right-of-way, or access to the state highway system, regardless of when or how the property, right-of-way, or access is acquired. Authorizes TxDOT or the commission to require the RMA to comply with any covenant, condition, restriction, or limitation that affects state highway right-of-way, but prohibits TxDOT or the commission from adopting rules or establishing policies that have certain effects related to the use of right-of-way or access or from requiring the RMA to pay for the use of the right-of-way or access, except under certain conditions.

(b) Requires an RMA and the commission or TxDOT, if a project of an RMA under this chapter includes the proposed use of improved state highway right-of-way, to enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the RMA and to protect the interests of the commission and TxDOT in the use of the right-of-way for operations of TxDOT, including public safety and congestion mitigation on the improved right-of-way.

(c) Provides that the commission and TxDOT, notwithstanding any other law, are not liable for any damages that result from an RMA's use of state highway right-of-way or access to the state highway system under this chapter, regardless of the legal theory, statute, or cause of action under which liability is asserted.

Sec. 370.041. CERTAIN POWERS. Provides that an RMA created under Section 370.031(c) (regarding creation of a regional mobility authority) has the same powers as an RMA originally created under Chapter 97, Acts of the 40th Legislature, 1st Called Session, 1927.

SECTION 21.02. Amends Subchapter E, Chapter 370, Transportation Code, by adding Section 370.194, as follows:

Sec. 370.194. MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS. Authorizes an RMA, if authorized by an applicable regulatory authority and approved by the MPO policy board that serves the region of the RMA, to offer to purchase a conservation easement from the owner of real property to mitigate an adverse environmental impact that is a direct result of a transportation project.

SECTION 21.03. Amends Section 370.302(i), Transportation Code, to prohibit an agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project from being for a term longer than 40, rather than 50, years.

SECTION 21.04. Amends Subchapter G, Chapter 370, Transportation Code, by adding Section 370.318, as follows:

Sec. 370.318. CONTRACT FOR ENFORCEMENT. Authorizes a private entity that contracts with an RMA to operate a turnpike project to contract with an agency of this state or a local governmental entity for the services of peace officers employed by the agency or entity to enforce laws related to the regulation and control of vehicular traffic on a state highway and to the payment of the proper toll on a turnpike project.

SECTION 21.05. Amends Section 11.11, Tax Code, by adding Subsection (k), as follows:

(k) Provides that, for purposes of this section, any portion of a facility leased to a private entity by an RMA under Chapter 370, Transportation Code, is public property used for a public purpose if the facility is operated by the private entity to provide transportation or utility services. Provides that any part of a facility leased to a private entity for a commercial purpose under Chapter 370, Transportation Code, is not exempt from taxation.

SECTION 21.06. Amends Section 25.07(c), Tax Code, to include that Subsection (a) (relating to leasehold and other possessory interests in exempt property) does not apply to a leasehold or other possessory interest in a facility granted by an RMA under Chapter 370, Transportation Code.

## ARTICLE 22. TOLL COLLECTION TRANSACTION PROCESSING BY CERTAIN TOLL PROJECT ENTITIES

SECTION 22.01. Amends Subchapter C, Chapter 284, Transportation Code, by adding Section 284.075, as follows:

Sec. 284.075. TRANSACTION PROCESSING. Authorizes a county to enter into an agreement with a bank or other financial institution, as defined by Section 31.002 (Definitions), Finance Code, or a clearinghouse association providing services to a bank or other financial institution, to provide, on terms and conditions approved by the county, toll transaction processing and other related services. Authorizes a county to enter into an agreement under this section jointly with other toll entities.

SECTION 22.02. Amends Subchapter E, Chapter 366, Transportation Code, by adding Section 366.186, as follows:

Sec. 366.186. TRANSACTION PROCESSING. Authorizes an RTA to enter into an agreement with a bank or other financial institution, as defined by Section 31.002, Finance Code, or a clearinghouse association providing services to a bank or other financial institution, to provide, on terms and conditions approved by the RTA, toll transaction processing and other related services. Authorizes an RTA to enter into an agreement under this section jointly with other toll entities.

SECTION 22.03. Amends Subchapter E, Chapter 370, Transportation Code, by adding Section 370.195, as follows:

Sec. 370.195. TRANSACTION PROCESSING. Authorizes an RMA to enter into an agreement with a bank or other financial institution, as defined by Section 31.002, Finance Code, or a clearinghouse association providing services to a bank or other financial institution, to provide, on terms and conditions approved by the RMA, toll transaction processing and other related services. Authorizes an RMA to enter into an agreement under this section jointly with other toll entities.

#### ARTICLE 23. PROTOCOL AGREEMENT BETWEEN TEXAS DEPARTMENT OF TRANSPORTATION AND REGIONAL TOLLWAY AUTHORITY

SECTION 23.01. (a) Provides that the Proposed TxDOT/NTTA Regional Protocol entered into between TxDOT and the North Texas Tollway Authority and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by TxDOT is void.

(b) Provides that the North Texas Tollway Authority will remain the operator for all turnpike projects within the service area of the authority on dissolution of the protocol under Subsection (a) of this section.

(c) Provides that this section does not apply to a CDA for a managed lane facility toll project the major portion of which is located outside the boundaries of a county in which two or more municipalities each with a population of more than 300,000 are located and for which TxDOT has issued a request for qualifications before the effective date of this section.

#### ARTICLE 24. PAYMENTS TO UNSUCCESSFUL PROPOSERS FOR COMPREHENSIVE DEVELOPMENT AGREEMENT CONTRACTS

SECTION 24.01. Amends Section 223.203(m), Transportation Code, to authorize, rather than require, TxDOT to pay an unsuccessful private entity that submits a response for detailed proposals under Subsection (f) (relating to the process for entering into comprehensive development agreements) a stipulated amount for the work product contained in the proposal. Makes a nonsubstantive change.

SECTION 24.02. Amends Section 370.306(m), Transportation Code, to authorize, rather than require, an RMA to pay an unsuccessful private entity that submits a response for detailed proposals under Subsection (f) (relating to the process for entering into comprehensive development agreements) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. Makes a nonsubstantive change.

#### ARTICLE 25. METROPOLITAN PLANNING ORGANIZATIONS, RURAL PLANNING ORGANIZATIONS, AND CORRIDOR PLANNING ORGANIZATIONS

SECTION 25.01. Amends the heading to Subchapter D, Chapter 472, Transportation Code, to read as follows:

#### SUBCHAPTER D. METROPOLITAN PLANNING ORGANIZATIONS AND RURAL PLANNING ORGANIZATIONS

SECTION 25.02. Amends Section 472.031(1), Transportation Code, to redefine "metropolitan planning organization."

SECTION 25.03. Amends Subchapter D, Chapter 472, Transportation Code, by adding Sections 472.0315 and 472.034-472.040, as follows:

Sec. 472.0315. DESIGNATION BY GOVERNOR. Requires the governor to designate an MPO for each urbanized area of the state with a population greater than 50,000 in accordance with 23 U.S.C. Section 134 (Metropolitan Planning).

Sec. 472.034. APPOINTMENTS TO POLICY BOARD. Requires appointments to an MPO policy board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 472.035. SEPARATION OF RESPONSIBILITIES. Requires an MPO policy board to develop and implement policies that clearly separate the policymaking responsibilities of the MPO policy board and the management responsibilities of the director and the staff of the MPO.

Sec. 472.036. PUBLIC TESTIMONY. Requires an MPO policy board to develop and implement policies that provide the public with a reasonable opportunity to appear before the MPO policy board and to speak on any issue under the jurisdiction of the MPO.

Sec. 472.037. COMPLAINTS. (a) Requires an MPO to maintain a system to promptly and efficiently act on complaints filed with the MPO. Requires the MPO to maintain certain information related to the complaint.

(b) Requires the MPO to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the MPO to periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 472.038. TECHNOLOGY REQUIREMENTS. Requires an MPO policy board to implement a policy requiring the MPO to use appropriate technological solutions to improve the MPO's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the MPO on the Internet.

Sec. 472.039. RURAL PLANNING ORGANIZATIONS. (a) Defines "local government," "regional planning commission," and "rural planning organization."

(b) Authorizes local governments that represent at least 75 percent of the affected population, in order to perform the transportation planning process required by this section, to create a rural planning organization (RPO) that includes an area that is located within the boundaries of a regional planning commission and outside the boundaries of an MPO. Requires the regional planning commission, if an RPO is created, to administer the RPO on behalf of the units of local government.

(c) Provides that an RPO is governed by a board of directors composed of elected officials and the district engineer of each TxDOT district any part of which is located within the boundaries of the RPO.

(d) Requires the RPO to send notice of its creation to the commission as soon as practicable following creation.

(e) Authorizes TxDOT to use money in the state highway fund to fund the operations of an RPO.

(f) Authorizes an RPO to enter into an agreement with TxDOT to develop transportation plans and programs for the area served by the RPO. Requires the process for the area served by the transportation plans and programs to provide for consideration of all modes of transportation and be continuing, cooperative,

and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(g) Authorizes an RPO to enter into an agreement with TxDOT to prepare and update periodically a long-range transportation plan (plan) for the area served by the RPO. Requires an RPO, before approving a plan, to provide to residents living within its boundaries, affected public agencies, and other interested parties a reasonable opportunity to comment on the plan. Requires an RPO to make each plan available for public review and deliver each plan to the commission at the time and in the manner established by the commission.

(h) Authorizes an RPO to provide to the commission recommendations for the selection of transportation projects, systems, or programs to be undertaken within the boundaries of the RPO.

(i) Authorizes the commission to delegate the selection of a project, system, or program under Subsection (h) to the RPO but requires the commission to agree with the RPO's selection before the selection becomes effective.

(j) Provides that an RPO is subject to the open meetings law, Chapter 551 (Open Meetings), Government Code.

Sec. 472.040. POSTING OF INFORMATION ON INTERNET. Requires an MPO to provide certain information on the MPO's Internet website about each transportation project located within the area served by the MPO.

SECTION 25.04. Amends Subchapter B, Chapter 227, Transportation Code, by adding Section 227.0135, as follows:

Sec. 227.0135. CORRIDOR PLANNING ORGANIZATION. (a) Requires the commission, before it designates a route for a segment of the TTC, to create a corridor planning organization (CPO) that is composed of representatives of MPOs and RPOs that may be affected by the segment.

(b) Sets forth the composition of the CPO.

(c) Requires the CPO to assist the commission in the planning of the segment of the TTC for which the CPO was created. Requires the commission to consider the CPO's recommendations when selecting a route for the segment. Requires the CPO to approve any facility proposed to be constructed as part of the segment of the TTC and to approve the method of contracting for the construction or operation of a facility, including whether the facility will be constructed or operated under a CDA.

(d) Provides that a CPO is subject to the open meetings law, Chapter 551, Government Code.

#### ARTICLE 26. PERMISSIBLE USES OF STATE HIGHWAY FUND

SECTION 26.01. Amends Section 201.115(d), Transportation Code, to authorize money in the state highway fund to be used to repay a loan under this section (Borrowing Money) if permitted by the Texas Constitution and appropriated by the legislature for that purpose, notwithstanding Section 222.001.

SECTION 26.02. Amends Section 222.001, Transportation Code, as follows:

Sec. 222.001. USE OF STATE HIGHWAY FUND. (a) Creates this subsection from existing text. Deletes an existing provision authorizing the use of money in the state highway fund by the Department of Public Safety to police the state highway system and to administer state laws relating to traffic and safety on public roads.

(b) Authorizes money in the state highway fund not described by Subsection (a) to be used only to improve the state highway system, except as otherwise provided by this code.

SECTION 26.03. Amends Section 222.073, Transportation Code, to require the commission to use money deposited in the state infrastructure bank to the extent permissible under, rather than notwithstanding, Section 222.001 for the purposes set forth in this subsection.

SECTION 26.04. Repealer: Section 222.002 (Purposes of Infrastructure), Transportation Code.

SECTION 26.05. Makes application of this article contingent upon passage of the constitutional amendment proposed by the 80<sup>th</sup> Legislature, Regular Session, 2007, to limit the purposes for which revenues from motor vehicle registration fees, taxes on motor fuels and lubricants, and certain revenues received from the federal government may be used.

#### ARTICLE 27. REVENUE FOR TEXAS MOBILITY FUND OTHER THAN TAXES

SECTION 27.01. Amends Subchapter B, Chapter 2302, Occupations Code, by adding Section 2302.054, as follows:

Sec. 2302.054. DISPOSITION OF FEES. Requires each fee collected by TxDOT under this chapter (Salvage Vehicle Dealers) to be deposited into the Texas mobility fund (mobility fund).

SECTION 27.02. Amends Subchapter B, Chapter 2303, Occupations Code, by adding Section 2303.055, as follows:

Sec. 2303.055. DISPOSITION OF FUNDS. Requires each fee and penalty collected by TxDOT under this chapter (Vehicle Storage Facilities) to be deposited into the mobility fund.

SECTION 27.03. Amends Sections 201.943(b), (c), (f), and (j), Transportation Code, as follows:

(b) Requires obligations to be secured by and payable from a pledge of and lien on all or part of the money in the mobility fund, including the revenues of the state dedicated or appropriated for deposit to the mobility fund.

(c) Deletes existing text referring to the issuance of bonds, notes, and other public securities by the commission.

(f) Prohibits the issuance of short-term obligations proposed by the commission unless the comptroller assumes that it will be refunded and refinanced over a 20-year period with level debt service, rather than level principal, requirements and bearing interest at then current market rates, as determined by the comptroller.

(j) Requires the comptroller to rely on assumptions made in the resolution authorizing obligations for the calculation of debt service, subject to the express limitations of this subchapter (Obligations for Certain Highway and Mobility Projects) and Section 49-k (Texas Mobility Fund), Article III, Texas Constitution, to determine the principal and interest requirements on outstanding and proposed obligations.

SECTION 27.04. Amends Section 501.138(c), Transportation Code, to require certain deposits to be made into the mobility fund rather than the general revenue fund.

SECTION 27.05. Amends Section 504.101(e), Transportation Code, to require the remainder of each fee collected by TxDOT under this section (Personalized License Plates), after \$1.25 is used to defray the cost of administering this section, to be deposited to the credit of the mobility fund rather than the general revenue fund.

SECTION 27.06. Amends Section 542.402, Transportation Code, to require the comptroller to deposit money received under Subsection (b) (relating to the disposition of certain fines) to the credit of the mobility fund.

SECTION 27.07. Amends Section 542.4031(g), Transportation Code, to require 67 percent of the money received by the comptroller under this section (State Traffic Fine) to be credited to the mobility fund, rather than the undedicated portion of the general revenue fund.

SECTION 27.08. Amends Section 623.011(b), Transportation Code, to increase the base fee for a permit for excess axle or gross weight from \$75 to \$200.

SECTION 27.09. Amends Subchapter B, Chapter 623, Transportation Code, by adding Section 623.020, as follows:

Sec. 623.020. DISPOSITION OF FEES. Requires each fee collected by TxDOT for a permit issued under this subchapter (General Permits) to be deposited into the mobility fund, except as provided by Section 621.353.

SECTION 27.10. Amends Section 623.076, Transportation Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires TxDOT to send the first \$1,000 of each fee collected under this subsection (for permits to move certain heavy equipment) to the comptroller for deposit to the credit of the mobility fund, rather than the general revenue fund.

(d) Requires each fee collected under this section (Permit Fee), except as provided by Subsection (c)(2), to be deposited to the credit of the mobility fund.

SECTION 27.11. Amends Subchapter A, Chapter 643, Transportation Code, by adding Section 643.005, as follows:

Sec. 643.005. DEPOSIT OF FUNDS. Requires all fees and penalties collected by TxDOT under this chapter (Motor Carrier Registration) to be deposited into the mobility fund, except as provided by Section 643.004(b).

SECTION 27.12. Amends Chapter 645, Transportation Code, by adding Section 645.005, as follows:

Sec. 645.005. DEPOSIT OF FUNDS. Requires all fees and penalties collected under this chapter (Single State Registration) to be deposited into the mobility fund, except as provided by Section 645.002(c).

SECTION 27.13. Repealer: Section 542.4031(h) (regarding the deposit of excess monies into the mobility fund by the comptroller), Transportation Code.

SECTION 27.14. Makes the application of this article prospective to the effective date of this article.

SECTION 27.15. (a) Effective date of this article: September 1, 2007, except as provided by Subsection (b).

(b) Effective date of Section 27.03 of this article: upon passage or September 1, 2007.

## ARTICLE 28. TOLL PROJECT EQUITY FUND

SECTION 28.01. Amends Section 1232.003, Government Code, by adding Subdivision (10), to define "toll project entity."

SECTION 28.02. Amends Chapter 1232, Government Code, by adding Subchapter E, as follows:

## SUBCHAPTER E. TOLL FACILITIES

Section 1232.251. TOLL PROJECT EQUITY FUND. (a) Provides that the toll project equity fund (equity fund) is a special account in the general revenue fund. Authorizes the equity fund, except as otherwise provided by this subchapter, to be used only for loans made under Section 1232.252. Provides that the equity fund is exempt from the application of Section 403.095 (Use of Dedicated Revenue).

(b) Requires the Texas Public Finance Authority (authority) to deposit to the credit of the equity fund all loan payments made by a toll project entity for a loan under Section 1232.252. Requires the loan payments to be used for certain purposes.

(c) Requires the authority, at the time and in the manner prescribed by the comptroller, to transfer the amount necessary to reimburse the general revenue fund, if any, to the comptroller for deposit to the credit of the undedicated portion of the general revenue fund.

(d) Sets forth the proceeds that constitute the equity fund.

Sec. 1232.252. LOANS FOR TOLL OR TURNPIKE PROJECTS. (a) Authorizes the authority to provide a loan to a toll project entity for a toll or turnpike project. Requires the loan to be made from the equity fund established under Section 1232.251.

(b) Authorizes a toll project entity to submit an application to the authority for a loan under this section if the toll or turnpike project for which financial assistance is sought is the subject of an active procurement conducted by TxDOT under Subchapter E (Comprehensive Development Agreements), Chapter 223, Transportation Code.

(c) Authorizes an application submitted under this section to include a request for a reservation of a portion of the amount of any general obligation bonds and notes the authority may issue each year under this subchapter.

(d) Requires the authority to confirm that the project is the subject of an active procurement on receiving an application for a loan under this section. Requires the authority, if it determines that a project is the subject of an active procurement, to, in accordance with the criteria adopted by the board of directors of the authority (board) under Section 1232.253, analyze the creditworthiness of the project and confirm, through a preliminary rating opinion letter provided by the toll project entity, whether the project's senior debt obligations, if any, have the potential to attain an investment grade rating.

(e) Authorizes the authority, if it determines that the financial assistance will be used for a project that is the subject of an active procurement and that the project is financially feasible, to approve a reservation and conditionally award a loan to the toll project entity for the project. Requires the toll project entity to enter into a loan commitment obligating the toll project entity to accept a loan from the authority within certain financial parameters established by the authority. Provides that the loan commitment is binding on the toll project entity and is required to require the toll project entity to accept a loan from the authority that satisfies the financial parameters set forth in the commitment.

(f) Authorizes the authority, after execution of a loan commitment, to issue general obligation bonds or notes under this subchapter, if constitutionally authorized, or revenue bonds under Section 1232.257 in an amount necessary to fund the loan. Requires the authority to determine the amount and time of a bond issue to best provide funds for one or multiple loans. Requires the toll project entity, before the funding of a loan, to enter into a written loan agreement with the authority containing the terms and conditions of the loan, including the loan repayment requirements.

(g) Requires the authority to administer the loans to ensure full repayment of the amount of the loan.

Sec. 1232.253. LOAN PROCESS. (a) Requires the board to adopt rules providing the criteria for evaluating the creditworthiness and financial feasibility of a project and approving a loan. Requires the authority to adopt a loan application form. Authorizes the application form to include certain information.

(b) Provides that a loan application submitted by a toll project entity is confidential and is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, until an agreement to develop, finance, refinance, construct, and operate the project is entered into.

Sec. 1232.254. INCURRENCE OF DEBT BY TOLL PROJECT ENTITY. (a) Authorizes a toll project entity to borrow money from the authority, including by direct loan.

(b) Authorizes a toll project entity to enter into a loan commitment and a loan agreement with the authority to provide financing for an eligible project. Requires the toll project entity to secure its repayment obligations by a pledge of revenue of the toll project entity derived from the toll or turnpike project.

(c) Requires money borrowed to be segregated from other funds under the control of the toll project entity and authorizes the money to be used only for purposes related to a specific toll or turnpike project.

(d) Provides that the authority granted by this section does not affect the ability of a toll project entity to incur debt using other statutorily authorized methods.

Sec. 1232.255. ISSUANCE OF GENERAL OBLIGATION BONDS AND NOTES. (a) Authorizes the authority to issue and sell general obligation bonds and notes of the state as authorized by Section 49-p, Article III, Texas Constitution, for the purpose of providing money to make loans to toll project entities under Section 1232.252. Prohibits the aggregate principal amount of bonds and notes that are issued each year by the authority from exceeding \$3 billion, not including refunding bonds. Authorizes the authority to determine the structure of the bonds to be issued so as to best provide funds for loans, including the issuance of interest only bonds and capital appreciation bonds.

(b) Requires the proceeds of the bonds and notes to be deposited into the equity fund or into other separate funds as may be required to provide for payment of issuance costs of the bonds and notes and the loans and administrative costs of the loan program and authorizes such proceeds to be used as authorized by Section 49-p, Article III, Texas Constitution, including for certain purposes.

(c) Authorizes the authority to enter into one or more credit agreements in connection with bonds or notes issued under this section, including interest rate lock agreements, at any time for a period and on conditions the authority approves.

Sec. 1232.256. APPROPRIATION REQUIRED. Requires general revenue, if the authority determines that there will not be sufficient money in the applicable interest and sinking accounts during the following biennium that is available to pay the principal of and interest on any outstanding bonds or notes issued under Section 1232.255 that mature or become due during that biennium, including an amount sufficient to make payments under a related credit agreement, in accordance with Section 49-p, Article III, Texas Constitution, to be appropriated to the authority and requires the comptroller to transfer to the applicable interest and sinking accounts money from the general revenue fund in amounts sufficient to pay the obligations.

Sec. 1232.257. ISSUANCE OF REVENUE BONDS. (a) Authorizes the authority to issue and sell revenue bonds to provide money to make loans to toll project entities under Section 1232.252. Authorizes the authority to issue bonds for a toll or turnpike project secured by a lien on the revenue of the project subordinate to the lien on the revenue securing other bonds issued for the project.

(b) Provides that the principal of, interest on, and any redemption premium on bonds issued by the authority under this section are payable solely from certain sources.

(c) Provides that bonds issued under this section do not constitute a debt of the state or a pledge of the faith and credit of the state. Requires each bond to contain on its face a certain statement.

(d) Sets forth certain conditions of a lien on or a pledge of revenue, a contract payment, or a pledge of money to the payment of bonds issued under this section.

Sec. 1232.258. TRUST AGREEMENT. (a) Authorizes bonds issued under Section 1232.257 to be secured by a trust agreement between the authority and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) Authorizes a trust agreement to pledge or assign the tolls and other revenue to be received, but prohibits such from conveying or mortgaging any part of a toll or turnpike project.

(c) Prohibits a trust agreement from evidencing a pledge of the revenue of a toll project except for certain purposes or as otherwise provided by law.

(d) Authorizes a trust agreement to set forth the rights and remedies of the bondholders and the trustee, to restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing corporate bonds and debentures, and to contain provisions the authority determines reasonable and proper for the security of the bondholders.

Sec. 1232.259. PROVISIONS PROTECTION AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. Authorizes a trust agreement or resolution providing for the issuance of bonds under Section 1232.257 to contain provisions to protect and enforce the rights and remedies of the bondholders, including certain covenants.

Sec. 1232.260. TRUST FUND. (a) Provides that all money received from the proceeds from the sale of bonds issued under Section 1232.257 or as revenue pledged to the payment of those bonds is a trust fund to be held and applied as provided by this section. Requires funds described by this section, notwithstanding any other law and without the prior approval of the comptroller, to be held in trust by a banking institution chosen by the authority or, at the discretion of the authority, in trust in the state treasury outside the general revenue fund.

(b) Requires the resolution authorizing the issuance of bonds or the trust agreement securing the bonds to provide that an officer to whom or a bank or trust company to which the money is paid is required to act as trustee of the money and to hold and apply the money for the purpose of the resolution or trust agreement, subject to this subchapter and the resolution or trust agreement.

Sec. 1232.261. REMEDIES. Authorizes a holder of a bond issued under Section 1232.257 and a trustee under a trust agreement, except to the extent restricted by a trust agreement, to protect and enforce by a legal proceeding in any court certain rights and to compel the performance of a duty under this subchapter, the trust agreement, or the resolution that the board or the authority or an officer of the board or the authority is required to perform.

Sec. 1232.262. EXEMPTION FROM TAXATION OR ASSESSMENT. Provides that bonds issued under this subchapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

SECTION 28.03. Makes the effective date of January 1, 2008, for Sections 1232.255 and 1232.256, Government Code, as added by this article, contingent upon passage of the constitutional amendment proposed by S.J.R. No. 46, 80<sup>th</sup> Legislature, Regular Session, 2007.

#### ARTICLE 29. TRANSPORTATION REINVESTMENT ZONES

SECTION 29.01. Amends Subchapter E, Chapter 222, Transportation Code, by adding Section 222.108, as follows:

Sec. 222.108. AGREEMENTS FOR ADMINISTRATION OF PASS-THROUGH AGREEMENTS. (a) Provides that this section applies only to a municipality that has designated a transportation reinvestment zone under Section 222.106 (Municipal Transportation Reinvestment Zones) or a county that has established a transportation reinvestment zone under Section 222.107 (County Transportation Reinvestment Zones; Tax Abatements; Road Utility Districts).

(b) Authorizes the municipality or county to enter into an agreement with an RMA operating under Chapter 370 or an RTA operating under Chapter 366 that allows the authority to administer, as the agent of the municipality or county, the pass-through agreement entered into with TxDOT under Section 222.104 by the municipality or the county.

SECTION 29.02. (a) Effective date of this article: upon passage or September 1, 2007, except as provided by Subsection (b).

(b) Makes application of this article contingent upon passage of S.B. No. 1266, 80<sup>th</sup> Legislature, Regular Session, 2007.

#### ARTICLE 30. USE OF HIGH OCCUPANCY VEHICLE LANES BY HYBRID VEHICLES

SECTION 30.01. Amends Section 224.153, Transportation Code, by adding Subsection (e), as follows:

(e) Authorizes a motor vehicle displaying the "hybrid vehicle" insignia authorized by Section 502.1861 in an easily readable location on the back of the vehicle to use a high occupancy vehicle lane regardless of the number of occupants in the vehicle unless the use would impair the receipt of federal funds or TxDOT determines that the high occupancy vehicle lane has reached 80 percent of its vehicle capacity.

SECTION 30.02. Amends Subchapter D, Chapter 502, Transportation Code, by adding Section 502.1861, as follows:

Sec. 502.1861. "HYBRID VEHICLE" INSIGNIA FOR CERTAIN MOTOR VEHICLES. (a) Requires TxDOT, at the time of registration or reregistration of the motor vehicle, to issue a specially designed "hybrid vehicle" insignia for a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and from a rechargeable energy storage system.

(b) Requires TxDOT to issue a "hybrid vehicle" insignia under this section without the payment of any additional fee to certain persons.

#### ARTICLE 31. DEPARTMENT RAIL FACILITY DUTIES

SECTION 31.01. Amends Section 91.004(a), Transportation Code, as follows:

(a) Authorizes TxDOT to plan and make policies for the location, construction, maintenance, and operation of rail facilities or systems, rather than a facility and system,

in this state. Authorizes TxDOT to reconstruct, relocate, and subject to Section 91.005 (Reliance on Private Entities), operate publicly or privately owned passenger or freight rail facilities, individually or as one or more systems.

SECTION 31.02. Amends Section 91.005, Transportation Code, to require TxDOT to contract with a private entity to operate a railroad under this chapter (Rail Facilities), rather than a railroad using facilities owned by TxDOT.

SECTION 31.03. Amends Subchapter B, Chapter 91, Transportation Code, by adding Section 91.038, as follows:

Sec. 91.038. PRIVATELY OWNED RAIL FACILITIES. (a) Authorizes TxDOT to relocate, construct, reconstruct, maintain, or operate a privately owned rail facility only if the commission first determines that the acquisition or other action will be in the best interests of improving the mobility of the state and will relieve congestion on public highways, enhance public safety, improve air quality, or expand economic opportunity.

(b) Requires an agreement entered into by TxDOT with a private owner for the transfer of a rail facility to contain provisions necessary to ensure compliance with each requirement of Subsection (a).

SECTION 31.04. Amends Section 91.071, Transportation Code, as follows:

Sec. 91.071. FUNDING. (a) Adds surplus revenue of a toll project, as defined in Section 201.001 (Definitions), to those funds TxDOT is authorized to use to implement this chapter.

(b) Adds money awarded from the Texas Enterprise Fund under Section 481.078 (Texas Enterprise Fund), Government Code, and money appropriated to the Texas rail relocation and improvement fund to the monies which TxDOT is authorized to spend from the general revenue fund.

SECTION 31.05. Amends Sections 91.072(a) and (c), Transportation Code, as follows:

(a) Provides that the commission and TxDOT have the same powers and duties relating to the financing of a rail facility or system established under Section 91.031 (Establishment of Rail Systems) as the commission and TxDOT have under Subchapter C (Toll Revenue Bonds), Chapter 228, rather than Subchapter E, Chapter 361, relating to the financing of a toll, rather than turnpike, project.

(c) Makes conforming changes.

SECTION 31.06. Amends Section 91.091(a), Transportation Code, as follows:

(a) Authorizes the commission to authorize TxDOT to acquire certain interests in real property, subject to Section 91.096. Deletes existing text relating to an acquisition made in the name of the state. Requires an interest in property acquired for a rail facility owned or to be owned by TxDOT to be acquired in the name of the state.

SECTION 31.07. Amends Section 91.095, Transportation Code, to authorize TxDOT to sell, convey, or otherwise dispose of any rights or other interests in real property acquired in the name of the state that the commission determines are no longer needed for TxDOT purposes.

SECTION 31.08. Amends Subchapter E, Chapter 91, Transportation Code, by adding Section 91.096, as follows:

Sec. 91.096. ACQUISITION OF PROPERTY FOR PRIVATELY OWNED RAIL FACILITIES. Authorizes TxDOT to only acquire an interest in real property for a privately owned rail facility if the commission makes the determination required by Section 91.038.

SECTION 31.09. Amends Section 201.973(d), Transportation Code, to authorize an obligation to be issued for the purpose of providing participation by the state in the financing or payment of all or part of certain costs, or providing loans under Section 201.9731 (Loan Programs). Makes conforming changes.

SECTION 31.10. Amends Subchapter O, Chapter 201, Transportation Code, by adding Section 201.9731, as follows:

Sec. 201.9731. LOAN PROGRAM. (a) Authorizes the money in the Texas rail relocation and improvement fund to be used to provide loans to eligible applicants if the applicant's project meets the requirements of this section, in addition to any other purpose authorized by this chapter (General Provisions and Administration).

(b) Requires TxDOT to administer the loan program and provides that TxDOT has all powers necessary and convenient to implement this section. Authorizes TxDOT to take certain actions.

(c) Requires TxDOT to allocate loans made under this section on bases that protect the public interest. Authorizes a loan to cover all of the project's costs, which do not include overhead costs or indirect costs.

(d) Requires TxDOT to adopt rules to implement the loan program.

SECTION 31.11. Amends Section 228.001(6), Transportation Code, to redefine "transportation project."

SECTION 31.12. Amends Section 455.005, Transportation Code, as follows:

Sec. 455.005. New heading: RAIL FIXED GUIDEWAY SYSTEM SAFETY OVERSIGHT. (a) Requires TxDOT to oversee safety and security practices of fixed guideway systems in compliance with federal law and to establish a program standard to be used to provide rail transit agency safety and security oversight. Deletes existing text relating to a certain safety program for each entity operating a fixed rail guideway mass transportation system within the state.

(b) Makes no changes to this subsection.

(c) Provides that the data collected under this section and the report of any investigation conducted by TxDOT or a contractor acting on behalf of TxDOT under this section are confidential and not subject to disclosure, inspection, or copying under Chapter 552, Government Code.

(d) Requires each rail transit agency, rather than each entity that operates a system, to develop and implement a system safety program plan and a security plan that complies with TxDOT's program plan standards and federal requirements; to conduct an annual review of said plans and submit the audit report to TxDOT; and to report accidents, hazards, and hazard resolution activities, rather than unacceptable hazardous conditions, to TxDOT in accordance with TxDOT's requirements. Makes conforming changes.

(e) Makes conforming changes.

(f) and (g) Makes no changes to these subsections.

(h) Defines "hazard," "rail fixed guideway system," and "rail transit agency." Deletes existing definitions for "accident," "commission," "department," "hazardous condition," "investigation," "rail fixed guideway mass transportation system," "safety," "security," and "unacceptable hazardous condition."

SECTION 31.13. Effective date of this article: upon passage or September 1, 2007.

ARTICLE 32. RAIL PROJECTS ELIGIBLE FOR TEXAS EMISSIONS REDUCTION  
PLAN GRANTS

[While the statutory reference in this article is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 32.01. Amends Section 386.109, Health and Safety Code, as follows:

Sec. 386.109. ELIGIBLE INFRASTRUCTURE PROJECTS. Authorizes the Texas Natural Resource Conservation Commission to consider for funding under Section 386.108 (Infrastructure Projects) a project to reduce air pollution and engine idling by relieving certain congestion at certain rail intersections.

SECTION 32.02. Appropriates, for the state fiscal biennium beginning September 1, 2007, \$25,000,000 in the Texas emissions reduction plan fund account to the Texas Commission on Environmental Quality for the purposes described by Section 386.109(4), Health and Safety Code, as added by this Act.

ARTICLE 33. INTERIM STUDY ON FUNDING FOR CERTAIN COUNTIES

SECTION 33.01. (a) Requires the Senate Committee on Transportation and Homeland Security (senate committee) to conduct an interim study to determine methods for addressing the shortfall in transportation funding for certain counties.

(b) Requires the senate committee, in conducting the study under Subsection (a) of this section, to investigate the methods proposed for addressing the shortfall in S.B. No. 1435, S.B. No. 1480, and S.B. No. 1808, 80th Legislature, Regular Session, 2007.

(c) Requires the senate committee, not later than December 1, 2008, to submit the results of the study, including any legislation proposed by the senate committee, to the lieutenant governor, the speaker of the house of representatives, and the members of the legislature.

(d) Provides that this section expires January 1, 2009.

ARTICLE 34. EFFECTIVE DATE

SECTION 34.01. Effective date: September 1, 2007, except as otherwise provided by this Act.