

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE G. TURNPIKES AND TOLL PROJECTS

CHAPTER 373. TOLL PROJECTS LOCATED IN TERRITORY OF LOCAL TOLL
PROJECT ENTITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 373.001. DEFINITIONS. In this chapter:

(1) "Local toll project entity" means an entity, other than the department, that is authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, including:

(A) a regional tollway authority under Chapter 366;

(B) a regional mobility authority under Chapter 370; or

(C) a county acting under Chapter 284.

(2) "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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.002. APPLICABILITY. This chapter does not apply to:

(1) a toll project described in Section 228.011;

(2) Phase 4 extension of the Dallas North Tollway in Collin and Denton Counties from U.S. 380 to the Grayson County line to be developed by North Texas Tollway Authority; or

(3) the North Tarrant Express project in Tarrant and Dallas Counties (Interstate Highway 820 and State Highway 121/State Highway 183 from Interstate Highway 35 West to State Highway 161, Interstate Highway 820 East from State Highway 121/State Highway 183 to Randol Mill Road, and Interstate Highway 35 West from

Interstate Highway 30 to State Highway 170).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll project is leased, sold, conveyed, or otherwise transferred to another governmental entity in accordance with applicable law, including Sections 228.151, 284.011, 366.036, 366.172, and 370.171, a toll project procured by the department or a local toll project entity determined by the process under Subchapter B is owned by that entity in perpetuity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.004. GOVERNMENTAL AND NOT COMMERCIAL TRANSACTIONS. A transaction involving a local toll project entity under Section 228.011 or this chapter is not primarily commercial in nature but is an inherently governmental transaction whose purpose is to determine governmental jurisdiction, ownership, control, or other responsibilities with respect to a project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.005. LEGAL CHALLENGES CONCLUDED. For the purposes of this chapter, all legal challenges to development of a toll project are considered concluded when a judgment or order of a court with jurisdiction over the challenge becomes final and unappealable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.006. TOLL PROJECT AGREEMENT. (a) Before initiating the primacy determination process under Subchapter B for a toll project, the department and the local toll project entity may enter into a toll project agreement that:

(1) identifies the responsibilities of each party for project-related activities, which may include the performance of

environmental work and traffic and revenue studies; and

(2) includes an agreement that the primacy determination process under Subchapter B may be initiated earlier than as provided by Section 373.051.

(b) A toll project agreement may provide an alternative to the primacy determination process under Subchapter B for toll project development, including an alternative timeline for the development of toll project phases.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.007. EXERCISE OF PRIMACY FOR TOLL PROJECT PHASES. Unless otherwise provided by a toll project agreement under Section 373.006 or other agreement, an exercise of primacy under Subchapter B over a phase of a toll project is an exercise of primacy over the entire project, with additional phases to be developed as the entity determines the phases financially feasible. Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

SUBCHAPTER B. PROCESS TO DETERMINE ENTITY TO DEVELOP, FINANCE,
CONSTRUCT, AND OPERATE TOLL PROJECT

Sec. 373.051. INITIATION OF PROCESS. (a) At any time after a metropolitan planning organization approves the inclusion in the metropolitan transportation improvement program of a toll project to be located in the territory of a local toll project entity, the local toll project entity may notify the department in writing of the local toll project entity's intent to initiate the process described in this subchapter.

(b) The department may notify the local toll project entity in writing of the department's intent to initiate the process described in this subchapter at any time after a metropolitan planning organization has approved the inclusion in the metropolitan transportation improvement program of a toll project to be located in the territory of a local toll project entity and:

(1) the department has issued a finding of no

significant impact for the project, or for a project for which an environmental impact statement is prepared, the department has approved the final environmental impact statement for the project; or

(2) for a project subject to environmental review requirements under federal law, the United States Department of Transportation Federal Highway Administration has issued a finding of no significant impact, or for a project for which an environmental impact statement is prepared, the department has submitted a final environmental impact statement to the Federal Highway Administration for approval.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.052. LOCAL TOLL PROJECT ENTITY OPTION. (a) The local toll project entity has the first option to develop, finance, construct, and operate a toll project. The local toll project entity must exercise its option not later than the later of:

(1) the 180th day after the date on which notification under Section 373.051(a) is provided or notification under Section 373.051(b) is received; or

(2) if the United States Department of Transportation Federal Highway Administration issues a record of decision for an environmental impact statement submitted by the department under Section 373.051(b)(2) more than 60 days after the date the department provides notice under Section 373.051(b), the 120th day after the date the record of decision is issued.

(b) The option period under Subsection (a) may be extended an additional 90 days by agreement of the department and the local toll project entity.

(c) If the local toll project entity exercises the option under Subsection (a), the local toll project entity after exercising the option must:

(1) within 180 days after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development of the toll project are secured and all legal challenges to development are concluded,

advertise for the initial procurement of required services, including, at a minimum, design services, for the project; and

(2) within two years after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development are secured and all legal challenges to development are concluded, enter into a contract for the construction of the toll project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.053. DEPARTMENT OPTION. (a) If the local toll project entity fails or declines to exercise the option to develop, finance, construct, and operate a toll project under Section 373.052(a), or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.052(c), the department has the option to develop, finance, construct, and operate the toll project. The department has not more than 60 days after the date the local toll project entity fails or declines to exercise its option under Section 373.052(a) or fails or declines to advertise for procurement or enter into a construction contract as required by Section 373.052(c) to exercise its option.

(b) If the department exercises its option under Subsection (a), the department after exercising the option must:

(1) within 180 days after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development of the toll project are secured and all legal challenges to development are concluded, advertise for the initial procurement of required services, including, at a minimum, design services, for the project; and

(2) within two years after the later of the date of exercising its option or the date on which all environmental approvals necessary for the development are secured and all legal challenges to development are concluded, enter into a contract for the construction of the toll project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.054. REINITIATION OF PROCESS. If the process described by Sections 373.051, 373.052, and 373.053 concludes without the local toll project entity or the department entering into a contract for the construction of the toll project, either entity may reinitiate the process under this subchapter by submitting notice to the other entity in the manner provided by Section 373.051.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.055. WAIVER OF OPTION; ALTERATION OF STEPS OR TIME LIMITS. (a) The department or the local toll project entity may at any time before or during the process established by this subchapter waive or decline to exercise any option, step, or other right under this subchapter that solely benefits that entity by notifying the other entity of its decision in writing.

(b) The department and the local toll project entity may, by written agreement, alter any other step or time limit under this subchapter, including the timing of or conditions for initiating the process under Section 373.051.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.056. SHARING OF PROJECT-RELATED INFORMATION. (a) In this section, "project-related information" includes traffic estimates, revenue estimates, plans, specifications, surveys, appraisals, environmental studies, and other work product developed for a toll project.

(b) On initiation of the process under Section 373.051, the department shall make its project-related information available to the local toll project entity.

(c) If the local toll project entity fails or declines to exercise an option or fails or declines to advertise for procurement or enter into a construction contract under Section 373.052, the local toll project entity shall make its project-related information available to the department.

(d) On entering into a contract for the construction of the toll project, the department or the local toll project entity, as applicable, shall reimburse the other entity for shared project-related information that it uses.

(e) Use by an entity of project-related information received by the entity under this section is at the sole risk of the receiving entity and does not confer liability on the entity that furnished the information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.057. PROGRESS REPORTS. After the department or the local toll project entity exercises an option under this subchapter, the department or the local toll project entity, as applicable, shall issue a semiannual report on the progress of the development of the toll project. The report shall be made available to the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.058. ENVIRONMENTAL REVIEW. (a) The department or the local toll project entity may begin any environmental review process that may be required for a proposed toll project before initiating the process under this subchapter.

(b) If the local toll project entity initiates the process for development of a toll project under Section 373.051(a) and has not begun the environmental review of the project, the local toll project entity shall begin the environmental review within 180 days of exercising the option.

(c) The department or the local toll project entity may begin development of a toll project before the project receives environmental clearance but may not begin construction of the project before the project receives that clearance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.059. PROJECT LOCATED IN TERRITORY OF MORE THAN ONE

LOCAL TOLL PROJECT ENTITY. If a toll project is in the territory of more than one local toll project entity, only the local toll project entity that first constructed toll projects may exercise the options and other rights under this subchapter. The local toll project entity exercising an option or other right under this section:

(1) may do so only with respect to the portion of the project located in the territory of that local toll project entity; and

(2) shall do so on behalf of another local toll project entity in whose territory the project will be located if requested by the other entity after the original entity declines to exercise its option.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

SUBCHAPTER C. USE OF RIGHT-OF-WAY BY LOCAL TOLL PROJECT ENTITY

Sec. 373.101. USE OF STATE HIGHWAY RIGHT-OF-WAY.

(a) Consistent with federal law, the commission and the department shall assist a local toll project entity in the development, financing, construction, and operation of a toll project for which the local toll project entity has exercised its option to develop, finance, construct, and operate the project under Subchapter B by allowing the local toll project entity to use state highway right-of-way and to access the state highway system as necessary to construct and operate the toll project.

(b) Notwithstanding any other law, a local toll project entity and the commission may agree to remove the toll project from the state highway system and transfer ownership to the local toll project entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.102. REIMBURSEMENT FOR USE OF RIGHT-OF-WAY.

(a) The commission or the department may not require a local toll project entity to pay for the use of state highway right-of-way or

access, except:

(1) to reimburse the department for actual costs incurred by the department that are owed to a third party, including the federal government, as a result of that use by the local toll project entity; and

(2) as required under Subsection (b).

(b) A local toll project entity shall reimburse the department for the department's actual costs to acquire a right-of-way transferred to the local toll project entity. If the department is not able to determine that amount, the reimbursement must be in an amount equal to the average actual historical right-of-way acquisition values for comparable right-of-way located in proximity to the project on the date of original acquisition of the right-of-way.

(c) In lieu of reimbursement, and at the local toll project entity's sole option, the local toll project entity may agree to pay to the department a portion of the revenues of the project, in the amount and for the period of time agreed to by the local toll project entity and the department.

(d) Money received by the department under this section shall be deposited in the state highway fund and, except for reimbursement for costs owed to a third party, used to fund additional projects in the department district in which the toll project is located.

(e) The department shall reimburse a local toll project entity for any cost of right-of-way acquired by the entity for a toll project that will be developed, financed, constructed, and operated by the department.

(f) The commission or department or the local toll project entity may waive the requirement of reimbursement under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.103. AGREEMENT FOR USE OF RIGHT-OF-WAY. A local toll project entity and the department shall enter into an agreement for any toll project for which the entity has exercised

its option to develop, finance, construct, and operate the project under Subchapter B and for which the entity intends to use state highway right-of-way. The agreement must contain provisions necessary to:

(1) ensure that the local toll project entity's construction, maintenance, and operation of the project complies with the requirements of applicable state and federal law; and

(2) protect the interests of the commission and the department in the use of right-of-way for operations of the department, including public safety and congestion mitigation on the right-of-way.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.104. LIABILITY FOR DAMAGES. (a) Notwithstanding any other law, the commission and the department are not liable for any damages that result from a local toll project entity's use of state highway right-of-way or access to the state highway system under this subchapter, regardless of the legal theory, statute, or cause of action under which liability is asserted.

(b) An agreement entered into by a local toll project entity and the department in connection with a toll project that is developed, financed, constructed, or operated by the local toll project entity and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.

Sec. 373.105. COMPLIANCE WITH FEDERAL LAW. Notwithstanding an action taken by a local toll project entity under this subchapter, the commission or department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1196 (S.B. 19), Sec. 1, eff. June 17, 2011.