

TRANSPORTATION CODE
CHAPTER 366. REGIONAL TOLLWAY AUTHORITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 366.001. SHORT TITLE. This chapter may be cited as the Regional Tollway Authority Act.
Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.002. PURPOSES; LIBERAL CONSTRUCTION. (a) The purposes of this chapter are:

(1) the expansion and improvement of transportation facilities and systems in this state;

(2) the creation of regional tollway authorities to secure and acquire rights-of-way for urgently needed transportation systems and to plan, design, construct, operate, expand, extend, and modify those systems; and

(3) the reduction of burdens and demands on the limited money available to the commission and an increase in the effectiveness and efficiency of the commission.

(b) This chapter shall be liberally construed to effect its purposes.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.003. DEFINITIONS. In this chapter:

(1) "Authority" means a regional tollway authority organized under this chapter.

(2) "Board" means the board of directors of an authority organized under this chapter.

(3) "Bond" means all bonds, certificates, notes, and other obligations of an authority authorized by this chapter, any other statute, or the Texas Constitution.

(4) "Bond proceedings" means a bond resolution and any bond indenture authorized by the bond resolution, any credit agreement entered into in connection with the bonds or the payments to be made under the agreement, and any other agreement between an authority and another person providing security for the payment of bonds.

(5) "Bond resolution" means an order or resolution of an authority's board authorizing the issuance of bonds.

(6) "Bondholder" means the owner of bonds and includes a trustee acting on behalf of an owner of bonds under the terms of a bond indenture.

(7) "Highway" means a road, highway, farm-to-market road, or street under the supervision of the state or a political subdivision of the state.

(8) "Local governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a district organized or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, or a nonprofit corporation, including a transportation corporation created under Chapter 431.

(9) "Revenue" means the tolls, rents, and other money received by an authority from the ownership or operation of a turnpike project.

(9-a) "Surplus revenue" means the revenue of a turnpike project or system remaining at the end of any fiscal year after all required payments and deposits have been made in accordance with all bond resolutions, trust agreements, indentures, credit agreements, or other instruments and contractual obligations of the authority payable from the revenue of the turnpike project or system.

(10) "System" means a turnpike project or any combination of turnpike projects designated as a system by the board under Section 366.034.

(11) "Turnpike project" means a highway of any number of lanes, with or without grade separations, owned or operated by an authority under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, service road, ramp, entrance plaza, approach, or tollhouse;

(C) an administration, storage, or other building the authority considers necessary to operate the turnpike

project;

(D) a parking area or structure, rest stop, park, and other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project; and

(E) property rights, easements, and interests the authority acquires to construct or operate the turnpike project.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.01, eff. June 11, 2007.

Sec. 366.004. CONSTRUCTION COSTS DEFINED. (a) The cost of acquisition, construction, improvement, extension, or expansion of a turnpike project or system under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the turnpike project or system;

(2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;

(3) machinery and equipment;

(4) interest payable before, during, and after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

(5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) compliance with laws, regulations, and administrative rulings;

(8) financing;

(9) the assumption of debts, obligations, and liabilities of an entity relating to a turnpike project or system transferred to an authority by that entity; and

(10) expenses related to the initial operation of the turnpike project or system.

(b) Costs attributable to a turnpike project or system and incurred before the issuance of bonds to finance the turnpike project or system may be reimbursed from the proceeds of sale of the bonds.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.57, eff. June 14, 2005.

SUBCHAPTER B. CREATION AND POWERS OF REGIONAL TOLLWAY AUTHORITIES

Sec. 366.031. CREATION AND EXPANSION OF A REGIONAL TOLLWAY AUTHORITY. (a) Two or more counties, acting through their respective commissioners courts, may by order passed by each commissioners court create a regional tollway authority under this chapter if:

(1) one of the counties has a population of not less than 300,000;

(2) the counties form a contiguous territory; and

(3) unless one of the counties has a population of 1.5 million or more, the commission approves the creation.

(b) The commission shall adopt rules to implement the provisions of this section by March 1, 1998.

(c) A commissioners court may by resolution petition an established authority for inclusion in the authority if the county is contiguous to a county that initially created the authority.

(d) On approval of the board of an authority receiving a petition under Subsection (c), the county becomes part of the authority.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.032. NATURE OF REGIONAL TOLLWAY AUTHORITY.

(a) An authority created under this chapter is a body politic and corporate and a political subdivision of this state.

(b) An authority is a governmental unit as that term is defined in Chapter 101, Civil Practice and Remedies Code.

(c) The exercise by an authority of the powers conferred by

this chapter in the acquisition, design, financing, construction, operation, and maintenance of a turnpike project or system is:

(1) 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

(2) an essential governmental function of the state.

(d) The operations of an authority are governmental, not proprietary, functions.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.033. GENERAL POWERS. (a) An authority, acting through its board, without state approval, supervision, or regulation, may:

(1) adopt rules for the regulation of its affairs and the conduct of its business;

(2) adopt an official seal;

(3) study, evaluate, design, acquire, construct, maintain, repair, and operate turnpike projects, individually or as one or more systems;

(4) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(5) enter into contracts or operating agreements with similar authorities or agencies of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;

(6) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;

(7) cooperate and work directly with property owners and governmental agencies and officials to support an activity required to promote or develop a turnpike project or system;

(8) employ and set the compensation and benefits of administrators, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, full-time and part-time employees, agents, consultants, and such other persons as the authority considers necessary or useful;

(9) receive loans, gifts, grants, and other contributions for the construction of a turnpike project or system and receive contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the commission, the department, any subdivision of the state, or any other local governmental or private entity, to be used for the purposes for which the grants or contributions are made, and enter into any agreement necessary for the grants or contributions;

(10) install, construct, maintain, repair, renew, relocate, and remove public utility facilities in, on, along, over, or under a turnpike project;

(11) organize a corporation under Chapter 431 for the promotion and development of turnpike projects and systems;

(12) adopt and enforce rules not inconsistent with this chapter for the use of any turnpike project or system, including traffic and other public safety rules;

(13) enter into leases, operating agreements, service agreements, licenses, franchises, and similar agreements with public or private parties governing the parties' use of all or any portion of a turnpike project and the rights and obligations of the authority with respect to a turnpike project; and

(14) do all things necessary or appropriate to carry out the powers expressly granted by this chapter.

(b) Rules adopted by the authority must be published in a newspaper with general circulation in the area in which the authority is located once each week for two consecutive weeks after adoption of the rule. The notice must contain a condensed statement of the substance of the rule and must advise that a copy of the complete text of the rule is filed in the principal office of the authority where the text may be read by any person. A rule takes effect 10 days after the date of the second publication of the notice under this subsection.

(c) Property comprising a part of a turnpike project or a system is not subject to condemnation or the power of eminent domain by any person, including a governmental entity.

(d) An authority may, if requested by the commission, perform any function not specified by this chapter to promote or develop turnpike projects and systems in this state.

(e) An authority may sue and be sued and plead and be impleaded in its own name.

(f) An authority may rent, lease, franchise, license, or otherwise make portions of any property of the authority, including tangible or intangible property, available for use by others in furtherance of its powers under this chapter by increasing:

(1) the feasibility or efficient operation of a turnpike project or system; or

(2) the revenue of the authority.

(g) An authority and any local governmental entity may enter into a contract under which the authority will operate a turnpike project or system on behalf of the local governmental entity. An authority may enter into a contract with the department under which the authority will operate a turnpike project or system on behalf of the department.

(h) The payments to be made to an authority under a contract described by Subsection (g) shall constitute operating expenses of the facility or system that is to be operated under the contract, and the contract may extend for a number of years as the parties agree.

(i) An authority shall adopt a written drug and alcohol policy restricting the use of controlled substances by 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 controlled substances or alcohol. An authority may adopt policies regarding the testing of employees suspected of being in violation of the authority's drug and alcohol policy. The policy shall 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.

(j) An authority shall adopt written procedures governing its procurement of goods and services that are consistent with general laws applicable to the authority.

(k) If an authority enters into a contract or agreement to design, finance, construct, operate, maintain, or perform any other function for a turnpike project, system, or improvement authorized by law on behalf of a local governmental entity, the commission, the department, a regional mobility authority, or any other entity, the contract or agreement may provide that the authority, in performing the function, is governed by the applicable provisions of this chapter and the rules and procedures adopted by the authority under this chapter, in lieu of the laws, rules, or procedures applicable to the other party for the performance of the same function.

(l) An authority, acting through its board, may agree with another entity to acquire a turnpike project or system from that entity and to assume any debts, obligations, and liabilities of the entity relating to a turnpike project or system transferred to the authority.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.58, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.04, eff. June 11, 2007.

Sec. 366.034. ESTABLISHMENT OF TURNPIKE SYSTEMS. (a) If an authority 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 turnpike projects as one operational and financial enterprise, it may create a system comprised of those turnpike projects. An authority may create more than one system and may combine two or more systems into one system. An authority may finance, acquire, construct, and operate additional turnpike projects as additions to and expansions of a system if the authority determines that the turnpike project could most efficiently and economically be acquired and constructed if it were a part of the system and that the addition will benefit the system.

(b) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a turnpike project that is not a part of the system or with the revenue of another system.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.036. TRANSFER OF TURNPIKE PROJECT OR SYSTEM.

(a) An authority may transfer any of its turnpike projects or systems to one or more local governmental entities if:

(1) the authority has commitments from the governing bodies of the local governmental entities to assume jurisdiction over the transferred projects or systems;

(2) property and contract rights in the transferred projects or systems and bonds issued for the projects or systems are not affected unfavorably;

(3) the transfer is not prohibited under the bond proceedings applicable to the transferred projects or systems;

(4) adequate provision has been made for the assumption of all debts, obligations, and liabilities of the authority relating to the transferred projects or systems by the local governmental entities assuming jurisdiction over the transferred projects or systems;

(5) the local governmental entities are authorized to assume jurisdiction over the transferred projects or systems and to assume the debts, obligations, and liabilities of the authority relating to the transferred projects or systems; and

(6) the transfer has been approved by the commissioners court of each county that is part of the authority.

(b) An authority may transfer to one or more local governmental entities any traffic estimates, revenue estimates, plans, specifications, surveys, appraisals, and other work product developed by the authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project or system, and the authority's rights and obligations under any related agreements, if the requirements of Subsections (a)(1) and (6) are met.

(c) A local governmental entity shall, using any lawfully available funds, reimburse any expenditures made by an authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the local governmental entity under Subsection (b) and any other amounts expended under related agreements transferred to the local governmental entity. The reimbursement may be made over time, as determined by the local governmental entity and the authority.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.59, eff. June 14, 2005.

Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) 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), the board of an authority may by resolution, and on making the findings set forth in this subsection, 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 is:

(1) situated in a county in which the authority is authorized to design, construct, and operate a turnpike project;

(2) anticipated to either:

(A) enhance the operation or revenue of an existing, or the feasibility of a proposed, turnpike project by bringing traffic to that turnpike project or enhancing the flow of traffic either on that turnpike project or to or from that turnpike project to another facility; or

(B) ameliorate the impact of an existing or proposed turnpike project by enhancing the capability of another facility to handle traffic traveling, or anticipated to travel, to or from that turnpike project; and

(3) not anticipated to result in an overall reduction of revenue of any turnpike project or system.

(b) The board in the resolution may prescribe terms for the use of the surplus revenue, including the manner in which the highway or related facility shall be studied, designed, constructed, maintained, repaired, or operated.

(c) An authority shall enter into an agreement to implement this section with the department, 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) An authority may not:
- (1) take an action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the revenue of a turnpike project or system; or
 - (2) commit in any fiscal year expenditures under this section exceeding 10 percent of its surplus revenue from the preceding fiscal year.
- (e) In authorizing expenditures under this section, the board shall consider:
- (1) balancing throughout the counties of the authority the application of funds generated by its turnpike projects and systems, taking into account where those amounts are already committed or programmed as a result of this section or otherwise; and
 - (2) connectivity to an existing or proposed turnpike project or system.
- (f) 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.
- (g) Notwithstanding other provisions of this section:
- (1) any work on a highway in the state highway system must be approved by the department; and
 - (2) the department shall supervise and regulate any work on a highway in the state highway system.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.05, eff. June 11, 2007.

Sec. 366.038. TOLL COLLECTION. An authority shall provide, for reasonable compensation, customer service and other toll collection and enforcement services for a toll project in the boundaries of the authority, regardless of whether the toll project is developed, financed, constructed, and operated under an agreement, including a comprehensive development agreement, with the authority or another entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.05, eff. June 11, 2007.

SUBCHAPTER C. FEASIBILITY OF REGIONAL TURNPIKE PROJECTS

Sec. 366.071. EXPENDITURES FOR FEASIBILITY STUDIES.

(a) An authority may pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of bonds for a proposed turnpike project or system by:

- (1) using legally available revenue derived from an existing turnpike project or system;
- (2) borrowing money and issuing bonds or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing turnpike project or system; or
- (3) pledging to the payment of the bonds or loan agreements legally available revenue anticipated to be derived from the operation of an existing turnpike project or system or revenue legally available to the authority from another source.

(b) Money spent under this section for a proposed turnpike project or system must be reimbursed to the turnpike project or system from which the money was spent from the proceeds of bonds issued for the acquisition and construction of the proposed turnpike project or system.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.072. FEASIBILITY STUDY FUND. (a) An authority may maintain a feasibility study fund. 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 any turnpike project or system.

(b) An authority may transfer an amount from a surplus fund established for a turnpike project or system to the authority's feasibility study fund if the remainder of the surplus fund is not

less than any minimum amount required by the bond proceedings to be retained for that turnpike project or system.

(c) Money in the feasibility study fund may be used only to pay the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed turnpike project or system;

(2) the financing of the improvement, extension, or expansion of an existing turnpike project or system; and

(3) private participation, as authorized by law, in the financing of a proposed turnpike project or system, the refinancing of an existing turnpike project or system, or the improvement, extension, or expansion of a turnpike project or system.

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

(e) For a purpose described by Subsection (c), an authority may 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.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER LOCAL GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more municipalities, counties, or local governmental entities, a combination of municipalities, counties, and local governmental entities, or a private group or combination of individuals in this state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed turnpike project or system by an authority;

(2) the improvement, extension, or expansion of an authority's existing turnpike project or system; or

(3) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a turnpike project or system by an authority.

(b) Money spent under Subsection (a) for an authority's proposed turnpike project or system 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 turnpike revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, or operation of the turnpike project or system.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

SUBCHAPTER D. TURNPIKE FINANCING

Sec. 366.111. TURNPIKE REVENUE BONDS. (a) An authority, by adoption of a bond resolution, may authorize the issuance of bonds to pay all or part of the cost of a turnpike project or system, to refund any bonds previously issued for the turnpike project or system, or to pay for all or part of the cost of a turnpike project or system that will become a part of another system.

(b) As determined in the bond resolution, the bonds of each issue shall:

(1) be dated;

(2) bear interest at the rate or rates and beginning on the dates, as authorized by law, or bear no interest;

(3) mature at the time or times, not exceeding 40 years from their date or dates; and

(4) be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

(c) An authority may 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) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the authority provides in the bond resolution.

(e) Additional bonds may be issued in the same manner to pay

the costs of a turnpike project or system. 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 turnpike project or system. In addition, an authority may issue bonds for a turnpike project or system secured by a lien on the revenue of the turnpike project or system subordinate to the lien on the revenue securing other bonds issued for the turnpike project or system.

(f) If the proceeds of a bond issue exceed the cost of the turnpike project or system for which the bonds were issued, the surplus shall be segregated from the other money of the authority and used only for the purposes specified in the bond resolution.

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

(h) 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.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.112. INTERIM BONDS. (a) An authority may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) The interim bonds may be authorized and issued in accordance with this chapter, without regard to the requirements, restrictions, or procedural provisions contained in any other law.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.113. PAYMENT OF BONDS; STATE AND COUNTY CREDIT NOT PLEDGED. (a) The principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from:

(1) the revenue of the turnpike project or system for which the bonds are issued, including tolls pledged to pay the bonds;

(2) payments made under an agreement with the commission or a local governmental entity as provided by Subchapter G;

(3) money derived from any other source available to the authority, other than money derived from a turnpike project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a turnpike project or system has been pledged for that purpose; and

(4) amounts received under a credit agreement relating to the turnpike project or system for which the bonds are issued.

(b) Bonds issued under this chapter do not constitute a debt of the state or any of the counties of an authority or a pledge of the faith and credit of the state or any of the counties. Each bond must contain on its face a statement to the effect that the state, the authority, and the counties of the authority are 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 the state or the counties of the authority are pledged to the payment of the principal of or interest on the bond.

(c) An authority may not incur financial obligations that cannot be paid from revenue derived from owning or operating the authority's turnpike projects and systems or from other revenue provided by law.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.114. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a turnpike project or system under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond;

(2) applies to an item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable against any person having any

claim, in tort, contract, or other remedy, against the applicable authority without regard to whether the person has notice of the lien or pledge.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.115. BOND INDENTURE. (a) Bonds issued under this chapter may 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) A bond indenture may pledge or assign the tolls and other revenue to be received but may not convey or mortgage any part of a turnpike project or system.

(c) A bond indenture may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or indentures of trust securing corporate bonds and debentures; and

(3) contain provisions the authority determines reasonable and proper for the security of the bondholders, including covenants:

(A) establishing the authority's duties relating to:

(i) the acquisition of property;

(ii) the construction, maintenance, operation, and repair of and insurance for a turnpike project or system; and

(iii) custody, safeguarding, and application of money;

(B) prescribing events that constitute default;

(C) prescribing terms on which any or all of the bonds become or may be declared due before maturity; and

(D) relating to the rights, powers, liabilities, or duties that arise on the breach of an authority's duty.

(d) The expenses incurred in carrying out a trust agreement may be treated as part of the cost of operating the turnpike project.

(e) In addition to all other rights by mandamus or other court proceeding, an owner or trustee of a bond issued under this chapter may 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 is entitled to:

(1) require the authority and the board to impose and collect tolls, charges, and other revenue sufficient to carry out any agreement contained in the bond proceedings; and

(2) apply for and obtain the appointment of a receiver for the turnpike project or system.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.116. APPROVAL OF BONDS BY ATTORNEY GENERAL.

(a) An authority shall submit to the attorney general for examination a transcript of proceedings relating to bonds authorized under this chapter. The transcript shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

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

(d) 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.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES OF SECURITIES. (a) A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that an authority requires.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.118. APPLICABILITY OF OTHER LAW; CONFLICTS. 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. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.392, eff. Sept. 1, 2001.

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

Sec. 366.161. TURNPIKE PROJECTS EXTENDING INTO OTHER COUNTIES. An authority may acquire, construct, operate, maintain, expand, or extend a turnpike project in:

(1) a county that is a part of the authority; or

(2) a county in which the authority operates or is constructing a turnpike project if the turnpike project in the affected county is a continuation of the authority's turnpike project or system extending from an adjacent county.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) An authority may construct or improve a turnpike project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by the commission, a political subdivision of this state, or any other local governmental entity.

(b) Except as provided by this chapter, an authority has the same powers and may use the same procedures as the commission in acquiring property.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.163. ACQUISITION OF PROPERTY. (a) An authority may acquire in the name of the authority public or private real and other property it determines necessary or convenient for the construction, operation, maintenance, expansion, or extension of a turnpike project or for otherwise carrying out this chapter.

(b) The property an authority may acquire under this subchapter includes all or any portion of, and rights in and to:

(1) public or private land, streets, alleys, rights-of-way, parks, playgrounds, and reservations;

(2) franchises;

(3) easements;

(4) licenses; and

(5) other interests in real and other property.

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

(d) 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. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the authority from using the property for a purpose authorized under this chapter, but 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) Subsection (d) does not affect the obligation of the authority under other state law to compensate the state for acquiring or using property owned by or on behalf of the state.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.164. RIGHT OF ENTRY. (a) To acquire property necessary or useful in connection with a turnpike project, an authority may enter any real property, water, or premises to make a survey, geotechnical evaluation, sounding, or examination.

(b) An entry under Subsection (a) is not:

(1) a trespass; or

(2) an entry under a pending condemnation proceeding.

(c) The authority shall make reimbursements for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.165. CONDEMNATION OF REAL PROPERTY. (a) Subject to Subsection (c), an authority may 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:

(1) the authority and the property owner cannot agree on a reasonable price for the property; or

(2) the property owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) An authority may condemn real property that the authority determines is:

(1) necessary or appropriate to construct or to efficiently operate a turnpike project;

(2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;

(3) necessary for access, approach, and interchange roads;

(4) necessary to provide proper drainage and ground slope for a turnpike project; or

(5) necessary otherwise to implement this chapter.

(c) An authority may construct a supplemental facility only on real property the authority purchases.

(d) Repealed by Acts 2005, 79th Leg., Ch. 281, Sec. 2.101(16), eff. June 14, 2005.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.101(16), eff. June 14, 2005.

Sec. 366.166. DECLARATION OF TAKING. (a) An authority may file a declaration of taking with the clerk of the court:

(1) in which the authority files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(b) An authority may file the declaration of taking concurrently with or subsequent to the filing of the condemnation petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the authority can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a turnpike project.

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

(e) Instead of the deposit under Subsection (d), at its option, the authority may, concurrently with the declaration of a

taking, tender in favor of the owner of the subject 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) 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) An owner may 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) A property owner that 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 defendant's desire to have the condemnation petition placed on the court's docket in the same manner as other cases pending in the court. On receipt of timely notice from the defendant, the court in which the eminent domain action is pending shall place the case on its docket in the same manner as other cases pending in the court.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.167. POSSESSION OF PROPERTY. (a) Immediately on the filing of a declaration of taking, an authority shall 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. The authority shall file evidence of the service with the clerk of the court. On filing of that evidence, the authority may take possession of the property on the same terms as if a commissioners hearing had been conducted, pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, an authority may not take possession before the 31st day after the date of service under Subsection (a).

(c) 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.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.168. SEVERANCE OF REAL PROPERTY. (a) If an authority's turnpike project severs a property owner's real property, the authority shall pay:

(1) the value of the property acquired; and

(2) the damages, if any, to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) At its option, an authority may 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. An authority may sell and dispose of severed real property that it determines is not necessary or useful to the authority. Severed property must be appraised before being offered for sale by an authority.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.169. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) An authority may use real property, including submerged land, streets, alleys, and easements, owned by the state or a local governmental entity that the authority considers necessary for the construction or operation of a turnpike project.

(b) The state or a local governmental entity having charge of public real property may consent to the use of the property for a turnpike project.

(c) Except as provided by Section 228.201, the state or a local governmental entity may convey, grant, or lease to an authority real property, including highways and other real property already devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish the authority's purposes, including the construction or operation of a turnpike project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of the state or local governmental entity

necessary for a conveyance, grant, or lease.

(d) This section does not deprive the School Land Board of the power to execute leases for the development of oil, gas, and other minerals on state-owned real property adjoining a turnpike project or in tidewater limits. The leases may provide for directional drilling from the adjoining property or tidewater area.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.60, eff. June 14, 2005.

Sec. 366.170. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. (a) Except as provided by Section 366.035 or Section 366.165(c), an authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

(1) parks and playgrounds;
(2) property owned by or on behalf of the state that under state law requires compensation to the state for the use or acquisition of the property; or

(3) as provided by this chapter.

(b) Public property damaged in the exercise of powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.171. PUBLIC UTILITY FACILITIES. (a) An authority may adopt rules for the installation, construction, operation, maintenance, repair, renewal, relocation, and removal of a public utility facility in, on, along, over, or under a turnpike project.

(b) If an authority determines it is necessary that a public utility facility located in, on, along, over, or under a turnpike project be relocated in the turnpike project, removed from the turnpike project, or carried along or across the turnpike project by grade separation, the owner or operator of the utility facility shall 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 turnpike project. The authority, as a part of the cost of the turnpike project or the cost of operating the turnpike project, shall pay the cost of the relocation, removal, or grade separation, including the cost of:

(1) installation of the facility in a new location;
(2) damages incurred by the utility to its facilities and services;

(3) interests in real property and other rights acquired to accomplish the relocation or removal; and

(4) maintenance of grade separation structures.

(c) The authority may reduce the total costs to be paid by the authority under Subsection (b) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation exceeds the limit specified by the authority. If an owner or operator of a public utility facility does not timely remove or relocate as required under Subsection (b), the authority may do so at the expense of the public utility. If the authority determines that a delay in relocation is the result of circumstances beyond the control of the utility, full costs shall be paid by the authority.

(d) Subchapter C, Chapter 181, Utilities Code, applies to

the erection, construction, maintenance, and operation of lines and poles owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a turnpike project or system constructed by an authority. An authority has the powers and duties delegated to the commissioners court by that subchapter, and an authority has exclusive jurisdiction and control of utilities located in its rights-of-way.

(e) 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 turnpike project or system constructed by an authority except as otherwise provided by this section. An authority has the power and duties delegated to the commissioners court by that subchapter and an authority has exclusive jurisdiction and control of utilities located in its right-of-way.

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

(g) In this section "public utility facility" means a track, pipe, main, conduit, cable, wire, tower, pole, or other item of plant or equipment or an appliance of a public utility or other person.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.51, eff. Sept. 1, 1999.

Sec. 366.172. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. (a) An authority may lease, sell, or convey in another manner a turnpike project to the department, a county, or a local government corporation created under Chapter 431 only with the approval of the governing body of the entity to which the project is transferred.

(b) An agreement to lease, sell, or convey a turnpike project under this section must provide for the discharge and final payment or redemption of the authority's outstanding bonded indebtedness for the turnpike project and must not be prohibited under the bond proceedings applicable to the system, if any, of which the turnpike project is a part.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.173. REVENUE. (a) An authority may:

(1) impose tolls for the use of each of its turnpike projects and systems and the different parts or sections of each of its turnpike projects and systems; and

(2) contract with a person for the use of part of a turnpike project or system or lease or sell part of a turnpike project or system, including the right-of-way adjoining the paved portion, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, parking facility, railroad track, billboard, livestock pasturage, telephone line or facility, telecommunication line or facility, data transmission line or facility, and electric line or facility, under terms set by the authority.

(b) Tolls must be set so that the aggregate of tolls from an authority's turnpike project or system, together with other revenue of the turnpike project or system:

(1) provides revenue sufficient to pay:

(A) the cost of maintaining, repairing, and operating the turnpike project or system; and

(B) the principal of and interest on the bonds issued for the turnpike project or system as those bonds become due and payable; and

(2) creates reserves for a purpose listed under Subdivision (1).

(c) Tolls are not subject to supervision or regulation by any state agency or other local governmental entity.

(d) Tolls and other revenue derived from a turnpike project or system for which bonds are issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the bond proceedings, shall be set aside at regular intervals as may be provided in the bond resolution or trust agreement in a sinking fund that is pledged

to and charged with the payment of:

- (1) interest on the bonds as it becomes due;
- (2) principal of the bonds as it becomes due;
- (3) necessary charges of paying agents for paying principal and interest; and
- (4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bond proceedings.

(e) Use and disposition of money to the credit of the sinking fund is subject to the bond proceedings.

(f) To the extent permitted under the applicable bond proceedings, revenue from one turnpike project of an authority may be used to pay the cost of other turnpike projects of the authority.

(g) An authority may not use revenue from its turnpike projects in a manner not authorized by this chapter. Revenue generated from a turnpike project may not be 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 turnpike project.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.174. AUTHORITY REVOLVING FUND. (a) An authority may 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) An authority may transfer into its revolving fund money from any permissible source, including:

- (1) money from a turnpike project if the transfer does not diminish the money available for the project or the system, if any, of which it is a part to less than an amount required to be retained by the bond proceedings pertaining to the project or system;

- (2) money received by the authority from any source and not otherwise committed, including money from the transfer of a turnpike project or system or sale of authority assets;

- (3) money received from the state highway fund; and

- (4) contributions, loans, grants, or assistance from the United States, another state, a political subdivision of this state, a foreign governmental entity, including the United Mexican States or a state of the United Mexican States, a local governmental entity, any private enterprise, or any person.

(c) The authority may use money in the revolving fund to:

- (1) finance the acquisition, construction, maintenance, or operation of a turnpike project or system, including the extension, expansion, or improvement of a project or system;

- (2) provide matching money required in connection with any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;

- (3) provide credit enhancement either directly or indirectly for bonds issued to acquire, construct, extend, expand, or improve a turnpike project or system;

- (4) provide security for or payment of future or existing debt for the design, acquisition, construction, operation, maintenance, extension, expansion, or improvement of a turnpike project or system;

- (5) borrow money and issue promissory notes or other indebtedness payable out of the revolving fund for any purpose authorized by this chapter; and

- (6) provide for any other reasonable purpose that assists in the financing of an authority as authorized by this chapter.

(d) Money spent or advanced from the revolving fund for a turnpike project or system must be reimbursed from the money of that turnpike project or system, and there must be a reasonable expectation of such repayment at the time of authorization.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1237, Sec. 5, eff. Nov. 6, 2001.

Sec. 366.175. USE OF SURPLUS REVENUE. The board of an authority may by resolution authorize the use of surplus revenue of a turnpike project or system to pay the costs of another turnpike project or system other than a project financed under Subchapter G. The board may in the resolution prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an

action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the surplus revenue.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.176. EXEMPTION FROM TAXATION OR ASSESSMENT.

(a) An authority is exempt from taxation of or assessments on:

- (1) a turnpike project or system;
- (2) property the authority acquires or uses under this chapter; or
- (3) income from property described by Subdivision (1) or (2).

(b) An authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by a county, municipality, road and utility district, river authority, any other state or local governmental entity, or any property owners' or homeowners' association.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.177. ACTIONS AFFECTING EXISTING ROADS. (a) An authority may impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.

(b) An authority may construct a grade separation at an intersection of a turnpike project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. The action may not affect a segment of the state highway system without the department's consent. The authority shall 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 turnpike project.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.178. FAILURE OR REFUSAL TO PAY TOLL. (a) A motor vehicle other than an authorized emergency vehicle, as defined by Section 541.201, that passes through a toll collection facility, whether driven or towed, shall pay the proper toll. The exemption from payment of a toll for an authorized emergency vehicle applies regardless of whether the vehicle is:

- (1) responding to an emergency;
- (2) displaying a flashing light; or
- (3) marked as a police or emergency vehicle.

(b) A person who fails or refuses to pay a toll provided for the use of a project is liable for a fine not to exceed \$250, plus an administrative fee incurred in connection with the violation.

(c) If a person fails to pay the proper toll:

(1) on issuance of a notice of nonpayment, the registered owner of the nonpaying vehicle shall pay both the proper toll and the administrative fee; and

(2) an authority may charge an administrative fee of not more than \$100 to recover the cost of collecting the unpaid toll.

(d) Notice of nonpayment under Subsection (c)(1) shall be sent by first-class mail and may not require payment of the proper toll and the administrative fee before the 30th day after the date the notice is mailed. The registered owner shall pay a separate toll and administrative fee for each nonpayment.

(e) If the registered owner of the vehicle fails to pay the proper toll and administrative fee in the time specified by the notice, the owner shall be cited as for other traffic violations as provided by law, and the owner shall pay a fine of not more than \$250 for each nonpayment.

(f) In the prosecution of a violation for nonpayment, 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. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence.

(g) The court of the local jurisdiction in which the violation occurs may assess and collect the fine in addition to any court costs. The court shall collect the proper toll and administrative fee and forward the toll and fee to the authority.

(h) It is a defense to nonpayment 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:

- (1) the occurrence of the failure to pay; or
- (2) eight hours after the discovery of the theft.

(i) A registered owner who is the lessor of a vehicle for which a notice of nonpayment has been issued is not liable if, not later than the 30th day after the date the notice of nonpayment is mailed, the registered owner provides to the authority a copy of the lease agreement covering the vehicle on the date of the nonpayment. The name and address of the lessee must be clearly legible. If the lessor timely provides the required information, the lessee of the vehicle on the date of the violation is considered to be the owner of the vehicle for purposes of this section. The lessee is subject to prosecution for failure to pay the proper toll if the authority sends a notice of nonpayment to the lessee by first-class mail not later than the 30th day after the date of the receipt of the information from the lessor.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 4.03, eff. September 1, 2007.

Sec. 366.179. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, a transponder is a device placed on or within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which an authority has contracted under Section 366.182(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. An insufficiently funded transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

(c) The following entities shall 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:

- (1) the authority;
- (2) an entity to which a project authorized by this chapter is transferred; or
- (3) a third party service provider under contract with an entity described by Subdivision (1) or (2).

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.61, eff. June 14, 2005.

Sec. 366.180. CONTROLLED ACCESS TO TURNPIKE PROJECTS.

(a) An authority may designate a turnpike project or a portion of a project as a controlled-access toll road.

- (b) An authority by order may:
- (1) prohibit the use of or access to or from a turnpike project by a motor vehicle, bicycle, other vehicle, or a pedestrian;
 - (2) deny access to or from:
 - (A) its turnpike projects;
 - (B) real property adjacent to its turnpike projects; or
 - (C) a street, road, alley, highway, or other public or private way intersecting its turnpike projects;
 - (3) designate locations on its turnpike projects at which access to or from the toll road is permitted;
 - (4) control, restrict, and determine the type and

extent of access permitted at a designated location of access to the turnpike projects; or

(5) erect appropriate protective devices to preserve the utility, integrity, and use of its turnpike projects.

(c) Denial of access to or from a segment of the state highway system is subject to the approval of the commission. Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.181. PROMOTION OF TOLL ROADS. An authority may promote the use of its turnpike projects by appropriate means, including advertising or marketing as the authority determines appropriate. Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.182. OPERATION OF TURNPIKE PROJECT. (a) An authority shall operate its turnpike projects through a force of toll-takers and other employees of the authority or through services contracted under Subsection (b) or (c).

(b) An authority may 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 authority's turnpike projects.

(c) An authority may contract with any state or local governmental entity for the services of peace officers of that agency. Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.183. AUDIT. An authority shall have a certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a turnpike project. Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.184. DISADVANTAGED BUSINESSES. (a) Consistent with general law, an authority shall:

(1) set goals for the award of contracts to disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

(b) This section does not exempt an authority from competitive bidding requirements provided by other law. Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES. (a) A contract made by an authority that requires the expenditures of public funds for the construction or maintenance of a turnpike project may 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.

(b) The authority shall adopt rules governing the award of contracts through competitive bidding.

(c) An authority may 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) The authority shall adopt rules governing the award of contracts for engineering, design, construction, and maintenance services in a single procurement.

(d-1) The rules adopted under Subsection (d) may not materially conflict with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code, and shall provide materially similar injunctive and declaratory action enforcement rights regarding the improper disclosure or use of unique or nonordinary information as provided in that subchapter.

(e) Notwithstanding any other law requiring a competitive bidding procedure, an authority may let a contract for the 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 the construction of the turnpike project in accordance with the authority's specifications. A construction manager-at-risk shall 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) The authority shall adopt rules governing the award of contracts using construction manager-at-risk procedures under this section.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.06, eff. June 11, 2007.

Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.07(a), eff. June 11, 2007.

SUBCHAPTER F. GOVERNANCE

Sec. 366.251. BOARD OF DIRECTORS. (a) An authority is governed by a board of directors.

(b) The commissioners court of each county of the authority shall appoint one director to serve on the board. The governor shall appoint one director to serve on the board.

(c) In addition to directors appointed by a commissioners court under Subsection (b), the commissioners courts of each county of the authority shall appoint one additional director if the county is:

(1) a county that created the authority under Section 366.031; or

(2) a county in which all or part of a turnpike project of not less than 10 centerline miles in length is located and has been open for use by the traveling public for at least three years.

(c-1) The commissioners court of a county eligible to appoint an additional director under Subsection (c) shall ensure that each director appointed by that commissioners court resides in a different geographic region in that county. To the extent possible, appointments to the board must reflect the diversity of the population of the various counties.

(d) Directors shall be divided into two groups. To the greatest degree possible, each group shall contain an equal number of directors. Directors shall serve terms of two years, except that one group of directors of the initial board of an authority shall serve for a term of one year.

(d-1) If one or more directors are subsequently appointed to the board, the directors other than the subsequent appointees shall determine the length of the appointees' terms, to comply with Subsection (d).

(e) The director appointed by the governor must have resided in a county outside the authority that is adjacent to a county of the authority for at least one year before the person's appointment. Each director appointed by a commissioners court under Subsection (b) must have resided in that county for at least one year before the person's appointment. Each director appointed by a commissioners court under Subsection (c) must have resided in a county of the authority for at least one year before the person's appointment.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 981, Sec. 2, eff. September 1, 2007.

(g) An elected official is not eligible to serve as a director.

(h) A vacancy in a position shall be filled promptly by the entity that made the appointment.

(i) Each director has equal status and may vote.

(j) The board of an authority shall select one director as the presiding officer of the board to serve in that capacity until the person's term as a director expires. The board shall elect one director as assistant presiding officer. The board shall select a secretary and treasurer, neither of whom need be a director.

(k) The vote of a majority attending a board meeting is necessary for any action taken by the board. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1305, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 981, Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 981, Sec. 2, eff. September 1, 2007.

Sec. 366.252. CONFLICT OF INTEREST. (a) A person is not eligible to serve on the board of an authority if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of toll road construction, maintenance, or operation;

(2) is employed by or participates in the management of a business entity or other organization regulated by the authority or receiving money from the authority;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the authority, other than compensation for acquisition of turnpike right-of-way;

(4) uses or receives a substantial amount of tangible goods, services, or money from the authority, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses, or for compensation for acquisition of turnpike right-of-way;

(5) is an officer, employee, or paid consultant of a Texas trade association in the field of road construction, maintenance, or operation; or

(6) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority.

(b) A person may not act as the general counsel to an authority if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority.

(c) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) In this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

(b) A director commits an offense if the person solicits, accepts, or agrees to accept any benefit from:

(1) a person the director knows to be subject to regulation, inspection, or investigation by the authority; or

(2) a person the director knows is interested in or likely to become interested in any contract, purchase, payment, claim, transaction, or matter involving the exercise of the director's discretion.

(c) A director who receives an unsolicited benefit that the director is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

(d) This section does not apply to:

(1) a fee prescribed by law to be received by a director;

(2) a benefit to which the director is lawfully entitled; or

(3) a benefit for which the director gives legitimate consideration in a capacity other than as a director.

(e) An offense under this section is a Class A misdemeanor.

(f) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.08, Penal

Code, the actor may be prosecuted under this section or Section 36.08.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.08, eff. June 11, 2007.

Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE.

(a) A person commits an offense 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.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.09, Penal Code, the actor may be prosecuted under this section or Section 36.09.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.08, eff. June 11, 2007.

Sec. 366.253. SURETY BONDS. (a) Before beginning a term, each director shall execute a surety bond in the amount of \$25,000, and the secretary and treasurer shall execute a surety bond in the amount of \$50,000.

(b) Each surety bond must be:

(1) conditioned on the faithful performance of the duties of office;

(2) executed by a surety company authorized to transact business in this state; and

(3) filed with the secretary of state's office.

(c) The authority shall pay the expense of the bonds.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.254. REMOVAL OF DIRECTOR. (a) It is a ground for removal of a director from the board if the director:

(1) did not have at the time of appointment the qualifications required by Section 366.251(e);

(2) whether at the time of appointment or at any time during the director's term, is ineligible under Section 366.251(g) or 366.252 to serve as a director;

(3) cannot discharge the director's duties for a substantial part of the term for which the director is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year.

(b) 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) If the administrative head of the authority has knowledge that a potential ground for removal exists, that person shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the person that appointed the director that a potential ground for removal exists.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1305, Sec. 2, eff. Sept. 1, 2001.

Sec. 366.255. COMPENSATION OF DIRECTOR. Each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties. A director is not entitled to any additional compensation for the director's services.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.256. EVIDENCE OF AUTHORITY ACTIONS. Actions of an authority are the actions of its board and may be evidenced in any legal manner, including a board resolution.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.257. PUBLIC ACCESS. An authority shall:

(1) make and implement policies that provide the public with a reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the authority; and

(2) prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the authority's programs.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. On request of

the commissioners court of a county of an authority, the board shall vote on whether to build a project that the county requests. Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.09, eff. June 11, 2007.

Sec. 366.258. INDEMNIFICATION. (a) An authority may 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) If an authority does not fully indemnify a director or officer as provided by Subsection (a), 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 may 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) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the authority.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.259. PURCHASE OF LIABILITY INSURANCE. (a) An authority shall 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 turnpike projects.

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

(c) 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) In this section, "equipment" includes an automobile, motor truck, trailer, aircraft, motor grader, roller, tractor, tractor power mower, and other power equipment.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.260. CERTAIN CONTRACTS AND SALES PROHIBITED.

(a) A director, agent, or employee of an authority may not:

- (1) contract with the authority; or
- (2) be directly or indirectly interested in:
 - (A) a contract with the authority; or
 - (B) the sale of property to the authority.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An authority shall make a strategic plan for its operations. A majority of the commissioners courts of the counties composing the authority shall by concurrent resolution determine the types of information required to be included in the strategic plan. Each even-numbered year, an authority shall issue a plan covering the next five fiscal years, beginning with the next odd-numbered fiscal year.

(b) Not later than March 31 of each year, an authority shall file with the commissioners court of each county of the authority a written report on the authority's activities describing all turnpike 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. At the invitation of a commissioners court of a county in the authority, representatives of the board and the administrative head of an authority shall appear before the commissioners court to present the report and receive questions and comments.

(c) The authority shall 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.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.262. MEETINGS BY TELEPHONE CONFERENCE CALL.
(a) 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) A telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(c) Notice of a telephone conference call meeting that by law must be open to the public must specify the location of the meeting. The location must be a conference room of the authority or other facility in a county of the authority that is accessible to the public.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

SUBCHAPTER G. AID FOR REGIONAL TURNPIKE PROJECTS

Sec. 366.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) To the extent permitted by the Texas Constitution, the department may 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. The agreement may not be inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

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

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. The commission or department may require money contributed by the commission or department under this section to be repaid from tolls or other revenue of the turnpike project or system on which the money was spent. Money repaid as required by the commission or department shall be deposited to the credit of the fund from which the contribution was made. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

(d) The commission or department may use federal money for any purpose described by this chapter.

(e) An action of an authority taken under this chapter must comply with the requirements of applicable federal law, including provisions relating to the role of metropolitan planning organizations under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under this chapter, the commission or the department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1237, Sec. 6, eff. Nov. 6, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.02, eff. June 11, 2007.

Sec. 366.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE TURNPIKE PROJECTS. (a) An authority may 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, a local governmental entity, or another political subdivision, to permit the entity, jointly with the authority, to study the feasibility of a turnpike project or system or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a turnpike project or system.

(b) An authority has broad discretion to negotiate

provisions in a development agreement with a private entity. The provisions may include provisions relating to:

(1) the design, financing, construction, maintenance, and operation of a turnpike project or system in accordance with standards adopted by the authority; and

(2) professional and consulting services to be rendered under standards adopted by the authority in connection with a turnpike project or system.

(c) An authority may not incur a financial obligation on behalf of, or otherwise guarantee the obligations of, a private entity that constructs, maintains, or operates a turnpike project or system.

(d) An authority or a county in an authority 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 a turnpike project or system.

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

(f) If an authority enters into an agreement with a private entity that includes the collection by the private entity of tolls for the use of a turnpike project or system, the private entity shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the entity will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll; and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(g) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a turnpike project or system may not be for a term longer than 50 years.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.67, eff. June 14, 2005.

Sec. 366.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) A local governmental entity other than a nonprofit corporation may, consistent with the Texas Constitution, issue bonds or enter into and make payments under agreements with an authority to acquire, construct, maintain, or operate a turnpike project or system. The entity may levy and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

(b) In addition to the powers provided by Subsection (a), a local governmental entity may, within any applicable constitutional limitations, agree with an authority to issue bonds or enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a turnpike project or system of that authority.

(c) 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 contract, a local governmental entity may:

(1) pledge revenue from any available source, including annual appropriations;

(2) levy and collect taxes; or

(3) provide for a combination of Subdivisions (1) and (2).

(d) The term of an agreement under this section may not exceed 40 years.

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

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.393, eff. Sept. 1, 2001.

Sec. 366.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An authority may enter into any agreement necessary or convenient to achieve the purposes of this subchapter.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.24, eff. Sept. 1, 1997.

Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. If an 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, the authority shall have, in addition to all powers granted in this chapter, all powers of the department related to the development of Trans-Texas Corridor projects.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.10, eff. June 11, 2007.

SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

(a) An authority may use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project.

(b) A comprehensive development agreement 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) An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. An authority may accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with this section.

(b) An authority shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) any other information the authority considers relevant or necessary.

(c) An authority shall 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:

(1) the authority decides to issue a request for qualifications for a proposed project; or

(2) the authority authorizes the further evaluation of an unsolicited proposal.

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

(e) An authority may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The authority shall evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and may qualify or shortlist private entities to submit detailed proposals under Subsection (f). The authority must 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) An authority shall 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. A request under this subsection may require additional information the authority considers relevant or necessary, including information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) engineering or architectural designs;

(4) the private entity's ability to meet schedules; or

(5) a financial plan, including costing methodology and cost proposals.

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

(h) An authority shall 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) An authority may enter into negotiations with the private entity whose proposal offers the apparent best value.

(j) 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, the authority may enter into negotiations with the private entity submitting the next-highest-ranking proposal.

(k) An authority may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The authority may then publish a new request for competing proposals and qualifications.

(l) An authority may 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) An authority may 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. A stipulated amount must be stated in the request for proposals and may not exceed 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. 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 recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority, with the unsuccessful private entity, jointly owns the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful private entity of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful private entity and does not confer liability on the authority.

(n) An authority may prescribe the general form of a comprehensive development agreement and may include any matter the authority considers advantageous to the authority. The authority and the private entity shall finalize the specific terms of a comprehensive development agreement.

(o) Section 366.185 and Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To encourage private entities to submit proposals under this subchapter, the following 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:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 366.402(b)(1) and (2), unless the private entity consents to the disclosure of the information;

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement unless the private entity consents to the

disclosure of the information or material; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement or during the authority's preparation of a proposal to the department relating to a comprehensive development agreement.

(b) 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. Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

(a) Notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the authority; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

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

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

(d) 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) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to, or instead of, performance and payment bonds, an authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

(g) An authority by rule shall prescribe requirements for alternative forms of security provided under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

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

(b) Notwithstanding Subsection (a), an authority may 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 turnpike project, including supplemental facilities. 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 shall be returned to the authority in satisfactory condition at no further cost.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. An authority may not incur a financial obligation for a private entity that designs, develops, finances, constructs, operates, or maintains a turnpike project. 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) An authority shall negotiate the terms of private participation in a turnpike project under this subchapter, including:

(1) methods to determine the applicable cost, profit, and project distribution among the private participants and the authority;

(2) reasonable methods to determine and classify toll rates and the responsibility for setting toll rates;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under this subchapter may include any provision the authority considers appropriate, including a provision:

(1) providing for the purchase by the authority, under terms and conditions agreed to by the parties, of the interest of a private participant in the comprehensive development agreement and related property, including any interest in a turnpike project designed, developed, financed, constructed, operated, or maintained under the comprehensive development agreement;

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

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

(4) permitting the private participant to pledge its rights under the comprehensive development agreement;

(5) concerning the private participant's right to operate and collect revenue from the turnpike project; and

(6) restricting the right of the authority to terminate the private participant's right to operate and collect revenue from the turnpike project unless and until any applicable termination payments have been made.

(c) An authority may enter into a comprehensive development agreement under this subchapter with a private participant only if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

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

(e) Notwithstanding any other law, and subject to compliance with the dispute resolution procedures set out in the comprehensive development agreement, an obligation of an authority under a comprehensive development agreement entered into under this subchapter 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, may be enforced by mandamus against the authority in a district court of any county of the authority, and the sovereign immunity of the authority is waived for that purpose. The district courts of any county of the authority shall have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under this subsection. The remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a comprehensive development agreement.

(f) If an authority enters into a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project, the private participant shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

- (B) increasing the amount of the tolls;
- (2) a plan outlining methods the private participant will use to collect the tolls, including:
 - (A) any charge to be imposed as a penalty for late payment of a toll; and
 - (B) any charge to be imposed to recover the cost of collecting a delinquent toll; and
- (3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(g) Except as provided by this subsection, a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

Sec. 366.408. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) To promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants, an authority shall adopt rules, procedures, and other guidelines governing selection of private participants for comprehensive development agreements and negotiations of comprehensive development agreements. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) An authority shall have up-to-date procedures for participation in negotiations under this subchapter.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.

Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments received by an authority under a comprehensive development agreement shall be used by the authority to finance the construction, maintenance, or operation of a turnpike project or a highway.

(b) The authority shall 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 comprehensive development agreement. To assist the authority in determining the allocation, each entity responsible for collecting tolls for a project shall 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.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 9.03, eff. June 11, 2007.