Transportation Code, §228.0111, recently repealed by Senate Bill 19, 82nd Legislature, Regular Session, 2011, established a process for providing local toll project entities, defined as regional tollway authorities, regional mobility authorities, or counties acting under Transportation Code, Chapter 284, with the first option to develop, construct, and operate toll projects located within the boundaries of the local toll project entity.

In accordance with the requirements of Transportation Code, §228.0111, the Texas Department of Transportation (department) and the counties in which State Highway 99 (Grand Parkway) is located entered into a Market Valuation Waiver Agreement, effective March 25, 2009, in which the parties agreed on the terms and conditions for the development, construction, and operation of the Grand Parkway, agreed to waive the development of a market valuation of the Grand Parkway, and agreed to certain other provisions applicable to the development, construction, and operation of the Grand Parkway.

In accordance with the requirements of Transportation Code, §228.0111(g), on September 14, 2009, Montgomery County (county) elected to exercise its option to develop, construct, and operate the portion of the Grand Parkway located within the county (project).

The Texas Legislature, in Senate Bill 19, which became effective on June 17, 2011, enacted Transportation Code, Chapter 373, establishing a new streamlined primacy determination process that replaces the market valuation and primacy determination process established in Transportation Code, §228.0111. Section 13 of Senate Bill 19 provides that the repeal of Section 228.0111 does not affect any market valuation waiver agreement or other agreement entered into between the department and a local toll project entity, or any resolution or minute order adopted by the department or a local toll project entity, under that repealed section.

However, Senate Bill 19 does not clearly provide that projects subject to the agreements, resolutions, or minute orders described in Section 13 of that bill are exempt from Chapter 373. In order to ensure the timely development of a project, it is important that it be absolutely clear whether a toll project is subject to the new primacy determination process in Chapter 373.

On June 20, 2011, the Montgomery County Commissioners Court elected to rescind the County's previous exercise of its option to develop, construct, and operate the portion of the Grand Parkway located within the county. To provide certainty for the procurement and contracting process for the project, the Montgomery County Commissioners Court further elected, pursuant to Transportation Code, §373.055, to waive and decline to exercise the county's option to develop, construct, finance, and operate the portion of the Grand Parkway project located in the county.

Transportation Code, §373.053 provides that if a local toll project entity fails or declines to exercise its option to develop, finance, construct, and operate a toll project, the department has 60 days after that date to decide whether it will exercise its option to develop, finance, construct, and
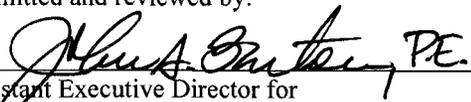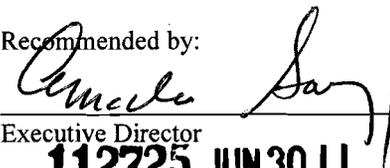
operate that project. The department has determined that its option to develop, finance, construct, and operate the portion of the Grand Parkway located within the county should be exercised.

IT IS THEREFORE ORDERED by the commission that the department's determination to exercise its option to develop, finance, construct, and operate the portion of State Highway 99 (Grand Parkway) in Montgomery County, pursuant to Transportation Code, §373.053, is approved, and the project is authorized with DEVELOP authority.

Submitted and reviewed by:

Assistant Executive Director for
Engineering Operations

Recommended by:

Executive Director

112725 JUN 30 11

Minute   Date
Number   Passed