

DRAFT DOCUMENTS ARE SUBJECT TO CHANGE PRIOR TO COMMISSION PRESENTATION

**FINAL ADOPTION OF AMENDMENTS TO CHAPTER 27
CONCERNING DETERMINATION OF TERMS FOR CERTAIN TOLL PROJECTS**

Description

This minute order adopts new §§27.90-27.92, concerning the Determination of Terms for Certain Toll Projects, to prescribe the process for the issuance of a determination by a committee established under Transportation Code, §228.013.

Background

Transportation Code, Section 228.013, added by Senate Bill 1420, 82nd Legislature, Regular Session, 2011, makes the following requirements for certain department toll projects in which a private entity has a financial interest in the project's performance; the distribution of the project's financial risk, the method of financing for the project, and the tolling structure and methodology will be determined by a committee comprised of representatives from the department, any local toll project entity for the area in which the project is located, the applicable metropolitan planning organization, and each municipality or county that provides revenue or right of way for the project. The new sections define the circumstances in which a committee must be established and prescribe the process for a committee's issuance of its determination.

The new sections only apply to projects developed under comprehensive development agreements (CDA). Based on the terms of agreements that have been used by the department for the development, construction, and operation of toll projects, a private entity will only have a financial interest in the performance of a project developed under a CDA.

The commission, by Minute Order 112723, dated June 30, 2011, proposed the new sections. Comments were received and are addressed in Exhibit A.

Criteria

None.

Problem/Condition

The terms determined by a committee will affect the project procurement and the terms of the CDA for the toll project. Accordingly, a determination must be issued as soon as practical after a procurement has been authorized.

Other Comments

None.

Alternate Solutions/Actions

None.

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TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt new §27.90, Purpose, §27.91, Definitions, and §27.92, Financial Terms, relating to Determination of Terms for Certain Toll Projects, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that new §27.90, §27.91, and §27.92, are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

Director, Texas Turnpike Authority Division

Recommended by:

Executive Director

Minute Number	Date Passed

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1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts new
3 \$27.90, Purpose, \$27.91, Definitions, and \$27.92, Financial
4 Terms, concerning Determination of Terms for Certain Toll
5 Projects. New \$27.90 is adopted without changes to the proposed
6 text as published in the July 15, 2011 issue of the *Texas*
7 *Register* (36 TexReg 4549) and will not be republished. New
8 \$27.91 and \$27.92 are adopted with changes to the proposed text
9 as published in the July 15, 2011 issue of the *Texas Register*
10 (36 TexReg 4549).

11

12 EXPLANATION OF ADOPTED NEW SECTIONS

13 Transportation Code, §228.013, added by Senate Bill 1420, 82nd
14 Legislature, Regular Session, 2011, requires, for certain
15 department toll projects in which a private entity has a
16 financial interest in the project's performance, that the
17 distribution of the project's financial risk, the method of
18 financing for the project, and the tolling structure and
19 methodology be determined by a committee comprised of
20 representatives from the department, any local toll project
21 entity for the area in which the project is located, the
22 applicable metropolitan planning organization, and each
23 municipality or county that provides revenue or right of way for
24 the project. The new sections prescribe the process for a
25 committee's issuance of its determination.

26

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1 The new sections define the circumstances in which a committee
2 must be established and the process for the issuance of a report
3 containing the committee's determination. The terms determined
4 by a committee will affect the project procurement and the terms
5 of the comprehensive development agreement for the toll project.
6 Accordingly, a determination must be issued as soon as practical
7 after a procurement has been authorized. The new sections only
8 apply to projects developed under comprehensive development
9 agreements. Based on the terms of agreements that have been
10 used by the department for the development, construction, and
11 operation of toll projects, a private entity will only have a
12 financial interest in the performance of a project developed
13 under a comprehensive development agreement.

14

15 New §27.90 describes the purpose of the new sections.

16

17 New §27.91 defines words and terms used in the new sections.

18

19 New §27.92 provides that the new sections only apply to a
20 department toll project that will be developed under a
21 concession agreement or an availability payment contract. Of
22 the comprehensive development agreements entered into or
23 contemplated to be entered into by the department, only a
24 concession agreement or an availability payment contract
25 provides a private entity with a financial interest in the
26 project's performance.

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Exhibit A

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2 New §27.92 limits the applicability of the new sections to a
3 department toll project for which funds allocated to a
4 metropolitan planning organization or local funds are expected
5 to be used to pay for project costs, property of a municipality
6 or county is expected to be used as project right of way, or a
7 municipality or county is expected to pay for the acquisition of
8 right of way for the project. It is in the state's interest to
9 have a determination issued as soon as possible. It may not be
10 possible at that time to know with certainty whether funds
11 allocated to a metropolitan planning organization or city or
12 county funds will be used to pay for project costs.
13 Accordingly, new §27.92 provides that new Subchapter H of
14 Chapter 27 applies if those funds are expected to be used to pay
15 project costs.

16

17 Transportation Code, §228.013 does not define what funds are
18 dedicated to or controlled by a region, municipality, or county.
19 The only funds a regional body has responsibility for allocating
20 to department toll projects are the funds the Texas
21 Transportation Commission (commission) allocates to metropolitan
22 planning organizations. Funds of a city or county that are
23 granted to the municipality or county by the department and not
24 used to meet local participation requirements would not be
25 dedicated to or controlled by the municipality or county. This
26 construction of the statute is consistent with the department's

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1 understanding that the purpose of the statute is to provide
2 local and regional stakeholders with a say in project terms that
3 affect the risk of loss of local and regional funds committed to
4 a project.

5

6 As the requirements of Transportation Code, §228.013 only apply
7 to department toll projects, new §27.92 provides that for a
8 project subject to the primacy determination process established
9 in Transportation Code, Chapter 373, Subchapter B, the committee
10 shall be formed after the department exercises its option under
11 that subchapter to develop, finance, construct, and operate the
12 project. New §27.92 provides that the membership of a committee
13 will be determined after the commission authorizes the
14 department to initiate a procurement for a toll project subject
15 to the new sections.

16

17 New §27.92 also provides that a committee shall submit a report
18 to the department's executive director prior to the date the
19 department issues a request for qualifications for a toll
20 project, except for a project for which the department and a
21 local toll project entity have agreed on the terms and
22 conditions for the project under Transportation Code, §228.0111,
23 or for which a local toll project entity has waived its option
24 to develop, construct, and operate the project. For those
25 projects, many of the terms to be considered by a committee have
26 already been settled. The report for those projects must be

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1 submitted prior to the date the department issues a request for
2 proposals for the project. The terms determined by a committee
3 will affect the project procurement, the delivery method used,
4 and the terms of the comprehensive development agreement for the
5 toll project. Accordingly, a determination must be issued as
6 soon as practical after a procurement has been authorized.
7 Delay in issuing a request for qualifications or request for
8 proposals and entering into an agreement for the delivery of a
9 toll project will result in additional costs and increased
10 congestion because of the delay in completing those needed
11 projects, and will affect the ability of private entities to put
12 together proposer teams.

13

14 New §27.92 also provides that if a department toll project is
15 subject to a market valuation agreement, market valuation waiver
16 agreement, or similar agreement entered into under
17 Transportation Code, §228.0111, or a toll project agreement
18 entered into under Transportation Code, §373.006, the report may
19 not include determinations that are inconsistent with the
20 provisions of the agreement that relate to the determinations to
21 be included in the report. Such an agreement will include
22 agreed terms and conditions for the development, construction,
23 and operation of a toll project, or other terms that relate to
24 the development, construction, and operation of a toll project.
25 Those terms have already been settled and the local toll project
26 entity, the department, and the applicable region are relying on

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Exhibit A

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1 the terms of those agreements in their planning and budgeting
2 efforts.

3
4 In order to have a determination issued as soon as possible, the
5 membership of a committee could be determined before it is clear
6 whether a particular entity is required to be represented. New
7 §27.92 provides that a committee will be comprised of one member
8 appointed by each metropolitan planning organization and local
9 toll project entity within whose boundaries all or part of the
10 proposed project may be located, and one member appointed by
11 each city and county which has provided local funds to pay for
12 project costs or has provided property of the city or county for
13 use as project right of way, or has submitted to the department
14 an order or resolution adopted by the city council or county
15 commissioners court committing local funds or property to the
16 project.

17
18 New §27.92 provides that a report issued by a committee will
19 contain a determination concerning the distribution of project
20 financial risk, which is defined as the allocation of revenue
21 risk for a toll project between the department and the private
22 entity with which the department enters into an agreement for
23 the project. New §27.92 also provides that a report issued by a
24 committee will contain a determination concerning the method of
25 financing for the project, which is defined as a determination
26 of whether the project should be funded with private or public

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1 funding or a combination of private and public funding.
2 Transportation Code, §228.013 does not define those provisions.
3 The definitions in the new sections are consistent with the
4 department's understanding that the purpose of the statute is to
5 provide local and regional stakeholders with a say in project
6 terms that affect the risk of loss of local and regional funds
7 committed to a project.

8

9 New §27.92 provides that a report issued by a committee will
10 also contain a determination concerning the project's tolling
11 structure and methodology, unless the project is subject to a
12 regional tolling policy. Regional tolling policies have been
13 adopted by certain metropolitan planning organizations that
14 include, among other things, policies on toll rates and toll
15 rate escalation. The membership of a metropolitan planning
16 organization's policy board generally will include the
17 municipalities, counties, and local toll project entities that
18 would be part of a committee established under Transportation
19 Code, §228.013.

20

21 New §27.92 provides that all members of a committee must utilize
22 their best efforts to support the generation of a report, and if
23 a committee does not submit a report by the date the department
24 is scheduled to issue a request for qualifications or request
25 for proposals, as applicable, for a project, the department will
26 use any business terms applicable to the project that have been

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1 adopted by the metropolitan planning organization and that
2 relate to the determinations to be included in the report. As
3 discussed above, the membership of a metropolitan planning
4 organization's policy board generally will include the entities
5 that would be part of a committee.

6

7 New §27.92(f)(5) has been revised to delete language that
8 incorrectly indicated that these committees are advisory
9 committees.

10

11 New §27.92 includes provisions relating to committee meetings
12 and administrative support of a committee that are intended to
13 ensure the efficient operation of the committee, including
14 having a division or office of the department schedule meetings
15 for the committee and having the committee chair and the
16 department finalize meeting agendas. A committee's report may
17 only discuss items that are within the committee's jurisdiction.
18 Notices of meetings must comply with the requirements of the
19 Open Meetings Act. The department shall provide information to
20 the committee, including the project procurement schedule,
21 necessary for a committee to issue a report in a timely manner.

22

23 New §27.92 defines a quorum of a committee as one half or more
24 of the number of members appointed to the committee, and
25 provides that a committee may act only by majority vote of the
26 members present at the meeting and voting. These provisions

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1 will ensure that a committee is able to carry out its functions
2 in a timely manner.

3

4 New §27.92 provides that a committee will cease to exist after
5 submitting its report, but that the department may reconvene a
6 committee if changed circumstances may result in a change in the
7 committee's determinations.

8

9 COMMENTS

10 Comments on the proposed new sections were received from Allen
11 Clemson, Executive Director, North Texas Tollway Authority
12 (NTTA).

13

14 Comment:

15 Because other toll authorities may enter into comprehensive
16 development agreements, the NTTA requests that the definition of
17 comprehensive development agreement in §27.91 be revised to
18 clarify that these rules apply only to comprehensive development
19 agreements between the department and a private entity, as
20 authorized by Transportation Code, §223.201(a)(1).

21

22 Response:

23 The requested change has been made, with a revision that
24 recognizes that the department is authorized to enter into
25 comprehensive development agreements under various provisions in
26 Transportation Code, Chapter 223, Subchapter E, not just

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1 Transportation Code, §223.201(a)(1).

2

3 Comment:

4 NTTA requests that §27.92(a) be amended to provide that the
5 rules apply only to a department toll project, as this mirrors
6 the provisions of Transportation Code, §228.013.

7

8 Response:

9 The requested change has been made.

10

11 Comment:

12 NTTA requests that §27.92(b) be amended to provide that for a
13 project subject to Transportation Code, Chapter 373, Subchapter
14 B, a committee shall be formed after the department exercises
15 its option under that subchapter to develop, finance, construct,
16 and operate the project. These changes make it explicit that a
17 committee will be formed after the department has elected to
18 deliver the project. Only when the department exercises its
19 option is the project a department project, as specified by
20 Transportation Code, §228.013.

21

22 Response:

23 The requested change has been made.

24

25 Comment:

26 NTTA requests that §27.92(b)(3) be amended to provide that a

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1 committee will consist of one member appointed by each city or
2 county that has provided or will provide local funds to pay for
3 right of way acquisition or other project costs or to acquire
4 right of way for the project, or has provided or will provide
5 property of the city or county for use as project right of way.
6 NTTA states that there does not seem to be a requirement in the
7 statute for an agreement with the department in order to qualify
8 for representation on the committee. Instead, the focus is much
9 more practical and singular - whether funds or right of way
10 provided by the municipality or county will be used on the
11 project. Second, it appears that the support itself does not
12 have to be prospective, as the rules indicate; only the use of
13 the donation is stated in the future tense.

14

15 Response:

16 The department agrees that the support does not need to be
17 prospective, and has revised the rules to provide that a city or
18 county may appoint a member to a committee if the city or county
19 has provided local funds to pay for right of way acquisition or
20 other project costs or to acquire right of way for the project,
21 or has provided property of the city or county for use as
22 project right of way. In order to have a determination issued
23 as soon as possible, a committee will be formed and members
24 appointed as early as possible in the procurement process. It
25 is possible that the membership of a committee could be
26 determined before it is clear whether a particular entity is

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1 required to be represented. Accordingly, the department
2 believes it is reasonable and appropriate to require some
3 assurance the city or county will actually be providing funding
4 or property for the project. The rules have been revised to
5 provide that, in order to be able to appoint a member, a city or
6 county that has not already provided local funds or property for
7 the project must submit to the department an order or resolution
8 adopted by the city council or county commissioners court
9 committing local funds or property to the project.

10

11 Comment:

12 NTTA states that Senate Bill 1420 does not indicate that the
13 commission is to select a committee's chair and vice-chair.
14 Typically committees elect their own officers. NTTA requests
15 that §27.92(c) be amended to remove the provisions authorizing
16 the commission to appoint a chair and vice-chair, or to delegate
17 that responsibility to the committee, and to provide that the
18 committee will elect a chair and vice-chair.

19

20 Response:

21 Section 27.92(c) has been changed to provide that a committee
22 will, subject to the commission's concurrence, elect a chair and
23 vice-chair. The requirement for commission concurrence is
24 necessary in order to ensure the efficient operation of the
25 committee and issuance of a report, and the timely completion of
26 a project procurement.

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1

2 Comment:

3 NTTA notes that §27.92(d)(3) of the proposed rules requires a
4 project's tolling structure and methodology to be consistent
5 with agreements finalized under the former Senate Bill 792, 80th
6 Legislature, 2007, market valuation process, and states that
7 while that is appropriate, it does not go far enough in two
8 respects. First, after a local toll project entity has waived
9 its right to deliver a project on terms negotiated pursuant to
10 the market valuation process and pursuant to a market valuation
11 waiver agreement, the committee should not be allowed to alter
12 any of those terms - not just tolling structure and methodology.
13 Second, new Transportation Code, §373.006 authorizes the
14 department and a local toll project entity to agree to any
15 "alternative to the primacy determination process." A committee
16 should not be allowed to override those agreements. The local
17 toll project entity, the department, and the applicable region
18 are reasonably relying on the terms of those agreements in their
19 planning and budgeting efforts.

20

21 NTTA requests that §27.92(d) be amended to provide that if a
22 project is subject to a market valuation agreement, market
23 valuation waiver agreement, a memorandum of understanding
24 regarding market valuation, or similar agreement, or to a toll
25 project agreement under Transportation Code, §373.006, between
26 the department and a local toll project entity, the committee's

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1 report must not include determinations that are inconsistent
2 with the provisions of such an agreement or toll project
3 agreement that relate to the determinations to be included in
4 the report.

5

6 Response:

7 The requested changes have been made with minor changes in
8 wording, including recognizing that the market valuation
9 agreement or similar agreement must have been entered into under
10 Transportation Code, §228.0111.

11

12 Comment:

13 NTTA states that consistent with the statutory expectations of
14 Senate Bill 1420, a committee should have a clear mandate to use
15 good-faith efforts to issue a report. Insofar as the statute
16 makes the issuance of a report mandatory, the provision
17 anticipating a "Failure to submit report" may be problematic.
18 NTTA requests that §27.92(e) be amended to provide that all
19 members of the committee will utilize their best efforts to
20 support the generation of a report.

21

22 Response:

23 The requested change has been made.

24

25 Comment:

26 NTTA states that Senate Bill 1420 does not indicate that the

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1 department controls a committee's agenda. Committee members
2 should be able to bring matters before the committee, provided
3 they are consistent with applicable law and these rules. NTTA
4 requests that §27.92(f)(2) be amended to provide that an agenda
5 item requested by a committee member will be included on a
6 committee meeting agenda unless the chair of the committee
7 properly determines its inclusion would conflict with applicable
8 law or these rules, and to remove the requirement for department
9 approval of the agenda item.

10

11 Response:

12 The proposed rules include the requirement for chair and
13 department approval to add an agenda item in order to ensure the
14 efficient operation of the committee and issuance of a report,
15 and the timely completion of a procurement. Transportation
16 Code, §228.013 does not define a number of things relating to
17 the operation of a committee and the process for the issuance of
18 a determination that the commission needed to define by rule.
19 No change has been made.

20

21 Comment:

22 The NTTA states that sometimes it is only after a matter has
23 been raised for discussion that it becomes apparent that the
24 matter is beyond the scope of the committee's mandate. Limiting
25 discussion to matters within the committee's jurisdiction could
26 chill such deliberations. It is clear that the committee's

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1 ultimate report should be limited to matters within the
2 committee's jurisdiction. The NTTA requests that §27.92(f)(2)
3 be amended to provide that a committee's report may only discuss
4 items that are within the committee's jurisdiction.

5

6 Response:

7 The requested change has been made.

8

9 STATUTORY AUTHORITY

10 The new sections are adopted under Transportation Code,
11 §201.101, which provides the commission with the authority to
12 establish rules for the conduct of the work of the department,
13 and more specifically, Transportation Code, §223.209, which
14 requires the commission to adopt rules, procedures, and
15 guidelines governing selection of a developer for a
16 comprehensive development agreement and negotiations to promote
17 fairness, obtain private participants in projects, and promote
18 confidence among those participants.

19

20 CROSS REFERENCE TO STATUTE

21 Transportation Code, §223.209 and §228.013.

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1 SUBCHAPTER H. DETERMINATION OF TERMS FOR CERTAIN TOLL PROJECTS

2 §27.90. Purpose. Transportation Code, §228.013 requires, for
3 certain department toll projects in which a private entity has a
4 financial interest in the project's performance, that the
5 distribution of the project's financial risk, the method of
6 financing for the project, and the tolling structure and
7 methodology be determined by a committee comprised of
8 representatives from the department, any local toll project
9 entity for the area in which the project is located, the
10 applicable metropolitan planning organization, and each
11 municipality or county that provides revenue or right of way for
12 the project. This subchapter prescribes the process for a
13 committee's issuance of its determination.

14

15 §27.91. Definitions. The following words and terms, when used
16 in this subchapter, shall have the following meanings, unless
17 the context clearly indicates otherwise.

18 (1) Availability payment contract--A comprehensive
19 development agreement under which payments are made to a private
20 entity from project and other revenue to compensate the private
21 entity for capital, operating, and financial costs, which may be
22 based on the private entity's performance under the agreement.

23 (2) Commission--The Texas Transportation Commission.

NOTE: New Sections
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Exhibit B

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1 (3) Committee--A committee established under this
2 subchapter.

3 (4) Comprehensive development agreement--An agreement
4 with a private entity authorized under Transportation Code,
5 Chapter 223, Subchapter E that, at a minimum, provides for the
6 design and construction, reconstruction, extension, expansion,
7 or improvement of a toll project and may also provide for the
8 financing, acquisition, maintenance, or operation of a toll
9 project.

10 (5) Concession agreement--A comprehensive development
11 agreement under which a private entity agrees to develop,
12 finance, and construct a toll project, and to assume operation
13 or maintenance responsibilities for a toll project, in exchange
14 for rights to revenue of the project.

15 (6) Department--The Texas Department of Transportation.

16 (7) Executive director--The executive director of the
17 department or the executive director's designee.

18 (8) Local funds--Funds of a city or county, any other
19 funds paid by a city or county to meet local participation
20 requirements, and money deposited in a subaccount created under
21 Transportation Code, §228.012.

22 (9) Local toll project entity--Has the meaning assigned
23 by Transportation Code, §373.001.

NOTE: New Sections
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1 (10) Metropolitan planning organization--The organization
2 or policy board of an organization created and designated under
3 23 U.S.C. §134 and 49 U.S.C. §5303, as amended, to make
4 transportation planning decisions for a metropolitan planning
5 area in which a toll project is located and to carry out the
6 metropolitan transportation planning process.

7 (11) Toll project--Has the meaning assigned by
8 Transportation Code, §201.001.

9

10 §27.92. Financial Terms.

11 (a) Applicability. This subchapter applies only to a
12 department toll project that will be developed under a
13 concession agreement or an availability payment contract, and
14 for which:

15 (1) funds allocated to a metropolitan planning
16 organization are expected to be used to pay for project costs;

17 (2) local funds are expected to be used to pay for
18 project costs; or

19 (3) property of a city or county is expected to be used
20 as project right of way or a city or county is expected to pay
21 for the acquisition of right of way for the project.

22 (b) Formation and membership of committee. For a project
23 subject to Transportation Code, Chapter 373, Subchapter B, the

NOTE: New Sections
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1 committee shall be formed after the department exercises its
2 option under that subchapter to develop, finance, construct, and
3 operate the project. The membership of a committee shall be
4 determined after the commission authorizes the department to
5 initiate a procurement for a toll project that provides for the
6 potential delivery of the project through a concession agreement
7 or an availability payment contract. A committee consists of
8 the following members:

9 (1) one member appointed by each metropolitan planning
10 organization within whose boundaries all or part of the proposed
11 project may be located;

12 (2) one member appointed by each local toll project
13 entity within whose boundaries all or part of the proposed
14 project may be located;

15 (3) one member appointed by each city and county which
16 has:

17 (A) provided local funds to pay for right of way
18 acquisition or other project costs or to acquire right of way
19 for the project, or has provided property of the city or county
20 for use as project right of way; or

21 (B) submitted to the department an order or resolution
22 adopted by the city council or county commissioners court
23 committing local funds or property to the project; and

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1 (4) one member appointed by the executive director to
2 represent the department.

3 (c) Officers. The committee will, subject to the
4 concurrence of the commission, elect a chair and vice-chair by
5 majority vote of the members of the committee.

6 (d) Duties. A committee established under this subchapter
7 shall submit a report to the executive director before the date
8 the department issues a request for qualifications for the toll
9 project, except for a project for which the department and a
10 local toll project entity have agreed on the terms and
11 conditions for the project under Transportation Code, §228.0111,
12 or for which a local toll project entity has waived its option
13 to develop, construct, and operate the project, in which case
14 the report shall be submitted before the date the department
15 issues a request for proposals for the project. If the project
16 is subject to a market valuation agreement, market valuation
17 waiver agreement, or similar agreement entered into under
18 Transportation Code, §228.0111, or a toll project agreement
19 entered into under Transportation Code, §373.006, the report may
20 not include determinations that are inconsistent with the
21 provisions of the agreement that relate to the determinations to
22 be included in the report. A report shall contain the following
23 determinations:

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1 (1) the distribution of project financial risk, which is
2 the allocation of revenue risk for a toll project between the
3 department and the private entity with which the department
4 enters into an agreement for the project;

5 (2) the method of financing for the project, which is a
6 determination of whether the project should be funded with
7 private or public funding or a combination of private and public
8 funding; and

9 (3) unless the project is subject to a regional tolling
10 policy, the project's tolling structure and methodology.

11 (e) Failure to submit report. All members of a committee
12 will utilize their best efforts to support the generation of a
13 report. If a committee does not submit a report by the date the
14 department is scheduled to issue a request for qualifications or
15 request for proposals, as applicable, for a project, the
16 department will use any business terms applicable to the project
17 that have been adopted by the metropolitan planning organization
18 and that relate to the determinations to be included in the
19 report.

20 (f) Meetings.

21 (1) Meeting requirements. The department's Office of
22 General Counsel will submit to the Office of the Secretary of
23 State notice of a meeting of the committee at least eight days

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1 before the date of the meeting. The notice will provide the
2 date, time, place, and purpose of the meeting. A meeting of a
3 committee will be open to the public. A committee will follow
4 the agenda set for each meeting under paragraph (2) of this
5 subsection.

6 (2) Scheduling of meetings. Meeting dates, times,
7 places, and agendas will be set by the office designated under
8 subsection (g) of this section. Any committee member may
9 suggest an agenda item, provided that the agenda item must be
10 approved by the chair of the committee and the department. A
11 committee's report may only discuss items that are within the
12 committee's jurisdiction. The office designated under
13 subsection (g) of this section will provide notice of the time,
14 date, place, and purpose of meetings to the members, by mail,
15 email, telephone, or any combination of the three, at least
16 eight calendar days before each meeting. All meetings must take
17 place in Texas and must be held in a location that is readily
18 accessible to the general public.

19 (3) Committee action. A quorum of the committee is one
20 half or more of the number of members appointed to the
21 committee. A committee may act only by majority vote of the
22 members present at the meeting and voting.

23 (4) Record. Minutes of all committee meetings shall be

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1 prepared and filed with the executive director. The complete
2 proceedings of all committee meetings must also be recorded by
3 electronic means.

4 (5) Public information. All minutes, transcripts, and
5 other records of the committees are records of the department
6 and as such, are subject to disclosure under the provisions of
7 Government Code, Chapter 552.

8 (g) Administrative support. For each committee, the
9 executive director will designate an office or division of the
10 department that will be responsible for providing any necessary
11 administrative support essential to the functions of the
12 committee. The department will provide project information and
13 other information to the committee to assist the committee in
14 carrying out its duties, including the project procurement
15 schedule.

16 (h) Duration. After a committee submits the report
17 described in subsection (d) of this section, the committee
18 ceases to exist. The department may, in its discretion,
19 reconvene a committee if changed circumstances may result in a
20 change in the committee's determinations.

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