

---

**From:** Jim Shepherd [mailto:Jim@JShepherdLaw.com]  
**Sent:** Wednesday, October 07, 2009 7:16 PM  
**To:** 'Jerry Hoagland'; Bill Bilyeu  
**Cc:** Keith Self Judge  
**Subject:** FW: CCTRA

Bill and Jerry:

Here are the relevant materials on Texas private toll roads. Attached are the following documents:

1. Texas Civil Statutes Articles 1447 – 1465 (Title 32, Chapter 11) – the “private toll road” Articles, which were repealed by the Legislature in 1991 (House Bill 749)
2. National Tollroad Authority Texas (Perot) Articles of Incorporation for 2 of the 4 projects located in part in Collin County, filed before the June 1, 1991 deadline for grandfathering (complete NTA 2 Articles and relevant Articles for NTA 3)
3. Current Texas Administrative Code addressing Private Toll Roads
4. Current Texas Transportation Code addressing Commission Approval of Toll Roads

The first items above were repealed, primarily in response to the failed Webb county project of a private toll way into Mexico from Webb county. The second was filed before the expiration of the ability to apply under the old rules in 1991. Note it is a Collin county project. If still valid, it might provide an opportunity to proceed under the old rules, instead of the new ones, discussed below.

Pursuant to the Texas Administrative Code( item 3 above), the private toll road would have to be constructed to state requirements, and be approved by both the commission, and TXDOT if it is connected to a road, bridge, or highway on the state highway system. An applicant would need to provide to the Commission all of the following:

1. Feasibility studies, including financing and traffic data
2. Social and Environmental impact per N.E.P.A. rules.
3. Environmental documentation per TAC rules.
4. Proposal for roles of TXDOT and applicant in the design and operation of the roadway.
5. Public input and hearings reports

The commission, on considering the application for a private toll road, will also hold a public hearing, consider the input of the local MPO, and consider whether the proposed road is consistent with the regional transportation plan, as developed by the MPO. (see TAC 27.33, attached)

Pursuant to the Transportation Code, Ch. 362,  
we find the following :

**Sec. 362.102. COMMISSION APPROVAL OF PRIVATE TURNPIKE OR TOLL PROJECT REQUIRED.** Notwithstanding any other provision of law, a private entity may not construct a privately

owned turnpike or toll project that connects to a road, bridge, or highway in the state highway system unless the commission approves the private turnpike or toll project as provided by this subchapter.

The Transportation Code follows with requirements for feasibility, environmental issues, connectivity, as set forth in the chapter.

We have been told that the definition of "connected" to the state highway system may not be as broad as one would think. The example was given of the North Dallas Tollway not being "connected" to HW380, as it just met the service roads, not the main lanes. This issue would need careful consideration before the applicant took the position that the private toll road would not "connect" to the NDT or 289, and therefore did not require the state approvals required by the TAC and Transportation codes.

The bottom line is the county, either as the county, or through the CCTRA, may not approve a private tollway. Such approvals are requested of TXDOT, unless the proposed tollway is not connected to the state highway system.

If the county determines the roadway will remain a public project, then the county is also required to provide the local MPO evidence of the following before proceeding-

An action of a county taken under this chapter must comply with the requirements of applicable federal law. The foregoing compliance requirement shall apply to the role of metropolitan planning organizations under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of a county taken under this chapter, the commission or department may take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable the state to receive federal-aid highway funds. (TC sec. 284.003)

I look forward to discussing this with you during your Oct. 12 meeting.

Jim

James E. Shepherd  
Shepherd Law Firm  
Suite 200  
1901 North Central Expressway  
Richardson, Texas 75080-3558  
Phone: 972-234-3117  
Fax: 972-889-3827  
jim@jshepherdlaw.com

Information contained in this transmission is attorney privileged and confidential. It is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone. 972-234-3117