

TRANSPORTATION CODE  
CHAPTER 227. TRANS-TEXAS CORRIDOR  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 227.001. DEFINITIONS. In this chapter:

(1) "Bond" has the meaning assigned by Title 9, Government Code.

(2) "Construction" includes extension, expansion, and improvement.

(3) "Credit agreement" has the meaning assigned by Title 9, Government Code.

(4) "Facility" means:

(A) a state highway;

(B) a turnpike;

(C) a freight or passenger railroad, including a commuter railroad, intercity railroad, and high-speed railroad;

(D) a public utility facility; or

(E) any structure that is reasonably necessary for the effective operation of a method of transportation, including an intermodal transfer or staging area, weigh station, inspection station, rest area, service station, restaurant, train or bus station, warehouse, freight interchange, switching yard, maintenance yard, and pipeline pumping station.

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

(5) "Fee" includes any charge, toll, rent, lease payment, user fee, franchise fee, percentage fee, license fee, fare, tariff, or other consideration received in return for the use of:

(A) property that is part of the Trans-Texas Corridor;

(B) a facility on the Trans-Texas Corridor; or

(C) a service that is offered in connection with the Trans-Texas Corridor.

(6) "Operation" includes maintenance and repair.

(7) "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 equipment.

(8) "Trans-Texas Corridor" means the statewide system of facilities designated by the commission under this chapter.

(9) "Turnpike" has the meaning assigned to toll project under Section 201.001(b).

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.24, eff. June 14, 2005.

Sec. 227.002. RULES. The commission may adopt rules and the department may implement procedures and forms as necessary or convenient to implement and administer this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.003. APPLICABILITY. (a) All laws governing the financing, design, construction, maintenance, or operation of a highway in the state highway system apply to the financing, design, construction, maintenance, or operation of a highway under this chapter unless in conflict with this chapter.

(b) All laws governing the financing, design, construction, maintenance, or operation of a turnpike by the department apply to the financing, design, construction, maintenance, or operation of a turnpike under this chapter unless in conflict with this chapter.

(c) This chapter does not apply to real or personal property, facilities, funding, projects, operations, construction, or a project plan of a transportation authority created under Chapter 451, 452, or 460, unless the commission or its designee has signed a written agreement with the transportation authority specifying the terms and conditions under which the transportation authority may participate in the Trans-Texas Corridor.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.004. ENVIRONMENTAL DOCUMENTATION. (a) The

department shall include in a draft or final environmental impact statement prepared as part of the environmental review of a Trans-Texas Corridor project information detailing:

- (1) the reasons for the immediate and future needs of the project;
- (2) the reasonableness of and necessity for the project; and
- (3) after a segment of the project has advanced:
  - (A) the reasons for the immediate and future needs for each mode of transportation in that segment of the project; and
  - (B) the reasonableness and necessity for each mode of transportation in that segment of the project.

(b) After receiving approval from the federal government, the department shall:

(1) post the final environmental impact statement on the department's Internet website, along with information concerning where a copy of the environmental impact statement may be reviewed or obtained; and

(2) provide notice to each state senator and representative who represents all or part of the area in which a segment of the project is located, and the commissioners court of each county in which a segment of the project is located, that the environmental impact statement is available on the department's Internet website.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.25, eff. June 14, 2005.

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The department shall:

(1) seek to achieve transparency in the department's functions related to the Trans-Texas Corridor by providing, to the greatest extent possible under the public information law (Chapter 552, Government Code) and other statutes governing the access to records, public access to information collected, assembled, or maintained by the department relating to the Trans-Texas Corridor;

(2) make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor; and

(3) make public in a timely manner all updates to the master development plan for the Trans-Texas Corridor, including financial plans.

(b) The department shall send electronic versions of all updates to the master development plan for the Trans-Texas Corridor to the Governor's Office of Budget and Planning, the Senate Finance Committee, the House Appropriations Committee, the Legislative Budget Board, the state auditor's office, and the comptroller in a timely manner.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 5.01, eff. June 11, 2007.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post on the department's Internet website, in a timely manner, the costs incurred by the department in connection with the financing, design, construction, maintenance, or operation of the Trans-Texas Corridor.

(b) Not later than the 10th day after the date the department enters into a contract relating to the Trans-Texas Corridor, the department shall post a copy of the contract on the department's Internet website.

Added by Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 5.01, eff. June 11, 2007.

#### SUBCHAPTER B. ESTABLISHMENT

Sec. 227.011. DESIGNATION. The commission shall designate facilities for the Trans-Texas Corridor.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.012. ROUTE SELECTION. The commission shall consider the following criteria when selecting a route for a segment of the Trans-Texas Corridor:

- (1) current and projected traffic patterns;
- (2) the safety of motorists;
- (3) potential risks to persons from spills or accidents of any kind;
- (4) environmental effects, including the effect on air quality;
- (5) current and projected economic development;

(6) the current and projected need for additional transportation options; and

(7) system connectivity.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.013. PUBLIC PARTICIPATION. Before designating a route for a segment of the Trans-Texas Corridor, the department shall hold at least one public hearing in each county through which the segment may pass.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.014. ESTABLISHMENT OF DISCRETE SYSTEMS. (a) If the commission determines that the mobility needs of this state would be most efficiently and economically met by jointly operating two or more facilities as one operational and financial enterprise, it may create a system composed of those facilities. The commission may create more than one system and may combine two or more systems into one system. The commission may finance, construct, and operate additional facilities as an expansion of a system if the commission determines that the facilities would most efficiently and economically be constructed and operated if part of the system and that the addition will benefit the system. A system may only include facilities included in a comprehensive transportation corridor developed under a comprehensive development agreement, or facilities located wholly or partly within the territory of a metropolitan planning organization or two adjacent department districts. This section does not prohibit the department from creating a system that includes a facility that will extend continuously through the territory of two or more metropolitan planning organizations or more than two adjacent department districts.

(b) The revenue of a system must be accounted for separately and may not be commingled with the revenue of a facility that is not a part of the system.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 5.03, eff. Jan. 11, 2004.

Text of section effective until April 1, 2009

Sec. 227.015. LOCATION OF FACILITIES. Notwithstanding any other law, including Chapter 181, Utilities Code, Chapter 402, Local Government Code, and Section 49.220, Water Code, the department may:

(1) specify the location of any facility on the Trans-Texas Corridor;

(2) direct the time and manner of construction of a public utility facility on the Trans-Texas Corridor; and

(3) direct the time and manner of construction or operation of any other facility on the Trans-Texas Corridor.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(27), eff. April 1, 2009.

Text of section effective on April 1, 2009

Sec. 227.015. LOCATION OF FACILITIES. Notwithstanding any other law, including Chapter 181, Utilities Code, Chapter 552, Local Government Code, and Section 49.220, Water Code, the department may:

(1) specify the location of any facility on the Trans-Texas Corridor;

(2) direct the time and manner of construction of a public utility facility on the Trans-Texas Corridor; and

(3) direct the time and manner of construction or operation of any other facility on the Trans-Texas Corridor.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(27), eff. April 1, 2009.

#### SUBCHAPTER C. DEVELOPMENT AND OPERATION

Sec. 227.021. AUTHORITY OF DEPARTMENT. (a) The department may:

(1) construct or operate any facility as part of the Trans-Texas Corridor; or

(2) authorize a governmental or private entity to

construct or operate a facility that is part of the Trans-Texas Corridor.

(b) A governmental entity may only construct or operate a facility that is located in the geographic area within which that entity is authorized to operate.

(c) Subject to Section 227.029, the department may grant or deny access to the Trans-Texas Corridor; provided, however, the department shall grant the owner of a public utility facility that is located on the Trans-Texas Corridor reasonable access to operate and maintain the owner's public utility facility. The department may not discriminate unreasonably among users or potential users of a facility.

(d) The department may construct or contract for the construction of public utility facilities. However, the department may not directly or indirectly 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 the department 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.

(f) The department may not limit the public's direct access to or from the Trans-Texas Corridor with the intent to benefit the economic viability of an ancillary facility.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.26, eff. June 14, 2005.

Sec. 227.022. PARTICIPATION BY OTHER ENTITIES. (a) A toll or non-toll highway on the Trans-Texas Corridor that is constructed or operated by another entity shall be part of the state highway system. This subsection applies even if the entity constructing or operating the highway is not independently authorized to construct or operate a highway that is part of the state highway system.

(b) If the department authorizes another governmental entity to construct or operate a facility on the Trans-Texas Corridor, that entity has each power of the department under this chapter with respect to that facility, including the right to collect fees, except that:

(1) any property acquired by the entity shall be held in the name of the state; and

(2) the entity may not file a declaration of taking and obtain early possession of real property, unless the entity is a regional mobility authority under Chapter 370.

(c) If the department authorizes another governmental entity to construct or operate a facility on the Trans-Texas Corridor, that entity is liable for a claim relating to the Trans-Texas Corridor only to the extent that the department would be liable if it were constructing or operating the facility.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.023. PARTICIPATION BY PRIVATE ENTITIES. (a) To the maximum extent practical and economical, the department shall encourage the participation of private entities in the planning, design, construction, and operation of facilities.

(b) The department shall contract with a private entity to operate a railroad using rail facilities owned by the department and may not use department employees to operate a railroad. The department may maintain a rail facility directly or through a private entity.

(c) To the extent and in the manner that the department may enter into comprehensive development agreements under Chapter 223, the department may enter into a comprehensive development agreement under this chapter that provides for the financing, development, design, construction, or operation of a facility or a combination of facilities on the Trans-Texas Corridor. All provisions of Chapter 223 relating to comprehensive development agreements apply to comprehensive development agreements for facilities under this chapter, including provisions relating to the confidentiality of information. Claims arising under a comprehensive development agreement are subject to Section 201.112.

(d) Property that is licensed or leased to a private entity under Section 227.082 for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

(e) If a contract between the department and a private entity includes the collection by the private entity of a fee for the use of a facility or a combination of facilities that are part of the Trans-Texas Corridor, the private entity shall submit to the department for approval:

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

(f) A contract with a private entity that includes the collection by the private entity of a fee for the use of a facility may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 5.04, eff. Jan. 11, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.27, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 264, Sec. 1.03, eff. June 11, 2007.

Sec. 227.024. HIGHWAYS. A highway, including a turnpike, on the Trans-Texas Corridor is a part of the state highway system. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.025. VEHICLE SIZE AND WEIGHT LIMITS. (a) The commission may authorize the operation of a vehicle that exceeds the height, length, or gross weight limitations of Subchapter C, Chapter 621, on a segment of a highway on the Trans-Texas Corridor if supported by an engineering and traffic study that includes an analysis of the structural capacity of bridges and pavements, current and projected traffic patterns and volume, and potential effects on public safety.

(b) This section does not authorize the operation of a vehicle that exceeds a maximum axle weight authorized by Chapter 621, 622, or 623.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.026. ACQUISITION OF PERSONAL PROPERTY. (a) The department may acquire personal property, except rolling stock, under a conditional sales contract, lease, equipment trust certificate, or other form of contract or trust agreement for use in connection with a facility.

(b) The department may enter into an agreement with a rail operator, transportation common carrier, transportation system, or any other entity for the common use of any facility.

(c) The department may enter into agreements with a public or private utility, the owner or operator of a communications system, utility common carrier, or transportation system, or another entity for the common use of a public utility facility in the Trans-Texas Corridor if the department has adopted rules requiring each common user to avoid damaging any equipment that the common user does not own or operate.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.027. ENVIRONMENTAL REVIEW. (a) The department shall conduct or approve each environmental evaluation or study required for an activity associated with the Trans-Texas Corridor. This subsection 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 department is entitled to review and give final approval regarding the sufficiency of any environmental evaluation conducted for a facility within the Trans-Texas Corridor.

(b) The commission may allocate responsibilities for conducting environmental evaluations or studies or preparing environmental documentation among entities involved in the construction or operation of any facility of the Trans-Texas Corridor.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.028. ENVIRONMENTAL MITIGATION. (a) Subject to Section 201.617(a-1), the department may acquire, maintain, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating a past, present, or future adverse environmental effect arising from the construction or operation of any part of the Trans-Texas Corridor without regard to whether the need for mitigation is established for a particular project.

(b) The department may contract with a governmental or private entity to maintain, control, hold, restore, enhance, develop, or redevelop property for the mitigation of a past, present, or future adverse environmental effect arising from the construction or operation of any part of the Trans-Texas Corridor without regard to whether the need for mitigation has already been established for a particular project.

(c) If authorized by the applicable regulatory authority, the department may pay a sum of money to an appropriate governmental or private entity instead of acquiring or managing property for the mitigation of a past, present, or future adverse environmental effect arising from construction or operation of any part of the Trans-Texas Corridor without regard to whether the need for mitigation has already been established for a particular project.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.28, eff. June 14, 2005.

Sec. 227.029. RELOCATION OF EXISTING FACILITIES. (a) The department may construct a grade separation at an intersection of a Trans-Texas Corridor facility with another facility and may change the line or grade of a facility to accommodate the facility to the design of a grade separation. The department shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a facility.

(b) If the department finds it necessary to change the location of a portion of a facility, it shall reconstruct the facility at a location that the department determines restores the utility of the facility. The reconstructed facility must be of substantially the same type and in as good condition as the original facility. The department shall determine and pay the cost of the reconstruction and any damage incurred in changing the location of a facility.

(c) Except as provided in Subsections (d)-(l), this section does not apply to the conversion of any highway that is a part of the state highway system to a highway of the Trans-Texas Corridor.

(d) Notwithstanding Subsections (a) and (b), this subsection and Subsections (e)-(i) govern the relocation of a public utility facility. If the department determines that a public utility facility must be relocated, including a relocation caused by the conversion of any road that is part of the state highway system to a highway on the Trans-Texas Corridor, the utility and the department 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.

(e) The department 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 the public utility facilities. If the department and the affected utility enter into an agreement after negotiations under Subsection (d), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(f) If the department and an affected utility do not enter

into an agreement under Subsection (d), the department shall provide to the affected utility:

(1) written notice of the department'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.

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

(h) If the utility fails to enter into an agreement within the 90-day period under Subsection (g), the department 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 department 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.

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

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

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

(j) Notwithstanding Subsections (d)-(i), an owner of a public utility facility is not obligated to relocate its public utility facility on the Trans-Texas Corridor if it determines that another location is feasible.

(k) If a public utility facility is relocated on the Trans-Texas Corridor, the department shall grant the owner reasonable entry and access to operate and maintain that owner's public utility facility.

(l) Subject to Subsections (a)-(k), the department, as part of the cost of the project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsections (d)-(i).

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.29, eff. June 14, 2005.

Sec. 227.030. UNAUTHORIZED USE. The department may remove unauthorized personal property, including a vehicle, from the Trans-Texas Corridor without notice and at the owner's expense. Removed property may be stored until claimed by the owner. If a removed motor vehicle is not claimed by the owner within 72 hours after the date and time of removal, it shall be considered abandoned within the meaning of Chapter 683. The department and its employees are not liable for damage to property that is removed from the Trans-Texas Corridor under this section. Any removal or relocation of a public utility facility is governed by Sections 227.029(d)-(i) and is not governed by this section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.031. EXCLUSIVE LANES. The department may dedicate one or more lanes of a highway on the Trans-Texas Corridor to the exclusive use of designated classes of vehicles.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.032. HIGHWAYS INTERSECTING TRANS-TEXAS CORRIDOR.

(a) The department shall ensure that, at each intersection of a segment of a state highway that is designated as part of the Trans-Texas Corridor and a segment of a highway that is designated as an interstate highway, state highway, or United States highway, the Trans-Texas Corridor and the interstate highway, state highway, or United States highway are directly accessible to each other.

(b) The department shall make every reasonable effort to connect a segment of a state highway that is designated as part of the Trans-Texas Corridor with significant farm-to-market and ranch-to-market roads and major county and city arterials included in the locally adopted long-range transportation plan as determined

by the department, taking into consideration:

- (1) financial feasibility;
- (2) advice solicited from:
  - (A) county commissioners courts;
  - (B) governing bodies of municipalities; and
  - (C) metropolitan planning organizations;
- (3) circuity of travel for landowners;
- (4) access for emergency vehicles; and
- (5) traffic volume.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.30, eff. June 14, 2005.

Sec. 227.033. GROUNDWATER. (a) After receipt of an unsolicited proposal or after soliciting proposals to construct a facility for the transportation of groundwater from the county in which the groundwater is pumped or extracted, but not later than the 90th calendar day before entering into a lease agreement, license agreement, or franchise agreement for the use of any part of the Trans-Texas Corridor for that purpose, the department shall provide written notice of the proposal or the solicitation to:

(1) each groundwater conservation district, subsidence district, or other local water authority having territory in the county in which the groundwater is pumped or extracted; and

(2) the commissioners court of the county in which the groundwater is pumped or extracted.

(b) The department may not pump or extract, or allow the pumping or extracting, of groundwater from the right-of-way of the Trans-Texas Corridor unless the groundwater is needed for the construction, operation, or maintenance of a facility other than a public utility facility. If a well drilled and operated on the Trans-Texas Corridor is located inside the boundaries of a groundwater conservation district or a subsidence district, the well is subject to the rules of the district.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.30, eff. June 14, 2005.

Sec. 227.034. PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A contract for the acquisition, construction, maintenance, or operation of a facility on the Trans-Texas Corridor may not contain a provision that limits or prohibits construction or operation of a highway or other transportation project that is:

(1) included in the unified transportation program of the department in effect at the time the contract is executed;

(2) a project of a local government; or

(3) constructed or operated for the safety of pedestrian or vehicular traffic.

(b) In this section, "transportation project" has the meaning assigned by Section 370.003.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.30, eff. June 14, 2005.

#### SUBCHAPTER D. RIGHT-OF-WAY ACQUISITION

Sec. 227.041. POWERS AND PROCEDURES. (a) Except as otherwise provided by this subchapter, the commission has the same powers and duties relating to the condemnation and acquisition of real property for a facility of the Trans-Texas Corridor that the commission and the department have relating to the condemnation or purchase of real property under Subchapter D, Chapter 203, for a toll project. The commission may purchase an option to purchase property, other than real property, a property right, or a right-of-way used for a public utility facility, that the commission is considering for possible use as part of the Trans-Texas Corridor even if it has not been finally decided that the Trans-Texas Corridor will be located on that property. An option to purchase may be purchased along alternative potential routes for the Trans-Texas Corridor even if only one of those potential routes will be selected as the final route.

(b) An interest in real property or a property right is necessary or convenient for the construction or operation of a facility if it is located in or contiguous to an existing or planned segment of the Trans-Texas Corridor or is needed for mitigation of adverse environmental effects, and if its acquisition will further the primary purposes of the Trans-Texas Corridor. Primary purposes include:

(1) providing right-of-way or a location for a facility;

(2) providing land for mitigation of adverse environmental effects;

(3) providing buffer zones for scenic or safety purposes;

(4) allowing for possible future expansion of any facility; and

(5) subject to Section 203.052(c), providing a location for a gas station, convenience store, or similar ancillary facility.

(b-1) The commission may not acquire property for an ancillary facility that will be used for commercial purposes, except to provide a location between the main lanes of a highway or between a highway and a department rail facility for a gas station, convenience store, or similar facility that:

(1) provides services to and directly benefits users of the Trans-Texas Corridor; and

(2) is not located within 10 miles of an intersection of a segment of a state highway that is designated as part of the Trans-Texas Corridor and a segment of a state highway that is designated as an interstate highway.

(c) Unless in conflict with this chapter, all laws governing the acquisition of right-of-way for a state highway apply to the acquisition of right-of-way for the Trans-Texas Corridor. Sections 203.056, 203.057, and 203.058 apply to an acquisition by the department from a state agency. Compensation to a state agency under those sections shall be reasonable and may take the form of a single payment, a participation payment under Section 227.042, or both a single payment and a participation payment.

(d) If the commission acquires property not immediately needed for department purposes, the department is encouraged to acquire an option to purchase the property under Subsection (a) or to lease back purchased land under Section 227.043 to continue the agricultural or recreational use of the property.

(e) Repealed by Acts 2005, 79th Leg., 2nd C.S., Ch. 1, Sec. 7, eff. November 18, 2005.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.31, eff. June 14, 2005.

Acts 2005, 79th Leg., 2nd C.S., Ch. 1, Sec. 4, eff. November 18, 2005.

Acts 2005, 79th Leg., 2nd C.S., Ch. 1, Sec. 7, eff. November 18, 2005.

Sec. 227.0415. DEVELOPMENT RIGHTS. (a) In connection with the acquisition of property located in an existing or planned segment of the Trans-Texas Corridor for the purpose of providing a location for an ancillary facility to be used for a commercial purpose, the owner of the property to be acquired may elect to retain the right to develop the property in accordance with the department's development plans. If more than one person owns an interest in the property, the election under this subsection must be made by unanimous written consent of all persons who own an interest in the property.

(b) If the owner does not develop the property within the time period set out in the department's development plans, the department may acquire the development rights for the property by purchase or condemnation.

(c) Property that is developed by the owner under this section is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.32A, eff. June 14, 2005.

Sec. 227.042. CORRIDOR 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 department may, with the owner's consent, pay the owner by means of a corridor participation payment.

(b) A right to receive a corridor 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 of the Trans-Texas Corridor.

(c) In this section, "corridor participation payment" means an intangible legal right to receive a percentage of one or more identified fees related to a segment of the Trans-Texas Corridor.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.043. PURCHASE AND LEASEBACK. The department may acquire real property for the Trans-Texas Corridor and immediately lease it back to the former owner for a fixed or indefinite term.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.044. RIGHT OF ENTRY TO PROPERTY WITH PUBLIC UTILITY FACILITY. To ensure the safety and convenience of the public, the department shall, when entering any real property, water, or premises on which is located a public utility facility:

(1) comply with applicable industry standard safety codes and practices; and

(2) give the owner or operator of the facility not less than 10 days' notice before entering the real property, water, or premises.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.045. OTHER GOVERNMENTAL ENTITIES. If the department authorizes another governmental entity to construct or operate a segment of or a facility on the Trans-Texas Corridor, that entity has all the powers and duties of the department under this subchapter, except that the entity:

(1) may only construct or operate a facility that is located in the geographic area within which that entity is authorized to operate; and

(2) may not file a declaration of taking and obtain early possession of real property.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.046. COST OF RELOCATING PUBLIC UTILITY FACILITY.

(a) An owner of a public utility facility holding a certificate of convenience and necessity, certificate of authority, or service provider certificate of authority shall recover from the department its reasonable costs to relocate a public utility facility to accommodate the development or construction of the Trans-Texas Corridor.

(b) An owner of a public utility facility is not obligated to relocate the utility facility on the Trans-Texas Corridor if the owner determines that another location is feasible.

(c) If a public utility facility is located on the Trans-Texas Corridor, the department shall grant the owner reasonable access to operate and maintain the utility facility in accordance with industry standard safety codes and practices.

(d) Relocation of facilities pursuant to this section is subject to the department's reasonable regulations pertaining to public health, safety, and welfare.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.047. ALTERNATIVE ACCESS TO SEVERED PROPERTY. If the department acquires a tract for the Trans-Texas Corridor that severs an owner's property, the department may allow the owner to build, in compliance with federal law, an alternative access between the severed tracts below the tract acquired by the department. An owner must obtain department approval of the design specifications of the alternative access.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.32, eff. June 14, 2005.

#### SUBCHAPTER E. FINANCING

Sec. 227.061. PERMISSIBLE SOURCES OF FUNDING. Subject to Section 227.062, the department may use any available source of funding in acquiring property for, constructing, and operating the Trans-Texas Corridor, including:

(1) an appropriation from the state highway fund for construction or maintenance of highways;

(2) a fee;

(3) proceeds from a bond secured by fees;

(4) proceeds from an obligation secured by the Texas Mobility Fund;

(5) a donation, in kind or in cash;

(6) a private investment;

(7) money transferred from the state infrastructure bank;

(8) a contribution from or contractual obligation of a governmental entity; and

(9) a loan, grant, or reimbursement from the federal government, subject to Section 227.062.  
Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.062. LIMITATIONS ON DEPARTMENT FINANCIAL PARTICIPATION. (a) Each fiscal year, the total amount disbursed by the department out of the state highway fund for the following activities on the Trans-Texas Corridor may not exceed 20 percent of the obligation authority under the federal-aid highway program that is distributed to this state in that year:

- (1) acquisition of right of way;
  - (2) initial construction of toll and nontoll highways;
- and
- (3) grading and bed preparation for non-highway facilities.

- (b) The limitation under Subsection (a) does not apply to:
- (1) money spent for:
    - (A) feasibility studies, environmental studies, and preliminary engineering conducted before the initial construction of a facility; or
    - (B) operation and maintenance of a facility;
  - (2) the proceeds of bonds or other public securities issued to pay the cost of a facility if those proceeds are deposited to the credit of the state highway fund;
  - (3) revenue attributable to a facility if that revenue is deposited to the credit of the state highway fund;
  - (4) loans deposited to the credit of the state highway fund; or
  - (5) contributions from a public or private entity that are deposited to the credit of the state highway fund.

(c) The department may not spend money from the general revenue fund for the construction or purchase of non-highway facilities on the Trans-Texas Corridor except pursuant to a line-item appropriation.

(d) The commission may not disburse money out of the state highway fund for the initial construction of a facility of the Trans-Texas Corridor unless the commission finds that the disbursement will reduce traffic congestion to an extent that is comparable to the reduction in traffic congestion that would likely be achieved by spending the same amount of money on the project that is the most reasonable alternative. This subsection does not apply to the disbursement of money out of the state highway fund for environmental studies or for the acquisition of right-of-way.

(e) The commission may not disburse money from the state highway fund or the Texas mobility fund to construct a portion of the Trans-Texas Corridor unless it would replace or supplement a project identified in the department's unified transportation program or a transportation corridor identified in the statewide transportation plan.

(f) The commission may not authorize the construction of rail facilities unless it finds that the construction will reduce congestion and improve mobility.

(g) The commission may not disburse money from the state highway fund that is dedicated under Sections 7-a and 7-b, Article VIII, Texas Constitution, for activities on the Trans-Texas Corridor if as a result, the amount expended each year from those funds on the addition of capacity to the state highway system would be less than the average annual expenditure from those funds for the addition of capacity to the state highway system over the previous five years. This subsection does not apply to past expenditures for activities on the Trans-Texas Corridor.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.33, eff. June 14, 2005.

Sec. 227.063. FINANCING OF FACILITIES AND SYSTEMS. (a) The commission and the department have the same powers and duties relating to the financing of a facility or a system established under Section 227.014 as the commission and the department have under Subchapter E, Chapter 361, relating to the financing of a turnpike project, including the ability to deposit the proceeds of bonds or other obligations and to pledge, encumber, and expend such proceeds and revenues as provided by Chapter 361.

(b) The powers held by the commission and the department include the powers to:

(1) authorize the issuance of bonds to pay all or part of the cost of a facility or system or to pay for all or part of the cost of a facility or system that will become a part of another system;

(2) maintain separate accounts for bond proceeds and the revenues of a facility or system, and pledge those revenues and proceeds to the payment of bonds or other obligations issued or entered into with respect to the facility or system;

(3) impose a toll or other fee for the use of a facility or system; and

(4) obtain from another source the fees and other revenue necessary to pay all or part of the principal and interest on bonds issued under this chapter.

(c) For purposes of this section, a reference in Subchapter E, Chapter 361 to:

(1) a turnpike project means a facility or system; and

(2) revenue includes a fee established under this chapter.

(d) The proceeds of bonds issued under this chapter may be held in trust by a banking institution chosen by the department or, at the discretion of the department, in trust in the state treasury outside the general revenue fund and the state highway fund.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Sec. 227.064. LOANS AND OTHER FUNDING. The department may borrow money from the United States or use money in the state infrastructure bank created under Subchapter D, Chapter 222, to fund the construction or operation of a facility under this chapter. Money borrowed under this section may be evidenced by the issuance of bonds.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

#### SUBCHAPTER F. REVENUE

##### Sec. 227.081. FEES.

Text of subsection effective until April 1, 2009

(a) Notwithstanding any other law, including Chapters 161, 162, 163, and 181, Utilities Code, Chapter 402, Local Government Code, and Chapter 49, Water Code, and except as provided in Subsection (e), the department may require a person, including a governmental or private entity, to pay a fee as a condition of using any part of the Trans-Texas Corridor.

Text of subsection effective on April 1, 2009

(a) Notwithstanding any other law, including Chapters 161, 162, 163, and 181, Utilities Code, Chapter 552, Local Government Code, and Chapter 49, Water Code, and except as provided in Subsection (e), the department may require a person, including a governmental or private entity, to pay a fee as a condition of using any part of the Trans-Texas Corridor.

(b) The commission may establish fees to be imposed by the department under this chapter. Fees may be set as absolute amounts, as a percentage of revenue, as a percentage of actual use or throughput, as a designated portion or percentage of initial facility funding, or on any other reasonable basis. Subject to approval by a body having jurisdiction and authority to establish a tariff, the commission may establish joint fees and divisions of fees.

(c) A fee may exceed the department's costs, but the commission may not establish a fee that is prohibitive or that discriminates unreasonably among users or potential users of a facility.

(d) In establishing a fee or the amount of a fee under this section, the commission shall consider:

(1) the acquisition cost of the property being used;

(2) if applicable, the value of the property being transported or of the service being offered;

(3) any cost to the department or to the public occasioned by the use, including environmental effects;

(4) comparable fees set by the competitive marketplace; and

(5) the desirable effects of full use of the Trans-Texas Corridor on the state's economy and its residents.

Text of subsection effective until April 1, 2009

(e) If a public road is replaced or eliminated by the Trans-Texas Corridor and a facility used the right-of-way of that road under Chapter 161, 162, 163, or 181, Utilities Code, Chapter

402, Local Government Code, or Chapter 49, Water Code, the department may not require the owner of that facility to pay a fee as a condition of using a segment of the Trans-Texas Corridor for the location of a replacement facility.

Text of subsection effective on April 1, 2009

(e) If a public road is replaced or eliminated by the Trans-Texas Corridor and a facility used the right-of-way of that road under Chapter 161, 162, 163, or 181, Utilities Code, Chapter 552, Local Government Code, or Chapter 49, Water Code, the department may not require the owner of that facility to pay a fee as a condition of using a segment of the Trans-Texas Corridor for the location of a replacement facility.

(f) The department may not require the owner of a public utility facility to pay a fee as a condition of crossing the Trans-Texas Corridor. The department may not require the owner of a public utility facility to pay a fee for placing a facility along or within the Trans-Texas Corridor specifically to provide service to customers within the Trans-Texas Corridor pursuant to an obligation as a provider of last resort. The department may not require payment of a fee for use of the Trans-Texas Corridor by a public utility facility in existence before the establishment of the Trans-Texas Corridor or for use by a facility that replaces a facility in existence before the establishment of the Trans-Texas Corridor unless the owner of the existing public utility facility relocates the public utility facility into the Trans-Texas Corridor of its own volition. For use of the Trans-Texas Corridor by a public utility facility whose owner places the facility in the Trans-Texas Corridor of its own volition, the department may charge the owner a fee as negotiated between the department and the owner. The fee shall be competitively neutral and nondiscriminatory among similarly situated owners of public utility facilities. Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(28), eff. April 1, 2009.

Sec. 227.082. LEASE OF PROPERTY OR RIGHTS. (a) The department may lease property on the Trans-Texas Corridor to any public or private entity. A lease may be for a term not longer than 50 years.

(b) The department may grant a franchise to use or operate a facility on the Trans-Texas Corridor. A franchise under this section may be granted for a term not longer than 50 years.

(c) The department may grant an exclusive or nonexclusive license to access or use any portion of the Trans-Texas Corridor. A license granted under this section may be for a definite or indefinite term. The department may not grant an exclusive license to access or use a highway on the Trans-Texas Corridor. The department may not grant an exclusive license for use of the Trans-Texas Corridor by an owner of a public utility facility if the exclusive use is prohibited by other law.

(d) Property may be leased or a franchise or license granted for any purpose reasonably necessary for the effective use or operation of a facility and to provide a location between the main lanes of a highway or between a highway and a department rail facility for a gas station, convenience store, or a similar facility that:

(1) provides services to and directly benefits users of the Trans-Texas Corridor; and

(2) is not located within 10 miles of an intersection of a segment of a state highway that is designated as part of the Trans-Texas Corridor and a segment of a state highway that is designated as an interstate highway.

(e) In return for a lease, franchise, or license, the department may accept anything of value as consideration, including:

(1) a cash payment;

(2) installment payments;

(3) one or more payments based on percentages of use or throughput; and

(4) an interest in real or personal property, or an intangible legal right.

(f) The department may lease property or grant a franchise or license under this section only if each agreement has been approved by the commissioners court of the county in which the

property, facility, or other part of the Trans-Texas Corridor is located. This subsection does not apply to a lease of property or a grant of a franchise or license to a private entity for the purpose of operating a highway, turnpike, rail facility, or utility facility under a comprehensive development agreement.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 2.33A, eff. June 14, 2005.

Sec. 227.083. DISPOSITION OF FEES. To the extent that it is not dedicated to another purpose by the constitution, by statute, or by contract, or deposited to a separate account under this chapter, revenue received by the department under this chapter shall be deposited to the credit of the state highway fund and may be used for any purpose authorized by this chapter. Subchapter D, Chapter 316, Government Code, and Section 403.095, Government Code, do not apply to revenue received under this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 1.01, eff. June 21, 2003.