

PUBLIC CHAPTER NO. 597**SENATE BILL NO. 1152****By Black****Substituted for: House Bill No. 1204****By Pinion, Fraley, Harmon, Hardaway, Shaw**

AN ACT to amend Tennessee Code Annotated, Title 4; Title 9; Title 12; Title 54; Title 55 and Title 67, to enact the "Tennessee Tollway Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 54, is amended by adding Sections 2 through 13 as a new, appropriately designated chapter.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Tollway Act".

SECTION 3. (a) It is the intent of the general assembly to supplement this title by authorizing tolling as an additional and alternative method for funding or financing the development and operation of highways and appurtenant facilities or other transportation-related facilities.

(b) The development of any tollway or toll facility project by or under the authority of the department shall be in accordance with the department's long-range statewide transportation plan. The department shall specifically identify any proposed tollway or toll facility project in the transportation improvement program furnished to the general assembly in support of the commissioner's annual funding recommendations. For each tollway or toll facility project included in such transportation improvement program there shall be submitted to the general assembly, either with such transportation improvement program upon its submission to the general assembly or prior thereto, any plans, feasibility analysis and other such information as may be available that describes the proposed project, the need for such project and any other information upon which the decision of the commissioner to recommend such project was based. No further development of any such tollway or toll facility project shall occur until the commissioner's annual funding recommendations, including the proposed tollway or toll facility project, have been approved by the general assembly pursuant to the express provisions of the General Appropriations Act or as otherwise provided by law.

(c) The development of any tollway or toll facility project by or under the authority of the department shall consider alternatives to the project, shall consider the economic, social and environmental effects of

the tollway project, and shall consider the findings of the environmental evaluation process and public comments, including comments from any metropolitan planning organization and/or rural planning organization in which the project is located, before developing any final construction plans for the tollway or toll facility. If the proposed project involves federal aid funding or constitutes a major federal action, the department's environmental evaluation process shall be subject, as applicable, to the National Environmental Policy Act of 1969, as amended. If the proposed project does not involve federal aid funding and does not otherwise constitute a major federal action, it shall be subject to environmental evaluation and documentation in accordance with such policies and procedures as the department may establish.

(d) The development of any tollway or toll facility project by or under the authority of the department shall be subject to public hearings conducted in accordance with such procedures as the department may establish. The department shall hold the public hearings at convenient locations during the environmental evaluation of the project and prior to plans for the tollway project being finally adopted.

(e) The environmental evaluation and public hearing provisions of subsections (c) and (d) of this section shall not apply to the authorization, sale or issuance of bonds under this chapter.

SECTION 4. When used in this chapter:

(1) "Ancillary agreements" means contracts or agreements facilitating the issuance and sale of bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto;

(2) "Bonds" means any bonds, notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, debentures, warrants, commercial paper, or other obligations or any other evidence of indebtedness or evidence of borrowed money issued or entered into by or on behalf of the department to finance tollway projects;

(3) "Commissioner" means the Commissioner of the State of Tennessee Department of Transportation;

(4) "Department" means the State of Tennessee department of transportation;

(5) "Develop" or "development" means the entire process of bringing a tollway or toll facility project to completion, including without limitation planning, feasibility analysis, environmental evaluation, preliminary engineering, design, acquisition of rights-of-way, relocation of utilities, permitting, environmental mitigation, contracting, funding and construction;

(6) "Hedging agreements" means interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements, relating to bonds;

(7) "Operate" or "operation" means any activity associated with the management, operation and maintenance of a completed tollway project, including, without limitation, collecting tolls; installing, repairing, or replacing equipment; maintenance, repair, or improvement of the tollway facility; the payment of debt service on bonds, amounts payable under hedging agreements and ancillary agreements and other costs related thereto; the payment of salaries, benefits and other costs of employees or employment necessary to the operation of tollways and toll facilities, including the collection of tolls and the payment of costs of operation and debt service; contracting or administering contracts related to any such activity; and the funding or financing of any such activity;

(8) "State funding board" means the state funding board established in Tennessee Code Annotated, § 9-9-101;

(9) "State tollway fund" means each separate fund established in accordance with Section 6, or all such funds as the context may require, and shall include any accounts and subaccounts therein;

(10) "Toll" means any fee or charge for the use of a tollway or toll facility;

(11) "Tollway" or "toll facility" means any highway, bridge, tunnel, parking lot or garage, and/or other paved surface or structure designed to carry or contain land transportation vehicles, or any other transportation-related facility, the development or operation of which may be wholly or partially funded or financed with toll revenues;

(12) "Tollway project" or "toll facility project" means any capital project involving the development or operation of a tollway or toll facility; and

(13) "Toll revenue" means revenues or monies received by the department from the collection of tolls; from any lease, concession, franchise, license, or other agreement for the right to operate all or part of a tollway, toll facility, or an appurtenant facility; and any other revenues or monies received by the department from the operation of a tollway or toll facility.

SECTION 5. (a) The department is hereby authorized to develop tollway or toll facility projects and to operate tollways or toll facilities as further provided in this chapter.

(b) In order to develop and operate tollways or toll facilities, the department may expend funds from the state tollway fund and the state highway fund as appropriated by the general assembly and any funds, grants, or loans received from or made available by the federal

government or any other government agency that may be lawfully applied to any tollway or toll facility project.

(c) The commissioner is authorized to set tolls for the use of tollways or toll facilities, subject to the provisions of any resolutions or indentures authorizing bonds. Upon or prior to the issuance of any bonds, and until such time as such bonds are no longer outstanding under the resolution or indenture providing for the issuance thereof, the commissioner shall prescribe and collect, or shall cause to be prescribed and collected, tolls for the use of tollways and toll facilities, and shall revise such tolls from time to time whenever necessary, to produce revenue, together with other monies that may be available, sufficient to:

(1) Provide for all costs of operation of the tollway project or projects and toll facility project or projects, including reasonable reserves therefor; and

(2) Pay when due all bonds and interest thereon, obligations under hedging agreements and ancillary agreements, and other indebtedness incurred by the state for the payment of which such tolls shall have been pledged, charged or otherwise encumbered, and interest thereon, including reasonable reserves therefor.

(d) The authority to develop and operate tollways or toll facilities and to set tolls as provided in this chapter shall not apply to any highway, bridge or other transportation-related facility constructed prior to the effective date of this chapter, except as follows:

(1) Additional lane capacity constructed on or along an existing highway or bridge after the effective date of this chapter may be developed and operated as a tollway; and

SECTION 6. (a) The Department of Finance and Administration is authorized to establish such funds, in the state treasury and/or with a trustee, paying agent or other custodian, as may be necessary, convenient or desirable to implement the provisions of this chapter and to comply with the terms of any resolution or indenture authorizing any bonds.

(b) The following shall be credited to the state tollway fund as established in accordance with this section:

(1) All toll revenues received by the department;

(2) Any revenues or funds that the general assembly may appropriate to the state tollway fund;

(3) Any proceeds of bonds or other indebtedness incurred by the state to finance costs associated with the development of tollway projects and toll facility projects;

(4) Any funds the department may receive from the federal government or any other government agency or private entity that by grant, donation, loan, or otherwise is permitted to be deposited in the state tollway fund for the purposes thereof; and

(5) Any interest earnings on deposits of or investments made from any funds held in the state tollway fund, unless otherwise permitted or required by a resolution or indenture authorizing bonds.

(c) At the request of the commissioner, the state funding board may pledge, encumber, transfer, or otherwise obligate funds held in the state tollway fund as security for bonds, hedging agreements, ancillary agreements or other indebtedness incurred by the state on behalf of the department for the purpose of developing and operating a tollway or toll facility, subject to the provisions of any resolutions or indentures authorizing bonds or such other evidences of indebtedness.

(d) The state tollway fund may be used for the following purposes:

(1) To defray costs associated with the development and operation of tollways or toll facilities authorized under this chapter;

(2) To pay the principal, interest and any premium due with respect to any bonds issued or other indebtedness incurred by the state for any tollway or toll facility project, and to pay any costs incurred by the department or state funding board in connection with the issuance and payment of such bonds or other indebtedness;

(3) To be pledged as security for bonds, hedging agreements, ancillary agreements or other indebtedness incurred by the state on behalf of the department for the purpose of developing and operating a tollway or toll facility; and

(4) Any other manner that the state highway fund may be lawfully used.

SECTION 7. In addition to such other authority to enter into contracts as may be provided by law, the department is hereby given full authority to enter into contracts, agreements or understandings with private parties, the federal government, or other governmental agencies for the purpose of developing or operating a tollway or toll facility, or any part thereof, including, but not limited to, the following:

(1) Design-build contracts with private entities pursuant to which all or part of the design, right-of-way acquisition, relocation of utilities and construction of a tollway or toll facility is accomplished by a private entity or entities on behalf of the department;

(2) Service agreements for the operation of a tollway, toll facility, or appurtenant facility; and

(3) Agreements with the federal government or other governmental agencies for the purpose of undertaking all or any part of a tollway or toll facility project.

SECTION 8. The commissioner shall promulgate rules and regulations pursuant to Title 4, Chapter 5, to carry out the provisions of this chapter. The commissioner is given full authority to enforce the rules and regulations promulgated pursuant to the provisions of this chapter.

SECTION 9. The traffic laws of this state, including the applicable traffic laws of any municipality through which a tollway passes, and the regulations promulgated by the commissioner in accordance with this chapter, shall govern the use of any tollway or toll facility authorized under this chapter. State and local law enforcement authorities are authorized to enforce such traffic laws and such regulations. Any person who uses a tollway facility without paying the toll required for the use thereof shall commit a Class C misdemeanor and shall be subject to a fine only of not more than fifty dollars (\$50.00).

SECTION 10. (a) The state funding board is authorized to issue bonds of the State of Tennessee, without limitation as to amount, for the purpose of financing costs associated with the development of tollway projects and toll facility projects, as shall be requested by the commissioner. Such request shall be accompanied by such information as the state funding board may require.

(b) The bonds shall be issued from time to time in such principal amounts and bearing such terms, including, but not limited to, optional or mandatory redemption prior to maturity, and may be sold in such manner, either at competitive or negotiated sale, and at such prices and subject to such terms and conditions, as shall be determined by the state funding board. The state funding board may delegate to any member thereof the power to establish any such matters within parameters determined by the state funding board.

(c) The bonds shall be payable solely from and secured solely by monies on deposit from time to time in the state tollway fund, including any proceeds of bonds as may be deposited therein, and shall not be a debt of, nor constitute a general obligation or pledge of the full faith and credit of, the State of Tennessee (except to the extent expressly provided by this section) or of any county, municipality, taxing entity or other political subdivision thereof.

(d) In case any member of the state funding board whose signature appears on any bond ceases to be a member before the delivery of such bond, such signature nevertheless shall be valid and sufficient for all purposes, the same as if such member had remained in office until such delivery.

(e) With respect to all or any portion of any issue of bonds, the state funding board may authorize and enter into hedging agreements and ancillary agreements, upon request by the commissioner, under such terms and agreements as the funding board may determine, including without limitation, with respect to hedging agreements, provisions permitting the funding board to pay to or receive from any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(f) When entering into any ancillary agreements, hedging agreements and agreements with purchasers of bonds, evidencing a transaction bearing a reasonable relationship to the State of Tennessee and also to another state or nation, the state funding board may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of the State of Tennessee or the laws of such other state or nation, provided that jurisdiction over the state funding board against which an action on such a contract or agreement is brought shall lie solely in the Tennessee Claims Commission or, if and to the extent permitted by law, a court in the State of Tennessee which would otherwise have jurisdiction of actions brought in contract against the state funding board.

(g) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking and investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, monies, or other funds belonging to them or within their control in any of the bonds, and the bonds shall be authorized security for all public deposits. Nothing contained in this subsection with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

(h) The state funding board is authorized to procure such legal and technical advice, approving opinions and financial assistance as it may consider necessary, and also to pay all necessary expenses, in connection with carrying into effect the provisions of this section, all of which may be funded from proceeds of the bonds or other state indebtedness.

(i) The powers conferred by this section shall be in addition and supplementary to any other general, special or local law. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument as security therefore, except as may be provided in this section, any other law to the contrary notwithstanding.

(j) The proceeds of sale of the bonds shall be deposited in the state tollway fund and disbursed in accordance with law and other

instruments governing the state tollway fund, but only for the purposes of this chapter.

(k) The bonds and the interest thereon shall be exempt from taxation by the State of Tennessee and by any county, municipality or taxing entity of the State of Tennessee, except for inheritance, transfer and estate taxes.

(l) A resolution authorizing bonds may provide that such bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and the regularity of their issuance. The validity of the authorization and issuance of bonds shall not be dependent on or affected in any way by proceedings taken for, or contracts or agreements made in connection with, the development of tollway projects or toll facility projects.

(m) Whenever any bonds shall be paid and discharged, they shall be cancelled and the cancelled bonds retained and made available for examination in annual audits. The state funding board may, by resolution, authorize and direct the paying agent for the bonds or other person in possession of bonds to destroy all bonds duly paid and cancelled, provided that such bonds paid and cancelled during any fiscal year may be destroyed only after the fiscal audit of the State of Tennessee covering such fiscal year has been completed. The paying agent or other person in possession of the bonds shall furnish a certified list of bonds duly paid and cancelled showing, for each issue of bonds the bond number, amount, date paid and such additional information as the state funding board may require. The provisions of this subsection shall be in addition to any other provisions of law. Where the provisions of this subsection are in conflict with other provisions of law, the provisions of this subsection shall prevail.

(n) In order to secure the payment of the principal of and interest on the bonds, and the payment of obligations under any ancillary agreements and hedging agreements, including obligations for termination or other non-periodic payments, or in connection with such bonds or agreements, the state funding board shall have the power to:

(1) Pledge (it being intended that the Perfection, Priority and Enforcement of Public Pledges and Lien Act, Title 9, Chapter 22, Tennessee Code Annotated, shall apply thereto) all or any part of the toll revenues, or other monies on deposit in the state tollway fund, or any rights to receive the same, to the punctual payment of the principal of and interest on the bonds and obligations under any such agreements, and covenant against thereafter pledging any such toll revenues or other monies to any other bonds or obligations;

(2) Covenant as to establishment and maintenance and collection of tolls;

(3) Provide for the terms, form, payment, registration, exchange, execution and authentication of the bonds in a manner not inconsistent with this section, which may include the appointment of paying agents, registrars and authenticating agents within or without the State of Tennessee;

(4) Covenant as to the use and disposition of the proceeds from the sale of the bonds in a manner not inconsistent with the provisions of this chapter;

(5) Covenant as to limitations on the issuance of additional obligations to finance tollway projects or toll facility projects and on the lien on toll revenues or other monies for the payment and security thereof;

(6) Covenant as to the amount and kind of insurance to be maintained on tollway projects and toll facility projects, and the use and disposition of insurance monies;

(7) Covenant as to the operation of tollway projects and toll facility projects;

(8) Covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;

(9) Redeem the bonds, and covenant for their redemption and to provide the terms and conditions thereof;

(10) Covenant as to books of account, as to the inspection and audit thereof, and as to the accounting methods;

(11) Covenant as to the investment of monies on deposit in the state tollway fund;

(12) Covenant and prescribe as to what occurrences shall constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(13) Covenant as to the rights, remedies, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;

(14) Make such covenants and do any and all such acts and things as may be necessary, convenient or desirable in order to secure the bonds, or in the discretion of the state funding board, to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein, it being the purpose hereof to give the state funding board power to do all

things in the issuance of the bonds and for their security that may be consistent with the Constitution of Tennessee;

(15) Vest in a trustee or trustees, which may be located within or without the State of Tennessee, powers and duties, including the right to enforce any covenants made to secure, or to pay, the bonds, limitations on liabilities, and the terms and conditions upon which the holders of the bonds or any portion or percentage of them may enforce any covenants thereunder or duties imposed thereby;

(16) Prescribe a procedure by which the terms of any resolution authorizing bonds, or any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of bonds the holders of which must consent thereto and the manner in which such consent must be given;

(17) Covenant and provide for the discharge and satisfaction and defeasance of all or any part of bonds and the indebtedness evidenced thereby; and

(18) Execute all instruments and perform such other acts as are necessary, convenient or desirable in the exercise of the powers herein granted or in the performance of the covenants or duties of the funding board.

(o) Nothing in this chapter shall be construed so as to impair the obligation of any contract made by the State of Tennessee upon any bonds, hedging agreements and ancillary agreements. The State of Tennessee hereby covenants and agrees with the holders of the bonds that so long as the bonds are outstanding and unpaid, the State of Tennessee will not limit or alter the rights and obligations of the state funding board and the commissioner under this section to prescribe, maintain and revise tolls and apply the toll revenues and other monies on deposit in the state tollway fund (including the continuing appropriation thereof) as provided in this chapter.

SECTION 11. By authorizing the issuance of bonds, hedging agreements and ancillary agreements, which are not a liability of the State of Tennessee, payable other than from toll revenues and other monies on deposit in the state tollway fund, the general assembly intends that such authorizations shall constitute:

(a) A direct and continuing appropriation to the state funding board of the toll revenues and other monies on deposit in the state tollway fund from time to time and to the state funding board a sum sufficient from the state tollway fund to satisfy obligations under such bonds and the resolutions or indentures authorizing such bonds, under hedging agreements, and under ancillary agreements; and

(b) The authority to expend those funds in accordance with this chapter, subject to any resolutions or indentures authorizing bonds.

SECTION 12. Nothing in this chapter shall be construed as either waiving the immunity of the State of Tennessee from suit or as extending its consent to be sued.

SECTION 13. In order to effectuate the purposes and policies prescribed in this chapter, the provisions of this chapter shall be liberally construed.

SECTION 14. Tennessee Code Annotated, Section 54-5-132, is amended by deleting the section in its entirety.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. (a) The provisions of this act shall be initially limited to a pilot program, as further provided in this section, to be conducted for the purpose of evaluating the feasibility of tolling as an additional method for funding the development of highways or other transportation-related facilities.

(b) The pilot program created by this act shall be limited to not more than two (2) projects, as follows:

(1) A new highway project, including such bridges and other structures as may be necessary to complete the project; and

(2) A major bridge project crossing a major river, together with such related highway facilities and structures as needed to complete the project and give it logical termini.

(c) It is the intent of the general assembly that the department shall proceed to identify and initiate the development of these pilot projects as soon as reasonably practical. It is further the intent of the general assembly that, to the extent feasible, consistent with legal requirements and available funding, that the department proceed with such development with the goal that at least one of the pilot projects shall be ready to proceed to contract for design and construction, or separate contracts therefor as appropriate, within five (5) years after the effective date of this act.

(d)(1) No pilot project shall be developed until the department conducts one (1) or more public hearings for the specific purpose of receiving public comments concerning tolling as an alternative means of funding or financing bridges or highways within the state and until the department submits a written report, reviewing such public comments, to the chairs of the Finance, Ways and Means

Committees of the Senate and House of Representatives and to the chairs of the Transportation Committees of the Senate and House of Representatives.

(2) No pilot project shall be developed by the department without the prior approval of the general assembly as provided in subsection (b) of Section 3 of this act.

(e) The department shall evaluate the progress of the pilot program and shall provide a written report of such evaluation to the general assembly on or before January 1, 2009. The written report shall contain such information as required by subsection (b) of Section 3 of this act. The department shall not develop any tollway project or toll facility project that is not within the provisions of the pilot program created in this section until after this report has been submitted to the general assembly and the general assembly has expressly authorized the department to proceed with additional tollway projects and toll facility projects.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 11, 2007



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of June 2007



PHIL BREDEESEN, GOVERNOR