

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 1892  
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Transportation & Homeland Security  
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Committee Report (Substituted)

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

Since its creation in 1983 under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties), Transportation Code, the Harris County Toll Road Authority has provided residents in the greater Houston area with much needed mobility solutions for the growing population in the area. Subsequently, leaders in North Texas, El Paso, Bexar County, Central Texas and North East Texas have created similar local authorities with the purpose of solving transportation issues locally.

Recently, the Texas Department of Transportation (TxDOT) has sought to take control of locally planned projects, preventing locally created tollway authorities from solving their own transportation issues. There is currently no law preventing TxDOT from requiring payment for the use of right-of-way or connection to the state highway system.

C.S.H.B. 1892 grants county tollway authorities created under Chapter 284, Transportation Code, and regional tollway authorities created under Chapter 366 (Regional Tollway Authorities), Transportation Code, with the first option in building projects within their jurisdictions and provides these authorities with the powers to cost-effectively construct and complete such projects. This bill also requires TxDOT to assist county tollway authorities in the completion of its projects by providing right-of-way owned by TxDOT and access to the state highway system without requiring payment for those resources.

Furthermore, C.S.H.B. 1892 establishes a statewide moratorium on comprehensive development agreements for two years, exempting certain projects in certain areas of the state, and creates a committee to study the policy implications of this transportation funding mechanism.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Department of Transportation and the Texas Transportation Commission is modified in SECTION 6 (Section 284.004, Transportation Code) of this bill.

Rulemaking authority is expressly granted to a regional tollway authority in SECTION 10 (Sections 366.402, 366.404, and 366.408, Transportation Code) and SECTION 14 (Section 366.185, Transportation Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. 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 subsection 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 of which a major portion is located in a nonattainment or near nonattainment air quality area as designated by the United States Environmental Protection Agency, and a project for which Texas Department of Transportation (TxDOT) has issued a request for qualifications before the effective date of this section.

(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.

(d) Defines "managed lane facility" for purposes of Subsection (c).

(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 agrees that TxDOT should execute the CDA knowing of these potential penalties.

(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.

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

(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. Amends Section 228.0055, Transportation Code, as follows:

Sec. 228.0055. USE OF CONTRACT PAYMENTS. (a) Creates this subsection from existing text. Requires, rather than authorizes, payments received by TxDOT or the commission under a CDA to be used by TxDOT or the commission to finance the

construction, maintenance, or operation of transportation projects or air quality projects in the region.

(b) Requires the commission or TxDOT to distribute the payments received under Subsection (a) among the TxDOT districts in which the project that is the subject of a CDA is located and to allocate the money to each district based on the percentage of toll revenue from users in that district. Requires each entity that collects tolls for a project to annually calculate the percentage of toll revenue from users of the project in each TxDOT district in which the project is located based on the number of recorded electronic toll collections to assist the commission or TxDOT in determining the appropriate allocation of money under this subsection.

(c) Prohibits the commission or TxDOT from revising the formula as provided in TxDOT's unified transportation program, or its successor document, in a manner that results in a decrease of a TxDOT district's allocation because of a payment under Subsection (a) or from taking any other action that would reduce funding allocated to a TxDOT district because of payments received under a CDA.

SECTION 3. Amends Subchapter A, Chapter 228, Transportation Code, by adding Sections 228.011 and 228.012, as follows:

Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) Provides that this section applies only to a county acting under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, Ferries, and Highways in Certain Counties).

(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 required by this title (Roadways), 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 they 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 certain written notification from the commission or TxDOT. Requires a county, if the county 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 certain agreements. 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 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. 228.012. TOLL PROJECTS WITHIN BOUNDARIES OF REGIONAL MOBILITY AUTHORITIES. (a) Provides that this section applies only to a toll project located within the boundaries of a regional mobility authority (RMA) operating under Chapter 370 (Regional Mobility Authorities).

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

(c) Requires the commission and TxDOT, to the extent authorized by federal law or required by this title (Roadways), to assist the RMA in the financing, construction, and operation of a toll project located within the boundaries of the RMA by allowing the RMA to use highway right-of-way owned by TxDOT and to access the state highway system. Requires the county, in connection with the use by the county of improved state highway right-of-way, to enter into an agreement with the commission or TxDOT as provided in this chapter (State Highway Toll Projects).

(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 RMA under Chapter 370.

(e) Requires the commission or TxDOT, before they 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 within the boundaries of the RMA, to provide the RMA the first option to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the RMA on certain terms and in a certain manner.

(f) Prohibits an agreement entered into by the RMA and the commission or TxDOT in connection with a project under Chapter 370 that is financed, constructed, or operated by the RMA and that is on or directly connected to the state highway system from requiring the RMA to make any payments to the commission or TxDOT, provided that the RMA and TxDOT or the commission may enter into an agreement which provides for the repayment of all or a portion of funds advanced by TxDOT or the commission to the RMA for the specific purpose of assisting the RMA in the development or construction of the project.

(g) Prohibits, except as provided by Section 284.004(a), an agreement entered into by the RMA and the commission or TxDOT in connection with a project under Chapter 370 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 once the RMA or organization has received notice from TxDOT relating to a toll project, the RMA has 180 days to provide TxDOT with written notice of the RMA's decision to exercise the first option to finance, construct, or operate, as applicable, the toll project. Requires written notice from TxDOT to describe in reasonable detail certain information. Authorizes the organization, in the event the RMA does not initiate work within 18 months of exercising its option to develop the project, to allow TxDOT to finance, construct, or operate the project.

SECTION 4. Amends Section 284.001(3), Transportation Code, to redefine "project."

SECTION 5. 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 a regional tollway authority (authority) under Chapter 366 (Regional Tollway Authorities). 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 described 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 6 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 or pledge of surplus revenue to pay or finance the costs 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 country 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, including the powers to finance and to encumber surplus revenue, 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.

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 Trans-Texas Corridor 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 Trans-Texas Corridor.

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, 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 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 7. 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 8. Amends Sections 284.065(b) and (c), Transportation Code, as follows:

(b) Authorizes an existing project to be pooled 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.

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

SECTION 10. 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 authority 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 authority to negotiate provisions relating to professional and consulting services provided in connection with a CDA.

(d) 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. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Requires an authority that enters into a CDA to use a competitive procurement process that provides the best value for the authority. Authorizes an authority to accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with this section.

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

(c) Requires an authority 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 authority 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 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 request for competing proposals and qualifications and authorizes the authority to qualify or shortlist private entities to submit detailed proposals under Subsection (f). Requires the authority to qualify or shortlist 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 or shortlisted 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 the authority considers relevant or necessary.

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

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

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

(k) Authorizes an authority 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 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.

(m) Authorizes an authority 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 authority, be used by the authority in the performance of its functions. Provides that the use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the receipt of the stipulated amount. Sets forth certain effects resulting after payment of the stipulated amount.

(n) Authorizes an authority to prescribe the general form of a CDA and include any matter the authority considers advantageous to the authority. Requires the authority 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. CONFIDENTIALTY OF INFORMATION. (a) Provides that, to encourage private entities to submit proposals under this subchapter, certain information is confidential, not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), Government Code, and 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 authority 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 authority 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 authority to set the amount of the bonds or the alternative forms of security if the 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 the authority to require certain alternative forms of security, in addition to, or instead of, performance and payment bonds.

(g) Requires an authority 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 authority.

(b) Authorizes an authority, 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 authority and are required to be returned to the authority in satisfactory condition at no further cost.

Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. Prohibits an authority from incurring a financial obligation for a private entity that designs, develops, finances, constructs, operates, or maintains a turnpike project. Provides that the authority 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 authority 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 authority considers appropriate, including certain provisions.

(c) Authorizes an authority 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 authority under a CDA, nor is an authority 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 authority 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 authority in a district court of any county of the authority, and waives the sovereign immunity of the authority for that purpose. Requires the district courts of any county of the authority 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 authority 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 authority, 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 authority to have up-to-date procedures for participation in negotiations under this subchapter.

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

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

(b) Requires the authority to allocate the distribution of funds received under Subsection (a) to the counties of the authority 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 authority 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 authority based on the number of recorded electronic toll collections.

SECTION 11. Amends Section 366.033(f), Transportation Code, to authorize an authority to rent, lease, franchise, license, or otherwise make portions of any property of the authority, 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 authority.

SECTION 12. Amends Subchapter B, Chapter 366, Transportation Code, by adding Section 366.037, as follows:

Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) Authorizes the 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 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 authority 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 authority's turnpike project or related facility.

(d) Prohibits an authority from taking certain actions.

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

(f) Provides that, except as provided by this section, an authority 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 authority with respect to a turnpike project or system.

Sec. 366.038. TOLL PROJECTS IN TERRITORY OF LOCAL OR REGIONAL TOLL PROJECT ENTITY. (a) Defines "local toll project entity."

(b) Requires, for each toll project located within the boundaries of a local toll project entity, the policy board of the organization, after completion of the market valuation, to notify the local toll project 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 organization to allow TxDOT to develop, finance, construct, and operate the project if the local toll project entity does not exercise the option to develop, finance, construct, and operate a toll project under Subsection (b).

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

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

(f) 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.

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

SECTION 13. Amends the heading to Section 366.185, Transportation Code, to read as follows:

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

SECTION 14. 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 authority 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 authority's criteria.

(c) Authorizes an authority 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 authority.

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

(e) Authorizes an authority, 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 authority during the design of the turnpike project and is responsible for construction of the turnpike project in accordance with the authority's specifications. Requires a construction manager-at-risk to be selected on the basis of criteria established by the authority, 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 authority and to deliver the required services in accordance with the authority's specifications.

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

SECTION 15. 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) Establishes that a director of the board of directors of any regional tollway authority (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 (Gift to Public Servant By Person Subject To His Jurisdiction), Penal Code, the actor is authorized to be prosecuted under either section.

Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE. Establishes that a person commits 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 (Offering Gift to Public Servant), Penal Code, the actor is authorized to be prosecuted under either section.

SECTION 16. 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 authority to request the board of the authority to vote on whether to build a project that the county requests.

SECTION 17. Amends Subchapter G, Chapter 366, Transportation Code, by adding Section 366.305, as follows:

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

SECTION 18. Effective date: upon passage or September 1, 2007.