

TRANSPORTATION CODE  
CHAPTER 228. STATE HIGHWAY TOLL PROJECTS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 228.001. DEFINITIONS. In this chapter:

(1) "Air quality project" means a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

(2) "Bond" means bonds, notes, or other obligations issued under Subchapter C or another law with respect to a toll project or system.

(3) "Region" means:

(A) a metropolitan statistical area and any county contiguous to that metropolitan statistical area; or

(B) two adjacent districts of the department.

(4) "System" means a toll project or any combination of toll projects designated as a system under Section 228.010.

(5) "Toll project" has the meaning assigned by Section 201.001(b).

(6) "Transportation project" means:

(A) a tolled or nontolled state highway improvement project;

(B) a toll project eligible for department cost participation under Section 222.103;

(C) the acquisition, construction, maintenance, or operation of a rail facility or system under Chapter 91;

(D) the acquisition, construction, maintenance, or operation of a state-owned ferry under Subchapter A, Chapter 342;

(E) a public transportation project under Chapter 455 or 456;

(F) the establishment, construction, or repair of an aviation facility under Chapter 21; and

(G) a passenger rail project of another governmental entity.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 7.03, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 920, Sec. 1, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 3, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.03, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.001 by Acts 2005, 79th Leg., ch. 281, Sec. 2.34, eff. June 14, 2005.

Sec. 228.002. AGREEMENTS WITH PUBLIC ENTITIES. (a) The department may enter into an agreement with a public entity to permit the entity, independently or jointly with the department, to design, develop, finance, construct, maintain, repair, or operate a toll project.

(b) An agreement entered into under this section with a regional tollway authority governed by Chapter 366 may provide that a function described by Subsection (a) that is performed by a regional tollway authority is governed by the provisions of Chapter 366 applicable to the performance of the same function for a turnpike project under that chapter and the rules and procedures adopted by the regional tollway authority under that chapter, in lieu of the laws, rules, or procedures applicable to the department for the performance of the same function.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.17, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 312, Sec. 58, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.56, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.301 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.34, eff. June 14, 2005.

Sec. 228.003. AGREEMENTS WITH OTHER GOVERNMENTAL AGENCIES. (a) The department may, with the approval of the commission, 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. The department must 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) If the department enters into an agreement with a

private entity, including a comprehensive development agreement under Subchapter E, Chapter 223, the department and the private entity may jointly enter into an agreement under Subsection (a). Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.19, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 312, Sec. 66, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.63, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.18, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.307 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.34, eff. June 14, 2005.

Sec. 228.004. PROMOTION OF TOLL PROJECT. The department may, notwithstanding Chapter 2113, Government Code, engage in marketing, advertising, and other activities to promote the development and use of toll projects and may enter into contracts or agreements necessary to procure marketing, advertising, or other promotional services from outside service providers.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 7.08, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 920, Sec. 4, eff. June 14, 2001; Renumbered from V.T.C.A., Transportation Code Sec. 361.042 and amended by Acts 2003, 78th Leg., ch. 312, Sec. 6, eff. June 18, 2003 and Acts 2003, 78th Leg., ch. 1325, Sec. 15.06, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.032 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.34, eff. June 14, 2005.

Sec. 228.005. REVENUE OF TOLL PROJECT OR SYSTEM. Except as provided by Subchapter C, toll revenue or other revenue derived from a toll project or system that is collected or received by the department under this chapter, and a payment received by the department under a comprehensive development agreement for a toll project or system:

- (1) shall be deposited in the state highway fund; and
- (2) is exempt from the application of Section 403.095,

Government Code.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.35, eff. June 14, 2005.

Sec. 228.0055. USE OF CONTRACT PAYMENTS. Payments received by the department under a comprehensive development agreement may be used by the department to finance the construction, maintenance, or operation of a transportation project or air quality project in the region.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.35, eff. June 14, 2005.

Sec. 228.006. USE OF SURPLUS REVENUE. (a) The commission shall 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 a department district in which any part of the toll project is located.

(b) The commission may not revise 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) The commission may not take 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.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 7.16, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 312, Sec. 39, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.37, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.12, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.189 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.36, eff. June 14, 2005.

Sec. 228.007. TOLL LANES. (a) Subject to Section 228.201, the commission may by order authorize the department to charge a toll for the use of one or more lanes of a state highway, including a high occupancy vehicle lane designated under Section 224.153 or an exclusive lane designated under Section 224.1541.

(b) If the commission authorizes the department to charge a toll under Subsection (a), the department may enter into an agreement with a regional tollway authority described in Chapter 366, a transit authority described in Chapter 451, 452, or 453, a coordinated county transportation authority under Chapter 460, a regional mobility authority under Chapter 370, a county acting

under Chapter 284, or a transportation corporation:

(1) to design, construct, operate, or maintain a toll lane under this section; and

(2) to charge a toll for the use of one or more lanes of a state highway facility under this section.

(c) The commission may by order authorize the department or the entity contracted to operate the toll lane to set the amount of toll charges. Any toll charges shall be imposed in a reasonable and nondiscriminatory manner.

(d) Revenue generated from toll charges and collection fees assessed by an entity with whom the department contracts under this section shall be allocated as required by the terms of the agreement.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.24, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1049, Sec. 4, eff. June 20, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 224.154 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.36, eff. June 14, 2005.

Sec. 228.008. TOLLS ON EXCLUSIVE LANE. The department may not charge a toll for the use of an exclusive lane unless:

(1) the lanes or multilane facility adjacent to the exclusive lane is tolled; or

(2) a vehicle that is authorized to use the tolled exclusive lane is authorized to use nontolled adjacent lanes or an adjacent nontolled multilane facility.

Added by Acts 2003, 78th Leg., ch. 1049, Sec. 5, eff. June 20, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 224.1541(d) by Acts 2005, 79th Leg., ch. 281, Sec. 2.37, eff. June 14, 2005.

Sec. 228.009. AUDIT. Notwithstanding any other law to the contrary, the department shall have an independent certified public accountant audit the department's books and accounts for each toll project or system at least annually. The audit shall be conducted in accordance with the requirements of any trust agreement securing bonds issued under Subchapter C that is in effect at the time of the audit. The cost of the audit may be treated as part of the cost of construction or operation of a toll project or system. This section does not affect the ability of a state agency to audit the department's books and accounts.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 920, Sec. 5, eff. June 14, 2001; Renumbered from V.T.C.A., Transportation Code Sec. 361.054 and amended by Acts 2003, 78th Leg., ch. 312, Sec. 7, eff. June 18, 2003 and Acts 2003, 78th Leg., ch. 1325, Sec. 15.07, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.033 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.38, eff. June 14, 2005.

Sec. 228.010. ESTABLISHMENT OF TOLL SYSTEMS. (a) If the commission 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, it may create a system composed of those projects. The commission may create more than one system in a region and may combine two or more systems in a region into one system. The department may 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) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a toll project that is not part of the system or with the revenue of another system.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.39, eff. June 14, 2005.

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

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

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.40, eff. June 14, 2005.

Sec. 228.052. OPERATION OF TOLL PROJECT OR SYSTEM. The department may 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.  
Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.40, eff. June 14, 2005.

Sec. 228.053. REVENUE. (a) The department may:

(1) impose tolls for the use of each toll project or system and the different segments or parts of each project or system; and

(2) notwithstanding anything in Chapter 202 to the contrary, contract with a person for the use of part of a toll project or system or lease part of a toll project or system for a gas station, garage, store, hotel, restaurant, railroad tracks, utilities, and telecommunications facilities and equipment and set the terms for the use or lease.

(b) The tolls shall be set so that, at a minimum, the aggregate of tolls from the toll project or system:

(1) provides a fund sufficient with other revenue and contributions, if any, to pay:

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

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

(2) creates reserves for the purposes listed under Subdivision (1).

(c) The tolls are not subject to supervision or regulation by any other state agency.

(d) The tolls and other revenue derived from the toll project or system for which bonds were issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the order or trust agreement in a sinking fund that is pledged to and charged with the payment of:

(1) interest on the bonds as it becomes due;

(2) principal of the bonds as it becomes due;

(3) necessary charges of paying agents for paying principal and interest; and

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bonds.

(e) Use and disposition of money to the credit of the sinking fund are subject to the order authorizing the issuance of the bonds or to the trust agreement.

(f) The revenue and disbursements for each toll project or system shall be kept separately. The revenue from one project may not be used to pay the cost of another project except as authorized by Sections 228.0055 and 228.006.

(g) Money in the sinking fund, less the reserve provided by the order or trust agreement, if not used within a reasonable time to purchase bonds for cancellation, shall be applied to the redemption of bonds at the applicable redemption price.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.09, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 920, Sec. 12, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 30, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.31, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.10, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.179 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.41, eff. June 14, 2005.

Sec. 228.054. FAILURE OR REFUSAL TO PAY TOLL; OFFENSE. (a) Except as provided by Subsection (e), the operator of a vehicle, other than an authorized emergency vehicle, that is driven or towed through a toll collection facility shall pay the proper toll.

(b) The operator of a vehicle who drives or tows a vehicle through a toll collection facility and does not pay the proper toll commits an offense.

(c) An offense under this section is a misdemeanor punishable by a fine not to exceed \$250.

(d) In this section, "authorized emergency vehicle" has the meaning assigned by Section 541.201.

(e) Notwithstanding Subsection (a), the department may waive the requirement of the payment of a toll or may authorize the payment of a reduced toll for any vehicle or class of vehicles.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.15, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1246, Sec. 6, eff. Sept. 1, 2001. Renumbered from V.T.C.A., Transportation Code Sec. 361.252 by Acts 2005, 79th Leg., ch. 281, Sec. 2.41, eff. June 14, 2005. Amended by Acts 2005, 79th Leg., ch. 23, Sec. 1, eff. Sept. 1, 2005.

Sec. 228.055. ADMINISTRATIVE FEE; NOTICE; OFFENSE. (a) In the event of nonpayment of the proper toll as required by Section 228.054, on issuance of a written notice of nonpayment, the registered owner of the nonpaying vehicle is liable for the payment of both the proper toll and an administrative fee.

(b) The department may impose and collect the administrative fee, so as to recover the cost of collecting the unpaid toll, not to exceed \$100. The department shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail and may require payment not sooner than the 30th day after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 228.054.

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

(d) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the department a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Section 228.054, with the name and address of the lessee clearly legible. If the lessor provides the required information within the period prescribed, the department may send a notice of nonpayment to the lessee at the address shown on the contract document by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Section 228.054 occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and, before the 30th day after the date the notice of nonpayment is mailed, provides to the department the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the department may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 228.054. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(f) An offense under this section is a misdemeanor punishable by a fine not to exceed \$250.

(g) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the department for deposit in the depository bank used for that purpose.

(h) In this section, "registered owner" means the owner of a vehicle as shown on the vehicle registration records of the department or the analogous department or agency of another state

or country.

(i) The department may contract, in accordance with Section 2107.003, Government Code, with a person to collect the unpaid toll and administrative fee before referring the matter to a court with jurisdiction over the offense.

Added by Acts 1995, 74th Leg., ch. 872, Sec. 2.15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1246, Sec. 7, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 49, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.47, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.253 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.41, eff. June 14, 2005.

Sec. 228.056. PRESUMPTIONS; PRIMA FACIE EVIDENCE; DEFENSES. (a) In the prosecution of an offense under Section 228.054 or 228.055, proof that the vehicle was driven or towed through the toll collection facility without payment of the proper toll may be shown by a video recording, photograph, electronic recording, or other appropriate evidence, including evidence obtained by automated enforcement technology.

(b) In the prosecution of an offense under Section 228.055(c), (d), or (e):

(1) it is presumed that the notice of nonpayment was received on the fifth day after the date of mailing;

(2) a computer record of the department of the registered owner of the vehicle is prima facie evidence of its contents and that the defendant was the registered owner of the vehicle when the underlying event of nonpayment under Section 228.054 occurred; and

(3) a copy of the rental, lease, or other contract document covering the vehicle on the date of the underlying event of nonpayment under Section 228.054 is prima facie evidence of its contents and that the defendant was the lessee of the vehicle when the underlying event of nonpayment under Section 228.054 occurred.

(c) It is a defense to prosecution under Section 228.055(c), (d), or (e) that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and had not been recovered before the failure to pay occurred, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) the occurrence of the failure to pay; or

(2) eight hours after the discovery of the theft.

Added by Acts 1995, 74th Leg., ch. 872, Sec. 2.15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1246, Sec. 8, eff. Sept. 1, 2001. Renumbered from V.T.C.A., Transportation Code Sec. 361.254 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.41, eff. June 14, 2005.

Sec. 228.057. ELECTRONIC TOLL COLLECTION. (a) For purposes of this section, a "transponder" means a device, placed on or within an automobile, that is capable of transmitting information used to assess or to collect tolls. A transponder is "insufficiently funded" when there are no remaining funds in the account in connection with which the transponder was issued.

(b) Any peace officer of this state may seize a stolen or insufficiently funded transponder and return it to the department, except that an insufficiently funded transponder may not be seized sooner than the 30th day after the date the department has sent a notice of delinquency to the holder of the account.

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

(d) The department may charge reasonable fees for administering electronic toll collection customer accounts.

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

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

Added by Acts 1995, 74th Leg., ch. 872, Sec. 2.15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1246, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 50, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.48, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.255 and

amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.41, eff. June 14, 2005.

Sec. 228.058. AUTOMATED ENFORCEMENT TECHNOLOGY. (a) To aid in the collection of tolls and in the enforcement of toll violations, the department may use automated enforcement technology that it determines is necessary, including automatic vehicle license plate identification photography and video surveillance, by electronic imaging or photographic copying.

(b) Automated enforcement technology approved by the department under Subsection (a) may be used only for the purpose of producing, depicting, photographing, or recording an image of a license plate attached to the front or rear of a vehicle.

(c) This section does not authorize the use of automated enforcement technology for any other purpose.

(d) Evidence obtained from technology approved by the department under Subsection (a) may not be used in the prosecution of an offense other than under Section 228.054 or 228.055 or in the prosecution of a capital offense.

Added by Acts 2001, 77th Leg., ch. 1246, Sec. 10, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 51, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.49, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.256 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.41, eff. June 14, 2005.

#### SUBCHAPTER C. TOLL REVENUE BONDS

Sec. 228.101. CONSTRUCTION COSTS. (a) The cost of construction, improvement, extension, or expansion of a toll project or system under this chapter includes the cost of:

(1) the actual acquisition, design, development, planning, financing, construction, improvement, extension, or expansion of the project or system;

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

(3) the acquisition of machinery, equipment, software, and intellectual property;

(4) interest before, during, and for one year after construction, improvement, extension, or expansion;

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

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

(7) financing; and

(8) placement of the project or system in operation and expenses related to the initial operation of the project or system.

(b) Costs attributable to a toll project or system for which bonds are issued that are incurred before the issuance of the bonds may be reimbursed from the proceeds of the sale of the bonds.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 920, Sec. 2, eff. June 14, 2001. Renumbered from V.T.C.A., Transportation Code Sec. 361.004 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.102. ISSUANCE OF BONDS. (a) The commission by order may authorize the issuance of toll revenue bonds to pay all or part of the cost of a toll project or system. The proceeds of a bond issue may be used solely for the payment of the project or system for which the bonds were issued and may not be divided between or among two or more projects. Each project is a separate undertaking, the cost of which shall be determined separately.

(b) As determined in the order authorizing the issuance, the bonds of each issue shall:

(1) be dated;

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

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

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

(c) The commission may sell the bonds at public or private sale in the manner and for the price it determines to be in the best

interest of the department.

(d) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the commission provides in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(e) If the proceeds of a bond issue are less than the toll project or system cost, additional bonds may be issued in the same manner to pay the costs of a project or system. Unless otherwise provided in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with and are payable, without preference or priority, from the same fund as the bonds first issued. In addition, the commission may issue bonds for a project or system secured by a lien on the revenue of the project or system subordinate to the lien on the revenue securing other bonds issued for the project or system.

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

(g) In addition to other permitted uses, the proceeds of a bond issue may be used to pay costs incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operation.

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

(i) Bonds issued under this subchapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.05, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 920, Sec. 11, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 22, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.22, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.04, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.171 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.103. APPLICABILITY OF OTHER LAW; CONFLICTS. All laws affecting the issuance of bonds by governmental entities, including Chapters 1201, 1202, 1204, 1207, and 1371, Government Code, apply to bonds issued under this subchapter. To the extent of a conflict between those laws and this subchapter, the provisions of this subchapter prevail.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.386, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 23, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.23, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.05, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.172 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.104. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. (a) The principal of, interest on, and any redemption premium on bonds issued by the commission under this subchapter are payable solely from:

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

(2) the proceeds of bonds issued for the project or system;

(3) the amounts deposited in a debt service reserve fund as required by the trust agreement securing bonds issued for the project or system;

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

(5) surplus revenue of another project or system as authorized by Section 228.006; and

(6) amounts received by the department:

(A) as pass-through tolls under Section 222.104;

(B) under an agreement with a local governmental entity entered into under Section 228.254;

(C) under other agreements with a local governmental entity relating to the project or system for which the



bonds are issued; and

(D) under a comprehensive development agreement entered into under Section 223.201.

(b) Bonds issued under this subchapter do not constitute a debt of the state or a pledge of the faith and credit of the state. Each bond must contain on its face a statement to the effect that:

(1) the state, the commission, and the department are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond; and

(2) the faith and credit and the taxing power of the state are not pledged to the payment of the principal of or interest on the bond.

(c) The commission and the department may not incur financial obligations that cannot be paid from tolls or revenue derived from owning or operating toll projects or systems or from money provided by law.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.06, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 312, Sec. 24, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.24, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.06, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.173 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.105. SOURCES OF PAYMENT OF AND SECURITY FOR TOLL REVENUE BONDS. Notwithstanding any other provisions of this subchapter, toll revenue bonds issued by the commission may:

(1) be payable from and secured by:

(A) payments made under an agreement with a local governmental entity as provided by Section 228.254;

(B) the proceeds of bonds issued for the toll project or system;

(C) amounts deposited in a debt service reserve fund as required by the trust agreement securing bonds issued for the project or system; or

(D) surplus revenue of another toll project or system as authorized by Section 228.006; and

(2) state on their faces any pledge of revenue or taxes and any security for the bonds under the agreement.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 25, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.25, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.07, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.174 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.106. INTERIM BONDS. (a) The commission may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) An order authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this subchapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 15.27, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.1751 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.107. EFFECT OF LIEN. (a) 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, Government Code, and:

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

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

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

(4) is enforceable in any court against any person having a claim, in tort, contract, or other remedy, against the commission or the department without regard to whether the person has notice of the lien or pledge.

(b) An order authorizing the issuance of bonds is not required to be recorded except in the regular records of the department.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 15.27, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.1752 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.108. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) The commission shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this subchapter. The record shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 15.27, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.1753 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.109. TRUST AGREEMENT. (a) Bonds issued under this subchapter may be secured by a trust agreement between the commission and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A trust agreement may pledge or assign the tolls and other revenue to be received but may not convey or mortgage any part of a toll project or system.

(c) A trust agreement may not evidence a pledge of the revenue of a toll project or system except:

(1) to pay the cost of maintaining, repairing, and operating the project or system;

(2) to pay the principal of, interest on, and any redemption premium on the bonds as they become due and payable;

(3) to create and maintain reserves for the purposes described by Subdivisions (1) and (2), as prescribed by Section 228.053; and

(4) as otherwise provided by law.

(d) Notwithstanding Subsection (c), surplus revenue may be used for a transportation or air quality project as authorized by Section 228.006.

(e) A trust agreement may:

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

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

(3) contain provisions the commission determines reasonable and proper for the security of the bondholders.

(f) The expenses incurred in carrying out a trust agreement may be treated as part of the cost of operating the toll project or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.08, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 312, Sec. 27, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.28, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.176 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.110. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. A trust agreement or order providing for the issuance of bonds may contain provisions to protect and enforce the rights and remedies of the bondholders, including:

(1) covenants establishing the commission's duties relating to:

(A) the acquisition of property;

(B) the design, development, financing, construction, improvement, expansion, maintenance, repair, operation, and insurance of the toll project or system in connection with which the bonds were authorized; and

(C) the custody, safeguarding, and application of money;

(2) covenants prescribing events that constitute default;

(3) covenants relating to the rights, powers, liabilities, or duties that arise on the breach of a duty of the commission, including the right of the trustee to bring actions against the commission or the department in any state court to enforce the covenants in the agreement, and the sovereign immunity of the state is waived for that purpose; and

(4) provisions for the employment of consulting engineers in connection with the construction or operation of the project or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 28, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.29, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.08, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.177 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.111. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that the department requires.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 5.015, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 312, Sec. 29, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.30, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.09, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.178 by Acts by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.112. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OR PRIVATE GROUP. (a) One or more municipalities, one or more counties, a combination of municipalities and counties, or a private group or combination of individuals in this state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to:

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

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

(3) the use of private participation under Subchapter E, Chapter 223.

(b) Money spent under Subsection (a) for a proposed toll project or system is reimbursable, with the consent of the commission, to the person paying the expenses out of the proceeds from toll revenue bonds issued for or other proceeds that may be used for the financing, design, development, construction, improvement, extension, expansion, or operation of the project.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 33, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.32, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.183 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.113. TRUST FUND. (a) All money received under this subchapter, whether as proceeds from the sale of bonds or as revenue, is a trust fund to be held and applied as provided by this subchapter. Notwithstanding any other law, including Section 9, Chapter 1123, Acts of the 75th Legislature, Regular Session, 1997, and without the prior approval of the comptroller, funds held under this subchapter shall be held in trust by a banking institution chosen by the department or, at the discretion of the department, in trust in the state treasury outside the general revenue fund.

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

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1306, Sec. 3, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 312, Sec. 35, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.33, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.11, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.185 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.114. REMEDIES. Except to the extent restricted by a trust agreement, a holder of a bond issued under this subchapter and a trustee under a trust agreement may:

(1) protect and enforce by a legal proceeding in any court a right under:

- (A) this subchapter or another law of this state;
- (B) the trust agreement; or
- (C) the order authorizing the issuance of the

bond; and

(2) compel the performance of a duty this subchapter, the trust agreement, or the order requires the commission or the department or an officer of the commission or the department to perform, including the imposing of tolls.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 36, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.34, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.186 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.115. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) The commission is exempt from taxation of or assessments on:

- (1) a toll project or system;
- (2) property the department acquires or uses under this subchapter; or
- (3) income from property described by Subdivision (1) or (2).

(b) Bonds issued under this subchapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.12, 2.13, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 312, Sec. 37, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.35, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.187 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.116. VALUATION OF BONDS SECURING DEPOSIT OF PUBLIC FUNDS. Bonds of the commission may secure the deposit of public funds of the state or a political subdivision of the state to the extent of the lesser of the face value of the bonds or their market value.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 38, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.36, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.188 by Acts 2005, 79th Leg., ch. 281, Sec. 2.42, eff. June 14, 2005.

Sec. 228.117. FUNDING FOR DEPARTMENT DISTRICT. The commission may not revise 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.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.43, eff. June 14, 2005.

#### SUBCHAPTER D. TRANSFER OF TOLL PROJECT

Sec. 228.151. LEASE, SALE, OR TRANSFER OF TOLL PROJECT OR SYSTEM. (a) The department may 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 or a local government corporation created under Chapter 431.

(b) The commission and the governor must approve the transfer of the toll project or system as being in the best interests of the state and the entity receiving the project or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended

by Acts 1997, 75th Leg., ch. 165, Sec. 30.19(d), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1171, Sec. 7.21, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 312, Sec. 54, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.52, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.282 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.44, eff. June 14, 2005.

Sec. 228.152. DISCHARGE OF OUTSTANDING BONDED INDEBTEDNESS. An agreement to lease, sell, or convey a toll project or system under Section 228.151 must provide for the discharge and final payment or redemption of the department's outstanding bonded indebtedness for the project or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 55, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.53, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.283 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.44, eff. June 14, 2005.

Sec. 228.153. REPAYMENT OF DEPARTMENT'S EXPENDITURES. (a) Except as provided by Subsection (b), an agreement to lease, sell, or convey a toll project or system under Section 228.151 must provide for the repayment of any expenditures of the department for the financing, design, development, construction, operation, or maintenance of the highway that have not been reimbursed with the proceeds of bonds issued for the highway.

(b) The commission may waive repayment of all or a portion of the expenditures if it finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed the amount of repayment waived.

Added by Acts 2003, 78th Leg., ch. 312, Sec. 56, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.54, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.284 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.44, eff. June 14, 2005.

Sec. 228.154. APPROVAL OF AGREEMENT BY ATTORNEY GENERAL. (a) An agreement for the lease, sale, or conveyance of a toll project or system under this subchapter shall be submitted to the attorney general for approval as part of the records of proceedings relating to the issuance of bonds of the governmental entity.

(b) If the attorney general determines that the agreement is in accordance with law, the attorney general shall approve the agreement and deliver to the commission a copy of the legal opinion of the attorney general stating that approval.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 7.21, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 312, Sec. 57, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.55, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.285 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.44, eff. June 14, 2005.

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

Sec. 228.201. LIMITATION ON TOLL FACILITY DESIGNATION. (a) Except as provided by Section 228.2015, the department may not operate a nontolled state highway or a segment of a nontolled state highway as a toll project, and may not transfer a highway or segment to another entity for operation as a toll project, unless:

(1) the commission by order designated the highway or segment as a toll project before the contract to construct the highway or segment was awarded;

(2) the highway or segment was open to traffic as a turnpike project on or before September 1, 2005;

(3) the project was designated as a toll project in a plan or program of a metropolitan planning organization on or before September 1, 2005;

(4) the highway or segment is reconstructed so that the number of nontolled lanes on the highway or segment is greater than or equal to the number in existence before the reconstruction;

(5) a facility is constructed adjacent to the highway or segment so that the number of nontolled lanes on the converted highway or segment and the adjacent facility together is greater than or equal to the number in existence on the converted highway or segment before the conversion;

(6) subject to Subsection (b), the highway or segment was open to traffic as a high-occupancy vehicle lane on May 1, 2005;

or

(7) the commission converts the highway or segment to a toll facility by:

(A) making the determination required by Section 228.202;

(B) conducting the hearing required by Section 228.203; and

(C) obtaining county and voter approval as required by Sections 228.207 and 228.208.

(b) The department may operate or transfer a high-occupancy vehicle lane under Subsection (a)(6) as a tolled lane only if the department or other entity operating the lane allows vehicles occupied by a specified number of passengers to use the lane without paying a toll.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.45, eff. June 14, 2005.

Sec. 228.2015. LIMITATION TRANSITION.

Text of section effective until September 1, 2006

(a) Notwithstanding Section 228.201, the department may operate a nontolled state highway or a segment of a nontolled state highway as a toll project if:

(1) a construction contract was awarded for the highway or segment before September 1, 2005;

(2) the highway or segment had not at any time before September 1, 2005, been open to traffic; and

(3) the commission designated the highway or segment as a toll project before the earlier of:

(A) the date the highway or segment is opened to traffic; or

(B) September 1, 2005.

(b) This section expires September 1, 2006.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.45, eff. June 14, 2005.

Sec. 228.202. COMMISSION DETERMINATION. The commission may by order convert a nontolled state highway or a segment of a nontolled state highway to a toll project if it determines that the conversion will improve overall mobility in the region or is the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to that segment of the state highway system.

Added by Acts 1995, 74th Leg., ch. 872, Sec. 2.25, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 7.23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1401, Sec. 1, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 1325, Sec. 7.02, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.0041(a) and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.46, eff. June 14, 2005.

Sec. 228.203. PUBLIC HEARING. Prior to converting a state highway or a segment of a state highway under this subchapter, the commission shall conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed conversion. Notice of the hearing shall be published in the Texas Register, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved highway is located.

Added by Acts 1995, 74th Leg., ch. 872, Sec. 2.25, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 7.23, eff. Sept. 1, 1997; Renumbered from V.T.C.A., Transportation Code Sec. 362.0041(b) and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.46, eff. June 14, 2005.

Sec. 228.204. RULES. The commission shall adopt rules implementing this subchapter, including criteria and guidelines for the approval of a conversion of a highway.

Added by Acts 1995, 74th Leg., ch. 872, Sec. 2.25, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 7.23, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1325, Sec. 7.02, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.0041(c) and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.46, eff. June 14, 2005.

Sec. 228.205. QUEEN ISABELLA CAUSEWAY. The commission may not convert the Queen Isabella Causeway in Cameron County to a toll project.

Added by Acts 2001, 77th Leg., ch. 1401, Sec. 1, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 1325, Sec. 7.02, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.0041(d) and

amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.46, eff. June 14, 2005.

Sec. 228.206. TOLL REVENUE. Toll revenue collected under this section:

(1) shall be deposited in the state highway fund;

(2) may be used by the department to finance the improvement, extension, expansion, or operation of the converted segment of highway and may not be collected except for those purposes; and

(3) is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 7.02, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.0041(f) by Acts 2005, 79th Leg., ch. 281, Sec. 2.46, eff. June 14, 2005.

Sec. 228.207. COUNTY AND VOTER APPROVAL. The commission may only convert a state highway or a segment of a state highway under this subchapter if the conversion is approved by:

(1) the commissioners court of each county within which the highway or segment is located; and

(2) the qualified voters who vote in an election under Section 228.208 and who reside in the limits of:

(A) a county if any part of the highway or segment to be converted is located in an unincorporated area of the county; or

(B) a municipality in which the highway or segment to be converted is wholly located.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 7.02, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.0041(g) and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.46, eff. June 14, 2005.

Sec. 228.208. ELECTION TO APPROVE CONVERSION. (a) 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 as required by Section 228.207(1), 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, shall call an election for the approval or disapproval of the conversion.

(b) If a county or municipality orders an election, the county or municipality shall 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) An order or resolution ordering an election and the election notice required by Subsection (b) must 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) The proposition submitted in the election must distinctly state the highway or segment proposed to be converted and the limits of that highway or segment.

(e) At an election ordered under this section, the ballots shall 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) A proposed conversion is approved only if it is approved by a majority of the votes cast.

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

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.46, eff. June 14, 2005.

#### SUBCHAPTER F. JOINT TOLL PROJECTS

Sec. 228.251. DEFINITIONS. In this subchapter:

(1) "Bonds" includes certificates, notes, and other obligations of an issuer authorized by statute, municipal home-rule charter, or the Texas Constitution.

(2) "Local governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a defined district, or a nonprofit corporation, including a transportation corporation created under Chapter 431.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended

by Acts 1995, 74th Leg., ch. 872, Sec. 2.22, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 312, Sec. 77, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.74, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.001 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.47, eff. June 14, 2005.

Sec. 228.252. APPLICABILITY OF OTHER LAW; CONFLICTS. (a) This subchapter is cumulative of all laws affecting the issuance of bonds by local governmental entities, particularly, but not by way of limitation, provisions of Chapters 1201 and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code, are applicable to and apply to all bonds issued under this subchapter, regardless of any classification of any such local governmental entities thereunder; provided, however, in the event of any conflict between such laws and this subchapter, the provisions of this subchapter prevail.

(b) This subchapter is cumulative of all laws affecting the commission, the department, and the local governmental entities, except that in the event any other law conflicts with this subchapter, the provisions of this subchapter prevail. Chapters 1201 and 1371, Government Code, and Subchapters A, B, and C, Chapter 1207, Government Code, apply to bonds issued by the commission under this subchapter.

(c) The department may enter into all agreements necessary or convenient to effectuate the purposes of this subchapter. Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.23, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.20, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.388, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 71, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.68, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.003 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.47, eff. June 14, 2005.

Sec. 228.253. USE OF FEDERAL FUNDS. The department may use federal funds for any purpose described by this subchapter. Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Transportation Code Sec. 362.006 by Acts 2005, 79th Leg., ch. 281, Sec. 2.47, eff. June 14, 2005.

Sec. 228.254. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) Under authority of Section 52, Article III, Texas Constitution, a local governmental entity other than a nonprofit corporation may, upon the required vote of the qualified voters, in addition to all other debts, issue bonds or enter into and make payments under agreements with the department, not to exceed 40 years in term, in any amount not to exceed one-fourth of the assessed valuation of real property within the local governmental entity, except that the total indebtedness of any municipality shall never exceed the limits imposed by other provisions of the constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, for the purposes of construction, maintenance, and operation of toll projects or systems of the department, or in aid thereof.

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

(c) To make payments under an agreement under Subsection (b) or pay the interest on bonds issued under Subsection (b) and to provide a sinking fund for the bonds or the contract, a local governmental entity may:

- (1) pledge revenue from any available source, including annual appropriations;
- (2) levy and collect taxes; or
- (3) provide for a combination of Subdivisions (1) and (2).

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

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

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 872, Sec. 2.26, eff. Sept. 1, 1995;



Acts 2001, 77th Leg., ch. 1420, Sec. 8.389, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 72, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.69, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 362.007 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.47, eff. June 14, 2005.