

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE G. TURNPIKES AND TOLL PROJECTS

CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY TOLL
PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. DEFINITIONS. In this chapter:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is:

- (A) a part of the state highway system; or
- (B) subject to the jurisdiction of the department.

(2) "Toll project entity" means an entity authorized by law to acquire, design, construct, operate, and maintain a toll project, including:

- (A) the department;
- (B) a regional tollway authority under Chapter 366;
- (C) a regional mobility authority under Chapter 370; or
- (D) a county under Chapter 284.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 259 (H.B. 1201), Sec. 12, eff. June 17, 2011.

Sec. 371.002. APPLICABILITY. This chapter does not apply to a project for which the commission selected an apparent best value proposer before May 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Sec. 371.003. VALUATION DETERMINATION. Any determination of value, including best value, under applicable federal or state

law for a comprehensive development agreement or other public-private partnership arrangement involving a toll project must take into consideration any factors the toll project entity determines appropriate, including factors related to:

- (1) oversight of the toll project;
 - (2) maintenance and operations costs of the toll project;
 - (3) the structure and rates of tolls;
 - (4) economic development impacts of the toll project;
- and
- (5) social and environmental benefits and impacts of the toll project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 9, eff. June 17, 2011.

SUBCHAPTER B. OVERSIGHT

Sec. 371.051. ATTORNEY GENERAL REVIEW AND EXAMINATION FEE.

(a) A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

(b) A toll project entity shall pay a nonrefundable examination fee to the attorney general on submitting a proposed comprehensive development agreement for review. At the time the examination fee is paid, the toll project entity shall also submit for review a complete transcript of proceedings related to the comprehensive development agreement.

(c) If the toll project entity submits multiple proposed comprehensive development agreements relating to the same toll project for review, the entity shall pay the examination fee under Subsection (b) for each proposed comprehensive development agreement.

(d) The attorney general shall provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the proceedings required under Subsection (b) are received. If the attorney general cannot provide a legal sufficiency determination within the

60-business-day period, the attorney general shall notify the toll project entity in writing of the reason for the delay and may extend the review period for not more than 30 business days.

(e) After the attorney general issues a legal sufficiency determination, a toll project entity may supplement the transcript of proceedings or amend the comprehensive development agreement to facilitate a redetermination by the attorney general of the prior legal sufficiency determination issued under this section.

(f) The toll project entity may collect or seek reimbursement of the examination fee under Subsection (b) from the private participant.

(g) The attorney general by rule shall set the examination fee required under Subsection (b) in a reasonable amount and may adopt other rules as necessary to implement this section. The fee may not be set in an amount that is determined by a percentage of the cost of the toll project. The amount of the fee may not exceed reasonable attorney's fees charged for similar legal services in the private sector.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1329 (S.B. 731), Sec. 1, eff. June 17, 2011.

Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD.

(a) Not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, a toll project entity shall provide the Legislative Budget Board with the names of qualifying or shortlisted proposers and their team members.

(b) At least 30 days before entering into a comprehensive development agreement, a toll project entity shall provide the Legislative Budget Board with:

(1) a copy of the version of the proposed comprehensive development agreement to be executed;

(2) a copy of the proposal submitted by the apparent best value proposer; and

(3) a financial forecast prepared by the toll project entity that includes:

(A) toll revenue the entity projects will be derived from the project during the planned term of the agreement;

(B) estimated construction costs and operating expenses; and

(C) the amount of income the entity projects the private participant in the agreement will realize during the planned term of the agreement.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1196, Sec. 11, eff. June 17, 2011.

(d) Before the comprehensive development agreement is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552, Government Code. On or after the date the comprehensive development agreement is entered into, the financial forecasts and traffic revenue reports are public information under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 10, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 11, eff. June 17, 2011.

SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project must contain a provision authorizing the toll project entity to terminate the agreement for convenience and to purchase, under terms agreed to by the parties:

(1) the interest of the private participant in the comprehensive development agreement; and

(2) related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(b) A comprehensive development agreement described by Subsection (a) must include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens, of not less than two years and not more than five years, over the term of the agreement.

(c) The provision must authorize the toll project entity to terminate the comprehensive development agreement and to purchase the private participant's interest at any time during a specified interval at the lesser of:

(1) the price stated for that interval; or

(2) the greater of:

(A) the then fair market value of the private participant's interest, plus or minus any other amounts specified in the comprehensive development agreement; or

(B) an amount equal to the amount of outstanding debt specified in the comprehensive development agreement, plus or minus any other amounts specified in the comprehensive development agreement.

(d) A toll project entity shall include in a request for proposals for an agreement described by Subsection (a) a request for the proposed price breakdown described by Subsection (b) and shall assign points to and score each proposer's price breakdown in the evaluation of proposals.

(e) A private participant shall, not later than 12 months before the date that a new price interval takes effect, notify the toll project entity of the beginning of the price interval. The toll project entity must notify the private participant as to whether it will exercise the option to purchase under this section not later than six months after the date it receives notice under this subsection.

(f) A toll project entity must notify the private participant of the toll project entity's intention to purchase the private participant's interest under this section not less than six

months before the date of the purchase.

(g) Subsections (b), (c), (d), (e), and (f) do not apply to a project for which a request for proposals was issued before January 1, 2013.

(h) If a project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule, the price for terminating the comprehensive development agreement may be adjusted to reflect the changes in the agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1234 (S.B. 1730), Sec. 3, eff. September 1, 2013.

Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS. If a toll project entity elects to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a project, the entity may:

(1) if authorized to issue bonds for that purpose, issue bonds to:

(A) make any applicable termination payments to the private participant; or

(B) purchase the interest of the private participant in the comprehensive development agreement or related property; or

(2) provide for the payment of obligations of the private participant incurred pursuant to the comprehensive development agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive development agreement may not contain a provision that limits or prohibits the construction, reconstruction, expansion,

rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003, by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity.

(b) Except as provided by Subsection (c), a comprehensive development agreement may contain a provision authorizing the toll project entity to compensate the private participant in the agreement for the loss of toll revenues attributable to the construction by the entity of a limited access highway project located within an area that extends up to four miles from either side of the centerline of the project developed under the agreement, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

(c) A comprehensive development agreement may not require the toll project entity to provide compensation for the construction of:

(1) a highway project contained in the state transportation plan or a transportation plan of a metropolitan planning organization in effect on the effective date of the agreement;

(2) work on or improvements to a highway project necessary for improved safety, or for maintenance or operational purposes;

(3) a high occupancy vehicle exclusive lane addition or other work on any highway project that is required by an environmental regulatory agency; or

(4) a transportation project that provides a mode of transportation that is not included in the project that is the subject of the comprehensive development agreement.

(d) The private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Subsection (b).

(e) A comprehensive development agreement that contains a provision described by Subsection (b) must require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private

participant that is attributable to the construction of a highway project described by Subsection (b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a) Before a toll project entity enters into a contract for the construction of a toll project, the entity shall publish in the manner provided by Section 371.152 information regarding:

(1) project financing, including:

(A) the total amount of debt that has been and will be assumed to acquire, design, construct, operate, and maintain the toll project;

(B) a description of how the debt will be repaid, including a projected timeline for repaying the debt; and

(C) the projected amount of interest that will be paid on the debt;

(2) whether the toll project will continue to be tolled after the debt has been repaid;

(3) a description of the method that will be used to set toll rates;

(4) a description of any terms in the contract relating to competing facilities, including any penalties associated with the construction of a competing facility;

(5) a description of any terms in the contract relating to a termination for convenience provision, including any information regarding how the value of the project will be calculated for the purposes of making termination payments;

(6) the initial toll rates, the methodology for increasing toll rates, and the projected toll rates at the end of the term of the contract; and

(7) the projected total amount of concession payments.

(b) A toll project entity may not enter into a contract for

the construction of a toll project before the 30th day after the date the information is first published under Section 371.152.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information under Section 371.151 must be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before the time set for entering into the contract and in two other newspapers that the toll project entity may designate.

(b) Instead of the notice required by Subsection (a), if the toll project entity estimates that the contract involves an amount less than \$300,000, the information may be published in two successive issues of a newspaper published in the county in which the project is to be constructed.

(c) If a newspaper is not published in the county in which the toll project is to be constructed, notice shall be published in a newspaper published in the county:

(1) nearest the county seat of the county in which the improvement is to be made; and

(2) in which a newspaper is published.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.

Sec. 371.153. HEARING. (a) A toll project entity shall hold a public hearing on the information published under Section 371.152 not later than the 10th day after the date the information is first published and not less than 10 days before the entity enters into the contract.

(b) A hearing under this section must be held in the county seat of the county in which the toll project is located.

(c) A hearing under this section must include a formal presentation and a mechanism for responding to comments and questions.

Added by Acts 2007, 80th Leg., R.S., Ch. 264 (S.B. 792), Sec. 11.01, eff. June 11, 2007.