

BILL ANALYSIS

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S.B. 1924
By: Ogden
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DIGEST AND PURPOSE

As proposed, S.B. 1924 amends the Transportation Code to allow the Texas Transportation Commission (TTC) to authorize the creation of a regional mobility authority (RMA) and establish an RMA as a local government unit with certain powers, duties, authorities, and abilities. This bill requires TTC to oversee an RMA and authorizes TTC to convert sections of state highway to a toll road and deed those stretches to the RMA and related requirements and authorities. This bill prohibits transferring the Queen Isabella Causeway to an RMA. This bill also establishes the structure in which the RMA enters agreements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 1 (Sections 370.035, 370.037, 370.038, 370.188 Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 6, Transportation Code, by adding Chapter 370, as follows:

CHAPTER 370. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 370.001. SHORT TITLE. Provides that this chapter may be cited as the Regional Mobility Authority Act.

Sec. 370.002. PURPOSES; LIBERAL CONSTRUCTION. (a) Sets forth the purposes of this chapter.

(b) Requires that this chapter be liberally construed to effect its purposes.

Sec. 370.003. DEFINITIONS. Defines “authority,” “board,” “bond,” “bond proceeding,” “bond resolution,” “bondholder,” “exclusive development agreement,” “governmental entity,” “highway,” “public utility facility,” “revenue,” “surplus revenue,” “system,” “transportation project,” and “turnpike project.”

Sec. 370.004. CONSTRUCTION COSTS DEFINED. (a) Sets forth the elements of the cost of acquisition, construction, improvement, extension, or expansion of a transportation project under this chapter.

(b) Authorizes costs attributable to a transportation project and incurred before the issuance of bonds to finance the transportation project to be reimbursed from the proceeds of sale of the bonds.

[Reserves Sections 370.005-370.030 for expansion.]

SUBCHAPTER B. CREATION AND POWERS OF REGIONAL MOBILITY AUTHORITIES

Sec. 370.031. CREATION OF A REGIONAL MOBILITY AUTHORITY. (a) Authorizes the Texas Transportation Commission (TTC), at the request of one or more counties, by order to authorize the creation of a regional mobility authority (authority) for the purposes of constructing, maintaining, and operating transportation projects in a region of this state. Provides that an authority is governed in accordance with Subchapter F.

(b) Prohibits the creation of an authority without the approval of TTC under Subsection (a).

Sec. 370.0315. ADDITION AND WITHDRAWAL OF COUNTIES. (a) Authorizes one or more counties to petition TTC for approval to become part of an existing authority. Authorizes TTC to approve the petition only if the board of directors of the authority (board) has agreed to the addition, and TTC finds that the affected political subdivisions in the county or counties will be adequately represented on the board.

(b) Authorizes one or more counties to petition TTC for approval to withdraw from an authority. Authorizes TTC to approve the petition only if the authority has no bonded indebtedness, or if the authority has debt other than bonded indebtedness, but the board has agreed to the withdrawal.

(c) Prohibits a county from becoming part of an authority or withdrawing from an authority without the approval of TTC.

Sec. 370.032. NATURE OF REGIONAL MOBILITY AUTHORITY. (a) Provides that an authority is a body politic and corporate and a political subdivision of this state.

(b) Provides that an authority is a governmental unit as that term is defined in Section 101.001, Civil Practice and Remedies Code.

(c) Provides that the exercise by an authority of the powers conferred by this chapter in the acquisition, design, financing, construction, operation, and maintenance of a transportation project or system is in all respects for the benefit of the people of the counties in which an authority operates and of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health, living conditions, and public safety, and an essential governmental function of the state.

(d) Provides that the operations of an authority are governmental, not proprietary, functions.

Sec. 370.033. GENERAL POWERS. (a) Authorizes an authority, through its board, to take certain actions, including adopting rules and performing tasks necessary to fulfill its functions and duties under this chapter.

(b) Provides that, except as provided by this subsection, property that is a part of a transportation project of an authority is not subject to condemnation or the exercise of the power of eminent domain by any person, including a governmental entity. Authorizes the Texas Department of Transportation (TxDOT) to condemn property that is a part of a transportation project of an authority if the property is needed for the construction, reconstruction, or expansion of a state highway or rail facility.

(c) Authorizes an authority, if requested by TTC, to perform any function not specified by this chapter to promote or develop a transportation project in this state.

(d) Authorizes an authority to sue and be sued and plead and be impleaded in its own name.

(e) Authorizes an authority to rent, lease, franchise, license, or make portions of its properties available for use by others in furtherance of its powers under this chapter by increasing the feasibility or the revenue of a transportation project.

(f) Authorizes an authority and a governmental entity to enter into a contract, agreement, interlocal agreement, or other similar arrangement under which the authority is authorized to plan, design, construct, or operate a transportation project on behalf of the governmental entity. Authorizes an authority to enter into a contract with TxDOT under which the authority will plan, develop, operate, or maintain a transportation project on behalf of TxDOT.

(g) Provides that payments to be made to an authority under a contract described by Subsection (f) constitute operating expenses of the transportation project or system that is to be operated under the contract. Provides that the contract may extend for the number of years as agreed to by the parties.

(h) Requires an authority to adopt a written drug and alcohol policy restricting the use of controlled substances by officers and employees of the authority, prohibiting the consumption of alcoholic beverages by employees while on duty, and prohibiting employees from working for the authority while under the influence of a controlled substance or alcohol. Authorizes an authority to adopt policies regarding the testing of employees suspected of being in violation of the authority's drug and alcohol policy. Requires the policy to provide that, unless required by court order or permitted by the person who is the subject of the testing, the authority shall keep the results of the test confidential.

(i) Requires an authority to adopt written procedures governing its procurement of goods and services that are consistent with general laws applicable to the authority.

(j) Prohibits an authority from applying for federal highway or rail funds without the approval of TxDOT.

(k) Provides that the authority granted to an authority under Subsection (a)(10) does not include the authority to operate a public utility facility that provides retail public utility service.

(l) Prohibits an authority, if it establishes an airport in Central Texas, from establishing the airport at a location prohibited to TxDOT by Section 21.069(c).

Sec. 370.034. ESTABLISHMENT OF TRANSPORTATION SYSTEMS. (a) Authorizes an authority, if it determines that the traffic needs of the counties in which it operates and the traffic needs of the surrounding region could be most efficiently and economically met by jointly operating two or more transportation projects as one operational and financial enterprise, to create a system made up of those transportation projects. Authorizes an authority to create more than one system and to combine two or more systems into one system. Authorizes an authority to finance, acquire, construct, and operate additional transportation projects as additions to or expansions of a system if the authority determines that the transportation project could most efficiently and economically be acquired or constructed if it were a part of the system and that the addition will benefit the system.

(b) Requires that the revenue of a system be accounted for separately and prohibits it from being commingled with the revenue of a transportation project that is not a part of the system or with the revenue of another system.

Sec. 370.035. CONVERSION AND TRANSFER OF STATE HIGHWAY SYSTEM PROJECTS. (a) Authorizes TTC by order to convert a segment of the free state highway system to a turnpike project and transfer that segment to an authority, or to transfer an

existing turnpike project that is part of the state highway system, whether previously tolled or not, to an authority if certain conditions are met.

(b) Requires an authority to reimburse TTC for the cost of a transferred turnpike project unless TTC determines that the transfer will result in a substantial net benefit to the state, TxDOT, and the traveling public that equals or exceeds that cost.

(c) Requires TTC, in computing the cost of the turnpike project, to include and consider certain information.

(d) Authorizes TTC, at the time a turnpike project is transferred, to remove the turnpike project from the state highway system. Provides that after a transfer, TTC has no liability, responsibility, or duty for the maintenance or operation of the turnpike project.

(e) Requires TTC, before transferring a turnpike project that is part of the state highway system under this section, to conduct a public hearing at which interested persons shall be allowed to speak on the proposed transfer. Requires notice of the hearing to be published in the Texas Register, one or more newspapers of general circulation in the counties in which the turnpike project is located, and a newspaper, if any, published in the counties of the applicable authority.

(f) Requires TTC to adopt rules to implement this section. Requires that the rules include criteria and guidelines for the approval of a transfer of a turnpike project.

(g) Requires an authority to adopt rules providing criteria and guidelines for approval of the transfer of a turnpike project under this section.

(h) Prohibits TTC from transferring the Queen Isabella Causeway in Cameron County to an authority under this section.

Sec. 370.036. TRANSFER OF BONDED TURNPIKE PROJECT TO DEPARTMENT.

(a) Authorizes an authority to transfer to TxDOT a turnpike project of the authority that has outstanding bonded indebtedness if TTC agrees to the transfer, and agrees to assume the outstanding bonded indebtedness.

(b) Authorizes TTC to assume the outstanding bonded indebtedness only if the assumption meets certain conditions.

(c) Requires the authority, if TTC agrees to the transfer under Subsection (a), to convey the turnpike project and any real property acquired to construct or operate the turnpike project to TxDOT.

(d) Requires TTC, at the time of a conveyance under this section, to designate the turnpike project as part of the state highway system. Provides that after the designation, the authority has no liability, responsibility, or duty to maintain or operate the transferred turnpike project.

Sec. 370.037. TRANSFER OF FERRY CONNECTING STATE HIGHWAYS. (a)

Authorizes TTC by order to transfer a ferry operated under Section 342.001 to an authority if TTC determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region, and the authority agrees to the transfer and agrees to assume all liability and responsibility for the maintenance and operation of the ferry on its transfer.

(b) Requires an authority to reimburse TTC for the cost of a transferred ferry unless TTC determines that the transfer will result in a substantial net benefit to the state, TxDOT, and the traveling public that equals or exceeds that cost.

(c) Requires TTC, in computing the cost of the ferry, to include and consider certain information.

(d) Requires TTC, at the time the ferry is transferred, to remove the ferry from the state highway system. Provides that after a transfer, TTC has no liability, responsibility, or duty for the maintenance or operation of the ferry.

(e) Requires TTC, before transferring a ferry that is a part of the state highway system under this section, to conduct a public hearing at which interested persons shall be allowed to speak on the proposed transfer. Requires notice of the hearing to be published in the Texas Register, one or more newspapers of general circulation in the counties in which the ferry is located, and a newspaper, if any, published in the counties of the applicable authority.

(f) Requires TTC to adopt rules to implement this section. Requires the rules to include criteria and guidelines for the approval of a transfer of a ferry.

(g) Requires an authority to adopt rules establishing criteria and guidelines for approval of the transfer of a ferry under this section.

(h) Authorizes an authority to temporarily charge a toll for use of a ferry transferred under this section to pay the costs necessary for an expansion of the ferry. Authorizes an authority to permanently charge a toll for use of ferry facilities that are an expansion of the ferry transferred under this section.

Sec. 370.038. COMMISSION RULES. (a) Requires TTC to adopt rules that meet certain criteria.

(b) Requires TTC to appoint a rules advisory committee to advise TxDOT and TTC on the development of TTC's initial rules required by this section. Requires the committee to include one or more members representing an existing authority, if applicable. Provides that Chapter 2110, Government Code, does not apply to the committee. Provides that this subsection expires on the date TTC adopts initial rules under this section.

[Reserves Sections 370.039-370.070 for expansion.]

SUBCHAPTER C. FEASIBILITY OF REGIONAL TRANSPORTATION PROJECTS

Sec. 370.071. EXPENDITURES FOR FEASIBILITY STUDIES. (a) Authorizes an authority to pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of bonds for a proposed transportation project by certain means.

(b) Requires that money spent under this section for a proposed transportation project be reimbursed to the transportation project from which the money was spent from the proceeds of bonds issued for the acquisition and construction of the proposed transportation project.

(c) Provides that the use of any money of a transportation project to study the feasibility of another transportation project or used to repay any money used for that purpose does not constitute an operating expense of the transportation project producing the revenue and may be paid only from the surplus money of the transportation project as determined by the authority.

Sec. 370.072. FEASIBILITY STUDY FUND. (a) Authorizes an authority to maintain a feasibility study fund. Provides that the fund is a revolving fund held in trust by a banking institution chosen by the authority and shall be kept separate from the money for a transportation project.

(b) Authorizes an authority to transfer an amount from a surplus fund established for a transportation project to the authority's feasibility study fund if the remainder of the surplus fund after the transfer is not less than any minimum amount required by the bond proceedings to be retained for that transportation project.

(c) Permits money in the feasibility study fund to be used only to pay the expenses of studying the cost and feasibility and any other expenses relating to bonds and financing.

(d) Requires that money spent under Subsection (c) for a proposed transportation project be reimbursed from the proceeds of revenue bonds issued for, or other proceeds that may be used for, the acquisition, construction, improvement, extension, expansion, or operation of the transportation project.

(e) Authorizes an authority, for a purpose described by Subsection (c), to borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of its feasibility study fund, pledging money in the fund or to be placed in the fund.

Sec. 370.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) Authorizes one or more municipalities, counties, or other governmental entities, a combination of municipalities, counties, and other governmental entities, or a private group or combination of individuals in this state, to pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to bonds and financing.

(b) Provides that money spent under Subsection (a) for a proposed transportation project is reimbursable without interest and with the consent of the authority to the person paying the expenses described in Subsection (a) out of the proceeds from revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, maintenance, repair, or operation of the transportation project.

[Reserves Sections 370.074-370.110 for expansion.]

SUBCHAPTER D. TRANSPORTATION PROJECT FINANCING

Sec. 370.111. TRANSPORTATION REVENUE BONDS. (a) Authorizes an authority, by bond resolution, to authorize the issuance of bonds to pay all or part of the cost of a transportation project, to refund any bonds previously issued for the transportation project, or to pay for all or part of the cost of a transportation project that will become a part of another system.

(b) Requires the bonds of each issue, as determined in the bond resolution, to meet certain criteria.

(c) Authorizes an authority to sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the authority.

(d) Requires that the proceeds of each bond issue be disbursed in the manner and under any restrictions provided in the bond resolution.

(e) Provides that additional bonds may be issued in the same manner to pay the costs of a transportation project. Provides that, unless otherwise provided in the bond resolution, the additional bonds shall be on a parity, without preference or priority, with bonds previously issued and payable from the revenue of the transportation project. Authorizes an authority, in addition, to issue bonds for a transportation project secured by a lien on the revenue of the transportation project subordinate to the lien on the revenue securing other bonds issued for the

transportation project.

(f) Requires that, if the proceeds of a bond issue exceed the cost of the transportation project for which the bonds were issued, the surplus be segregated from the other money of the authority and used only for the purposes specified in the bond resolution.

(g) Provides that bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(h) Provides that bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(i) Requires that bonds issued under this chapter be considered authorized investments under Chapter 2256, Government Code, for this state, any governmental entity, and any other public entity proposing to invest in the bonds.

Sec. 370.112. INTERIM BONDS. (a) Authorizes an authority, before issuing definitive bonds, to issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) Authorizes the interim bonds to be authorized and issued in accordance with this chapter, without regard to a requirement, restriction, or procedural provision in any other law.

(c) Authorizes a bond resolution authorizing interim bonds to provide that the interim bonds recite that the bonds are issued under this chapter. Provides that the recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Sec. 370.113. PAYMENT OF BONDS; STATE AND COUNTY CREDIT. (a) Provides that the principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from certain sources.

(b) Provides that bonds issued under this chapter do not constitute a debt of this state or of a governmental entity, or a pledge of the faith and credit of this state or of a governmental entity. Requires that each bond contain on its face a statement to the effect that the state, the authority, or any governmental entity is not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and neither the faith and credit and taxing power of this state or of any governmental entity are pledged to the payment of the principal of or interest on the bond. Provides that this subsection does not apply to a governmental entity that has entered into an agreement under Section 370.303.

(c) Prohibits an authority from incurring a financial obligation that cannot be paid from revenue derived from owning or operating the authority's transportation projects or from other revenue provided by law.

Sec. 370.114. EFFECT OF LIEN. (a) Sets forth provisions regarding a lien on or a pledge of revenue from a transportation project under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter.

(b) Provides that a bond resolution is not required to be recorded except in the regular records of the authority.

Sec. 370.115. BOND INDENTURE. (a) Authorizes bonds issued by an authority under this chapter to be secured by a bond indenture 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 bond indenture to pledge or assign the revenues to be received but prohibits the bond indenture from conveying or mortgaging any part of a transportation project.

(c) Authorizes a bond indenture to contain certain provisions and information.

(d) Authorizes an expense incurred in carrying out a trust agreement to be treated as part of the cost of operating the transportation project.

(e) Authorizes an owner or trustee of a bond issued under this chapter, in addition to all other rights by mandamus or other court proceeding, to enforce the owner's rights against an issuing authority, the authority's employees, the authority's board, or an agent or employee of the authority's board and entitles the owner or trustee to require the authority or the board to impose and collect tolls, fares, fees, charges, and other revenue sufficient to carry out any agreement contained in the bond proceedings, and apply for and obtain the appointment of a receiver for the transportation project or system.

Sec. 370.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) Requires an authority to submit to the attorney general for examination the record of proceedings relating to bonds authorized under this chapter. Requires the record to include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) Requires the attorney general, if the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, to approve the bonds and deliver to the comptroller certain records.

(c) Requires the comptroller, on receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, to register the record of proceedings.

(d) Provides that, after approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

Sec. 370.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES OF SECURITIES. (a) Authorizes a bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue to furnish indemnifying bonds or pledge securities that an authority requires.

(b) Authorizes bonds of an authority to secure the deposit of public money of this state or a political subdivision of this state to the extent of the lesser of the face value of the bonds or their market value.

Sec. 370.118. APPLICABILITY OF OTHER LAW; CONFLICTS. Provides that all laws affecting the issuance of bonds by local governmental entities, including Chapters 1201, 1202, 1204, and 1371, Government Code, apply to bonds issued under this chapter. Provides that to the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

[Reserves Sections 370.119-370.160 for expansion.]

SUBCHAPTER E. ACQUISITION, CONSTRUCTION, AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER COUNTIES. (a) Permits an authority to acquire, construct, operate, maintain, expand, or extend a transportation project only in certain counties.

(b) Authorizes an authority, under an agreement with another governmental entity, to construct, operate, maintain, expand, or extend a transportation project in a county that is not part of the authority and is not owned by the authority.

Sec. 370.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) Authorizes an authority to construct or improve a transportation project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by TTC, a political subdivision of this state, or any other governmental entity.

(b) Provides that, except as provided by this chapter, an authority has the same powers and may use the same procedures as TTC in acquiring property.

Sec. 370.163. ACQUISITION OF PROPERTY. (a) Authorizes an authority to acquire in the name of the authority public or private property it determines necessary or convenient for the construction, operation, maintenance, expansion, or extension of a transportation project or for otherwise carrying out this chapter only if the primary purpose of an acquisition is the furtherance of a transportation project.

(b) Provides that the property an authority may acquire under this subchapter includes all or any portion of, and rights in and to, certain property.

(c) Authorizes an authority to acquire real property by any method, including purchase and condemnation. Authorizes an authority to purchase public or private real property on the terms and at the price the authority and the property owner consider reasonable.

(d) Provides that covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the authority are not binding against the authority and do not impair the authority's ability to use the property for a purpose authorized by this chapter. Prohibits the beneficiaries of the covenants, conditions, restrictions, or limitations from enjoining the authority from using the property for a purpose authorized under this chapter, but provides that this section does not affect the right of a person to seek compensation for damages to the person's property under Section 17, Article I, Texas Constitution.

(e) Provides that Subsection (d) does not affect the obligation of the authority under other state law to compensate this state for acquiring or using property owned by or on behalf of the state.

Sec. 370.164. RIGHT OF ENTRY. (a) Authorizes an authority, to acquire property necessary or useful in connection with a transportation project, on or after the fourth day after the date the authority gives notice to the owner of the real property, water, or premises, to enter any real property, water, or premises to make a survey, geotechnical evaluation, sounding, or examination.

(b) Requires an authority, in order to ensure the safety and convenience of the public, when entering any real property, water, or premises on which is located a public utility facility, to follow certain guidelines.

(c) Provides that an entry under Subsection (a) or (b) is not a trespass, or an entry under a pending condemnation proceeding.

(d) Requires the authority to make reimbursements for any actual damages to real

property, water, or premises that result from an activity described by Subsection (a) or (b).

Sec. 370.165. CONDEMNATION OF REAL PROPERTY. (a) Authorizes an authority, subject to Subsection (c), to acquire public or private real property in the name of the authority by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if certain conditions are met.

(b) Authorizes an authority to condemn real property that the authority determines is necessary for certain purposes.

(c) Permits an authority to construct a supplemental facility only on real property the authority purchases.

(d) Provides that an authority's acquisition of any property of TTC under this section or any other section of this chapter or an authority's relocation, rerouting, disruption, or alteration of any facility of TTC is considered a conversion of a state highway under Section 370.035 and is subject to each requirement or approval of a conversion under that section.

(e) Provides that the authority granted under this section does not include the authority to condemn a bridge connecting this state to the United Mexican States that is owned by a county or municipality.

Sec. 370.166. DECLARATION OF TAKING. (a) Authorizes an authority to file a declaration of taking with the clerk of the court in which the authority files a condemnation petition under Chapter 21, Property Code, or to which the case is assigned.

(b) Authorizes an authority to file the declaration of taking concurrently with or subsequent to the filing of the condemnation petition but prohibits the authority from filing the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) Requires the declaration of taking to include certain information.

(d) Requires a deposit to the registry of the court of an amount equal to the fair market value, as determined by the authority, of the property to be condemned and any damages to the remainder to accompany the declaration of taking.

(e) Authorizes the authority, instead of the deposit under Subsection (d), at its option, concurrently with the declaration of a taking, to tender in favor of the owner of the property a bond or other security in an amount sufficient to secure the owner for the value of the property taken and damages to remaining property, if the authority obtains the court's approval.

(f) Provides that the date on which the declaration is filed is the date of taking for the purpose of assessing the value of the property taken and damages to any remaining property to which an owner is entitled.

(g) Authorizes an owner to draw upon the deposit held by the court under Subsection (d) on the same terms and conditions as are applicable under state law to a property owner's withdrawal of a commissioners' award deposited under Section 21.021(a)(1), Property Code.

(h) Provides that a property owner who is a defendant in an eminent domain action filed by an authority under this chapter has 20 days after the date of service of process of both a condemnation petition and a notice of declaration of taking to give notice to the court in which the action is pending of the property owner's preference that the condemnation petition be placed on the court's docket in the

same manner as other cases pending in the court. Requires the court in which the action is pending, on receipt of timely notice from the property owner, to place the case on its docket in the same manner as other cases pending in the court.

Sec. 370.167. POSSESSION OF PROPERTY. (a) Requires an authority, immediately on the filing of a declaration of taking, to serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. Requires the authority to file evidence of the service with the clerk of the court. Authorizes the authority, on filing of that evidence, to take possession of the property on the same terms as if a commissioners hearing had been conducted, pending the litigation.

(b) Prohibits an authority, if the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, from taking possession before the 31st day after the date of service under Subsection (a).

(c) Provides that a property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Sec. 370.168. SEVERANCE OF REAL PROPERTY. (a) Requires an authority, if a transportation project of the authority severs a property owner's real property, to pay certain amounts.

(b) Authorizes an authority, at its option, to negotiate for and purchase the severed real property or any part of the severed real property if the authority and the property owner agree on terms for the purchase. Authorizes an authority to sell and dispose of severed real property that it determines is not necessary or useful to the authority. Requires severed property to be appraised before being offered for sale by the authority.

Sec. 370.169. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) Authorizes an authority to use real property, including submerged land, streets, alleys, and easements, owned by this state or a local government that the authority considers necessary for the construction or operation of a transportation project.

(b) Authorizes this state or a local government having charge of public real property to consent to the use of the property for a transportation project.

(c) Authorizes this state or a local government, except as provided by Section 370.035, to convey, grant, or lease to an authority real property, including highways and other real property devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish a purpose of the authority, including the construction or operation of a transportation project. Authorizes a conveyance, grant, or lease under this section to be made without advertising, court order, or other action other than the normal action of this state or local government necessary for a conveyance, grant, or lease.

(d) Provides that this section does not deprive the School Land Board of the power to execute a lease for the development of oil, gas, and other minerals on state-owned real property adjoining a transportation project or in tidewater limits. Authorizes a lease to provide for directional drilling from the adjoining property or tidewater area.

(e) Provides that this section does not affect the obligation of the authority under another law to compensate this state for acquiring or using property owned by or on behalf of this state. Provides that an authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 370.170. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. (a) Prohibits, except as provided by Section 370.035 or 370.165(c), an authority from paying compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, other than certain property.

(b) Requires public property damaged in the exercise of a power granted by this chapter to be restored or repaired and placed in its original condition as nearly as practicable.

(c) Provides that an authority has full easements and rights-of-way through, across, under, and over any property owned by the state or any local government that are necessary or convenient to construct, acquire, or efficiently operate a transportation project or system under this chapter. Provides that this subsection does not affect the obligation of the authority under other law to compensate this state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of this state. Provides that an authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 370.171. PUBLIC UTILITY FACILITIES. (a) Authorizes an authority to adopt rules for the installation, construction, operation, maintenance, repair, renewal, relocation, or removal of a public utility facility in, on, along, over, or under a transportation project.

(b) Requires the owner or operator of a facility, if an authority determines it is necessary that a public utility facility located in, on, along, over, or under a transportation project be relocated in the transportation project, removed from the transportation project, or carried along or across the transportation project by grade separation, to relocate or remove the facility in accordance with the requirements of the authority and in a manner that does not impede the design, financing, construction, operation, or maintenance of the transportation project.

(c) Requires the authority, as a part of the cost of the transportation project or the cost of operating the transportation project, to pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsection (a), including certain costs.

(d) Authorizes the authority to reduce the total costs to be paid by the authority under Subsection (c) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation or removal exceeds the reasonable limit specified by the authority unless the failure of the owner or operator of the facility to timely relocate or remove the facility results directly from certain causes.

(e) Provides that if an owner or operator of a public utility facility does not timely relocate or remove the facility as required by Subsection (b), the authority is authorized to do so at the expense of the owner or operator. Requires the authority, if it relocates or removes a facility under this subsection, to relocate or remove the facility in a safe manner that meets certain conditions.

(f) Requires the owner or operator of a public utility facility relocated or removed under Subsection (e) to reimburse the authority for the expenses incurred for the relocation or removal of the facility, except that the owner or operator is not required to reimburse the authority if the failure of the owner or operator to timely relocate or remove the facility was the direct result of circumstances beyond the control of the owner or operator.

(g) Requires an authority, not later than 60 days before relocating or removing a public utility facility under Subsection (e), to provide to the utility certain information.

(h) Provides that Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of a line or pole owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a transportation project or system constructed by an authority. Provides that an authority has the powers and duties delegated to the commissioners court by that subchapter and exclusive jurisdiction and control of utilities located in its rights-of-way.

(i) Provides that Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of facilities used for conducting gas by a gas utility, as that term is defined by Section 181.021, Utilities Code, through, under, along, across, and over a transportation project or system constructed by an authority except as otherwise provided by this section. Provides that an authority has the power and duties delegated to the commissioners court by that subchapter and exclusive jurisdiction and control of utilities located in its right-of-way.

(j) Provides that the laws of this state applicable to the use of public roads, streets, and waters by a telephone or telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone or telegraph corporation over, under, across, on, and along a transportation project constructed by an authority under this chapter.

Sec. 370.172. LEASE, SALE, OR CONVEYANCE OF TRANSPORTATION PROJECT. Authorizes an authority to lease, sell, or convey in any other manner a transportation project to a governmental entity with the approval of the governing body of the governmental entity to which the project is transferred.

Sec. 370.173. REVENUE. (a) Authorizes an authority to perform certain acts.

(b) Requires tolls, fees, fares, or other charges to be set at rates or amounts so that the aggregate of tolls, fees, fares, or other charges from an authority's transportation project, together with certain revenue from the transportation project, provide revenues sufficient to pay certain costs and create certain reserves.

(c) Provides that tolls, fees, fares, or other usage charges are not subject to supervision or regulation by any agency of this state or another governmental entity.

(d) Requires revenue derived from tolls, fees, and fares, and other revenue derived from a transportation project for which bonds are issued, other than any part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as provided in the bond proceedings, to be set aside at regular intervals as provided in the bond resolution or trust agreement in a sinking fund that is pledged to and charged with certain payments.

(e) Provides that use and disposition of money deposited to the credit of the sinking fund is subject to the bond proceedings.

(f) Authorizes revenue from one transportation project of an authority, to the extent permitted under the applicable bond proceedings, to be used to pay the cost of another transportation project of the authority.

(g) Prohibits an authority from using revenue from a transportation project in a manner not authorized by this chapter. Prohibits revenue derived from a transportation project, except as provided by this chapter, from being applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a transportation project.

Sec. 370.174. **AUTHORITY REVOLVING FUND.** (a) Authorizes an authority to maintain a revolving fund to be held in trust by a banking institution chosen by the authority separate from any other funds and administered by the authority's board.

(b) Authorizes an authority to transfer into its revolving fund money from certain permissible sources.

(c) Authorizes the authority to use money in the revolving fund for certain purposes.

(d) Requires money spent or advanced from the revolving fund for a transportation project to be reimbursed from the money of that transportation project. Requires there to be a reasonable expectation of repayment at the time the expenditure or advancement is authorized.

Sec. 370.175. **USE OF SURPLUS REVENUE.** (a) Requires an authority, each year, if it determines that it has surplus revenue from transportation projects, to reduce tolls, spend the surplus revenue on other transportation projects in the counties of the authority in accordance with Subsection (b), or deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Authorizes an authority, consistent with other law and commission rule, to spend surplus revenue on other transportation projects by certain means.

Sec. 370.176. **EXEMPTION FROM TAXATION OR ASSESSMENT.** (a) Provides that an authority is exempt from taxation of or assessments on certain entities.

(b) Provides that an authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by any governmental entity or any property owners' or homeowners' association.

Sec. 370.177. **ACTIONS AFFECTING EXISTING ROADS.** (a) Authorizes an authority to impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.

(b) Authorizes an authority to construct a grade separation at an intersection of a transportation project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. Prohibits the action from affecting a segment of the state highway system without the department's consent. Requires the authority to pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the transportation project.

(c) Requires an authority, if feasible, to provide access to properties previously abutting a county road or other public road that is taken for a transportation project and to pay abutting property owners the expenses or any resulting damages for a denial of access to the road.

(d) Requires the authority, if an authority changes the location of a segment of a county road as part of its development of a transportation project, to, on the request of the county, reconstruct that segment of the road at a location that the authority determines, in its discretion, restores the utility of the road. Provides that the reconstruction and its associated costs are in furtherance of a transportation project.

Sec. 370.178. **FAILURE OR REFUSAL TO PAY TURNPIKE PROJECT TOLL; OFFENSE; ADMINISTRATIVE PENALTY.** (a) Requires the operator of a vehicle, other than an authorized emergency vehicle as defined by Section 541.201, that is driven or towed through a toll collection facility of a turnpike project to pay the proper toll.

Provides that the operator of a vehicle who drives or tows a vehicle through a toll collection facility and does not pay the proper toll commits an offense. Provides that an offense under this subsection is a misdemeanor punishable by a fine not to exceed \$250.

(b) Provides that in the event of nonpayment of the proper toll as required by Subsection (a), on issuance of a written notice of nonpayment, the registered owner of the nonpaying vehicle is liable for the payment of both the proper toll and an administrative fee.

(c) Authorizes the authority to impose and collect the administrative fee to recover the cost of collecting the unpaid toll, not to exceed \$100. Requires the authority to send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th day after the date the notice was mailed. Requires the registered owner to pay a separate toll and administrative fee for each event of nonpayment under Subsection (a).

(d) Provides that the registered owner of a vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under Subsection (c) and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. Provides that each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) Provides that it is an exception to the application of Subsection (b) or (d) that 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 the authority a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Subsection (a), with the name and address of the lessee clearly legible. Authorizes the authority, if the lessor provides the required information within the period prescribed, to send a notice of nonpayment to the lessee at the address shown on the contract document by first class mail before the 30th day after the date of receipt of the required information from the lessor. Provides that the lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. Requires the lessee to pay a separate toll and administrative fee for each event of nonpayment. Provides that each failure to pay a toll or administrative fee under this subsection is a separate offense.

(f) Provides that it is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Subsection (a) occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and before the 30th day after the date the notice of nonpayment is mailed, provides to the authority the name and address of the person to whom the vehicle was transferred. Authorizes the authority, if the former owner of the vehicle provides the required information within the period prescribed to send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided by the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. Provides that the subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. Requires the subsequent owner to pay a separate toll and administrative fee for each event of nonpayment under Subsection (a). Provides that each failure to pay a toll or administrative fee under this subsection is a separate offense.

(g) Provides that an offense under Subsection (d), (e), or (f) is a misdemeanor punishable by a fine not to exceed \$250.

(h) Requires the court in which a person is convicted of an offense under this section to also collect the proper toll and administrative fee and forward the toll and fee to the authority.

(i) Provides that in the prosecution of an offense under this section, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. Authorizes the proof to be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence.

(j) Provides that it is a defense to prosecution under this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of a certain date.

(k) Defines “registered owner.”

Sec. 370.179. USE AND RETURN OF TRANSPONDERS. (a) Defines “transponder.” Provides that a transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Authorizes any law enforcement or peace officer of an entity with which an authority has contracted under Section 370.182(c) to seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. Prohibits an insufficiently funded transponder from being seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

(c) Requires certain entities to consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations.

Sec. 370.180. CONTROLLED ACCESS TO TURNPIKE PROJECTS. (a) Authorizes an authority by order to designate a turnpike project or a portion of a project as a controlled-access toll road.

(b) Authorizes an authority by order to perform certain acts.

(c) Provides that denial of access to or from a segment of the state highway system is subject to the approval of the commission.

Sec. 370.181. PROMOTION OF TRANSPORTATION PROJECT. Authorizes an authority to promote the use of a transportation project, including a project that it operates on behalf of another entity, by appropriate means, including advertising or marketing as the authority determines appropriate.

Sec. 370.182. OPERATION OF TRANSPORTATION PROJECT. (a) Requires an authority to operate a transportation project with employees of the authority or by using services contracted under Subsection (b) or (c).

(b) Authorizes an authority to enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend the

transportation project of the authority.

(c) Authorizes an authority to contract with any state or local government for the services of peace officers of that agency.

Sec. 370.183. **AUDIT.** Requires an authority to have a certified public accountant audit the authority's books and accounts at least annually. Authorizes the cost of the audit to be treated as part of the cost of construction or operation of a transportation project.

Sec. 370.184. **DISADVANTAGED BUSINESSES.** (a) Requires an authority, consistent with general law, to perform certain acts.

(b) Provides that this section does not exempt an authority from competitive bidding requirements provided by other law.

Sec. 370.185. **PROCUREMENT.** Requires an authority to adopt rules governing the award of contracts for goods and services. Authorizes an authority, notwithstanding any other provision of state law, to procure goods and services, including materials, engineering, design, construction, operations, maintenance, and other goods and services, through any procedure authorized by this chapter. Provides that procurement of professional services is governed by Chapter 2254, Government Code.

Sec. 370.186. **COMPETITIVE BIDDING.** Authorizes a contract made by an authority to be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

Sec. 370.187. **RESTRICTION ON LOCATION OF TURNPIKE PROJECTS.** Prohibits an authority from constructing, maintaining, or operating a turnpike project in a county that, on November 6, 2001, meets certain criteria.

Sec. 370.188. **PROJECT APPROVAL.** (a) Prohibits an authority from beginning construction of a transportation project that will connect to the state highway system or to a department rail facility without the approval of the commission.

(b) Requires TTC by rule to establish procedures and criteria for an approval under this section. Requires the rules to require TTC to consider a request for project approval not later than the 60th day after the date TxDOT receives all information reasonably necessary to review the request.

Sec. 370.189. **ENVIRONMENTAL REVIEW OF AUTHORITY PROJECTS.** (a) Requires an authority to adopt rules for environmental review of a transportation project that is not subject to review under the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.), as amended. Requires the rules to provide certain information.

(b) Requires an environmental review of a project to be conducted before the authority may approve the location or alignment of the project.

(c) Requires the authority to consider the results of the environmental review in executing its duties.

(d) Requires the authority to coordinate with the Texas Commission on Environmental Quality and the Parks and Wildlife Department in the preparation of an environmental review.

[Reserves Sections 370.190-370.250 for expansion.]

SUBCHAPTER F. GOVERNANCE

Sec. 370.251. **BOARD OF DIRECTORS.** (a) Provides that the governing body of an

authority is a board of directors consisting of representatives of each county in which a transportation project of the authority is located or is proposed to be located. Requires the commissioners court of each county that initially forms the authority to appoint at least two directors to the board. Authorizes additional directors to be appointed to the board at the time of initial formation by agreement of the counties creating the authority to ensure fair representation of political subdivisions in the counties of the authority that will be affected by a transportation project of the authority, provided that the number of directors must be an odd number. Requires the commissioners court of a county that is subsequently added to the authority to appoint one director to the board. Requires the governor to appoint one director to the board who shall serve as the presiding officer of the board and to appoint an additional director to the board if an appointment is necessary to maintain an odd number of directors on the board.

(b) Requires the commissioners court of each county of an authority that contains an operating transportation project of the authority, unless the commissioners courts of the counties of the authority unanimously agree otherwise, to appoint one additional director.

(c) Provides that directors 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.

(d) Requires one director appointed to the initial board of an authority by the commissioners court of a county to be designated by the court to serve a term of two years and one director designated to serve a term of four years. Requires the directors other than the subsequent appointees, if one or more directors are subsequently appointed to the board, to determine the length of the appointees' terms, to comply with Subsection (c).

(e) Requires the appointing authority, if a vacancy occurs on the board, to promptly appoint a successor to serve for the unexpired portion of the term.

(f) Requires all appointments to the board to be made without regard to race, color, disability, sex, religion, age, or national origin.

(g) Provides that certain individuals are ineligible to serve as a director.

(h) Provides that each director has equal status and may vote.

(i) Provides that the vote of a majority attending a board meeting is necessary for any action taken by the board. Provides that if a vacancy exists on a board, the majority of directors serving on the board is a quorum.

(j) Authorizes TTC to refuse to authorize the creation of an authority if TTC determines that the proposed board will not fairly represent political subdivisions in the counties of the authority that will be affected by the creation of the authority.

Sec. 370.2515. BOARD COMPOSITION PROPOSAL BY TURNPIKE AUTHORITY. Authorizes the turnpike authority or the county, if a county in which a turnpike authority under Chapter 366 operates or a county owning or operating a toll project under Chapter 284 is part of an authority, to submit to the commission a certain proposed structure for the board and a method of appointment to the board:

Sec. 370.252. PROHIBITED CONDUCT FOR DIRECTORS AND EMPLOYEES. (a) Prohibits a director or employee of an authority from certain acts.

(b) Provides that a person is not eligible to serve as a director or chief administrative officer of an authority if the person or the person's spouse meets

certain criteria.

(c) Provides that a person is not eligible to serve as a director or chief administrative officer of an authority if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation, or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation.

(d) Defines "Texas trade association."

(e) Provides that a person is not ineligible to serve as a director or chief administrative officer of an authority if the person has received funds from TxDOT for acquisition of highway right-of-way unless the acquisition was for a project of the authority.

Sec. 370.253. SURETY BONDS. (a) Requires each director, before beginning a term, to execute a surety bond in the amount of \$25,000, and the secretary and treasurer to execute a surety bond in the amount of \$50,000.

(b) Requires each surety bond to be meet certain requirements.

(c) Requires the authority to pay the expense of the bonds.

Sec. 370.254. REMOVAL OF DIRECTOR. (a) Provides that it is a ground for removal of a director from the board if the director does not meet certain qualifications.

(b) Provides that the validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a director exists.

(c) Requires a person, if the chief administrative officer of the authority has knowledge that a potential ground for removal exists, to notify the presiding officer of the board of the ground. Requires the presiding officer to then notify the person that appointed the director that a potential ground for removal exists.

Sec. 370.255. COMPENSATION OF DIRECTOR. Provides that each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties. Provides that a director is not entitled to any additional compensation for the director's services.

Sec. 370.256. EVIDENCE OF AUTHORITY ACTIONS. Provides that actions of an authority are the actions of its board and authorizes it to be evidenced in any legal manner, including a board resolution.

Sec. 370.257. PUBLIC ACCESS. Requires an authority to perform certain acts.

Sec. 370.258. INDEMNIFICATION. (a) Authorizes an authority to indemnify one or more of its directors or officers for necessary expenses and costs, including attorney's fees, incurred by the directors or officers in connection with any claim asserted against the directors or officers in their respective capacities as directors or officers.

(b) Authorizes the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity, if an authority does not fully indemnify a director or officer as provided by Subsection (a), to assess indemnity against the authority, its receiver, or trustee only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) Authorizes a court to not assess indemnity under Subsection (b) for an amount paid by the director or officer to the authority.

(d) Provides that this section applies to a current or former director or officer of the authority.

Sec. 370.259. PURCHASE OF LIABILITY INSURANCE. (a) Requires an authority to insure its officers and employees from liability arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the authority's transportation projects.

(b) Requires insurance coverage under this section to be provided by the purchase of a policy of liability insurance from a reliable insurance company authorized to do business in this state. Requires the form of the policy to be approved by the commissioner of insurance.

(c) Provides that this section is not a waiver of immunity of the authority or the counties in an authority from liability for the torts or negligence of an officer or employee of an authority.

(d) Defines "equipment."

Sec. 370.260. CERTAIN CONTRACTS AND SALES PROHIBITED. (a) Prohibits a director, agent, or employee of an authority from certain performing certain acts.

(b) Provides that a person who violates Subsection (a) is liable for a civil penalty to the authority in an amount not to exceed \$1,000.

Sec. 370.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) Requires an authority to make a strategic plan for its operations. Requires a majority of the commissioners courts of the counties of the authority to by concurrent resolution determine the types of information required to be included in the strategic plan. Requires an authority, each even-numbered year, to issue a plan covering the succeeding five fiscal years, beginning with the next odd-numbered fiscal year.

(b) Requires an authority, not later than March 31 of each year, to file with the commissioners court of each county of the authority a written report on the authority's activities describing all transportation revenue bond issuances anticipated for the coming year, the financial condition of the authority, all project schedules, and the status of the authority's performance under the most recent strategic plan. Requires representatives of the board and the administrative head of an authority, at the invitation of a commissioners court of a county of the authority, to appear before the commissioners court to present the report and receive questions and comments.

(c) Requires the authority to give notice to the commissioners court of each county of the authority not later than the 90th day before the date of issuance of revenue bonds.

Sec. 370.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Provides that Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call.

(b) Provides that a telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(c) Requires notice of a telephone conference call meeting that by law must be open to the public to specify the location of the meeting. Requires the location to

be a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(d) Requires each part of the telephone conference call meeting that by law must be open to the public to be audible to the public at the location specified in the notice and to be tape-recorded or documented by written minutes. Requires the tape recording or the written minutes of the meeting, on conclusion of the meeting, to be made available to the public.

[Reserves Sections 370.263-370.300 for expansion.]

SUBCHAPTER G. PARTICIPATION IN FINANCING, CONSTRUCTION, AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) Authorizes TxDOT to agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system on terms agreed on by the commission or department, as applicable, and the authority. Prohibits the agreement from being inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

(b) Authorizes TxDOT to use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies under Subsection (a).

(c) Provides that an obligation or expense incurred by TTC or TxDOT under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. Authorizes TTC or TxDOT to require money contributed by TTC or TxDOT under this section to be repaid from tolls or other revenue of the turnpike project on which the money was spent. Requires money repaid as required by TTC or TxDOT to be deposited to the credit of the fund from which the contribution was made. Provides that money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

(d) Authorizes TTC or TxDOT to use federal money for any purpose described by this chapter.

(e) Prohibits a turnpike project developed by an authority from being part of the state highway system unless otherwise agreed to by the authority and TxDOT.

(f) Authorizes TTC to grant or loan department money to an authority for the acquisition of land for or the construction, maintenance, or operation of a turnpike project. Authorizes TTC to require the authority to repay money provided under this section from toll revenue or other sources on terms established by TTC.

(g) Requires money repaid as required by TTC to be deposited to the credit of the fund from which the money was provided. Provides that money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

Sec. 370.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE TRANSPORTATION PROJECTS. (a) Authorizes an authority to enter into an agreement with a public or private entity, including a toll road corporation, the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, another governmental entity, or a political subdivision, to permit the entity, independently or jointly with the authority, to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project. Authorizes an authority and a private entity

jointly to enter into an agreement with another governmental entity to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project.

(b) Provides that an authority has broad discretion to negotiate provisions in a development agreement with a private entity. Authorizes the provisions to include certain information.

(c) Prohibits an authority from incurring a financial obligation on behalf of, or guarantee the obligations of, a private entity that constructs, maintains, or operates a transportation project.

(d) Provides that an authority or a county in an authority is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of a transportation project.

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

Sec. 370.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL

GOVERNMENTAL ENTITIES. (a) Authorizes a governmental entity other than a nonprofit corporation to, consistent with the Texas Constitution, issue bonds, notes, or other obligations or enter into and make payments under agreements with an authority to acquire, construct, maintain, or operate a transportation project, whether inside or outside the geographic boundaries of the governmental entity, including agreements to pay the principal of, and interest on, bonds, notes, or other obligations issued by the authority and make payments under any related credit agreements. Authorizes the entity to impose and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

(b) Authorizes a governmental entity, in addition to the powers provided by Subsection (a), to, at the extent constitutionally permitted, agree with an authority to issue bonds, notes, or other obligations, create a taxing district or an entity to promote economic development, fund public improvements to promote economic development, or enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a transportation project of the authority. Authorizes an agreement to include a means for a local governmental entity to provide funds for a transportation project that benefits the governmental entity to be developed by the authority.

(c) Authorizes a governmental entity, to make payments under an agreement under Subsection (b), to pay the interest on bonds issued under Subsection (b), or to provide a sinking fund for the bonds or the agreement, to perform certain acts.

(d) Prohibits the term of an agreement under this section from exceeding 40 years.

(e) Requires an election required to authorize action under this subchapter to be held in conformity with Chapter 1251, Government Code, or other law applicable to the governmental entity.

(f) Authorizes the governing body of any governmental entity issuing bonds, notes, or other obligations or entering into agreements under this section to exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code, except that the prohibition in that chapter on the repayment of an obligation with ad valorem taxes does not apply to an issuer exercising the authority granted by this section.

Sec. 370.304. **ADDITIONAL AGREEMENTS OF AUTHORITY.** Authorizes an authority to enter into any agreement necessary or convenient to achieve the purposes of this subchapter.

Sec. 370.305. **EXCLUSIVE DEVELOPMENT AGREEMENTS.** Authorizes an authority to use an exclusive development agreement to construct, maintain, repair, operate, extend, or expand a transportation project by invested private funding or by public funding, private funding, or any combination. Provides that an agreement under this section is not subject to a requirement or restriction of Section 222.103(i).

Sec. 370.306. **PROCESS FOR ENTERING INTO EXCLUSIVE DEVELOPMENT AGREEMENTS.** (a) Requires the authority, if an authority enters into an exclusive development agreement, to use a competitive procurement process that provides the best value for the authority. Authorizes the authority to accept unsolicited proposals for a proposed transportation project or solicit proposals in accordance with this section.

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

(c) Requires the authority to publish a request for competing proposals and qualifications in the Texas Register that includes the criteria used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if certain conditions exist.

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

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

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

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

(i) Authorizes an authority 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.

(j) Requires an authority to pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. Requires the 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 authority, be used by the authority in the performance of its functions. Provides that after payment of the stipulated amount the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design and the work product contained in the proposal becomes the property of the authority.

(k) Requires an authority to prescribe the general form of an exclusive development agreement and may include any matter the authority considers advantageous to the authority. Requires the authority and the private entity to negotiate the specific terms of an exclusive development agreement.

(l) Provides that Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to an exclusive development agreement entered into under Section 370.305.

Sec. 370.307. CONFIDENTIALITY OF NEGOTIATIONS FOR EXCLUSIVE DEVELOPMENT AGREEMENTS. Provides that to encourage private entities to submit proposals under Section 370.306, 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 for a proposed project is entered into.

Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a) Requires an authority, notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, to require a private entity entering into an exclusive development agreement under Section 370.005 to provide a performance and payment bond or an alternative form of security in an amount sufficient to meet certain obligations.

(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 the authority to set the amount of the bonds or the alternative forms of security, if an authority 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 an authority, in addition to performance and payment bonds, to require certain alternative forms of security.

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

Sec. 370.309. OWNERSHIP OF TRANSPORTATION PROJECTS. (a) Provides that a transportation project that is the subject of a development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the authority that entered into the agreement.

(b) Authorizes an authority to enter into an agreement that provides for 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 transportation project, including supplemental facilities. Requires the

transportation project, including the facilities, at the termination of the agreement, to be in a state of proper maintenance as determined by the authority and to be returned to the authority in satisfactory condition at no further cost.

Sec. 370.310. TERMS OF PRIVATE PARTICIPATION. Requires an authority to negotiate certain terms of private participation in a transportation project.

Sec. 370.311. RULES, PROCEDURES, AND GUIDELINES GOVERNING NEGOTIATING PROCESS. (a) Requires an authority to adopt rules, procedures, and other guidelines governing negotiations to promote fairness, obtain private participants in transportation projects, and promote confidence among those participants. Requires the rules to contain criteria relating to the qualifications of the participants and the award of the contracts and to authorize the authority to impose a fee for reviewing proposals for private involvement in a transportation project.

(b) Requires an authority to have up-to-date procedures for participation in negotiations on transportation projects.

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

(d) Provides that a proposal and related information submitted for private involvement in a transportation project, and all documents and information created by the authority or its agents during the authority's consideration of a proposal for private involvement in a transportation project, are excepted from disclosure, inspection, or copying under Chapter 552, Government Code, and are not subject to discovery, subpoena, or other means of legal compulsion for release, until the authority has entered into an agreement or until it has determined not to develop a proposed project through an agreement with a private entity.

(e) Authorizes an authority to agree to acquire the work product of an unsuccessful proposer for the development of a project through an exclusive development agreement or other form of private involvement in a transportation project if the payment for such work product does not exceed its value to the authority.

Sec. 370.312. PARTICIPATION ON CERTAIN OTHER BOARDS, COMMISSIONS, OR PUBLIC BODIES. (a) Authorizes an authority to participate in and designate board members to serve as representatives on boards, commissions, or public bodies, the purposes of which are to promote the development of joint toll facilities in this state, between this state and other states of the United States, or between this state and the United Mexican States or states of the United Mexican States.

(b) Authorizes a fee or expense associated with authority participation under this section to be reimbursed from money in the authority's feasibility study fund.

Sec. 370.313. COMBINATION OF ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES. Authorizes an authority to procure a combination of engineering, design, and construction services in a single procurement for a transportation project provided that any contract awarded must be the one that results in the best value to the authority.

Sec. 370.314. PERFORMANCE AND PAYMENT BONDS AND SECURITY. Requires an authority, notwithstanding Chapter 2253, Government Code, to require any party to an agreement to operate or maintain a transportation project to provide performance and payment bonds or other forms of security in amounts considered by the authority to be adequate to protect the authority and to assure performance of all obligations to the authority and to subcontractors providing materials or labor for a transportation project.

Sec. 370.315. TRANS-TEXAS CORRIDOR PROJECTS. Requires the authority, in the event that an authority is requested by TTC to participate in the development of a transportation project that has been designated as part of the Trans-Texas Corridor in addition to all powers granted in this chapter, to all powers of the department related to the development of Trans-Texas Corridor projects.

[Reserves Sections 370.316-370.330 for expansion.]

SUBCHAPTER H. DISSOLUTION OF AUTHORITY

Sec. 370.331. VOLUNTARY DISSOLUTION. (a) Prohibits an authority from being dissolved unless the dissolution is approved by TTC.

(b) Authorizes the board to submit a request to TTC for approval to dissolve.

(c) Authorizes TTC to approve a request to dissolve only if certain criteria exists.

Sec. 370.332. INVOLUNTARY DISSOLUTION. (a) Authorizes TTC by order to require an authority to dissolve if TTC determines that the authority has not substantially complied with the requirements of a TTC rule or an agreement between TxDOT and the authority.

(b) Prohibits TTC from requiring dissolution unless certain conditions exist.

SECTION 2. Repealer: Section 361.003 (Regional Mobility Authority), Transportation Code.

SECTION 3. (a) Effective date: September 1, 2003.

(b) Provides that this Act does not affect the term of a member of the board of directors of a regional mobility authority serving on the effective date of this Act.