

TRANSPORTATION CODE
CHAPTER 370. REGIONAL MOBILITY AUTHORITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 370.001. SHORT TITLE. This chapter may be cited as the Regional Mobility Authority Act.
Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. . . .

Sec. 370.003. DEFINITIONS. In this chapter:

(1) "Authority" means a regional mobility authority organized under this chapter or under Section 361.003, as that section existed before June 22, 2003.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a bond, certificate, note, or other obligation of an authority authorized by this chapter, another statute, or the Texas Constitution.

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

(5) "Bond resolution" means an order or resolution of a board authorizing the issuance of a bond.

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

(7) "Comprehensive development agreement" means an agreement under Section 370.305.

(8) "Governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a district organized or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, the department, a rail district, a transit authority, a nonprofit corporation, including a transportation corporation, that is created under Chapter 431, or any other public entity or instrumentality.

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

(9-a) "Intermodal hub" means a central location where cargo containers can be easily and quickly transferred between trucks, trains, and airplanes.

(10) "Public utility facility" means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

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

(12) "Surplus revenue" means revenue that exceeds:

(A) an authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase as provided in the applicable bond proceedings;

(B) coverage requirements of a bond indenture for a transportation project;

(C) costs of operation and maintenance for a transportation project;

(D) cost of repair, expansion, or improvement of a transportation project;

(E) funds allocated for feasibility studies; and

(F) necessary reserves as determined by the authority.

(13) "System" means a transportation project or a combination of transportation projects designated as a system by the board under Section 370.034.

(14) "Transportation project" means:

(A) a turnpike project;

(B) a system;
(C) a passenger or freight rail facility,
including:
(i) tracks;
(ii) a rail line;
(iii) switching, signaling, or other
operating equipment;
(iv) a depot;
(v) a locomotive;
(vi) rolling stock;
(vii) a maintenance facility; and
(viii) other real and personal property
associated with a rail operation;
(D) a roadway with a functional classification
greater than a local road or rural minor collector;
(E) a ferry;
(F) an airport, other than an airport that on
September 1, 2005, was served by one or more air carriers engaged in
scheduled interstate transportation, as those terms were defined by
14 C.F.R. Section 1.1 on that date;
(G) a pedestrian or bicycle facility;
(H) an intermodal hub;
(I) an automated conveyor belt for the movement
of freight;
(J) a border crossing inspection station;
(K) an air quality improvement initiative;
(L) a public utility facility;
(M) a transit system; and
(N) if applicable, projects and programs listed
in the most recently approved state implementation plan for the
area covered by the authority, including an early action compact.

(14-a) "Transportation project" does not include a
border inspection facility that serves a bridge system that had
more than 900,000 commercial border crossings during the state
fiscal year ending August 31, 2002.

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

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

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

(C) an administration, storage, or other
building the authority considers necessary for the operation of a
turnpike project;

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

(E) a property right, easement, or interest the
authority acquires to construct or operate the turnpike project.

(16) "Mass transit" means the transportation of
passengers and hand-carried packages or baggage of a passenger by
any means of surface, overhead, or underground transportation,
other than an aircraft or taxicab.

(17) "Service area" means the county or counties in
which an authority or transit provider has established a transit
system.

(18) "Transit provider" means an entity that provides
mass transit for the public and that was created under Chapter 451,
452, 453, 454, 457, 458, or 460.

(19) "Transit system" means:

(A) property owned or held by an authority for
mass transit purposes; and

(B) facilities necessary, convenient, or useful
for:

(i) the use of or access to mass transit by
persons or vehicles; or

(ii) the protection or environmental
enhancement of mass transit.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21,
2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 5.07,
eff. Jan. 11, 2004; Acts 2005, 79th Leg., ch. 281, Sec. 2.62, eff.
June 14, 2005.

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

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

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

(3) machinery and equipment;

(4) interest payable before, during, and for not more than three years after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

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

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

(7) compliance with laws, regulations, and administrative rulings, including any costs associated with necessary environmental mitigation measures;

(8) financing;

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

(10) expenses related to the initial operation of the transportation project.

(b) Costs attributable to a transportation project and incurred before the issuance of bonds to finance the transportation project may be reimbursed from the proceeds of sale of the bonds. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.63, eff. June 14, 2005.

SUBCHAPTER B. CREATION AND POWERS OF REGIONAL MOBILITY AUTHORITIES

Sec. 370.031. CREATION OF A REGIONAL MOBILITY AUTHORITY. (a) At the request of one or more counties, the commission by order may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating transportation projects in a region of this state. An authority is governed in accordance with Subchapter F.

(b) An authority may not be created without the approval of the commission under Subsection (a) and the approval of the commissioners court of each county that will be a part of the authority.

(c) A municipality that borders the United Mexican States and has a population of 105,000 or more has the same authority as a county, within its municipal boundaries, to create and participate in an authority. 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. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.64, eff. June 14, 2005.

Sec. 370.0311. CERTAIN MUNICIPALITIES. (a) This section applies to a municipality:

(1) with a population of 5,000 or less; and

(2) in which a ferry system that is a part of the state highway system is located.

(b) A municipality has the same authority as a county under this chapter to create and participate in an authority.

(c) A municipality that creates or participates in an authority has the same powers and duties as a county that creates or participates in an authority under this chapter.

(d) The governing body of a municipality that creates or participates in an authority has the same powers and duties as a commissioners court of a county that creates or participates in an authority under this chapter.

(e) An elected member of the governing body of a municipality that creates or participates in an authority has the same powers and duties as a commissioner of a county that creates or

participates in an authority under this chapter.

Added by Acts 2005, 79th Leg., ch. 877, Sec. 5, eff. June 17, 2005.

Sec. 370.0315. ADDITION AND WITHDRAWAL OF COUNTIES. (a) One or more counties may petition the commission for approval to become part of an existing authority. The commission may approve the petition only if:

(1) the board has agreed to the addition; and

(2) the commission finds that the affected political subdivisions in the county or counties will be adequately represented on the board.

(b) One or more counties may petition the commission for approval to withdraw from an authority. The commission may approve the petition only if:

(1) the authority has no bonded indebtedness; or

(2) the authority has debt other than bonded indebtedness, but the board has agreed to the withdrawal.

(c) A county may not become part of an authority or withdraw from an authority without the approval of the commission.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

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

(c) The exercise by an authority of the powers conferred by this chapter in the acquisition, design, financing, construction, operation, and maintenance of a transportation project or system is:

(1) in all respects for the benefit of the people of the counties in which an authority operates and of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health, living conditions, and public safety; and

(2) an essential governmental function of the state.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.033. GENERAL POWERS. (a) An authority, through its board, may:

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

(2) adopt an official seal;

(3) study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects, individually or as one or more systems, provided that a transportation project that is subject to Subpart C, 23 C.F.R. Part 450, is:

(A) included in the plan approved by the applicable metropolitan planning organization; and

(B) consistent with the statewide transportation plan and the statewide transportation improvement program;

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

(5) enter into contracts or operating agreements with a similar authority, another governmental entity, or an agency of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;

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

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

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

(9) notwithstanding Sections 221.003 and 222.031 and subject to Subsections (j) and (m), apply for, directly or indirectly receive and spend loans, gifts, grants, and other contributions for any purpose of this chapter, including the construction of a transportation project, and receive and spend

contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the commission, the department, a subdivision of this state, or a governmental entity or private entity, to be used for the purposes for which the grants, loans, or contributions are made, and enter into any agreement necessary for the grants, loans, or contributions;

(10) install, construct, or contract for the construction of public utility facilities, direct the time and manner of construction of a public utility facility in, on, along, over, or under a transportation project, or request the removal or relocation of a public utility facility in, on, along, over, or under a transportation project;

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

(12) adopt and enforce rules not inconsistent with this chapter for the use of any transportation project, including tolls, fares, or other user fees, speed and weight limits, and traffic and other public safety rules, provided that an authority must consider the same factors that the Texas Turnpike Authority division of the department must consider in altering a prima facie speed limit under Section 545.354;

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

(14) borrow money from or enter into a loan agreement or other arrangement with the state infrastructure bank; and

(15) do all things necessary or appropriate to carry out the powers and duties expressly granted or imposed by this chapter.

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

(c) An authority may, if requested by the commission, perform any function not specified by this chapter to promote or develop a transportation project in the authority's area of jurisdiction.

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

(e) An authority may rent, lease, franchise, license, or make portions of its properties available for use by others in furtherance of its powers under this chapter by increasing the feasibility or the revenue of a transportation project. If the transportation project is a project other than a public utility facility an authority may rent, lease, franchise or make property available only to the extent that the renting, lease or franchise benefits the users of the project.

(f) An authority and a governmental entity may enter into a contract, agreement, interlocal agreement, or other similar arrangement under which the authority may plan, design, construct, or operate a transportation project on behalf of the governmental entity. An authority may enter into a contract with the department under which the authority will plan, develop, operate, or maintain a transportation project on behalf of the department, subject to the transportation project being in the authority's area of jurisdiction.

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

(h) An authority shall adopt a written drug and alcohol policy restricting the use of controlled substances by officers and employees of the authority, prohibiting the consumption of alcoholic beverages by employees while on duty, and prohibiting employees from working for the authority while under the influence of a controlled substance or alcohol. An authority may adopt policies regarding the testing of employees suspected of being in

violation of the authority's drug and alcohol policy. The policy shall provide that, unless required by court order or permitted by the person who is the subject of the testing, the authority shall keep the results of the test confidential.

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

(j) An authority may not apply for federal highway or rail funds without the approval of the department.

(k) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(l) If an authority establishes an airport in Central Texas, the authority may not establish the airport at a location prohibited to the department by Section 21.069(c).

(m) If an authority receives money from the general revenue fund, the Texas Mobility Fund, or the state highway fund it may use the money only to acquire, design, finance, construct, operate, or maintain a turnpike project under Section 370.003(14)(A) or (D) or a transit system under Section 370.351.

(n) Nothing in this chapter or any contractual right obtained under a contract with an authority under this chapter supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the utilities code regarding licensing, certification, or regulatory jurisdiction of the Public Utility Commission of Texas or the Railroad Commission of Texas.

(o) Except as provided in Subchapter J, an authority may not provide 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 the transit provider or under Section 370.186.

(p) Before providing public transportation or mass transit services in the service area of any other existing transit provider, including a transit provider operating under Chapter 458, an authority must first consult with that transit provider. An authority shall ensure there is coordination of services provided by the authority and an existing transit provider, including a transit provider operating under Chapter 458. An authority is ineligible to participate in the formula or discretionary program under Chapter 456 unless there is no other transit provider, including a transit provider operating under Chapter 458, providing public transportation or mass transit services in the service area of the authority.

(q) An authority, acting through its board, may agree with another 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.65, eff. June 14, 2005.

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.036. TRANSFER OF BONDED TURNPIKE PROJECT TO

DEPARTMENT. (a) An authority may transfer to the department a turnpike project of the authority that has outstanding bonded indebtedness if the commission:

- (1) agrees to the transfer; and
- (2) agrees to assume the outstanding bonded indebtedness.

(b) The commission may assume the outstanding bonded indebtedness only if the assumption:

(1) is not prohibited under the terms of an existing trust agreement or indenture securing bonds or other obligations issued by the commission for another project;

(2) does not prevent the commission from complying with covenants of the commission under an existing trust agreement or indenture; and

(3) does not cause a rating agency maintaining a rating on outstanding obligations of the commission to lower the existing rating.

(c) If the commission agrees to the transfer under Subsection (a), the authority shall convey the turnpike project and any real property acquired to construct or operate the turnpike project to the department.

(d) At the time of a conveyance under this section, the commission shall designate the turnpike project as part of the state highway system. After the designation, the authority has no liability, responsibility, or duty to maintain or operate the transferred turnpike project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.037. TRANSFER OF FERRY CONNECTING STATE HIGHWAYS. (a) The commission by order may transfer a ferry operated under Section 342.001 to an authority if:

(1) the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region; and

(2) the authority:

(A) agrees to the transfer; and

(B) agrees to assume all liability and responsibility for the maintenance and operation of the ferry on its transfer.

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

(c) In computing the cost of the ferry, the commission shall:

(1) include the total amount spent by the department for the original construction of the ferry, including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the ferry and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, or operating the ferry to be incurred by the authority and not by the department if the ferry is transferred.

(d) The commission shall, at the time the ferry is transferred, remove the ferry from the state highway system. After a transfer, the commission has no liability, responsibility, or duty for the maintenance or operation of the ferry.

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

(f) The commission shall adopt rules to implement this section. The rules must include criteria and guidelines for the approval of a transfer of a ferry.

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

(h) An authority may permanently charge a toll for use of a

ferry transferred under this section. An authority may permanently charge a fee or toll for priority use of ferry facilities under Section 370.193.

(i) The commission may not transfer a ferry under this section if the ferry is located in a municipality with a population of 5,000 or less unless the city council of the municipality approves the transfer.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 877, Sec. 6, eff. June 17, 2005.

Sec. 370.038. COMMISSION RULES. (a) The commission shall adopt rules that:

(1) govern the creation of an authority;
(2) govern the commission's approval of a project under Section 370.187 and other commission approvals required by this chapter;

(3) establish design and construction standards for a transportation project that will connect with a highway in the state highway system or a department rail facility;

(4) establish minimum audit and reporting requirements and standards;

(5) establish minimum ethical standards for authority directors and employees; and

(6) govern the authority of an authority to contract with the United Mexican States or a state of the United Mexican States.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.039. TRANSFER OF TRANSPORTATION PROJECT OR SYSTEM. (a) An authority may transfer any of its transportation projects or systems to one or more governmental entities if:

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

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

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

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

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

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

(b) An authority may transfer to one or more 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 transportation project or system, and the authority's rights and obligations under any related agreements, if the requirements of Subsections (a)(1) and (6) are met.

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

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.66, eff. June 14, 2005.

SUBCHAPTER C. FEASIBILITY OF REGIONAL TRANSPORTATION PROJECTS

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

(1) using legally available revenue derived from an existing transportation project;

(2) borrowing money and issuing bonds or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing transportation project; or

(3) pledging to the payment of the bonds or a loan agreement legally available revenue anticipated to be derived from the operation of transportation projects or revenue legally available to the authority from another source.

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

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

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

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

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

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

(3) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a

transportation project by an authority.

(b) Money spent under Subsection (a) for a proposed transportation project is reimbursable without interest and with the consent of the authority to the person paying the expenses described in Subsection (a) out of the proceeds from revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, maintenance, repair, or operation of the transportation project. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

SUBCHAPTER D. TRANSPORTATION PROJECT FINANCING

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

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

- (1) be dated;
- (2) bear interest at the rate or rates provided by the bond resolution and beginning on the dates provided by the bond resolution and as authorized by law, or bear no interest;
- (3) mature at the time or times provided by the bond resolution, not exceeding 40 years from their date or dates; and
- (4) be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

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

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

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

- (1) the revenue of the transportation project for which the bonds are issued;

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.115. BOND INDENTURE. (a) Bonds issued by an authority under this chapter may be secured by a bond indenture between the authority and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A bond indenture may pledge or assign the revenues to be received but may not convey or mortgage any part of a transportation project.

(c) A bond indenture may:

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

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

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

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

(i) the acquisition of property;

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

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

(B) prescribing events that constitute default;

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

(D) relating to the rights, powers, liabilities,

or duties that arise on the breach of a duty of the authority.

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

(e) In addition to all other rights by mandamus or other court proceeding, an owner or trustee of a bond issued under this chapter may enforce the owner's rights against an issuing authority, the authority's employees, the authority's board, or an agent or employee of the authority's board and is entitled to:

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) An authority shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this chapter. 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. 2.01, eff. June 21, 2003.

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER COUNTIES. (a) An authority may acquire, construct, operate, maintain, expand, or extend a transportation project only in:

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

(2) a county in this state that is not a part of the authority if:

(A) the transportation project in that county is a continuation of a transportation project of the authority extending from a county adjacent to that county;

(B) the county is given an opportunity to become part of the authority on terms and conditions acceptable to the authority and that county; and

(C) the commissioners court of the county agrees to the proposed acquisition, construction, operation, maintenance,

expansion, or extension of the transportation project in that county; or

(3) a county in another state or the United Mexican States if:

(A) each governing body of a political subdivision in which the project will be located agrees to the proposed acquisition, construction, operation, maintenance, expansion, or extension;

(B) the project will bring significant benefits to the counties in this state that are part of the authority;

(C) the county in the other state is adjacent to a county that is:

(i) part of the authority constructing, operating, maintaining, expanding, or extending the transportation project; and

(ii) has a municipality with a population of 500,000 or more; and

(D) the governor approves the proposed construction, operation, maintenance, expansion, or extension.

(b) Repealed by Acts 2005, 79th Leg., ch. 281, Sec. 2.102. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, ch. 2.102, eff. June 14, 2005.

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.163. ACQUISITION OF PROPERTY. (a) Except as otherwise provided by this subchapter, the governing body of an authority has the same powers and duties relating to the condemnation and acquisition of real property for a transportation project that the commission and the department have under Subchapter D, Chapter 203, relating to the condemnation or purchase of real property for a toll project.

(b) Repealed by Acts 2005, 79th Leg., ch. 281, Sec. 2.101(17).

(c) The authority granted under this section does not include the authority to condemn a bridge connecting this state to the United Mexican States that is owned by a county or municipality. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.68, 2.101(17), eff. June 14, 2005.

Sec. 370.164. DECLARATION OF TAKING. (a) An authority may file a declaration of taking with the clerk of the court:

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

(2) to which the case is assigned.

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

(c) An authority may not file a declaration of taking before the completion of all:

(1) environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) public hearings and meetings, including those held in connection with the environmental rules adopted by the authority under Section 370.188, that are required by federal or state law; and

(3) notifications required by the rules adopted by the authority under Section 370.188.

(d) The declaration of taking must include:

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

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

(A) the municipality in which the property is

located;

(B) the street address of the property; and
(C) the lot and block number of the property;

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

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

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

(e) A deposit to the registry of the court of an amount equal to the appraised value as determined by the authority of the property to be condemned must accompany the declaration of taking.

(f) The date on which the declaration is filed is the date of taking for the purpose of assessing damages to which a property owner is entitled.

(g) After a declaration of taking is filed, the case shall proceed as any other case in eminent domain under Chapter 21, Property Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.165. POSSESSION OF PROPERTY. (a) Immediately on the filing of a declaration of taking, the authority shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The authority shall file evidence of the service with the clerk of the court. On filing of that evidence, the authority may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the authority may not take possession before the 91st day after the date of service under Subsection (a).

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.166. PARTICIPATION PAYMENT FOR REAL PROPERTY. (a) As an alternative to paying for an interest in real property or a real property right with a single fixed payment, the authority may, with the owner's consent, pay the owner by means of a participation payment.

(b) A right to receive a participation payment under this section is subordinate to any right to receive a fee as payment on the principal of or interest on a bond that is issued for the construction of the applicable segment.

(c) In this section, "participation payment" means an intangible legal right to receive a percentage of one or more identified fees related to a segment constructed by the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.167. SEVERANCE OF REAL PROPERTY. (a) If a transportation project of an authority severs a property owner's real property, the authority shall pay:

(1) the value of the property acquired; and

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.168. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) An authority may use real property, including submerged land, streets, alleys, and easements, owned by this state or a local government that the authority considers necessary for the construction or operation of a transportation project.

(b) This state or a local government having charge of public

real property may consent to the use of the property for a transportation project.

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.69, eff. June 14, 2005.

Sec. 370.169. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. (a) Except as provided by Section 370.035, an authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, other than:

(1) a park, playground, or designated environmental preserve;

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

(3) as provided by this chapter.

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

(c) An authority has full easements and rights-of-way through, across, under, and over any property owned by the state or any local government that are necessary or convenient to construct, acquire, or efficiently operate a transportation project or system under this chapter. This subsection does not affect the obligation of the authority under other law to compensate this state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of this state. An authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.170. PUBLIC UTILITY FACILITIES. (a) An authority may adopt rules for the authority's approval of the installation, construction, relocation, and removal of a public utility facility in, on, along, over, or under a transportation project.

(b) If the authority determines that a public utility facility located in, on, along, over, or under a transportation project must be relocated, the utility and the authority shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of the public utility facility.

(c) The authority shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of a public utility facility. If the authority and the affected utility enter into an agreement after negotiations under Subsection (b), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(d) If the authority and an affected utility do not enter into an agreement under Subsection (b), the authority shall provide to the affected utility:

(1) written notice of the authority's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(e) Not later than the 90th day after the date a utility receives the notice from the authority, including the plan and agreement terms and conditions under Subsection (d), the utility shall enter into an agreement with the authority that provides for the relocation.

(f) If the utility fails to enter into an agreement within the 90-day period under Subsection (e), the authority may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the authority under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(g) The 90-day period under Subsection (e) may be extended:

(1) by mutual agreement between the authority and the utility; or

(2) for any period of time during which the utility is negotiating in good faith with the authority to relocate its facility.

(h) Subject to Subsections (a)-(g), the authority, as a part of the cost of the transportation project or the cost of operating the transportation project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsection (a).

(i) The authority may reduce the total costs to be paid by the authority under Subsection (h) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation or removal exceeds the reasonable limit specified by agreement between the authority and the owner or operator of the public utility facility, unless the failure of the owner or operator of the facility to timely relocate or remove the facility results directly from:

(1) a material action or inaction of the authority;

(2) an inability of the public utility facility owner or operator to obtain necessary line clearances to perform the removal or relocation; or

(3) conditions beyond the reasonable control of the owner or operator of the facility, including:

(A) an act of God; or

(B) a labor shortage or strike.

(j) The owner or operator of a public utility facility relocated or removed under Subsection (f) shall reimburse the authority for the expenses the authority reasonably incurred for the relocation or removal of the facility, less any costs that would have been payable to the owner or operator under Subsection (h) had the owner or operator relocated or removed the facility, except that the owner or operator is not required to reimburse the authority if the failure of the owner or operator to timely relocate or remove the facility was the result of circumstances beyond the control of the owner or operator.

(k) Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of a line or pole owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a transportation project or system constructed by an authority. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(l) Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of facilities used for conducting gas by a gas utility, as that term is defined by Section 181.021, Utilities Code, through, under, along, across, and over a transportation project or system constructed by an authority except as otherwise provided by this section. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(m) The laws of this state applicable to the use of public roads, streets, and waters by a telephone or telegraph corporation apply to the erection, construction, maintenance, location, and

operation of a line, pole, or other fixture by a telephone or telegraph corporation over, under, across, on, and along a transportation project constructed by an authority under this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.171. LEASE, SALE, OR CONVEYANCE OF TRANSPORTATION PROJECT. An authority may lease, sell, or convey in any other manner a transportation project to a governmental entity with the approval of the governing body of the governmental entity to which the project is transferred.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.172. REVENUE. (a) An authority may:

(1) impose tolls, fees, fares, or other charges for the use of each of its transportation projects and the different parts or sections of each of its transportation projects; and

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

(b) Tolls, fees, fares, or other charges must be set at rates or amounts so that the aggregate of tolls, fees, fares, or other charges from an authority's transportation project, together with other revenue of the transportation project:

(1) provides revenue sufficient to pay:

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

(B) the principal of and interest on any bonds issued for the transportation project as those bonds become due and payable; and

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

(c) Any toll, fee, fare, or other charge imposed on an owner of a public utility facility under this section must be imposed in a manner that is competitively neutral and nondiscriminatory among similarly situated users of the transportation project.

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

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

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided in the bond proceedings; and

(5) any amounts due under credit agreements.

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

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

(h) An authority may not use revenue from a transportation project in a manner not authorized by this chapter. Except as provided by this chapter, revenue derived from a transportation project may not be applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a transportation project.

(i) An authority may not require the owner of a public

utility facility to pay a fee as a condition of placing a facility across the rights-of-way.

(j) If the transportation project is a project other than a public utility facility, an authority may contract for the use of part of a transportation project or lease or sell part of a transportation project under Subsection (a)(2) only to the extent that the contract, lease, or sale benefits the users of the transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.173. AUTHORITY REVOLVING FUND. (a) An authority may maintain a revolving fund to be held in trust by a banking institution chosen by the authority separate from any other funds and administered by the authority's board.

(b) An authority may transfer into its revolving fund money from any permissible source, including:

(1) money from a transportation project if the transfer does not diminish the money available for the project to less than any amount required to be retained by the bond proceedings pertaining to the project;

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

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

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

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

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

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

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

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

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

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

(d) Money spent or advanced from the revolving fund for a transportation project must be reimbursed from the money of that transportation project. There must be a reasonable expectation of repayment at the time the expenditure or advancement is authorized. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.174. USE OF SURPLUS REVENUE. (a) Each year, if an authority determines that it has surplus revenue from transportation projects, it shall reduce tolls, spend the surplus revenue on other transportation projects in the counties of the authority in accordance with Subsection (b), or deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Consistent with other law and commission rule, an authority may spend surplus revenue on other transportation projects by:

(1) constructing a transportation project located within the counties of the authority;

(2) assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) with the approval of the commission, constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to another governmental entity if:

(A) the other governmental entity authorizes the authority to construct the project and agrees to assume all

liability and responsibility for the maintenance and operation of the project on its transfer; and

(B) the project is constructed in compliance with all laws applicable to the governmental entity.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.175. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) An authority is exempt from taxation of or assessments on:

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

(b) An authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by any governmental entity or any property owners' or homeowners' association. This subsection does not apply to fees or assessments charged under approved rate schedules or line extension policies of a municipally owned electric or gas utility.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.176. ACTIONS AFFECTING EXISTING ROADS. (a) An authority may impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.

(b) An authority may construct a grade separation at an intersection of a transportation project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. The action may not affect a segment of the state highway system without the department's consent. The authority shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the transportation project.

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.177. FAILURE OR REFUSAL TO PAY TURNPIKE PROJECT TOLL; OFFENSE; ADMINISTRATIVE PENALTY. (a) Except as provided by Subsection (a-1), the operator of a vehicle, other than an authorized emergency vehicle as defined by Section 541.201, that is driven or towed through a toll collection facility of a turnpike project shall pay the proper toll. 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. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$250.

(a-1) Notwithstanding Subsection (a), the board 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.

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

(c) The authority may impose and collect the administrative fee to recover the cost of collecting the unpaid toll, not to exceed \$100. The authority 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 not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th day after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Subsection (a).

(d) The registered owner of a vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under

Subsection (c) and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. 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 (b) or (d) that the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the authority a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Subsection (a), with the name and address of the lessee clearly legible. If the lessor provides the required information within the period prescribed, the authority 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.

(f) It is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Subsection (a) occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and before the 30th day after the date the notice of nonpayment is mailed, provides to the authority the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the authority may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided by the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. 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 Subsection (a). Each failure to pay a toll or administrative fee under this subsection is a separate offense.

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

(h) 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 authority.

(i) In the prosecution of an offense under this section, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence, including evidence obtained by automated enforcement technology that the authority determines is necessary, including automated enforcement technology described by Sections 228.058(a) and (b).

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

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

(k) 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 23, Sec. 2, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 281, Sec. 2.70, eff. June 14, 2005.

Sec. 370.178. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, "transponder" means a device placed on or

within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which an authority has contracted under Section 370.181(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. An insufficiently funded transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

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

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

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.71, eff. June 14, 2005.

Sec. 370.179. CONTROLLED ACCESS TO TURNPIKE PROJECTS. (a) An authority by order may designate a turnpike project or a portion of a project as a controlled-access toll road.

(b) An authority by order may:

- (1) prohibit the use of or access to or from a turnpike project by a motor vehicle, bicycle, another classification or type of vehicle, or a pedestrian;

- (2) deny access to or from:
 - (A) a turnpike project;
 - (B) real property adjacent to a turnpike project;

or

- (C) a street, road, alley, highway, or other public or private way intersecting a turnpike project;

- (3) designate locations on a turnpike project at which access to or from the toll road is permitted;

- (4) control, restrict, and determine the type and extent of access permitted at a designated location of access to a turnpike project; or

- (5) erect appropriate protective devices to preserve the utility, integrity, and use of a turnpike project.

(c) Denial of access to or from a segment of the state highway system is subject to the approval of the commission. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.180. PROMOTION OF TRANSPORTATION PROJECT. An authority may promote the use of a transportation project, including a project that it operates on behalf of another entity, by appropriate means, including advertising or marketing as the authority determines appropriate. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.181. OPERATION OF TRANSPORTATION PROJECT. (a) An authority shall operate a transportation project with employees of the authority or by using services contracted under Subsection (b) or (c).

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

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

(d) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(e) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this

chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.182. AUDIT. (a) An authority shall have a certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a transportation project.

(b) The commission may initiate an independent audit of the authority or any of its activities at any time the commission considers appropriate. An audit under this subsection shall be conducted at the expense of the department.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.183. DISADVANTAGED BUSINESSES. (a) Consistent with general law, an authority shall:

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.184. PROCUREMENT. An authority shall adopt rules governing the award of contracts for goods and services. Notwithstanding any other provision of state law, an authority may procure goods and services, including materials, engineering, design, construction, operations, maintenance, and other goods and services, through any procedure authorized by this chapter. Procurement of professional services is governed by Chapter 2254, Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.185. COMPETITIVE BIDDING. A contract made by an authority may be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.186. CONTRACTS WITH GOVERNMENTAL ENTITIES. (a) Except as provided by Subsection (c), an authority may not construct, maintain, or operate a turnpike or toll project in an area having a governmental entity established under Chapter 284 or 366 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken. An authority may not construct, maintain, or operate a transportation project that another governmental entity has determined to be a project under Chapter 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken.

(b) An authority may not receive or be paid revenue derived by another governmental entity operating under Chapter 284, 366, 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the revenue shall be received by or paid to the authority.

(c) Subsection (a) does not apply to a turnpike or toll project located in a county in which a regional tollway authority has transferred under Section 366.036 or 366.172:

(1) all turnpike projects of the regional tollway authority that are located in the county; and

(2) all work product developed by the regional tollway authority in determining the feasibility of the construction,

improvement, extension, or expansion of a turnpike project to be located in the county.

(d) An authority may not construct, maintain, or operate a passenger rail facility within the boundaries of an intermunicipal commuter rail district created under Article 6550c-1, Vernon's Texas Civil Statutes, 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.72, eff. June 14, 2005.

Sec. 370.187. PROJECT APPROVAL. (a) An authority may not begin construction of a transportation project that will connect to the state highway system or to a department rail facility without the approval of the commission.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.188. ENVIRONMENTAL REVIEW OF AUTHORITY PROJECTS. (a) An authority shall adopt rules for environmental review of a transportation project that is not subject to review under the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.), as amended. The rules must:

(1) specify the types of projects for which a public hearing is required;

(2) establish procedures for public comment on the environmental review, including a procedure for requesting a public hearing on an environmental review for which a public hearing is not required; and

(3) require:

(A) an evaluation of any direct or indirect environmental effect of the project;

(B) an analysis of project alternatives; and

(C) a written report that briefly explains the authority's review of the project and that specifies any mitigation measures on environmental harm on which the project is conditioned.

(b) An environmental review of a project must be conducted before the authority may approve the location or alignment of the project.

(c) The authority shall consider the results of the environmental review in executing its duties.

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

(e) This section does not prohibit an owner of a public utility facility or a proposed public utility facility from conducting any necessary environmental evaluation for the public utility facility. The authority is entitled to review and give final approval regarding the sufficiency of any environmental evaluation conducted for a facility that is part of a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.189. DEPARTMENT MAINTENANCE AND OPERATION. (a) If requested by an authority, the department may agree to assume all or part of the duty to maintain or operate a turnpike project or ferry of the authority.

(b) The authority shall reimburse the department for necessary costs of maintaining or operating the turnpike project or ferry as agreed by the department and the authority.

(c) Money received by the department under Subsection (b) shall be deposited to the credit of the state highway fund and is exempt from the application of Sections 403.095 and 404.071, Government Code.

(d) If the department assumes all of the duty to maintain or operate a turnpike project or ferry under Subsection (a), the authority is not liable for damages resulting from the maintenance or operation of the turnpike project or ferry.

(e) An agreement under this section is not a joint enterprise for purposes of liability.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.190. PROPERTY OF CERTAIN TRANSPORTATION AUTHORITIES. An authority may not condemn or purchase real property of a transportation authority operating under Chapter 451, 452, or 460 unless the authority has entered into a written agreement with the transportation authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.191. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS. (a) In this section, "port of entry" means a place designated by executive order of the president of the United States, by order of the United States secretary of the treasury, or by act of the United States Congress at which a customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

(b) This section applies only to a port of entry for land traffic from the United Mexican States and does not apply to a port of entry for marine traffic.

(c) To the extent an authority considers appropriate to expedite commerce and based on the Texas ITS/CVO Business Plan prepared by the department, the Department of Public Safety, and the comptroller, the authority shall provide for implementation by the appropriate agencies of the use of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) in any new commercial motor vehicle inspection facility constructed by the authority and in any existing facility located at a port of entry to which this section applies. The authority shall coordinate with other state and federal transportation officials to develop interoperability standards for the systems.

(d) If an authority constructs a facility at which commercial vehicle safety inspections are conducted, the facility may not be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety and the facility must include implementation of ITS/CVO technology by the appropriate agencies to support all commercial motor vehicle regulation and enforcement functions.

(e) As part of its implementation of technology under this section, an authority shall to the greatest extent possible as a requirement of the construction of the facility:

(1) enhance efficiency and reduce complexity for motor carriers by providing a single point of contact between carriers and regulating state and federal government officials and providing a single point of information, available to wireless access, about federal and state regulatory and enforcement requirements;

(2) prevent duplication of state and federal procedures and locations for regulatory and enforcement activities, including consolidation of collection of applicable fees;

(3) link information systems of the authority, the department, the Department of Public Safety, the comptroller, and, to the extent possible, the United States Department of Transportation and other appropriate regulatory and enforcement entities; and

(4) take other necessary action to:
(A) facilitate the flow of commerce;
(B) assist federal interdiction efforts;
(C) protect the environment by reducing idling time of commercial motor vehicles at the facilities;

(D) prevent highway damage caused by overweight commercial motor vehicles; and

(E) seek federal funds to assist in the implementation of this section.

(f) Construction of a facility to which this section applies is subject to the availability of federal funding for that purpose. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.192. PROPERTY OF RAPID TRANSIT AUTHORITIES. An authority may not condemn or purchase real property of a rapid transit authority operating pursuant to Chapter 451 that was confirmed before July 1, 1985, and in which the principal municipality has a population of less than 750,000, unless the

authority has entered into a written agreement with the rapid transit authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.193. PRIORITY BOARDING OF FERRY. An authority may establish a system under which an owner of a motor vehicle may pay an additional fee or toll that entitles the vehicle to have priority in boarding a ferry operated by the authority.

Added by Acts 2005, 79th Leg., ch. 877, Sec. 7, eff. June 17, 2005.

SUBCHAPTER F. GOVERNANCE

Sec. 370.251. BOARD OF DIRECTORS. (a) The governing body of an authority is a board of directors consisting of representatives of each county in which a transportation project of the authority is located or is proposed to be located. The commissioners court of each county that initially forms the authority shall appoint at least two directors to the board. Additional directors may be appointed to the board at the time of initial formation by agreement of the counties creating the authority to ensure fair representation of political subdivisions in the counties of the authority that will be affected by a transportation project of the authority, provided that the number of directors must be an odd number. The commissioners court of a county that is subsequently added to the authority shall appoint one director to the board. The governor shall appoint one director to the board who shall serve as the presiding officer of the board and shall appoint an additional director to the board if an appointment is necessary to maintain an odd number of directors on the board.

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

(c) If permitted under the constitution of this state, directors serve staggered six-year terms, with the terms of no more than one-third of the directors expiring on February 1 of each odd-numbered year. If six-year terms are not permitted under the constitution, directors serve two-year terms, with the terms of not more than one-half of the directors expiring on February 1 of each year.

(d) If six-year terms are permitted under the constitution of this state, one director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of two years and one director designated to serve a term of four years. If six-year terms are not permitted under the constitution, one director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of one year and one director designated to serve a term of two years. If one or more directors are subsequently appointed to the board, the directors other than the subsequent appointees shall determine the length of the appointees' terms, to comply with Subsection (c).

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

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

(g) The following individuals are ineligible to serve as a director:

- (1) an elected official;
- (2) a person who is not a resident of a county within the geographic area of the authority;
- (3) a department employee;
- (4) an employee of a governmental entity any part of which is located within the geographic boundaries of the authority; and

(5) a person owning an interest in real property that will be acquired for an authority project, if it is known at the time of the person's proposed appointment that the property will be acquired for the authority project.

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

(i) The vote of a majority attending a board meeting is necessary for any action taken by the board. If a vacancy exists on

a board, the majority of directors serving on the board is a quorum.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.73, eff. June 14, 2005.

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

(1) at the creation of the authority if the county is a county that initially forms an authority;

(2) when a new county is added to the authority; and

(3) when the county is initially added to the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.252. PROHIBITED CONDUCT FOR DIRECTORS AND EMPLOYEES. (a) A director or employee of an authority may not:

(1) accept or solicit any gift, favor, or service that:

(A) might reasonably influence the director or employee in the discharge of an official duty; or

(B) the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the interest of the authority;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the authority.

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

(1) is employed by or participates in the management of a business entity or other organization, other than a governmental entity, that is regulated by or receives funds from the authority or the department;

(2) directly or indirectly owns or controls more than a 10 percent interest in a business or other organization that is regulated by or receives funds from the authority or the department;

(3) uses or receives a substantial amount of tangible goods, services, or funds from the authority or the department; or

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

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

(d) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of

business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

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

(f) In addition to the prohibitions and restrictions of this section, directors are subject to Chapter 171, Local Government Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.74, eff. June 14, 2005.

Sec. 370.2521. FILING OF FINANCIAL STATEMENT BY DIRECTOR. (a) Except as provided by Subsection (c), (d), or (e) a director shall file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with the Texas Ethics Commission.

(b) Subchapter B, Chapter 572, Government Code:

(1) applies to a director as if the director were a state officer; and

(2) governs the contents, timeliness of filing, and public inspection of a statement filed under Subsection (a).

(c) Subsection (a) does not apply to a director who is a state officer subject to Subchapter B, Chapter 572, Government Code.

(d) A director who is a municipal officer subject to Chapter 145, Local Government Code, or a county officer subject to Subchapter A, Chapter 159, Local Government Code, shall file with the Texas Ethics Commission a copy of the financial statement filed under Chapter 145, Local Government Code, or Subchapter A, Chapter 159, Local Government Code, as applicable. Subchapter B, Chapter 572, Government Code, governs the timeliness of filing and public inspection of a copy of a statement filed under this subsection.

(e) Subsection (a) does not apply to an authority if each county that is a part of the authority has a population of less than 200,000. The commissioners courts of the counties that are a part of an authority to which this subsection applies may jointly adopt a process that requires the directors of the authority to disclose personal financial activity as specified by the commissioners courts.

(f) A person subject to Subsection (a) or (d) commits an offense if the person fails to file the statement required by Subsection (a) or the copy required by Subsection (d), as applicable. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2005, 79th Leg., ch. 590, Sec. 1, eff. Sept. 1, 2005.

Sec. 370.2522. APPLICABILITY OF CONFLICTS OF INTEREST LAW TO DIRECTORS. (a) A director is considered to be a local public official for purposes of Chapter 171, Local Government Code.

(b) For purposes of Chapter 171, Local Government Code, a director, in connection with a vote or decision by the board, is considered to have a substantial interest in a business entity if a person related to the director in the second degree by consanguinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity.

Added by Acts 2005, 79th Leg., ch. 590, Sec. 1, eff. Sept. 1, 2005.

Sec. 370.2523. APPLICABILITY OF NEPOTISM LAWS. A director is a public official for purposes of Chapter 573, Government Code.

Added by Acts 2005, 79th Leg., ch. 590, Sec. 1, eff. Sept. 1, 2005.

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

(b) Each surety bond must be:

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.254. REMOVAL OF DIRECTOR. (a) It is a ground for removal of a director from the board if the director:

(1) did not have at the time of appointment the qualifications required by Section 370.251;

(2) at the time of appointment or at any time during the director's term, is ineligible under Section 370.251 or 370.252 to serve as a director;

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.256. EVIDENCE OF AUTHORITY ACTIONS. Actions of an authority are the actions of its board and may be evidenced in any legal manner, including a board resolution.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.257. PUBLIC ACCESS. An authority shall:

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

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

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

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

(e) If an officer or director who has been indemnified by an authority under Subsection (a) is subsequently convicted of an offense involving the conduct for which the officer or director was indemnified, the officer or director is liable to the authority for the amount of indemnification paid, with interest at the legal rate for interest on a judgment from the date the indemnification was paid.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 590, Sec. 2, eff. Sept. 1, 2005.

Sec. 370.259. PURCHASE OF LIABILITY INSURANCE. (a) An authority shall insure its officers and employees from liability

arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the authority's transportation projects.

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.260. CERTAIN CONTRACTS AND SALES PROHIBITED. (a) A director, agent, or employee of an authority may not:

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call. The board may hold an open or closed meeting by telephone conference call subject to the requirements of Sections 551.125(c)-(f), Government Code, but is not subject to the requirements of Subsection (b) of that section.

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.75, eff. June 14, 2005.

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

Sec. 370.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) The department may agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system on terms agreed on by the commission or department, as applicable, and the authority. The agreement may not be inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

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

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

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

(e) A turnpike project developed by an authority may not be part of the state highway system unless otherwise agreed to by the authority and the department.

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

(b) An authority has broad discretion to negotiate provisions in a development agreement with a private entity. The provisions may include provisions relating to:

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

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

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

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

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

(f) An authority may not directly provide water,

wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(g) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

(h) 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, the private entity shall submit to the authority for approval:

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

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 50 years. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.77, eff. June 14, 2005.

Sec. 370.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) A governmental entity other than a nonprofit corporation may, consistent with the Texas Constitution, issue bonds, notes, or other obligations or enter into and make payments under agreements with an authority to acquire, construct, maintain, or operate a transportation project, whether inside or outside the geographic boundaries of the governmental entity, including agreements to pay the principal of, and interest on, bonds, notes, or other obligations issued by the authority and make payments under any related credit agreements. The entity may impose and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

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

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

- (1) pledge revenue from any available source, including annual appropriations;
- (2) impose and collect taxes; or
- (3) pledge revenue and impose and collect taxes.

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

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.305. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) An authority may use a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project.

(b) A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design and construction of a transportation project and may also provide for the financing, acquisition, maintenance, or operation of a transportation project.

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

(d) This section expires on August 31, 2011.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.306. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. The authority may accept unsolicited proposals for a proposed transportation project or solicit proposals in accordance with this section.

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

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

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

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs; and

(B) proposed sources of funds.

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

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

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

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

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

(f) An authority shall issue a request for detailed proposals from all private entities qualified under Subsection (e) if the authority proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

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

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

(3) detailed engineering or architectural designs;

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

(5) costing methodology; or

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

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

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

(i) An authority may enter into discussions with the private entity whose proposal offers the apparent best value. The discussions shall be limited to:

(1) incorporation of aspects of other proposals for the purpose of achieving the overall best value for the authority;

(2) clarifications and minor adjustments in scheduling, cash flow, and similar items; and

(3) matters that have arisen since the submission of the proposal.

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

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

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

(m) An authority shall pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

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

(2) the work product contained in the proposal becomes the property of the authority.

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

(o) Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under Section 370.305.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.307. CONFIDENTIALITY OF NEGOTIATIONS FOR COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private entities to submit proposals under Section 370.306, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal submitted by a private entity for a comprehensive development agreement, except information provided under Sections 370.306(b)(1) and (2);

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After an authority completes its final ranking of proposals under Section 370.306(h), the final rankings of each proposal under each of the published criteria are not confidential. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under Section 370.305 to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

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

(2) protect:

(A) the authority; and

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

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

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

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

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

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

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

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

(b) Notwithstanding Subsection (a), an authority may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of the agreement, the transportation project, including the facilities, must be in a state of proper maintenance as determined by the authority and shall be returned to the authority in satisfactory condition at no further cost.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.310. LIABILITY FOR PRIVATE OBLIGATIONS. An authority may not incur a financial obligation for a private entity that constructs, maintains, or operates a transportation project. The authority or a political subdivision of the state is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of the project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.311. TERMS OF PRIVATE PARTICIPATION. (a) An authority shall negotiate the terms of private participation in a transportation project, including:

(1) methods to determine the applicable cost, profit, and project distribution between the private equity investors and the authority;

(2) reasonable methods to determine and classify toll rates or user fees;

(3) acceptable safety and policing standards; and

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

(b) A comprehensive development agreement entered into under Section 370.305 must include a provision authorizing the authority to purchase, under terms agreed to by the parties, the interest of a private equity investor in a transportation project.

(c) An authority may only enter into a comprehensive development agreement under Section 370.305 with a private equity investor 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.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.312. RULES, PROCEDURES, AND GUIDELINES GOVERNING NEGOTIATING PROCESS. (a) An authority shall adopt rules, procedures, and other guidelines governing selection and negotiations to promote fairness, obtain private participants in transportation projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

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

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.313. PARTICIPATION ON CERTAIN OTHER BOARDS, COMMISSIONS, OR PUBLIC BODIES. (a) An authority may participate in and designate board members to serve as representatives on boards, commissions, or public bodies, the purposes of which are to promote the development of joint toll facilities in this state, between this state and other states of the United States, or between this state and the United Mexican States or states of the United Mexican States.

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

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.314. COMBINATION OF ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES. An authority may procure a combination of engineering, design, and construction services in a single procurement for a transportation project provided that any contract awarded must be the one that results in the best value to the authority.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.315. PERFORMANCE AND PAYMENT BONDS AND SECURITY. Notwithstanding Chapter 2253, Government Code, an authority shall require any party to an agreement to operate or maintain a transportation project to provide performance and payment bonds or other forms of security, including corporate guarantee, in amounts considered by the authority to be adequate to protect the authority and to assure performance of all obligations to the authority and to subcontractors providing materials or labor for a transportation project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.316. TRANS-TEXAS CORRIDOR PROJECTS. In the event that an authority is requested by the commission to participate in the development of a transportation project that has been designated as part of the Trans-Texas Corridor, the authority shall have, in addition to all powers granted in this chapter, all powers of the department related to the development of Trans-Texas Corridor projects.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

Sec. 370.317. AGREEMENTS WITH LOCAL GOVERNMENTS. (a) In this section, "local government" means a:

(1) county, municipality, special district, or other political subdivision of this state;

(2) local government corporation created under Subchapter D, Chapter 431; or

(3) combination of two or more entities described by Subdivision (1) or (2).

(b) A local government may enter into an agreement with an authority or a private entity under which the local government assists in the financing of the construction, maintenance, and operation of a turnpike project located in the government's jurisdiction in return for a percentage of the revenue from the project.

(c) A local government may use any revenue available for road purposes, including bond and tax proceeds, to provide financing under Subsection (b).

(d) An agreement under this section between a local government and a private entity must be approved by the department.

(e) Revenue received by a local government under an agreement under this section must be used for transportation purposes.

Added by Acts 2005, 79th Leg., ch. 1297, Sec. 2, eff. Sept. 1, 2005.

SUBCHAPTER H. DISSOLUTION OF AUTHORITY

Sec. 370.331. VOLUNTARY DISSOLUTION. (a) An authority may not be dissolved unless the dissolution is approved by the commission.

(b) A board may submit a request to the commission for approval to dissolve.

(c) The commission may approve a request to dissolve only if:

(1) all debts, obligations, and liabilities of the authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(2) there are no suits pending against the authority, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and

(3) the authority has commitments from other governmental entities to assume jurisdiction of all authority transportation facilities.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

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

(b) The commission may not require dissolution unless:

(1) the conditions described in Sections 370.331(c)(1) and (2) have been met; and

(2) the holders of any indebtedness have evidenced their agreement to the dissolution.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 2.01, eff. June 21, 2003.

SUBCHAPTER I. TRANSIT SYSTEMS

Sec. 370.351. TRANSIT SYSTEMS. (a) An authority may construct, own, operate, and maintain a transit system.

(b) An authority shall determine each transit route, including transit route changes.

(c) 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.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

Sec. 370.352. PUBLIC HEARING ON FARE AND SERVICE CHANGES. (a) In this section:

(1) "Service change" means any addition or deletion resulting in the physical realignment of a transit route or a change in the type or frequency of service provided in a specific, regularly scheduled transit route.

(2) "Transit revenue vehicle mile" means one mile traveled by a transit vehicle while the vehicle is available to public passengers.

(3) "Transit route" means a route over which a transit vehicle travels that is specifically labeled or numbered for the

purpose of picking up or discharging passengers at regularly scheduled stops and intervals.

(4) "Transit route mile" means one mile along a transit route regularly traveled by transit vehicles while available to public passengers.

(b) Except as provided by Section 370.353, an authority shall hold a public hearing on:

(1) a fare change;

(2) a service change involving:

(A) 25 percent or more of the number of transit route miles of a transit route; or

(B) 25 percent or more of the number of transit revenue vehicle miles of a transit route, computed daily, for the day of the week for which the change is made; or

(3) the establishment of a new transit route.

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

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

Sec. 370.353. PUBLIC HEARING ON FARE AND SERVICE CHANGES: EXCEPTIONS. (a) In this section, "experimental service change" means an addition of service to an existing transit route or the establishment of a new transit route.

(b) A public hearing under Section 370.352 is not required for:

(1) a reduced or free promotional fare that is instituted daily or periodically over a period of not more than 180 days;

(2) a headway adjustment of not more than five minutes during peak-hour service and not more than 15 minutes during nonpeak-hour service;

(3) a standard seasonal variation unless the number, timing, or type of the standard seasonal variation changes; or

(4) an emergency or experimental service change in effect for 180 days or less.

(c) A hearing on an experimental service change in effect for more than 180 days may 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. If a hearing is not held before or while the experimental service change is in effect, the service that existed before the change must be reinstated at the end of the 180th day after the change became effective and a public hearing must be held in accordance with Section 370.352 before the experimental service change may be continued.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

Sec. 370.354. NOTICE OF HEARING ON FARE OR SERVICE CHANGE. (a) After calling a public hearing required by Section 370.352, the authority shall:

(1) at least 30 days before the date of the hearing, publish notice of the hearing at least once in a newspaper of general circulation in the territory of the authority; and

(2) post notice in each transit vehicle in service on any transit route affected by the proposed change for at least two weeks within 30 days before the date of the hearing.

(b) The notice must contain:

(1) a description of each proposed fare or service change, as appropriate;

(2) the time and place of the hearing; and

(3) if the hearing is required under Section 370.352(c), a description of the latest proposed change and the previous changes.

(c) The requirement for a public hearing under Section 370.352 is satisfied at a public hearing required by federal law if:

(1) the notice requirements of this section are met; and

(2) the proposed fare or service change is addressed at the meeting.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

Sec. 370.355. CRIMINAL PENALTIES. (a) An authority by

resolution may prohibit the use of the transit system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may 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) An authority by resolution may 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) The authority shall 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) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the transit system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the transit system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may 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 of the transit system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

(g) An offense under Subsection (d) is not a crime of moral turpitude.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

SUBCHAPTER J. ACQUIRING TRANSIT SYSTEMS

Sec. 370.361. TRANSFER OF TRANSIT SYSTEMS. (a) In this section, "unit of election" means a political subdivision that previously voted to join the service area of a transit provider.

(b) An authority may 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 the counties in which the authority operates could be most efficiently and economically met by the transfer.

(c) On receipt of a written request under Subsection (b), the governing body of the transit provider may 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. Notice of a hearing must 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. The notice shall also solicit written comments on the proposed transfer. The transit provider may participate fully with the authority in conducting a public hearing.

(d) A board may 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). Before approving the acquisition, the board shall consider public comments received under Subsection (c).

(e) After considering public comments received under Subsection (c), the governing body of the transit provider may order an election to dissolve the transit provider and transfer all services, property, funds, assets, employees, debts, and obligations to the authority. The governing body of the transit provider shall submit to the qualified voters in the units of election in the transit provider's service area a proposition that reads substantially as follows: "Shall (name of transit provider) be dissolved and its services, property, funds, assets, employees, debts, and obligations be transferred to (name of regional mobility authority)?"

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

(g) The governing body of the transit provider shall canvass the returns and declare the results of the election separately with respect to each unit of election. 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. 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. If the proposition is not approved in every unit of election, the proposition does not pass and the transit provider is not dissolved.

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

(i) The authority shall assume all debts or other obligations of the transferred transit provider in connection with the acquisition of property under Subsection (g). The authority may not use 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.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

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

(b) The authority by resolution may:

(1) decrease the rate of the sales and use tax to a permissible rate; or

(2) call an election for the increase or decrease of the sales and use tax to a permissible rate.

(c) If an authority orders an election, the authority shall 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) A resolution ordering an election and the election notice required by Subsection (c) must show, in addition to the requirements of the Election Code, the hours of the election and polling places in election precincts.

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

(f) The permissible rates for a sales and use tax imposed under this subchapter are:

(1) one-quarter of one percent;

(2) one-half of one percent;

(3) three-quarters of one percent; or

(4) one percent.

(g) Chapter 322, Tax Code, applies to a sales and use tax imposed under this subchapter.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

Sec. 370.363. MAXIMUM TAX RATE. (a) An authority may not adopt a sales and use tax 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) 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:

(1) the voters in the service area approve the authority's sales and use tax rate or rate increase at an election held on the same day on which a municipality or county having territory in the jurisdiction of the service area adopts a sales and use tax or an additional sales and use tax; and

(2) the combined rates of all sales and use taxes imposed by the authority and all political subdivisions of this state would exceed two percent in any part of the territory in the service area.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14,

2005.

Sec. 370.364. ELECTION TO CHANGE TAX RATE. (a) At an election ordered under Section 370.362(b)(2), the ballots shall be printed to permit voting for or against the proposition: "The increase (decrease) of the local sales and use tax rate for mass transit to (percentage)."

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

(c) A notice of the election and a certified copy of the order canvassing the election results shall be:

- (1) sent to the commission and the comptroller; and
- (2) filed in the deed records of the county.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.

Sec. 370.365. SALES TAX: EFFECTIVE DATES. (a) 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) An increase or decrease in the rate of a sales and use tax implemented under this subchapter takes effect on:

(1) the first day of the first calendar quarter that begins after the date the comptroller receives the notice provided under Section 370.364(c); or

(2) the first day of the second calendar quarter that begins after the date the comptroller receives the notice, if within 10 days after the date of receipt of the notice the comptroller gives written notice to the board that the comptroller requires more time to implement tax collection and reporting procedures.

Added by Acts 2005, 79th Leg., ch. 281, Sec. 2.76, eff. June 14, 2005.