

1 **PUBLIC-PRIVATE PARTNERSHIPS FOR**
2 **TOLLWAY FACILITIES**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sheldon L. Killpack**

6 House Sponsor: John Dougall

7 Cosponsor: Carlene M. Walker

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the ~~§→ [Motor Vehicles Code,]~~ ←§ Revenue and Taxation Code, Utah
12 Procurement Code, and the Transportation Code by amending provisions relating to
13 public-private partnerships for tollway facilities.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ provides definitions;
- 17 ▶ exempts from the privilege tax the use or possession of public property as a tollway
18 by a private entity pursuant to a tollway development agreement;
- 19 ▶ provides a procurement procedure for soliciting tollway development agreement
20 proposals;
- 21 ▶ redesignates the Tollway Restricted Account within the Transportation Fund as a
22 restricted special revenue fund;
- 23 ▶ authorizes the Department of Transportation ~~H→~~ , **with approval of the**
23a **Transportation Commission,** ←H to enter into public-private
24 partnerships for tollway facilities;
- 25 ▶ requires the department ~~H→~~ **and the commission** ←H to make rules establishing



- 25a minimum guidelines for tollway
- 26 development agreement proposals;
- 27 ▶ authorizes the department ~~H~~→ and the commission ←~~H~~ to accept solicited
- 27a and unsolicited proposals for

- 28 public-private partnerships for tollway facilities;
- 29 ▶ requires the department ~~H→~~ **and the commission** ~~←H~~ to make rules establishing
- 29a procedures for accepting
- 30 unsolicited proposals;
- 31 ▶ requires the department to engage outside counsel and consultants to provide the
- 32 state advice on developing rules and guidelines for public-private partnerships and
- 33 on evaluating the risks of a tollway development agreement proposal;
- 34 ▶ provides that toll rates on a tollway that is the subject of a tollway development
- 35 agreement shall be established in the tollway development agreement;
- 36 ▶ requires the Transportation Commission to ~~S→~~ **[makes] make** ~~←S~~ rules setting any
- 36a increases of tolls
- 37 that are greater than the increases provided in a tollway development agreement;
- 38 ▶ requires the department to submit ~~H→~~ **[certain provisions] a tollway development**
- 38a **agreement proposal** ~~←H~~ or amendments or
- 39 modifications to ~~H→~~ **[certain provisions of]** ~~←H~~ a tollway development agreement proposal to
- 40 the Transportation Commission for approval prior to entering into the tollway
- 41 development agreement;
- 42 ~~H→ [requires the department to report certain provisions or amendments or modifications~~
- 43 ~~to certain provisions of a tollway development agreement proposal to the~~
- 44 ~~Legislature prior to entering into the tollway development agreement;]~~ ~~←H~~
- 45 ▶ requires the department to report ~~H→~~ **[annually]** ~~←H~~ to the Legislature
- 45a ~~H→ [through the first year of~~
- 46 ~~operation of a tollway]~~ ~~←H~~ on the status and progress of a tollway; and
- 47 ▶ makes technical changes.
- 48 **Monies Appropriated in this Bill:**
- 49 None
- 50 **Other Special Clauses:**
- 51 None
- 52 **Utah Code Sections Affected:**
- 53 AMENDS:
- 54 **59-4-101**, as last amended by Chapter 182, Laws of Utah 2003
- 55 **72-2-120**, as last amended by Chapter 245, Laws of Utah 2005
- 56 **72-6-118**, as last amended by Chapter 245, Laws of Utah 2005
- 57 ENACTS:
- 58 **63-56-502.5**, Utah Code Annotated 1953



- 59 **72-6-201**, Utah Code Annotated 1953
- 60 **72-6-202**, Utah Code Annotated 1953
- 61 **72-6-203**, Utah Code Annotated 1953
- 62 **72-6-204**, Utah Code Annotated 1953
- 63 **72-6-205**, Utah Code Annotated 1953
- 64 **72-6-206**, Utah Code Annotated 1953



66 *Be it enacted by the Legislature of the state of Utah:*

67 Section 1. Section **59-4-101** is amended to read:

68 **59-4-101. Tax basis -- Exceptions -- Assessment and collection.**

69 (1) (a) Except as provided in Subsections (1)(b) and (c), a tax is imposed on the
70 possession or other beneficial use enjoyed by any person of any real or personal property which
71 for any reason is exempt from taxation, if that property is used in connection with a business
72 conducted for profit.

73 (b) Any interest remaining in the state in state lands after subtracting amounts paid or
74 due in part payment of the purchase price as provided in Subsection 59-2-1103(2)(b)(i) under a
75 contract of sale is subject to taxation under this chapter regardless of whether the property is
76 used in connection with a business conducted for profit.

77 (c) The tax imposed under Subsection (1)(a) does not apply to property exempt from
78 taxation under Section 59-2-1114.

79 (2) The tax imposed under this chapter is the same amount that the ad valorem property
80 tax would be if the possessor or user were the owner of the property. The amount of any
81 payments which are made in lieu of taxes is credited against the tax imposed on the beneficial
82 use of property owned by the federal government.

83 (3) A tax is not imposed under this chapter on the following:

84 (a) the use of property which is a concession in, or relative to, the use of a public
85 airport, park, fairground, or similar property which is available as a matter of right to the use of
86 the general public;

87 (b) the use or possession of property by a religious, educational, or charitable
88 organization;

89 (c) the use or possession of property if the revenue generated by the possessor or user

90 of the property through its possession or use of the property inures only to the benefit of a
 91 religious, educational, or charitable organization and not to the benefit of any other person;

92 (d) the possession or other beneficial use of public land occupied under the terms of an
 93 agricultural lease or permit issued by the United States or this state;

94 (e) the use or possession of any lease, permit, or easement unless the lease, permit, or
 95 easement entitles the lessee or permittee to exclusive possession of the premises to which the
 96 lease, permit, or easement relates. Every lessee, permittee, or other holder of a right to remove
 97 or extract the mineral covered by the holder's lease, right, permit, or easement except from
 98 brines of the Great Salt Lake, is considered to be in possession of the premises,
 99 notwithstanding the fact that other parties may have a similar right to remove or extract another
 100 mineral from the same lands or estates; [or]

101 (f) the use or possession of property by a public agency, as defined in Section
 102 11-13-103, to the extent that the ownership interest of the public agency in that property is
 103 subject to a fee in lieu of ad valorem property tax under Section 11-13-302[:]; or

104 (g) the possession or beneficial use of public property as a tollway by a private entity
 105 through a tollway development agreement as defined in Section 72-6-202.

106 (4) A tax imposed under this chapter is assessed to the possessors or users of the
 107 property on the same forms, and collected and distributed at the same time and in the same
 108 manner, as taxes assessed owners, possessors, or other claimants of property which is subject to
 109 ad valorem property taxation. The tax is not a lien against the property, and no tax-exempt
 110 property may be attached, encumbered, sold, or otherwise affected for the collection of the tax.

111 Section 2. Section **63-56-502.5** is enacted to read:

112 **63-56-502.5. Definitions -- Procurement of tollway development agreements.**

113 (1) As used in this section:

114 (a) "Department" means the Department of Transportation.

115 (b) "Tollway development agreement" has the same meaning as defined in Section
 116 72-6-202.

117 (2) The department ~~H~~ and the Transportation Commission ~~H~~ :

117a ~~H~~ (a) may solicit a tollway development agreement proposal by following the
 117b requirements of this section;

118 [~~(a)~~] (b) ~~H~~ may award a solicited tollway development agreement contract for any tollway
 119 project by following the requirements of this section; and

120 ~~H~~ [~~(b)~~] (c) ~~H~~ shall make rules, by following the procedures and requirements of
 120a Title 63, Chapter

121 46a, Utah Administrative Rulemaking Act, establishing requirements for the procurement of
122 tollway development agreement proposals in addition to those required by this section.

123 (3) (a) Before entering into a tollway development agreement, the department may
124 issue a request for qualifications to prequalify potential contractors.

125 (b) Public notice of the request for qualifications shall be given in accordance with
126 policy board rules.

127 (c) The department shall require, as part of the qualifications specified in the request
128 for qualifications, that potential contractors at least provide:

129 (i) a demonstration of their experience with other transportation concession projects
130 with attributes similar to the project being procured;

131 (ii) a financial statement of the firm or consortium of firms making the proposal;

132 (iii) a conceptual project development plan and financing plan;

133 (iv) the legal structure of the firm or consortium of firms making the proposal;

134 (v) the organizational structure for the project; and

135 (vi) a statement describing why the firm or consortium of firms is best qualified for the
136 project.

137 (d) The request for qualifications shall identify the number of eligible competing
138 proposers that the department will select to submit a proposal.

139 (4) The department shall:

140 (a) evaluate the responses received from the request for qualifications;

141 (b) select from their number those qualified to submit proposals; and

142 (c) invite those respondents to submit proposals based upon the department's request
143 for proposals.

144 (5) The department shall issue a request for proposals to those qualified respondents
145 that may require, as appropriate for the procurement:

146 (a) a description of the proposed project or projects;

147 (b) a financial plan for the project, including:

148 (i) the anticipated financial commitment of all parties;

149 (ii) equity, debt, and other financing mechanisms;

150 (iii) an analysis of the projected return, rate of return, or both; and

151 (iv) the monetary benefit and other value to a government entity;

- 152 (c) assumptions about user fees or toll rates; ~~H→~~ [and] ~~←H~~
 153 (d) a project development and management plan, including:
 154 (i) the contracting structure;
 155 (ii) the plan for quality management;
 156 (iii) the proposed toll enforcement plan; and
 157 (iv) the plan for safety management ~~H→~~ ; and
 157a (e) the proposal to comply with the minimum guidelines for tollway development
 157b agreement proposals under Section 72-6-204 ~~←H~~ .
 158 (6) The department ~~H→~~ and the Transportation Commission [shall] ~~←H~~ :
 159 (a) ~~H→~~ shall ~~←H~~ evaluate the submissions received in response to the request for
 159a proposals from the
 160 prequalified proposers;
 161 (b) ~~H→~~ shall ~~←H~~ comply with rules relating to discussion of proposals, best and
 161a final offers, and
 162 evaluations of the proposals submitted; and
 163 (c) ~~H→~~ may ~~←H~~ after considering price and other identified factors ~~H→~~ and complying
 163a with the requirements of Section 72-6-206 ~~←H~~ , award the contract to the
 164 responsible proposer whose proposal is most advantageous to the state.
 165 Section 3. Section 72-2-120 is amended to read:
 166 **72-2-120. Tollway Restricted Special Revenue Fund -- Revenue -- Nonlapsing.**
 167 (1) There is created [~~within the Transportation Fund a restricted account~~] a restricted
 168 special revenue fund known as the "Tollway [~~Restricted Account~~] Restricted Special Revenue
 169 Fund."
 170 (2) The [~~account~~] fund shall be funded from the following sources:
 171 (a) tolls collected by the department under Section 72-6-118;
 172 (b) funds received by the department through a tollway development agreement under
 173 Section 72-6-203;
 174 [~~(b)~~] (c) appropriations made to the [~~account~~] fund by the Legislature;
 175 [~~(c)~~] (d) contributions from other public and private sources for deposit into the
 176 [~~account~~] fund;
 177 [~~(d)~~] (e) interest earnings on cash balances; and
 178 [~~(e)~~] (f) all monies collected for repayments and interest on [~~account~~] fund monies.
 179 (3) All monies appropriated to the [~~account~~] fund are nonlapsing.
 180 [~~(4) (a) Monies shall be appropriated by the Legislature from the restricted account to~~
 181 the commission for tollway purposes.]
 182 (4) The Division of Finance shall create a subaccount for each tollway as defined in

183 Section 72-6-118.

184 [~~(b)~~] (5) The commission may authorize the monies [~~under Subsection (4)(a)~~]
185 deposited into the fund to be spent by the department to establish and operate tollways and
186 related facilities, including design, construction, reconstruction, operation, maintenance,
187 enforcement, impacts from tollways, and the acquisition of right-of-way.

188 Section 4. Section **72-6-118** is amended to read:

189 **72-6-118. Definitions -- Establishment and operation of tollways -- Imposition**
190 **and collection of tolls -- Amount of tolls -- Rulemaking.**

191 (1) As used in this section:

192 (a) "High occupancy toll lane" means a high occupancy vehicle lane designated under
193 Section 41-6a-702 that may be used by an operator of a vehicle carrying less than the number
194 of persons specified for the high occupancy vehicle lane if the operator of the vehicle pays a
195 toll or fee.

196 (b) "Toll" means any tax, fee, or charge assessed for the specific use of a tollway.

197 (c) "Toll lane" means a designated new highway or additional lane capacity that is
198 constructed, operated, or maintained for which a toll is charged for its use.

199 (d) (i) "Tollway" means a highway, highway lane, bridge, path, tunnel, or right-of-way
200 designed and used as a transportation route that is constructed, operated, or maintained through
201 the use of toll revenues.

202 (ii) "Tollway" includes a high occupancy toll lane and a toll lane.

203 (e) "Tollway development agreement" has the same meaning as defined in Section
204 72-6-202.

205 (2) Subject to the provisions of Subsection (3), the department may:

206 (a) establish, expand, and operate tollways and related facilities for the purpose of
207 funding in whole or in part the acquisition of right-of-way and the design, construction,
208 reconstruction, operation, enforcement, and maintenance of or impacts from a transportation
209 route for use by the public;

210 (b) enter into contracts, agreements, licenses, franchises, tollway development
211 agreements, or other arrangements to implement this section; [~~and~~]

212 (c) impose and collect tolls on any tollway established under this section[~~;~~]; and

213 (d) grant exclusive or nonexclusive rights to a private entity to impose and collect tolls

214 pursuant to the terms and conditions of a tollway development agreement.

215 (3) (a) Except as provided under Subsection (3)(d), the department or other entity may
216 not establish or operate a tollway on an existing state highway, except as approved by the
217 commission and the Legislature.

218 (b) Between sessions of the Legislature, a state tollway may be designated or deleted if:

219 (i) approved by the commission in accordance with the standards made under this
220 section; and

221 (ii) the tollways are submitted to the Legislature in the next year for legislative
222 approval or disapproval.

223 (c) In conjunction with a proposal submitted under Subsection (3)(b)(ii), the
224 department shall provide a description of the tollway project, projected traffic, the anticipated
225 amount of tolls to be charged, and projected toll revenue.

226 (d) If approved by the commission, the department may:

227 (i) establish high occupancy toll lanes on existing state highways; and

228 (ii) establish tollways on new state highways or additional capacity lanes.

229 (4) ~~[H]~~ (a) Except as provided in Subsection (4)(b), in accordance with Title 63,
230 Chapter 46a, Utah Administrative Rulemaking Act, the commission shall:

231 (i) set the amount of any toll imposed or collected on a tollway on a state highway[-];
232 and

233 (ii) for tolls established under Subsection (4)(b), set:

234 (A) an increase in a toll rate or user fee above an increase specified in a tollway
235 development agreement; or

236 (B) an increase in a toll rate or user fee above a maximum toll rate specified in a
237 tollway development agreement.

238 (b) A toll or user fee and an increase to a toll or user fee imposed or collected on a
239 tollway on a state highway that is the subject of a tollway development agreement shall be set
240 in the tollway development agreement.

241 (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
242 the department shall make rules:

243 (i) necessary to establish and operate tollways on state highways; and

244 (ii) that establish standards and specifications for automatic tolling systems.

245 (b) The rules shall:
 246 (i) include minimum criteria for having a tollway; and
 247 (ii) conform to regional and national standards for automatic tolling.
 248 (6) (a) The commission may provide funds for public or private tollway pilot projects
 249 or high occupancy toll lanes from General Fund monies appropriated by the Legislature to the
 250 commission for that purpose.

251 (b) The commission may determine priorities and funding levels for tollways
 252 designated under this section.

253 (7) (a) ~~[AH]~~ Except as provided in Subsection (7)(b), all revenue generated from a
 254 tollway on a state highway shall be deposited into the Tollway Restricted ~~[Account]~~ Special
 255 Revenue Fund created in Section 72-2-120 and used for acquisition of right-of-way and the
 256 design, construction, reconstruction, operation, maintenance, ~~[and]~~ enforcement of
 257 transportation facilities, and other facilities used exclusively for the operation of a tollway
 258 facility within the corridor served by the tollway.

259 (b) Revenue generated from a tollway that is the subject of a tollway development
 260 agreement shall be deposited into the Tollway Restricted Special Revenue Fund and used in
 261 accordance with Subsection (7)(a) unless:

- 262 (i) the revenue is to a private entity through the tollway development agreement; or
- 263 (ii) the revenue is identified for a different purpose under the tollway development
- 264 agreement.

265 Section 5. Section **72-6-201** is enacted to read:

266 **Part 2. Public-Private Partnerships for Tollways Act**

267 **72-6-201. Title.**

268 This part is known as the "Public-Private Partnerships for Tollways Act."

269 Section 6. Section **72-6-202** is enacted to read:

270 **72-6-202. Definitions.**

271 As used in this part:

- 272 (1) "High occupancy toll lane" has the same meaning as defined in Section 72-6-118.
- 273 (2) "Toll" has the same meaning as defined in Section 72-6-118.
- 274 (3) "Toll lane" has the same meaning as defined in Section 72-6-118.
- 275 (4) "Tollway" has the same meaning as defined in Section 72-6-118.

276 (5) (a) "Tollway development agreement" means a contractual agreement with a public
 277 or private entity that provides for any predevelopment activities, design, construction,
 278 reconstruction, financing, acquisition, maintenance, or operation of a tollway or any or all of
 279 them.

280 (b) "Tollway development agreement" may include:

281 (i) predevelopment agreements;

282 (ii) franchise and concession agreements;

283 (iii) leases;

284 (iv) right-of-entry agreements;

285 (v) financial participation agreements;

286 (vi) other financing agreements;

287 (vii) design-build agreements;

288 (viii) operating agreements;

289 (ix) agreements for services of independent engineers;

290 (x) agreements for the enforcement of tolls on a tollway; or

291 (xi) any combination of Subsections ~~§~~ [(1)] (5) ~~←~~§ (b)(i) through (x).

292 Section 7. Section **72-6-203** is enacted to read:

293 **72-6-203. Authority to enter into public-private partnership agreements for**
 294 **tollways.**

295 (1) Subject to the provisions of this part, the department may:

296 (a) enter into a tollway development agreement with one or more public or private
 297 entities to permit the entity or entities to, independently or jointly with the department, study,
 298 perform predevelopment activities, design, finance, acquire, construct, reconstruct, maintain,
 299 repair, operate, extend, or expand a tollway facility;

300 (b) enter into an agreement with other public agencies or private entities to
 301 independently or jointly provide services, or to study the feasibility of a tollway; and

302 (c) negotiate the terms of private participation in a tollway, including:

303 (i) methods to determine the applicable cost, profit, and revenue distribution between
 304 the private participants and the department;

305 (ii) a reasonable method to determine toll rates or user fees, including:

306 (A) identification of vehicle or user classifications, or both, for toll rates;

- 307 (B) the original proposed toll rate or user fee for the tollway facility;
- 308 (C) proposed toll rate or user fee increases; and
- 309 (D) a maximum toll rate or user fee for the tollway facility;
- 310 (iii) acceptable safety and policing standards; and
- 311 (iv) other applicable professional, consulting, design, engineering, construction,
- 312 operation and maintenance standards, requirements, expenses, and costs;
- 313 (d) grant to a private entity through a tollway development agreement the right to
- 314 impose and collect tolls or user fees under Section 72-6-118 and the right to enforce toll
- 315 violations; and
- 316 (e) provide to the private entity, on mutually agreed terms, services in support of the
- 317 tollway development, operation, and maintenance including planning, environmental review,
- 318 design, right-of-way acquisition, oversight, inspection and monitoring, maintenance, and
- 319 policing.
- 320 (2) The department shall engage outside consultants and counsel to:
- 321 (a) provide the state with professional services, including legal and financial guidance,
- 322 to develop rules and guidelines for public-private partnerships;
- 323 (b) assist the department in evaluating the risks and benefits of a proposed
- 324 public-private partnership; and
- 325 (c) assist in the selection and terms of a tollway development agreement.
- 326 (3) A tollway development agreement entered into under this section shall include:
- 327 (a) a provision for the application of tolls and other operating revenues to the payment
- 328 of operating and maintenance costs, indebtedness by the private entity for the tollway, reserves
- 329 for reconstruction, rehabilitation, resurfacing and restoration, return on equity or investment,
- 330 and sums owing the department;
- 331 (b) a provision authorizing the department to purchase, under terms agreed to by the
- 332 parties, the interest of a private participant in a tollway development agreement; and
- 333 (c) a provision requiring that, at the termination of the tollway development agreement,
- 334 the tollway project shall:
- 335 (i) be in a state of proper maintenance as outlined in the agreement and determined by
- 336 the department; and
- 337 (ii) be returned to the department in satisfactory condition at no further cost to the

338 department.

339 (4) A tollway development agreement entered into under this section may include:

340 (a) allocations of liability, risk, and responsibility;

341 (b) combinations of public and private funding and financing;

342 (c) compensation to the department for the grant of the tollway development agreement
343 or the right to impose and collect tolls;

344 (d) participation by the department in tollway revenue, proceeds of refinancings and
345 proceeds of sale of the tollway or interests in the private entity;

346 (e) extensions of time for, and exceptions to, performance by the private entity and
347 compensation from the department to the private entity, due to stated events or circumstances;

348 (f) requirements for performance security, including payment and performance bonds,
349 letters of credit, security deposits, guarantees, and similar protections;

350 (g) rights and obligations to expand the tollway, extend the tollway, add capacity
351 improvements, add intelligent transportation systems, and otherwise upgrade the tollway during
352 the term of the tollway development agreement;

353 (h) alternative dispute resolution procedures;

354 (i) limitations on liability and waivers of consequential damages;

355 (j) lender rights and protections; and

356 (k) other terms necessary or desirable to attract private investment and protect the
357 department's interests.

358 (5) (a) A tollway that is the subject of a tollway development agreement with a private
359 entity, including the facilities acquired or constructed on the tollway, is public property and
360 title to the tollway and facilities is vested in the state.

361 (b) A tollway that is the subject of a tollway development agreement is part of the state
362 highway system for purposes of identification, maintenance, enforcement of traffic laws, and
363 other purposes.

364 (c) The department may enter into one or more agreements that provide for:

365 (i) the lease of rights-of-way, improvements, and all or any portion of the
366 appurtenances over and under the tollway facility to the private entity for a term ending not
367 later than 99 years after commencement of revenue operations, provided that the agreement
368 provides upon termination for reversion of the leased property, together with the right to

369 impose and collect tolls, to the department;

370 (ii) the granting of easements;

371 (iii) the issuance of franchises, licenses, or permits; or

372 (iv) any other lawful uses to enable a private entity to construct, operate, maintain, or

373 finance a tollway.

374 Section 8. Section **72-6-204** is enacted to read:

375 **72-6-204. Minimum requirements for a tollway development agreement proposal.**

376 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
377 department ~~H~~→ and the commission ←~~H~~ shall make rules establishing minimum guidelines
377a for tollway development

378 agreement proposals.

379 (2) The guidelines under Subsection (1) shall require the proposal to include:

380 (a) a map indicating the location of the tollway facility;

381 (b) a description of the tollway facility;

382 (c) a list of the major permits and approvals required for developing or operating

383 improvements to the tollway facility from local, state, or federal agencies and a projected

384 schedule for obtaining the permits and approvals;

385 (d) a description of the types of public utility facilities, if any, that will be crossed by

386 the tollway facility and a statement of the plans to accommodate the crossing;

387 (e) an estimate of the design and construction costs of the tollway facility;

388 (f) a statement setting forth the private entity's general plans for developing or

389 operating the tollway facility, including identification of any revenue, public or private, or

390 proposed debt or equity investment proposed by the private entity;

391 (g) a statement of the estimated level of funding, if any, required to be provided by the

392 state;

393 (h) the name and addresses of the persons who may be contacted for further

394 information concerning the tollway development agreement proposal; and

395 (i) any other material or information that the department requires by rules made under

396 this section.

397 (3) The department is not required to review a tollway development agreement

398 proposal if it determines that the proposal does not meet the guidelines established under this

399 section.

400 Section 9. Section **72-6-205** is enacted to read:

401 **72-6-205. Solicited and unsolicited tollway development agreement proposals.**

402 (1) In accordance with this section, the department may:

403 (a) accept unsolicited tollway development agreement proposals; or

404 (b) solicit tollway development agreement proposals for a proposed project.

405 (2) The department shall solicit tollway development agreement proposals in
406 accordance with Section 63-56-502.5.

407 (3) In accordance with Title 63, Chapter, 46a, Utah Administrative Rulemaking Act,
408 the department ~~H~~ and the commission ~~H~~ shall establish rules and procedures for accepting
408a unsolicited proposals that
409 require the:

410 (a) private entity that submits the unsolicited proposal to comply with the minimum
411 requirements for tollway development agreement proposals under Section 72-6-204;

412 (b) department to issue a request for competing proposals and qualifications that
413 includes:

414 (i) a description of the proposed tollway development facility and the terms and
415 conditions of a tollway development agreement;

416 (ii) submittal requirements;

417 (iii) the criteria to be used to evaluate the proposals;

418 (iv) the relative weight given to the criteria; and

419 (v) the deadline by which competing proposals must be received; and

420 (c) department to publish a notice advertising the request for competing proposals and
421 providing information regarding how to obtain a copy of the request.

422 (4) (a) The department may establish a fee in accordance with Section 63-38-3.2 for
423 reviewing unsolicited proposals and competing proposals submitted under this section.

424 (b) The department may waive the fee under Subsection (4)(a) if it determines that it is
425 reasonable and in the best interest of the state.

426 Section 10. Section **72-6-206** is enacted to read:

427 **72-6-206. Commission approval and legislative review of tollway development**
428 **agreement provisions.**

429 (1) Prior to the department entering into a tollway development agreement under
430 Section 72-6-203, the department shall ~~H~~ [:

431 ~~_____ (a) ←H submit to the commission for approval the H→ [following included~~
431a ~~in-a] ←H tollway~~
432 ~~development agreement H→ , including ←H :~~
433 ~~H→ [(i)] (a) ←H a description of the tollway facility, including the conceptual design~~
433a ~~of the facility~~
434 ~~and all proposed interconnections with other transportation facilities;~~
435 ~~H→ [(ii)] (b) ←H the proposed date for development, operation, or both of the~~
435a ~~tollway facility;~~
436 ~~H→ [(iii)] (c) ←H the proposed term of the tollway development agreement;~~
437 ~~H→ [(iv)] (d) ←H the proposed method to determine toll rates or user fees, including:~~
438 ~~H→ [(A)] (i) ←H identification of vehicle or user classifications, or both, for toll rates;~~
439 ~~H→ [(B)] (ii) ←H the original proposed toll rate or user fee for the tollway facility;~~
440 ~~H→ [(C)] (iii) ←H proposed toll rate or user fee increases; and~~
441 ~~H→ [(D)] (iv) ←H a maximum toll rate or user fee for the tollway facility; and~~
442 ~~H→ [(v)] (e) ←H any proposed revenue, public or private, or proposed debt or equity~~
442a ~~investment that~~
443 ~~will be used for the design, construction, financing, acquisition, maintenance, or operation of~~
444 ~~the tollway facility H→ [; and~~
445 ~~_____ (b) submit the provisions of a proposed tollway development agreement approved by~~
446 ~~the commission under Subsection (1)(a) to the Executive Appropriations Committee and the~~
447 ~~Transportation Interim Committee or another committee designated by the Legislative~~
448 ~~Management Committee for review prior to entering into the agreement] ←H .~~
449 (2) Prior to amending or modifying H→ [a provision of] ←H a tollway development
449a agreement
450 H→ [specified under Subsection (1)(a)] ←H , the department shall H→ [;
451 ~~_____ (a) ←H submit the proposed amendment or modification to the commission for~~
451a ~~approval H→ [;~~
452 ~~and~~
453 ~~_____ (b) report the proposed amendment or modification approved by the commission under~~
454 ~~Subsection (2)(a) to the Executive Appropriations Committee and the Transportation Interim~~
455 ~~Committee or another committee designated by the Legislative Management Committee for~~
456 ~~review] ←H .~~
457 (3) The department shall report H→ [annually] ←H to the Executive Appropriations
457a Committee,
458 Transportation Interim Committee, or another committee designated by the Legislative

459 Management Committee ~~H~~→ ~~[through the first year of operation]~~ on the status and progress ←~~H~~
459a of a tollway subject to a tollway
460 development agreement under Section 72-6-203 ~~H~~→ ~~[on the status and progress of the~~
460a tollway] ←~~H~~ .

Legislative Review Note

as of 1-27-06 10:12 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel