

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2702  
By: Krusee (Staples)  
Transportation and Homeland Security  
5/17/2005  
Committee Report (Substituted)

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

Through H.B. 3588 and H.B. 2, the 78th Legislature enacted sweeping changes to the fundamental laws governing transportation financing and development. These laws address, among other things, the financing and development of the Trans-Texas Corridor, regional mobility authorities, pass-through tolls, the financing and development of TxDOT turnpikes, and the financing and development of rail facilities.

C.S.H.B. 2702 revises the provisions of H.B. 3588, 78th Legislature, Regular Session, 2003, and H. B. 2, 78th Legislature, Third Called Session, 2003, to address issues raised in the implementation of the bills, to provide the tools necessary for the Texas Department of Transportation (TxDOT) to address current transportation needs, and to address other transportation-related issues.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 1.02 (Section 91.055, Transportation Code) and SECTION 2.14 (Sections 223.203 and 223.205, Transportation Code) of this bill.

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 1.02 (Sections 91.057 and 91.061, Transportation Code), SECTION 1.05 (Section 91.075, Transportation Code), SECTION 2.14 (Section 223.209, Transportation Code), and SECTION 2.42 (Section 284.012, Transportation Code) of this bill.

Rulemaking authority previously granted to the Texas Transportation Commission is rescinded in SECTION 2.25 (Section 228.004, Transportation Code) of this bill.

Rulemaking authority previously granted to the State Aircraft Pooling Board is transferred to the Texas Transportation Commission in SECTION 3.11 (Section 2205.043, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. RAIL FACILITIES

SECTION 1.01. Amends Section 91.051, Transportation Code, to require a contract, except for a contract entered into under Sections 91.052, 91.054, or 91.102, rather than unless otherwise provided by this subchapter, made by the Texas Department of Transportation (department) for the construction, maintenance, or operation of a rail facility, to be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the department's criteria.

SECTION 1.02. Amends Subchapter C, Chapter 91, Transportation Code, by adding Sections 91.054-91.061, as follows:

Sec. 91.054. COMPREHENSIVE DEVELOPMENT AGREEMENTS.  
(a) Authorizes the department to enter into a comprehensive development agreement with a private entity to acquire, construct, maintain, or operate a rail facility or system.

(b) Defines "comprehensive development agreement."

(c) Authorizes the department to negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

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

(e) Provides that claims arising under a comprehensive development agreement are subject to Section 201.112.

(f) Provides that the authority to enter into comprehensive development agreements provided by this section expires on August 31, 2011.

Sec. 91.055. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Requires the department, if the department enters into a comprehensive development agreement, to use a competitive procurement process that provides the best value for the department. Authorizes the department to accept unsolicited proposals for a proposed project or solicit proposals in accordance with this section.

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

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

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

(e) Authorizes the department to interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). Requires the department to 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). Requires the department to qualify or shortlist at least two private entities to submit detailed proposals for a project under Subsection (f) unless the department does not receive more than one proposal or one response to a request under Subsection (c).

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

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

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

(i) Authorizes the department to enter into discussions with the private entity whose proposal offers the apparent best value. Requires discussions to be limited to certain issues and topics.

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

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

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

(m) Requires the department to pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. Requires the stipulated amount to be stated in the request for proposals and prohibits the amount from exceeding the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. Provides that the use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section.

Provides that after payment of the stipulated amount the department jointly owns with the unsuccessful proposer the rights to, and is authorized to 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 the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

(n) Authorizes the department to prescribe the general form of a comprehensive development agreement and to include any matter the department considers advantageous to the department. Requires the department and the private entity to finalize the specific terms of a comprehensive development agreement.

(o) Provides that Chapter 2254 (Professional and Consulting Services), Government Code, does not apply to a comprehensive development agreement entered into under Section 91.054.

Sec. 91.056. CONFIDENTIALITY OF INFORMATION RELATING TO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Provides that, to encourage private entities to submit proposals under Section 91.055, certain information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), 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.

(b) Provides that after the department completes its final ranking of proposals under Section 91.055(h), the final rankings of each proposal under each of the published criteria cease to be confidential.

Sec. 91.057. PERFORMANCE AND PAYMENT SECURITY. (a) Requires the department, notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, to require a private entity entering into a comprehensive development agreement under Section 91.054 to provide a performance and payment bond or an alternative form of security in an amount sufficient to meet certain conditions.

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

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

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

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

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

(g) Requires the Texas Transportation Commission (commission), by rule, to prescribe requirements for alternate forms of security provided under this section.

Sec. 91.058. OWNERSHIP OF RAIL FACILITY OR SYSTEM. (a) Provides that a rail facility or system 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 shall to be owned by the department.

(b) Authorizes the department, notwithstanding Subsection (a), to enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a rail facility or system. Provides that at the termination of the agreement, the rail facility or system is to be in a state of proper maintenance as determined by the department and is required to be returned to the department in satisfactory condition at no further cost.

Sec. 91.059. LIABILITY FOR PRIVATE OBLIGATIONS. Prohibits the department from incurring a financial obligation for a private entity that constructs, maintains, or operates a rail facility or system. Provides that the state or a political subdivision of the state is not liable for any financial or other obligations of a rail facility or system solely because a private entity constructs, finances, or operates any part of the project.

Sec. 91.060. TERMS OF PRIVATE PARTICIPATION. (a) Requires the department to negotiate the terms of private participation in a rail facility or system, including certain provisions.

(b) Requires a comprehensive development agreement entered into under Section 91.054 to include a provision authorizing the department to purchase, under terms and conditions agreed to by the parties, the interest of a private participant in a rail facility or system financed, constructed, operated, or maintained under the comprehensive development agreement.

Sec. 91.061. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) Requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in rail facility projects, and promote confidence among those participants. Requires the rules to contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) Requires the department to have up-to-date procedures for participation in negotiations on rail facility projects.

(c) Sets forth that the department has exclusive judgment to determine the terms of an agreement.

SECTION 1.03. Amends Section 91.071(b), Transportation Code, to prohibit each fiscal year, the total amount disbursed by the department from the state highway fund to implement this chapter from exceeding \$25 million, rather than \$12.5 million.

SECTION 1.04. Amends Section 91.074(c), Transportation Code, to provide that a rail facility or system that is used or leased by a private entity under this subsection for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

SECTION 1.05. Amends Subchapter D, Chapter 91, Transportation Code, by adding Section 91.075, as follows:

Sec. 91.075. PASS-THROUGH FARES. (a) Defines "pass-through fare."

(b) Authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through fares to the public or private entity as reimbursement for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger rail facility or a freight rail facility by the entity.

(c) Authorizes the department to use any available funds for the purpose of making a pass-through fare payment under this section, including funds from the state infrastructure bank.

(d) Authorizes the commission to adopt rules necessary to implement this section. Authorizes rules adopted under this subsection to include certain criteria.

## ARTICLE 2. HIGHWAYS

SECTION 2.01. Amends Section 201.001, Transportation Code, to define "toll project."

SECTION 2.02. Amends Sections 201.115(a) and (c), Transportation Code, as follows:

(a) Authorizes the commission to authorize the department to borrow money from any source to carry out the functions of the department.

(c) Requires the notes, if the department, rather than the commission, borrows money by the issuance of notes, to be considered a state security for purposes of Chapter 1231 (Bond Review Board), Government Code. Deletes existing text relating to requirements of Subchapter N and an exception under Subsection (b) relating to maturity limitations.

SECTION 2.03. Amends Section 201.615, Transportation Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the department to consider the aesthetic character of the project, including input from each affected local community, except as provided by Subsection (c), and certain other factors, when developing transportation projects that involve the construction, reconstruction, rehabilitation, or resurfacing of a highway, other than a maintenance resurfacing project.

(c) Provides that the consideration of the aesthetic character of a project does not apply to transportation projects that involve the rehabilitation or resurfacing of a bridge or highway.

SECTION 2.04. Amends Section 202.112, Transportation Code, by adding Subsection (d), to prohibit an option to acquire property purchase under this section or Section 227.041 (Powers and Procedures) from expiring later than the fifth anniversary of the date the option was

purchased and authorizes it to be renewed for subsequent periods that expire not later than the fifth anniversary of the date the option was renewed, by agreement of the commission and the grantor of the option or the grantor's heirs or assigns.

SECTION 2.05. Transfers Section 203.004, Transportation Code, to Subchapter H, Chapter 201, Transportation Code, redesignates it as Section 201.617, Transportation Code, and amends it as follows:

Sec. 201.617. New heading: MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS. (a) Authorizes the department, if authorized by an applicable regulatory authority, to take certain actions to mitigate an adverse environmental impact that is a direct result of a state highway improvement project. Deletes existing text relating to property used for the mitigation of an adverse environmental impact directly resulting from the construction or maintenance of a state highway.

(a-1) Provides that before the commission is authorized to acquire by purchase or condemnation real property to mitigate an adverse environmental impact that is a direct result of a state highway improvement project, the department is required, if authorized by an applicable regulatory authority, offer to purchase a conservation easement from the owner of the real property. Authorizes the department, if the landowner does not accept the offer to execute a conservation easement before the 61st day after the date the offer is made, to acquire the property by purchase or condemnation.

(b) Makes no changes to this subsection.

(c) Redefines "management."

SECTION 2.06. Amends Subchapter K, Chapter 201, Transportation Code, by adding Section 201.907, as follows:

Sec. 201.907. CONTRACT FOR ENFORCEMENT. Authorizes the department or a public or private entity contracted to operate a toll project to contract with an agency of this state or a local governmental entity for the services of peace officers employed by the agency or entity to enforce certain laws relating to toll roads.

SECTION 2.07. Amends Section 203.052(b), Transportation Code, to provide that property necessary or convenient to a state highway for purposes of Subsection (a) includes an interest in real property, a property right, or a material that the commission determines is necessary or convenient to store materials or equipment for use or used in construction or maintenance of a state highway; to provide a location between the main lanes of a highway or between a department rail facility and highway for a gas station, convenience store, or similar facility that provides certain services, is not within a certain distance of an entrance or exit ramp and a certain existing privately owned establishment; or to construct or operate a toll booth, toll plaza, service center, or other facility used in connection with the construction, maintenance, or operation of a toll project.

SECTION 2.08. Amends Sections 203.0521, Transportation Code, as follows:

(a) Authorizes the department, if a proposed acquisition of a tract of real property under Section 203.052 would leave the owner of the property a remainder of the tract, to negotiate for and purchase the remainder or any part of the severed real property if the department and the owner agree on terms for the purchase. Creates an exception as provided by Subsection (f) and makes conforming changes.

(b) Requires the department, in acquiring real property under Subsection (a), to pay the value of the property acquired and certain damages to the remainder of the owner's property caused by the severance. Deletes existing text authorizing the department to acquire remainder property only if the owner consents.

(c) Authorizes the department, instead of a single fixed payment for real property purchased under Subsection (a) for a toll project, to agree to a payment to the owner in the form of certain methods. Deletes existing text excepting the department from acquiring remainder property if an appraisal or environmental investigation indicates the presence of hazardous materials or substances.

(d) Provides that a right to received revenue under Subsection (c)(1) is subject to any pledge of the revenue under the terms of a trust agreement securing bonds issued for the applicable segment of the toll project.

(e) Authorizes the department and its designated agents to enter the real property, rather than a remainder, to conduct an appraisal, survey, or environmental investigation to determine whether the department will offer to acquire the real property. Makes a conforming change.

(f) Provides that the department is not required under Subsection (a) to make an offer on a remainder if an appraisal or environmental investigation indicates the presence of hazardous materials or substances.

SECTION 2.09. Amends Section 203.055, Transportation Code, as follows:

Sec. 203.055. New heading: ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) Authorizes the governing body of a political subdivision or public agency that owns or is in charge of public real property to consent to the use of the property for highway purposes.

(b) Creates this subsection from existing text. Authorizes the governing body of a political subdivision or public agency to, without advertisement, convey the title to or rights or easements in real property that the department needs for highway purposes. Deletes existing text relating to acquisition and ownership.

(c) Authorizes a political subdivision or a state agency, notwithstanding any law to the contrary, at the request of the department, to lease, lend, grant, or convey to the department real property, including a highway or real property currently devoted to public use, that may be necessary or appropriate to accomplish the department's purposes. Authorizes the political subdivision or state agency to lease, lend, grant, or convey the property under certain conditions. Deletes existing text defining "political subdivision."

SECTION 2.10. Transfers Sections 361.137, 361.138, 361.233, and 361.142, Transportation Code, to Subchapter D, Chapter 203, Transportation Code, redesignates them as Sections 203.066-203.069, and amends them as follows:

Sec. 203.066. New heading: DECLARATION OF TAKING FOR TOLL PROJECT.

(a) Provides that this section and Section 203.067 apply only to a taking for a toll project.

(b) Creates this subsection from existing text. Authorizes the department to file a declaration of taking with the clerk of the court in which the department files a condemnation petition under Chapter 21 (Eminent Domain), Property Code, or to which the case is assigned.

(c)-(g) Redesignated from existing Subsections (b)-(e). Makes a conforming change.

(h) Provides that the filing of a declaration of taking does not affect the special commissioner's hearing or any other proceeding under Chapter 21 (Eminent Domain), Property Code. Deletes existing text relating to a requirement of a case in eminent domain, after a declaration of taking is filed.

(i) Provides that a taking under this section gives rise to compensable damages for early possession, as determined by the special commissioners under Chapter 21, Property Code.

Sec. 203.067. New heading : POSSESSION OF PROPERTY FOR TOLL PROJECT. Makes a conforming change.

Sec. 203.068. New heading: RIGHT OF ENTRY FOR TOLL PROJECT. Makes a conforming change.

Sec. 203.069. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Makes no changes to this section.

SECTION 2.11. Amends Section 203.092(a) Transportation Code, to require a utility to make a relocation of a utility facility at the expense of this state if relocation is required by improvement of a segment of the state highway system that was designated by the commission as a turnpike project or toll project before September 1, 2005. Deletes existing text relating to relocation of a utility facility.

SECTION 2.12. Amends Section 221.001(1), Transportation Code, to redefine "highway."

SECTION 2.13. Amend Section 222.104, Transportation Code, as follows:

- (a) Makes no changes to this subsection.
- (b) Authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system by the public or private entity.
- (c) Authorizes the department to enter into an agreement with a private entity that provides for the payment of pass-through tolls to the department as reimbursement for the department's design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system that is financed by the department.
- (d) Redesignated from Subsection (c). Authorizes the department and a regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, and Highways in Certain Counties), to enter into an agreement that provides for certain payments to be made. Deletes existing text relating to a regional mobility authority, a regional toll authority, or a county acting under Chapter 284.
- (e) Redesignated from Subsection (d).
- (f) Authorizes a regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 to secure and pay its obligations under an agreement under this section from any lawfully available funds.
- (g) Redesignated from Subsection (e). Authorizes rules adopted under this subsection to include, rather than establish, certain criteria.
- (h) Requires money repaid to the department under this section to be deposited to the credit of the fund from which the money was originally provided and provides that it is exempt from the application of Section 403.095, Government Code.

SECTION 2.14. Amends Chapter 223, Transportation Code, by adding Subchapter E, as follows:

#### SUBCHAPTER E. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 223.201. AUTHORITY. (a) Authorizes the department, subject to Section 223.202, to enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a toll project, certain facilities, and certain state highway projects.

(b) Defines "comprehensive development agreement."

(c) Authorizes the department to negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(d) Provides that money disbursed by the department under a comprehensive development agreement is not included in certain amounts.

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

(f) Provides that the authority to enter into comprehensive development agreements provided by this section expires on August 31, 2011.

Sec. 223.202. LIMITATION ON DEPARTMENT FINANCIAL PARTICIPATION. Prohibits the amount of money disbursed by the department from the state highway fund and the Texas mobility fund during a federal fiscal year to pay the costs under comprehensive development agreements from exceeding 40 percent of the obligation authority under the federal-aid highway program that is distributed to this state for the fiscal year.

Sec. 223.203. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Requires the department, if the department enters into a comprehensive development agreement, to use a competitive procurement process that provides the best value for the department. Authorizes the department to accept unsolicited proposals for a proposed project or solicit proposals in accordance with this section.

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

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

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

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

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

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

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

(i) Authorizes the department to enter into discussions with the private entity whose proposal offers the apparent best value. Requires the discussions to be limited to certain topics and issues.

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

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

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

(m) Requires the department to pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. Requires the stipulated amount to be stated in the request for proposals and prohibits the stipulated amount from exceeding the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. Provides that the use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section.

Provides that after payment of the stipulated amount the department jointly owns with the unsuccessful proposer 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 the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

(n) Authorizes the department to prescribe the general form of a comprehensive development agreement and may include any matter the department considers advantageous to the department. Requires the department and the private entity to finalize the specific terms of a comprehensive development agreement.

(o) Provides that Subchapter A of this chapter and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under this subchapter.

Sec. 223.204. CONFIDENTIALITY OF INFORMATION. (a) Provides that to encourage private entities to submit proposals under this subchapter, certain information is confidential,

is not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), 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.

(b) Provides that after the department completes its final ranking of proposals under Section 223.203(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 223.205. PERFORMANCE AND PAYMENT SECURITY. (a) Requires the department, notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253 (Public Work Performance and Payment Bonds), Government Code, to 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 perform certain actions.

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

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

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

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

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

(g) Requires the department, by rule, to prescribe requirements for alternative forms of security provided under this section.

Sec. 223.206. OWNERSHIP OF HIGHWAY. (a) Provides that a state highway or another facility described in Section 223.201(a) 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 required to be owned by the department.

(b) Authorizes the department, notwithstanding Subsection (a), to enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a state highway, including supplemental facilities. Provides that at the termination of the agreement, the highway or other facilities are to be in a state of proper maintenance as determined by the department and is required to be returned to the department in satisfactory condition at no further cost.

(c) Provides that for purposes of Section 11.11 (Public Property), Tax Code, a state highway or other facility that is licensed or leased to a private entity under a comprehensive development agreement is used for a public purpose if the highway or other facility is operated by the private entity to provide transportation services. Provides that a highway asset or toll project that is used or leased by a private entity under Section 202.052 or 228.053 for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

Sec. 223.207. LIABILITY FOR PRIVATE OBLIGATIONS. Prohibits the department from incurring a financial obligation for a private entity that designs, develops, finances, constructs, maintains, or operates a state highway or other facility under this subchapter. Provides that the state or a political subdivision of the state is not liable for any financial or other obligations of a project solely because a private entity constructs, finances, or operates any part of the project.

Sec. 223.208. TERMS OF PRIVATE PARTICIPATION. (a) Requires the department to negotiate the terms of private participation under this subchapter, including certain costs, methods, and standards.

(b) Requires a comprehensive development agreement entered into under this subchapter or Section 227.023(c) to include any provision that the department considers appropriate, including certain provisions.

(c) Authorizes the department to enter into a comprehensive development agreement under this subchapter or under Section 227.023(c) 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) Provides that Section 223.207 does not apply to the obligations of the department under a comprehensive development agreement.

(e) Authorizes an obligation of the commission or the department under a comprehensive development agreement entered into under this subchapter or Section 227.023(c), notwithstanding anything in Section 201.112 or other law to the contrary, and subject to compliance with the dispute resolution procedures set out in the comprehensive development agreement, to make 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, or to not terminate the private participant's right to operate and collect revenue from the project unless and until any applicable termination payments have been made, to be enforced by mandamus against the commission, the department, and the comptroller of public accounts (comptroller) in a district court of Travis County, and the sovereign immunity of the state is waived for that purpose. Requires the district courts of Travis County to have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought pursuant to this subsection.

(f) Prohibits a comprehensive development agreement entered into under this subchapter or Section 227.023(c) and any obligations incurred, issued, or owed thereunder from constituting a state security under Chapter 1231 (Bond Review Board), Government Code.

(g) Requires the private participant, if the department enters into a comprehensive development agreement with a private participant that includes the collection by the private participant that includes the collection by the private participant of tolls for the use of a toll project, to submit to the department for approval of certain toll related matters.

(h) Prohibits 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 from being for a term longer than 50 years.

Sec. 223.209. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) Requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants. Requires the rules to

contain criteria relating to the qualifications of the participants and the award of the contracts.

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

(c) Establishes that the department has exclusive judgment to determine the terms of an agreement.

SECTION 2.15. Amends Section 244.151(9), Transportation Code, to redefine "restricted lane."

SECTION 2.16. Amends Section 227.001(4) and (9), Transportation Code, to redefine "facility" and "turnpike."

SECTION 2.17. Amends Section 227.021, Transportation Code, by adding Subsection (f), to prohibit the department from pumping or extracting, or allowing the pumping or extracting, of groundwater from the right-of-way of the Trans-Texas Corridor unless the groundwater is needed for the construction, operation, or maintenance of a facility other than a public utility facility. Provides that if a well drilled and operated on the Trans-Texas Corridor is located inside the boundaries of a groundwater conservation district, the well is subject to the rules of the district.

SECTION 2.18. Amends Section 227.023, Transportation Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Deletes existing text relating to Chapter 361 and replaces it with Chapter 223. Makes a conforming change.

(d) Provides that for the purposes of Section 11.11, Tax Code, a facility that is licensed or leased to a private entity under a comprehensive development agreement, other than a facility described in Section 227.001(4)(E) that is used for commercial purposes, is used for a public purpose if the facility is operated by the private entity to provide transportation or utility services. Provides that property that is licensed or leased to a private entity under Section 227.082 for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

(e) Requires the private entity, if a contract between the department and a private entity includes the collection by the private entity of a fee for the use of a facility or a combination of facilities that are part of the Trans-Texas Corridor, to submit certain methods and methodologies to the department for approval.

(f) Prohibits a contract with a private entity from being for a term longer than 50 years.

SECTION 2.19. Amends Section 227.028(a), Transportation Code, to make it subject to Section 201.617(a-1).

SECTION 2.20. Amends Section 227.029(b), Transportation Code, to require the department, if it finds it necessary to change the location of a portion of a facility, to reconstruct the facility at a location that the department determines restores the utility of the facility, rather than to be most favorable. Makes nonsubstantive changes.

SECTION 2.21. Amends Subchapter C, Chapter 227, Transportation Code, by adding Section 227.032, as follows:

Sec. 227.032. HIGHWAYS INTERSECTING TRANS-TEXAS CORRIDOR. (a) Requires the department to ensure that, at each intersection of a segment of a state highway that is designated as part of Trans-Texas Corridor and a segment of a highway that is designated as an interstate highway, state highway, or United States highway, the Trans-Texas Corridor and the interstate highway, state highway, or United States highway are directly accessible to each other.

(b) Requires the department to make every reasonable effort to connect a segment of a state highway that is designated as part of the Trans-Texas Corridor with significant farm-to-market and ranch-to-market roads as determined by the department, taking into consideration certain advice, financial feasibility, circuitry of travel for landowners, access for emergency vehicles, and traffic volume.

SECTION 2.22. Amends Section 227.041, Transportation Code, as follows:

Sec.227.041. POWERS AND PROCEDURES. (a) Makes conforming changes.

(b) Provides that an interest in real property or a property right is necessary or convenient for the construction or operation of a facility if it is located in or contiguous to an existing or planned segment of the Trans-Texas Corridor or is needed for mitigation of adverse environmental effects, and if its acquisition will further the primary purposes of the Trans-Texas Corridor. Deletes existing text relating to generating certain revenue.

(c) Deletes existing text relating to laws governing the acquisition of right-of-way for a state highway.

(d) Provides that if the commission acquires property not immediately needed for department purposes, the department is encouraged to acquire an option to purchase the property under Subsection (a) or to lease back purchased land under section 227.043 to continue the agriculture or recreational use of the property.

SECTION 2.23. Amends Section 227.062(c), Transportation Code, to require each fiscal year, the total amount disbursed by the department out of state and federal funds to not exceed \$50 million, rather than \$25 million, for the construction or purchase of non-highway facilities on the Trans-Texas Corridor. Makes a nonsubstantive change.

SECTION 2.24. Amends Sections 227.082(c) and (d), Transportation Code, as follows:

(c) Makes a nonsubstantive change.

(d) Authorizes property to be leased or a franchise or license granted for any purpose reasonably necessary for the effective use or operation of a facility and to provide a location between the main lanes of a highway or between a highway and a department rail facility for a facility or a gas station, convenience store, or similar facility that provides certain services or is located within in a certain distance of an entrance or exit ramp and is located within a certain distance of a certain existing privately owned establishment.

SECTION 2.25. Amends Subtitle B, Title 6, Transportation Code, by adding Chapter 228, and transferring Sections 361.001, 361.301, 361.307, and 361.032, Transportation Code, to Chapter 228, Transportation Code, designates them as Subchapter A, and amends them as follows:

## CHAPTER 228. STATE HIGHWAY TOLL PROJECTS

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 228.001. DEFINITIONS. Defines "air quality project," "bond," "region," "system," "toll project," and "transportation project." Deletes existing text defining "authority," "owner," "turnpike project," and "regional tollway authority."

Sec. 228.002. New heading: AGREEMENTS WITH PUBLIC ENTITIES. Authorizes the department to enter into an agreement with a public entity, rather than a public or private entity, including a toll road corporation, to permit the entity, independently or jointly with the department, to design, develop, finance, construct, maintain, repair, or operate a toll project. Deletes existing text authorizing the department to authorize the investment of money to finance certain projects. Makes conforming changes.

Sec. 228.003. New heading: AGREEMENTS WITH OTHER GOVERNMENTAL AGENCIES. (a) Authorizes the department, rather than the department and a private entity jointly, with the approval of the commission, to enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a toll project, or to finance, construct, operate, and maintain a toll project. Requires the department to obtain the approval of the governor to enter into an agreement with an agency of another state, the United Mexican States, or a state of the United Mexican States.

(b) Authorizes the department and the private entity, if the department enters into an agreement with a private entity, including a comprehensive development agreement under Subchapter E, Chapter 223 to jointly enter into an agreement under Subsection (a). Deletes existing text prohibiting the department from entering into certain agreements without the approval of the governor.

Sec. 228.004. New heading: PROMOTION OF TOLL PROJECT. Authorizes the department, notwithstanding Chapter 2113 (Use of Appropriated Money), Government Code, to engage in marketing, advertising, and other activities to promote the development and use of toll projects and to enter into contracts or agreements necessary to procure marketing, advertising, or other promotional services from outside service providers. Deletes existing text relating to the commission adopting rules and department authorizations relating to implementation and administration of this chapter.

SECTION 2.26. Amends Subchapter A, Chapter 228, Transportation Code, by adding Section 228.005, as follows:

Sec. 228.005. TOLL REVENUE. Sets forth specific guidelines for toll revenue collected or received by the department under this chapter, except as provided by Subchapter C or E.

SECTION 2.27. Transfers Sections 361.189 and 224.154, Transportation Code, to Subchapter A, Chapter 228, Transportation Code, redesignates them as Sections 228.006 and 228.007, Transportation Code, and amends them as follows:

Sec. 228.006 . USE OF SURPLUS REVENUE. (a) Requires the commission, rather than authorizes the commission by order, to authorize the use of surplus revenue of a toll project or system to pay the costs of a transportation project, highway project, or air quality project within the department district in which any part of the turnpike project is located, rather than the region. Makes conforming changes.

(b) Prohibits the commission from revising the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a district's allocation because of a payment under Subsection (a).

(c) Prohibits the commission from taking an action under this section that violates, impairs, or is inconsistent with a bond order, trust agreement, or indenture governing the use of the surplus revenue.

Sec. 228.007. TOLL LANES. (a) Authorizes the commission , subject to Section 228.201, by order to authorize the department to charge a toll for the use of one or more lanes of a state highway, rather than facility, including a high occupancy vehicle lane designated under Section 224.153 or an exclusive lane designated under Section 224.1541. Deletes existing text relating to notwithstanding any law of this state relating to charging tolls on existing free public highways, and subject to Section 224.1541(d). Deletes existing text relating to congestion mitigation. Makes conforming changes.

(b) Authorizes the department, if the commission authorizes the department to charge a toll under Subsection (a), to enter into an agreement with regional

tollway described in Chapter 366 (Regional Tollway Authority), a transit authority described in Chapter 451 (Metropolitan Rapid Transit Authority), Chapter 452 (Regional Transportation Authorities), or Chapter 453 (Municipal Transit Departments), a coordinated county transportation authority under Chapter 460 (Coordinated County Transportation Authorities), a regional mobility authority under Chapter 370 (Regional Mobility Authorities), a county acting under Chapter 284 (Causeways, Bridges, Tunnels, Turnpikes, and Highways in Certain Counties), or a transportation corporation to build, charge, and maintain certain toll lanes.

(c) Makes no changes to this subsection.

(d) Deletes existing text relating to the use of revenue generated from toll charges and collection fees. Deletes existing text of Subsection (e) relating to powers granted by this section.

SECTION 2.28. Transfers Section 224.1541(d), Transportation Code, to Subchapter A, Chapter 228, Transportation Code, redesignates it as Section 228.008, Transportation Code, and amends it as follows:

Sec. 228.008. New heading: TOLLS ON EXCLUSIVE LANE. Makes a conforming change.

SECTION 2.29. Transfers 361.033, Transportation Code, to Subchapter A, Chapter 228, Transportation Code, redesignates it as Sections 228.009, Transportation Code, and amends it to make conforming changes.

SECTION 2.30. Amends Subchapter A, Chapter 228, Transportation Code, by adding Section 228.010, as follows:

Sec. 228.010. ESTABLISHMENT OF TOLL SYSTEMS. (a) Authorizes the commission, if it determines that the mobility needs of a region of this state could be most efficiently and economically met by jointly operating two or more toll projects in that region as one operational and financial enterprise, to create a system composed of those projects. Authorizes the commission to create more than one system in a region and to combine two or more systems in a region into one system. Authorizes the department to finance, acquire, construct, and operate additional toll projects in the region as additions to or expansions of a system if the commission determines that the toll project could most efficiently and economically be acquired or constructed if it were part of the system and that the addition will benefit the system.

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

SECTION 2.31. Amends Chapter 228, Transportation Code, by adding Subchapter B, as follows:

#### SUBCHAPTER B. USE AND OPERATION OF TOLL PROJECTS OR SYSTEMS

Sec. 228.051. DESIGNATION. Authorizes the commission by order to designate one or more lanes of a segment of the state highway system as a toll project or system, subject to Section 228.201.

Sec. 228.052. OPERATION OF TOLL PROJECT OR SYSTEM. Authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system, including the operation of toll plazas and lanes and customer service centers and the collection of tolls.

SECTION 2.32. Transfers Sections 361.179, 361.252, 361.253, 361.254, 361.255, and 361.256, Transportation Code, to Subchapter B, Chapter 228, Transportation Code, redesignates them as Sections 228.053, 228.054, 228.055, 228.056, 228.057, and 228.058, Transportation Code, and amends them as follows:

Sec. 228.053. REVENUE. (a) Authorizes the department, in addition to the powers granted, rather than notwithstanding anything, in Chapter 202, to contract with a person for the use of part of a toll project or system or lease part of a toll project or system only for a gas station, convenience store, or similar facility that provides services to and directly benefits users of a toll project, provided that the facility is located between the main lanes of the toll project and is not within five miles of an entrance ramp or exit ramp. Deletes existing text relating to contracting for a garage, store, hotel, restaurant, railroad tracks, utilities, and telecommunications facilities and equipment and setting the terms for the use or lease.

(a-1) Authorizes a contract or lease agreement under Subsection (a)(2) to be entered into for the purpose of constructing and operating a commercial facility only if, on the effective date of the contract or lease agreement, a facility that provides a service described by that subdivision is not located within five miles of the part of the toll project to be used or leased.

(b) through (f) Make conforming changes.

(g) Makes no changes to this subsection.

Sec. 228.054 through Sec. 228.056. Make conforming changes.

Sec. 228.057. New heading: ELECTRONIC TOLL COLLECTION. (a) and (b) Makes no changes to these subsections.

(c) Authorizes the department to enter into an agreement with one or more persons to market and sell transponders for use on department toll roads.

(d) Authorizes the department to charge reasonable fees for administering electronic toll collection customer accounts.

(e) Provides that electronic toll collection customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(f) Requires a contract for the acquisition, construction, maintenance, or operation of a toll project to ensure the confidentiality of all electronic toll collection customer account information under Subsection (e).

Sec. 228.058. AUTOMATED ENFORCEMENT TECHNOLOGY. (a) through (c) Makes no changes to these subsections.

(d) Prohibits evidence from technology approved by the department under Subsection (a) from being used in the prosecution of an offense other than under Section 228.054 or 228.055 or in the prosecution of a capital offense. Makes conforming changes.

SECTION 2.33. Transfers Sections 361.004, 361.171, 361.172, 361.173, 361.174, 361.1751, 361.1752, 361.1753, 361.176, 361.177, 361.178, 361.183, 361.185, 361.186, 361.187, and 361.188, Transportation Code, to Chapter 228, Transportation Code, designates them as Subchapter C, and amends them as follows:

#### SUBCHAPTER C. TOLL REVENUE BONDS

Sec. 228.101. CONSTRUCTION COSTS. Provides that the cost of construction, improvement, extension, or expansion of a toll project or system under this chapter

includes certain costs including the acquisition of machinery, equipment, software, intellectual property, and other advisory services. Deletes existing text relating to acquisition and turnpike projects. Makes conforming changes.

Sec. 228.102. New heading: ISSUANCE OF BONDS. Makes conforming changes. Deletes existing text relating to projects being required to be financed by certain means.

Sec. 228.103. APPLICABILITY OF OTHER LAW; CONFLICTS. Makes conforming changes.

Sec. 228.104. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. Requires the principal of, interest on, and any redemption premium on bonds issued by the commission under this subchapter to be paid solely from surplus revenue of another project or system as authorized by Section 228.006 and certain amounts received by the department. Makes conforming changes.

Sec. 228.105. New heading: SOURCES OF PAYMENT OF AND SECURITY FOR TOLL REVENUE BONDS. Makes conforming changes.

Sec. 228.106. INTERIM BONDS. Makes a conforming change.

Sec. 228.107. EFFECT OF LIEN. Provides that a lien on or a pledge of revenue, a contract payment, or a pledge of money to the payment of bonds issued under this subchapter is valid and effective in accordance with Chapter 1208 (Security for Public Securities), Government Code, and is enforceable in any court at the time of payment and delivery of the bond. Deletes existing text relating to a turnpike project.

Sec. 228.108. APPROVAL OF BONDS BY ATTORNEY GENERAL. Makes conforming changes.

Sec. 228.109. TRUST AGREEMENT. Authorizes surplus revenue, notwithstanding Subsection (c), to be used for a transportation or air quality project as authorized by Section 228.006. Makes conforming changes.

Sec. 228.110. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. Deletes existing text relating to covenants prescribing terms on which any or all of the bonds may be declared before maturity. Makes conforming changes.

Sec. 228.111 through Sec. 228.116. Make conforming changes.

SECTION 2.34. Amends Subchapter C, Chapter 228, Transportation Code, by adding Section 228.117, as follows:

Sec. 228.117. FUNDING FOR DEPARTMENT DISTRICT. Prohibits the commission from revising the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a district's allocation because revenue bonds are issued for a toll project located within the department district.

SECTION 2.35. Transfers Subchapter H, Chapter 361, Transportation Code, to Chapter 228, Transportation Code, redesignates it as Subchapter D, and amends it as follows:

SUBCHAPTER D. New heading: TRANSFER OF TOLL PROJECT

Deletes existing Section 361.281 relating to the applicability of the subchapter.

Sec. 228.151. New heading: LEASE, SALE, OR TRANSFER OF TOLL PROJECT OR SYSTEM. Authorizes the department to lease, sell, or transfer in another manner a toll project or system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project under Subchapter E, to a governmental entity

that has the authority to operate a tolled highway, rather than a county, a municipality, regional tollway authority, regional mobility authority. Makes conforming changes.

Sec. 228.152 through Sec. 228.154. Make conforming changes.

SECTION 2.36. Amends Chapter 228, Transportation Code, by adding Subchapter E, as follows:

SUBCHAPTER E. LIMITATION ON TOLL FACILITY DETERMINATION;  
CONVERSION OF NONTOLLED STATE HIGHWAY

Sec. 228.201. LIMITATION ON TOLL FACILITY DESIGNATION. Prohibits the department, except as provided by Section 228.2015, from operating a nontolled state highway or a segment of a nontolled state highway as a toll project, and from transferring a highway or segment to another entity for operation as a toll project unless certain conditions exist.

Sec. 228.2015. LIMITATION TRANSITION. (a) Authorizes the department, notwithstanding Section 228.201, to operate a nontolled state highway or a segment highway as a toll project if certain conditions exist.

(b) Provides that this section expires September 1, 2006.

SECTION 2.37. Transfers Section 362.0041, Transportation Code, to Subchapter E, Chapter 228, Transportation Code, redesignates as Sections 228.202-228.208, and amends, as follows:

Sec. 228.202. New heading: COMMISSION DETERMINATION. Makes conforming changes.

Sec. 228.203. New heading: PUBLIC HEARING. Makes conforming changes.

Sec. 228.204. New heading: RULES. Requires the commission to adopt rules implementing this subchapter, rather than section, including criteria and guidelines for the approval of a conversion highway. Makes conforming changes.

Sec. 228.205. New heading: QUEEN ISABELLA CAUSEWAY. Makes conforming changes.

Sec. 228.206. New heading: TOLL REVENUE. Deletes existing text relating to a highway converted to a toll facility under this section. Makes conforming changes.

Sec. 228.207. New heading: COUNTY AND VOTER APPROVAL. Authorizes the commission to only convert a state highway or a segment of a state highway under this subchapter if the conversion is approved by the qualified voters who vote in an election under Section 228.208 and who reside in the limits of certain counties and municipalities.

Sec. 228.208. ELECTION TO APPROVE CONVERSION. (a) Requires the commissioners court of each county described by Section 228.207(2)(A) or the governing body of a municipality described by SECTION 228.207(2)(B), as applicable, if notified by the department of the proposed conversion of a highway or segment under this subchapter, and after approval of the conversion by the appropriate commissioners courts of each county described by Section 228.207(1), to call an election for the approval or disapproval of the conversion.

(b) Requires the county or municipality, if a county or municipality orders an election, to publish notice of the election in a newspaper of general circulation published in the county or municipality at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election.

(c) Requires an order or resolution ordering an election and the election notice required by Subsection (b) to show, in addition to the requirements of the Election Code, the location of each polling place and the hours that the polls will be open.

(d) Requires the proposition submitted in the election to distinctly state the highway or segment proposed to be converted and the limits of that highway or segment.

(e) Requires ballots, at an election ordered under this section, to be printed to permit voting for or against the proposition: "The conversion of (highway) from (beginning location) to (ending location) to a toll project."

(f) Provides that a proposed conversion is approved only if it is approved by a majority of the votes cast.

(g) Requires a notice of the election and a certified copy of the order canvassing the election results to be sent to the commission.

SECTION 2.38. Transfers Sections 362.001, 362.003, 362.006, and 362.007, Transportation Code, to Chapter 228, Transportation Code, designates them as Subchapter F, and amends them as follows:

#### SUBCHAPTER F. JOINT TOLL PROJECTS.

Sec. 228.251. DEFINITIONS. Deletes existing text defining "cost" and "turnpike projects." Makes conforming changes.

Sec. 228.252. through Sec. 228.254. Make conforming changes.

SECTION 2.39. Amends Section 284.001(3), Transportation Code, to redefine "project."

SECTION 2.40. Amends Section 284.008, Transportation Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Creates an exception as provided by Subsection (d).

(d) Authorizes a county, before construction on a project under this chapter begins, to request that the commission adopt an order stating that the project will not become part of the state highway system under Subsection (c). Provides that Section 362.051 does not apply to the project, the project is required to be maintained by the county, and the project will not become part of the state highway system unless the county transfers the project under Section 284.011, if the commission adopts the order.

SECTION 2.41. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.011, as follows:

Sec. 284.011. TRANSFER OF PROJECT TO DEPARTMENT. (a) Authorizes a county to transfer to the department a project under this chapter that has outstanding bonded indebtedness if the commission agrees to the transfer and agrees to assume the outstanding bonded indebtedness.

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

(c) Requires the county, if the commission agrees to the transfer under Subsection (a), to convey the project and any real property acquired to construct or operate the project to the department.

(d) Requires the commission, at the time of a conveyance under this section, to designate the project as part of the state highway system. Sets forth that the

county, after the designation, has no liability, responsibility, or duty to maintain or operate the project.

SECTION 2.42. Amends Subchapter A, Chapter 284, Transportation Code, by adding Section 284.012, as follows:

Sec. 284.012. TRANSFER OF ASSETS. (a) Authorizes a county, acting through the commissioners court of the county, to submit a request to the commission for authorization to create a regional mobility authority under Chapter 370 and to transfer all projects under this chapter to the regional mobility authority if certain conditions exist.

(b) Authorizes the county to submit to the commission a proposed structure for the initial board of directors of the regional mobility authority and a method for appointment to the board of directors at the creation of the regional mobility authority. Provides that subsequent appointments to the board of directors are subject to the requirements of Subchapter F, Chapter 370.

(c) Authorizes the county, after commission authorization, to transfer each of its projects under this chapter to the regional mobility authority to the extent authorized by the Texas Constitution if property and contract rights in the projects and bonds issued for the projects are not affected unfavorably.

(d) Requires the commission to adopt rules governing the creation of a regional mobility authority and the transfer of projects under this section.

SECTION 2.43. Amends Section 284.061(c), Transportation Code, to make a conforming change.

SECTION 2.44. Amends Subchapter C, Chapter 284, Transportation Code, by adding Section 284.0615, as follows:

Sec. 284.0615. DECLARATION OF TAKING BY CERTAIN COUNTIES.

(a) Provides that this section applies only to a county with a population of 3.3 million or more.

(b) Provides that if, in connection with a project under this chapter, a commissioners court of the county authorizes the county to proceed in the manner provided by Section 203.066, the county may file a declaration of taking and proceed in the manner provided by that section on the project, and a reference to the department in that section means the county.

SECTION 2.45. Amends Section 284.064, Transportation Code, by adding Subsections (d) and (e), as follows:

(d) Requires a person, if a county enters into an agreement with the person that includes the collection by the person of tolls for the use of a project, to submit to the county certain plans, methodologies, and changes.

(e) Prohibits an agreement with a person that includes the collection by the person of tolls for the use of a project from being for a term longer than 50 years.

SECTION. 2.46. Amends Subchapter C, Chapter 284, Transportation Code, by adding Section 284.0665, as follows:

Sec. 284.0665. COMPENSATION OF OPERATING BOARD MEMBERS. (a) Defines "performing the duties of the operating board."

(b) Provides that this section applies only to an operating board that meets certain criteria.

(c) Entitles a member of the operating board to receive as compensation not more than \$150 a day for each day the member actually spends performing the duties of the operating board.

(d) Requires the operating board to set a limit on the amount of compensation a member of the operating board may receive in a year under this section not to exceed \$7,200.

(e) Entitles a member of the operating board, in addition to Subsection (c), to reimbursement of actual and necessary expenses incurred in performing duties of the operating board.

(f) Requires a member of the operating board, to receive compensation or reimbursement under this section, to file a verified statement with the local government corporation that includes certain information.

SECTION 2.47. Amends Section 284.067 (c), Transportation Code, as follows:

(c) Authorizes any county, rather than each county, into which the project extends, by condemnation or another method under general law, to acquire the property necessary for the project, except that a county is prohibited from condemning property in another county until after the resolution required by Subsection (a) is adopted.

SECTION 2.48. Amends Section 366.004(a), Transportation Code, to provide that the cost of acquisition, construction, improvement, extension, or expansion of a turnpike project or system under this chapter includes the cost of the assumption of debts, obligations, and liabilities of an entity relating to a turnpike project or system transferred to an authority by that entity. Makes a conforming change.

SECTION 2.49. Amends Section 366.033, Transportation Code, by adding Subsection (k), as follows:

(k) Authorizes an authority, acting through its board, to 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.

SECTION 2.50. Amends Subchapter B, Chapter 366, Transportation Code, by adding Section 366.036, as follows:

Sec. 366.036. TRANSFER OF TURNPIKE PROJECT OR SYSTEM. (a) Authorizes an authority to transfer any of its turnpike projects or systems to one or more local governmental entities if certain conditions exist.

(b) Authorizes an authority to 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) Requires a local governmental entity, using any lawfully available funds, to 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. Authorizes the reimbursement to be made over time, as determined by the local governmental entity and the authority.

SECTION 2.51. Amends Section 366.169(c), Transportation Code, to make a conforming change.

SECTION 2.52. Amends Section 370.003, Transportation Code, by amending Subdivision (14) and adding Subdivisions (16)-(19), to redefine "transportation project" and define "mass transit," "service area," "transit provider," and "transit system."

SECTION 2.53. Amends Section 370.004(a), Transportation Code, to add that the cost of acquisition, construction, improvement, extension, or expansion of a transportation project under this chapter includes the assumption of debts, obligations, and liabilities of an entity relation to a transportation project transferred to an authority by that entity.

SECTION 2.54. Amends Section 370.031, Transportation Code, by adding Subsection (c), as follows:

(c) Sets forth that a municipality that borders the United Mexican States and has a population of 500,000 or more has the same authority as a county to create and participate in an authority. Sets forth that a municipality creating or participating in an authority has the same powers and duties as a county participating in an authority, the governing body of the municipality has the same powers and duties as the commissioners court of a county participating in an authority, and an elected member of the municipality's governing body has the same powers and duties as a commissioner of a county that is participating in an authority.

SECTION 2.55. Amends Section 370.033, Transportation Code, by amending Subsection (m) and adding Subsections (o) and (p), as follows:

(m) Authorizes an authority, if it receives money from the general revenue fund, the Texas Mobility Fund, or the state highway fund, to use the money only to acquire, design, finance, construct, operate, or maintain a turnpike project under Section 370.00(14)(A) or (D) or a transit system under Section 370.351.

(o) Prohibits an authority, except as provided in Subchapter J, from providing mass transit services in the service area of another transit provider that has taxing authority and has implemented it anywhere in the service area unless the service is provided under a written agreement with transit provider or under Section 370.186.

(p) Authorizes an authority, acting through its board, to agree with another entity to acquire a transportation project or system from that entity to acquire a transportation project or system from that entity and to assume any debts, obligations, and liabilities of the entity relating to a transportation project or system transferred to the authority.

SECTION 2.56. Amends Subchapter B, Chapter 370, Transportation Code, by adding Section 370.039, as follows:

Sec. 370.039. TRANSFER OF TRANSPORTATION PROJECT OR SYSTEM. (a) Authorizes an authority to transfer any of its transportation projects or systems to one or more governmental entities if certain conditions exist.

(b) Authorizes an authority to transfer to one or more 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) Requires a governmental entity, using any lawfully available funds, to reimburse any expenditures made by an authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the governmental entity under Subsection (b) and any other amounts expended under related agreements transferred to the governmental entity. Authorizes the reimbursement to be made over time, as determined by the governmental entity and the authority.

SECTION 2.57. Amends Section 366.302, Transportation Code, by adding Subsections (f) and (g), as follows:

(f) Requires the private entity, 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 project, to submit to the authority certain plans, methodologies, and changes.

(g) Prohibits an agreement with a private entity that includes the collection by the private entity of tolls for the use of a project from being for a term longer than 50 years.

SECTION 2.58. Amends Section 370.163(a), Transportation Code, to make conforming changes. Deletes existing text relating to the concurrence of the commission.

SECTION 2.59. Amends Section 370.168(c), Transportation Code, to make a conforming change.

SECTION 2.60. Amends Section 370.186, Transportation Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Creates an exception as provided by Subsection (c).

(c) Provides that Subsection (a) does not apply to certain turnpike or toll projects located in a county in which a regional tollway authority has transferred certain projects and work products under Section 366.036 or 366.172.

(d) Prohibits an authority from constructing, maintaining, or operating a passenger rail facility within the boundaries of an intermunicipal commuter rail district created under Article 6550c-1, V.T.C.S., as those boundaries existed on September 1, 2005, unless the district and the authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken.

SECTION 2.61. Amends Chapter 370, Transportation Code, by adding Subchapters I and J, as follows:

#### SUBCHAPTER I. TRANSIT SYSTEMS

Sec. 370.351. TRANSIT SYSTEMS. (a) Authorizes an authority to construct, own, operate, and maintain a transit system.

(b) Requires an authority to determine each transit route, including transit route changes.

(c) Provides that this chapter does not prohibit an authority, municipality, or transit provider from providing any service that complements a transit system, including providing parking garages, special transportation for persons who are disabled or elderly, or medical transportation services.

Sec. 370.352. PUBLIC HEARING ON FARE AND SERVICE CHANGES. (a) Defines "service change," "transit revenue vehicle mile," "transit route," and "transit route mile."

(b) Requires an authority, except as provided by Section 370.353, to hold a public hearing on a fare change, certain service changes, and the establishment of a new transit route.

(c) Requires an authority to hold the public hearing required by Subsection (b) before the cumulative amount of service charges in a fiscal year equals a percentage amount described in Subsection (b)(2)(A) or (B).

Sec. 370.353. PUBLIC HEARING ON FARE CHANGE AND SERVICE CHANGES: EXCEPTIONS. (a) Defines "experimental service change."

(b) Provides that a public hearing under Section 370.352 is not required for certain reduced or free promotional fares, headway adjustments, standard seasonal variations, or an emergency or experimental service change.

(c) Authorizes a hearing on an experimental service change in effect for more than 180 days to be held before or while the experimental service change is in effect and satisfies the requirement for a public hearing if the hearing notice required by Section 370.354 states that the change may become permanent at the end of the effective period. Requires the service that existed before the change, if a hearing is not held before or while the experimental service change is in effect, to be reinstated at the end of the 180th day after the change became effective and requires a public hearing to be held in accordance with Section 370.352 before the experimental service change may be continued.

Sec. 370.354. NOTICE OF HEARING ON FARE OR SERVICE CHANGE. (a) Requires the authority, after calling a public hearing required by Section 370.352, to take certain actions relating to the notice of the hearing. Requires the notice to contain certain information. Provides that the requirement for said public hearing is satisfied at a public hearing required by federal law if certain conditions exist.

Sec. 370.355. CRIMINAL PENALTIES. (a) Authorizes an authority by resolution to prohibit the use of the transit system by a person who fails to possess evidence showing that the appropriate fare for the system has been paid and to establish reasonable and appropriate methods, including using peace officers under Section 370.181(c), to ensure that persons using the transit system pay the appropriate fare for that use.

(b) Authorizes an authority by resolution to provide that a fare for or charge for the use of the transit system that is not paid incurs a penalty, not to exceed \$100.

(c) Requires the authority to post signs designating each area in which a person is prohibited from using the transit system without possession of evidence showing that the appropriate fare has been paid.

(d) Sets forth the actions that constitute an offense under this section.

(e) Authorizes the notice required by Subsection (d)(2) to be included in a citation issued to the person by a peace officer under Article 14.06, Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use the transit system.

(f) Provides that an offense under Subsection (d) is a Class C misdemeanor.

(g) Provides that an offense under Subsection (d) is not a crime of moral turpitude.

#### SUBCHAPTER J. ACQUIRING TRANSIT SYSTEMS

Sec. 370.361. TRANSFER OF TRANSIT SYSTEMS. (a) Defines "unit of election."

(b) Authorizes an authority to request in writing a transit provider to transfer the provider's transit system and taxing authority to the authority if the board determines that the traffic needs of counties in which the authority operates could be most efficiently and economically met by the transfer.

(c) Authorizes the governing body of the transit provider, on receipt of a written request under Subsection (b), to authorize the authority to solicit public comment and conduct at least one public hearing on the proposed transfer in each unit of election in the transit provider's service area. Requires notice of a hearing to be published in the Texas Register, one or more newspapers of general circulation in the transit provider's service area, and a newspaper, if any, published in the

counties of the requesting authority. Requires the notice to also solicit written comments on the proposed transfer. Authorizes the transit provider to participate fully with the authority in conducting a public hearing.

(d) Authorizes a board to approve the acquisition of the transit provider if the governing body of the transit provider approves transfer of its operations to the authority and dissolution of the transit provider is approved in an election ordered under Subsection (e). Requires the board, before approving the acquisition, to consider public comments received under Subsection (c).

(e) Authorizes the governing body of the transit provider, after considering public comments received under Subsection (c), to order an election to dissolve the transit provider and transfer all services, property, funds, assets, employees, debts, and obligations to the authority. Requires the governing body of the transit provider to submit to the qualified voters in units of election in the transit provider's service area a proposition. Sets forth the specific language for the proposition.

(f) Requires an election under Subsection (e) to be conducted so that votes are separately tabulated and canvassed in each participating unit of election in the transit provider's service area.

(g) Requires the governing body of the transit provider to canvass the returns and declare the results of the election separately with respect to each unit of election. Sets forth that if a majority of the votes received in a unit of election are in favor of the proposition, the proposition is approved in that unit of election. Provides that the transit provider is dissolved and its services, property, funds, assets, employees, debts, and obligations are transferred to the authority only if the proposition is approved in every unit of election. Provides that if the proposition is not approved in every unit of election, the proposition does not pass and the transit provider is not dissolved.

(h) Requires a certified copy of the order or resolution recording the results of the election to be filed with the department, the comptroller, and the governing body of each unit of election in the transit provider's service area.

(i) Requires the authority to assume all debts or other obligations of the transferred transit provider in connection with the acquisition of property under Subsection (g). Prohibits the authority from using revenue from sales and use tax collected under this subchapter or other revenue of the transit system in a manner inconsistent with any pledge of that revenue for the payment of any outstanding bonds, unless provisions have been made for a full discharge of the bonds.

Sec. 370.362. SALES AND USE TAX. (a) Authorizes the authority, if an authority acquires a transit provider with taxing authority, to impose a sales and use tax at a permissible rate that does not exceed the rate approved by the voters who reside in the service area of the transit provider's transfer system at an election under this subchapter.

(b) Authorizes the authority by resolution to take certain actions.

(c) Requires the authority, if an authority orders an election, to publish notice of the election in a newspaper of general circulation in the territory of the authority at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election.

(d) Requires a resolution ordering an election and the election notice required by Subsection (c) to show, in addition to the requirements of the Election Code, the hours of the election and polling places in election precincts.

(e) Requires a copy of the election notice required by Subsection (c) to be furnished to the commission and the comptroller.

(f) Provides that certain rates are permissible rates for a sales tax under this subchapter.

(g) Provides that Chapter 322 (Sales and Use Taxes for Special Purpose Taxing Authorities), Tax Code, applies to a sales and use tax imposed under this subchapter.

Sec. 370.363. MAXIMUM TAX RATE. (a) Prohibits an authority from adopting a sales tax and use rate, including a rate increase, that when combined with the rates of all sales and use taxes imposed by all political subdivisions of this state having territory in the service area of the transferred transit system exceeds two percent in any location in the service area.

(b) Provides that an election to approve a sales and use tax or increase the rate of an authority's sales and use tax has no effect if certain conditions exist.

Sec. 370.364. ELECTION TO CHANGE TAX RATE. (a) Requires the ballots, at an election ordered under Section 370.362(b)(2), to be printed to permit voting for or against the proposition. Sets forth the specific language for the proposition.

(b) Provides that the increase or decrease in the tax rate becomes effective only if it is approved by a majority of the votes cast.

(c) Requires a notice of the election and a certified copy of the order canvassing the election results to be sent to the commission and the comptroller and filed in the deeds records of the county.

Sec. 370.365. SALES TAX: EFFECTIVE DATES. (a) Provides that a sales and use tax implemented under this subchapter takes effect on the first day of the second calendar quarter that begins after the date the comptroller receives a copy of the order required to be sent under Section 370.364(c).

(b) Provides that an increase or decrease in the rate of a sales and use tax implemented under this subchapter takes effect on certain dates.

SECTION 2.62. Amends Section 370.302, Transportation Code, by adding Subsections (h) and (i), as follows:

(h) Requires the private entity, 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 transportation project, to submit to the authority for approval certain plans, methodologies, and changes.

(i) Prohibits an agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project from being for a term longer than 50 years.

SECTION 2.63. Amends Section 395.001(a), Transportation Code, to provide that this subchapter applies only to the governing of a toll road authority that is adjacent to county with a population of 3.3 million or more and which a municipality with a population of more than 60,000 is located.

SECTION 2.64. Amends Section 395.051(a), Transportation Code, to make conforming changes.

SECTION 2.65. Amends Section 451.554, Transportation Code, as follows:

Sec. 451.554. BOARD APPROVAL OF ANNEXATION: EFFECTIVE DATE. (a) Provides that the addition of territory annexed under Section 451.551, or approved under Section 451.552 or 451.553, does not take effect if, before the effective date of the

addition under Subsection (b), the board of the authority gives written notice to governing body of the municipality that added new territory to the authority by virtue of annexation, that the addition would create a financial hardship on the authority because certain conditions exist.

(b) Provides that in the absence of a notice under Subsection (a), the addition of territory takes effect on the 31st day after certain dates.

SECTION 2.66. Amends Section 472.031, Transportation Code, by adding Subsection (c), to prohibit a legislative member of a policy board from being counted as absent at a meeting of the policy board during a legislative session.

SECTION 2.67. Amends Section 451.071, Transportation Code, by adding Subsection (f), to authorize a referendum on a proposal to expand a system approved under this section from being held on any date specified in Section 41.001, Election Code, or a date chosen by order of the board of the authority, provided that certain conditions exist.

SECTION 2.68. Amends Section 101.022, Civil Practice and Remedies Code, as follows:

Sec. 101.022. DUTY OWED: PREMISE AND SPECIAL DEFECTS. (a) Creates an exception as provided in Subsection (c).

(b) Makes no changes to this subsection.

(c) Provides that if a claim arises from a premise defect on a toll highway, road, or street, the governmental unit owes to the claimant only the duty that a private person owes to a licensee on private property.

SECTION 2.69. Amends Section 21.042, Property Code, by adding Subsection (g), to require the special commissioners, if a portion of a tract or parcel of real property is condemned for state highway purposes, to consider the decreased access to or from the remaining property in determining the damage to the property owner.

SECTION 2.70. Amends Section 11.11, Tax Code, by adding Subsection (j), as follows:

(j) Provides that for purposes of this section, a facility owned by the department that is part of the Trans-Texas Corridor, is a rail facility or system, or is a highway in the state highway system, and that is licensed or leased to a private entity by that department under Chapter 91 (Rail Facilities), 223 (Bids and Contracts for Highway Projects), or 227 (Trans-Texas Corridor), Transportation Code, is public property used for a public purpose if the rail facility or system, highway, or facility is operated by the private entity to provide transportation or utility services. Provides that any part of a facility, rail facility or system, or state highway that is licensed or leased to a private entity for a commercial purpose is not exempt from taxation.

SECTION 2.71. Repealer:

(1) Section 201.6061 (Payment of Fee to Public Agency or Private Entity in Connection with Mitigation of Certain Adverse Environmental Impacts), Transportation Code;

(2) Sections 222.102 (Temporary Toll Projects) and 222.103(h) (Cost Participation), Transportation Code;

(3) Sections 224.155 (Failure or Refusal to Pay Toll), 224.156 (Collection Fee; Notice; Offense), 224.157 (Presumptions; Prima Facie Evidence; Defenses), 224.158 (Use and Return of Transponders), and 224.160 (Automated Enforcement Technology), Transportation Code;

(4) Section 284.009 (Conveyance of State Highway to County or Toll Road Authority), Transportation Code, as added by Chapter 953, Acts of the 78th Legislature, Regular Session, 2003;

(5) Section 284.009 (Conveyance of State Highway to County or Toll Road Authority), Transportation Code, as added by Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003;

(6) Section 361.002 (Chapter Liberally Construed), Transportation Code;

(7) Sections 361.031 (Texas Turnpike Authority) and 361.050 (Disadvantaged Businesses), Transportation Code;

(8) Subchapter C (Development of Turnpike Projects), Chapter 361, Transportation Code;

(9) Sections 361.131 (Powers and Procedures of Department in Acquiring Property), 361.132 (Acquisition of Property), 361.133 (Acquisition of Rights in Public Real Property), 361.134 (Description of Real Property), 361.135 (Condemnation of Real Property), 361.136 (Severance of Real Property), 361.1375 (Declaration of taking by Certain Counties), and 361.140 (Restoration of or Compensation for Damage to or Destruction of Private Property), 361.141 (Compensation for and Restoration of Public Property), and 361.142 (Covenants, Conditions, Restrictions, or Limitations), Transportation Code;

(10) Sections 361.175 (Turnpike Revenue Refunding Bonds), 361.180 (Tolls on Converted Highways), and 361.191 (Expenditure of Money Authorized by Commission), Transportation Code;

(11) Sections 361.231 (Awarding of Contracts), 361.232 (Substitution For and Effect on Existing Roads), 361.234 (Public Utilities Facilities), 361.235 (Use of Real State Property), 361.236 (Maintenance of Turnpike Project), and 361.238 (Payment of Bond Indebtedness; Cessation or Continuation of Tolls), Transportation Code;

(12) Section 361.251 (Turnpike Project a State Highway), Transportation Code;

(13) Sections 361.302 (Comprehensive Development Agreements), 361.3021 (Limitation on Department Financial Participation), 361.3022 (Process for Entering into Comprehensive Development Agreements), 361.3023 (Confidentiality of Information Relating to Comprehensive Development Agreements), 361.3024 (Performance and Payment Security) 361.303 (Ownership of Turnpike Project), 361.304 (Liability for Private Obligations), 361.305 (Terms of Private Participation), and 361.306 (Rules, Procedures, and Guidelines Governing Selection and Negotiating Process), Transportation Code;

(14) Subchapter J (Pooling of Turnpike Projects), Chapter 361, Transportation Code;

(15) Sections 362.002 (Construction) and 362.008 (Additional Agreements of Department), Transportation Code;

(16) Sections 366.035 (Conversion of State Highway System Projects) and 366.165(d) (Condemnation of Real Property); and

(17) Sections 370.035 (Conversion and Transfer of State Highway System Projects) and 370.163(b) (Acquisition of Property), Transportation Code.

SECTION 2.72. Repealer: Section 370.161(b) (Transportation Projects Extending into Other Counties), Transportation Code.

SECTION 2.73. Makes application of Chapter 370, Transportation Code, as amended by this Act, prospective.

### ARTICLE 3. AVIATION

SECTION 3.01. Amends the heading to Subchapter A, Chapter 2205, to read as follows:

SUBCHAPTER A. STATE AIRCRAFT POOLING;  
GENERAL PROVISIONS

SECTION 3.02. Amends Section 2205.002, Government Code, by amending Subdivision (1) and adding Subdivision (1-a), to define "commission" and "department." Deletes existing text defining "board."

SECTION 3.03. Amends Section 2205.032, Government Code, as follows:

Sec. 2205.032. CUSTODY, CONTROL, OPERATION, AND MAINTENANCE. (a) Requires the department, rather than the State Aircraft Pooling Board (board), to operate a pool for the custody, control, operation, and maintenance of all aircraft owned or leased by the state.

(b) Makes conforming changes.

(c) Makes conforming changes and deletes existing text relating to an appropriations request.

(d) Provides that this section does not apply to aircraft owned or operated by the Department of Public Safety or the Parks and Wildlife Department that are used for law enforcement purposes.

SECTION 3.04. Amends Section 2205.034, Government Code, to make conforming changes.

SECTION 3.05. Amends Section 2205.035, Government Code, to make conforming changes. Deletes existing text relating to a state agency being the prior owner of an aircraft.

SECTION 3.06. Amends Section 2205.036, Government Code, to authorize the department to monitor and ensure compliance with the requirements of this section. Makes conforming changes.

SECTION 3.07. Amends Section 2205.038, Government Code, to require the department to prepare a manual that establishes minimum standards for the operation of passenger aircraft by state agencies. Makes conforming changes.

SECTION 3.08. Amends Section 2205.039, Government Code, to authorize the department to monitor and ensure compliance with the requirements of this section. Makes conforming changes.

SECTION 3.09. Amends Section 2205.040, Government Code, as follows:

(a) Makes conforming changes.

(b) Requires the department to deposit all revenue received under this chapter to the credit of the state highway fund. Provides that money deposited to the credit of the state highway fund under this section is exempt from the application of Section 403.095. Deletes existing text relating to a requirement to prescribe a billing procedure.

(c) Authorizes the department to spend money from the state highway fund for expenses incurred under this chapter.

(d) Sets forth that it is the intent of the legislature that receipts and expenditures that relate to the state highway fund under this chapter be balanced over time so that, to the extent practicable, the receipts and expenditures do not result in a net gain or net loss to the fund.

SECTION 3.10. Amends Section 2205.041(a), Government Code, to make conforming changes.

SECTION 3.11. Amends Section 2205.043(b), Government Code, to require the commission to adopt rules, consistent with federal regulations and Subtitle A, Title 11, rather than Article 6139f, Revised Statutes. Makes conforming changes.

SECTION 3.12. Amends Section 2205.044, Government Code, as follows:

Sec. 2205.044. New heading: FUEL AND MAINTENANCE. Authorizes the department to provide aircraft fuel or aircraft maintenance services to a state or federal governmental agency or a political subdivision if the agency or political subdivision reimburses the department at the current rates for the fuel or services. Makes conforming changes.

SECTION 3.13. Amends Section 2205.045(a), Government Code, to make conforming changes.

SECTION 3.14. Amends Section 2205.046, Government Code, to make conforming changes.

SECTION 3.15. Amends Section 2205.047, Government Code, to make conforming changes.

SECTION 3.16. Amends Section 2175.134(c), Government Code, to require that proceeds from the sale of surplus and salvage property formerly belonging to the board be deposited to the credit of the state highway fund to be used for the purpose of administering Chapter 2205.

SECTION 3.17. Amends Section 2175.191(c), Government Code, to require that proceeds from the sale of surplus and salvage property formerly belonging to the board be deposited to the credit of the state highway fund to be used for the purpose of administering Chapter 2205.

SECTION 3.18. Repealer:

(1) Sections 2205.003 (Establishment), 2205.004 (Composition of Board; Terms), 2205.005 (Appointments), 2205.006 (Eligibility), 2205.007 (Conflicts of Interest), 2205.008 (Information About Qualifications and Standards of Conduct), 2205.009 (Removal), 2205.010 (Presiding Officer; Meetings; Quorum), 2205.011 (Public Access and Testimony), 2205.012 (Staff), 2205.013 (Merit Pay), 2205.014 (Career Ladder), 2205.015 (Equal Employment Opportunity), 2205.016 (Annual Report), 2205.017 (Information on Complaints), 2205.018 (State Employee Incentive Program), 2205.019 (Sunset Provision), and 2205.042 (Pilots), Government Code; and

(2) Section 31.01, Chapter 3, Acts of the 78th Legislature, 3rd Called Session, 2003.

#### ARTICLE 4. TRANSITION PROVISIONS; EFFECTIVE DATE.

SECTION 4.01. Makes application of Section 101.022, Civil Practice and Remedies Code, as amended by this Act, prospective.

SECTION 4.02. Sets forth that on the effective date of this Act: (1) the State Aircraft Pooling Board is abolished, and all powers, duties, obligations, rights, contracts, bonds, appropriations, records, and real or personal property of the State Aircraft Pooling Board are transferred to the Texas Department of Transportation;

(2) a rule, policy, procedure, or decision of the State Aircraft Pooling Board continues in effect as a rule, policy, procedure, or decision of the Texas Department of Transportation until superseded by an act of the Texas Department of Transportation;

(3) a reference in law to the State Aircraft Pooling Board means the Texas Department of Transportation;

(4) all temporary employees of the Texas Department of Transportation who were previously employed by the State Aircraft Pooling Board on August 31, 2003, become regular full-time employees of the Texas Department of Transportation; and

(5) notwithstanding Section 31.01, Chapter 3, Acts of the 78th Legislature, 3rd Called Session, 2003, any memorandum of understanding or interagency contract entered into between the Texas Department of Transportation and the State Aircraft Pooling Board for the operation of state aircraft expires.

SECTION 4.03. Effective date: upon passage or September 1, 2005.