Texas Transportation Legislation Overview of the 85th Regular Legislative Session

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The 85th Texas Regular Legislative Session[1] was a challenging one for transportation issues and advocates. The Legislature succeeded in passing a Sunset bill for the Texas Department of Transportation ("TxDOT") extending the agency for 12 more years, but that bill included provisions that will make toll project development more difficult. The Legislature also declined to reauthorize the use of public private partnerships ("P3s") for highway projects. The failure to do so removes an important tool at a time when there are critical projects around the state that lack the necessary funding, and when the Trump administration reportedly will pursue a national infrastructure program based, in part, on private sector investment.[2] Aside from these issues there were no significant policy changes related to transportation funding or project development, although there were a number of bills passed that will be of interest to toll agencies and others interested in transportation issues.

Set forth below is an overview of the process leading to passage of the TxDOT Sunset bill (and the inclusion of one particular anti-toll amendment), the failed effort to reauthorize comprehensive development agreements ("CDAs"), and a general discussion of the circumstances which may have contributed to both. A more detailed discussion of the TxDOT Sunset bill and other legislation is contained in the Appendices.

SB 312— The TxDOT Sunset Bill

The Sunset Advisory Commission ("SAC") Staff Report for TxDOT, released in November 2016, opened with the following passage:

> The Texas Department of Transportation (TxDOT) has reached another pivotal moment in its long and often turbulent history. After a decade of intense legislative scrutiny including multiple Sunset reviews, frequent leadership changes, and continuing organizational flux, TxDOT is now embarking on another high-stakes transition as it prepares to spend billions of dollars in new funding.[3]

This description succinctly captures much of what TxDOT has faced in recent years. The agency underwent contentious sunset reviews in 2009 and 2011, and while last session (the 84th Legislative Session) was not a sunset year, HB 20 was similar to a sunset bill due to the prescriptive manner in which it addressed TxDOT's planning and prioritization procedures.[4]

The SAC Staff Report focused primarily on TxDOT's contracting procedures and oversight, continuing progress toward performance-based transportation planning and the implementation of HB 20, and overall readiness to effectively manage the influx of new funding expected to come from Propositions 1 and 7. The statutory aspects of the SAC recommendations were embodied in SB 312, sponsored by Senator Robert Nichols (a SAC member and Chair of the Senate Transportation Committee) and Representative Larry Gonzales (SAC Chair). In general, and in contrast to previous TxDOT Sunset bills, SB 312 (as filed) was relatively non-controversial and focused primarily on project planning and contracting issues along with various administrative functions of the agency.

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[1] On June 6, 2017, Governor Abbott issued his call for a special session of the 85th Texas Legislature to address 20 different issues. None of the enumerated issues are directly related to transportation.

[2] *See, e.g.*, Office of Mgmt. & Budget, Exec. Office of the President, *Budget of the U.S. Government: A New Foundation for American Greatness, Fiscal Year 2018*, at 19 (2017), *available at* https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf

[3] Sunset Advisory Comm'n, *Sunset Staff Report: Texas Department of Transportation* (2016–2017), *available at*: https://www.sunset.texas.gov/public/uploads/files/reports/Texas%20Department%20of%20Transportation%20Staff%20Report_11-15-2016_0.pdf.

[4] Act of May 29, 2015, 84th Leg., R.S., ch. 314, § 2, 2015 Tex. Gen. Laws 1449 (filed and enacted as HB 20).

Senate and House Consideration of SB 312
SB 312 was passed by the full Senate on March 21st with only three amendments. Thus, the bill continued to closely mirror the recommendations in the SAC Staff Report when it passed the first chamber. However, SB 312 was not considered by the House until May 16th, almost two months after Senate passage. By then it was relatively late in the session, and the deadline for House bills to be reported out of committees had passed. SB 312 therefore became a vehicle to advance other House bills which were dead because they had not yet received a committee hearing or had been heard but had not made it through the committee process. These so-called "zombie" bills needed another vehicle to come back to life, and SB 312 served that purpose for many. There were 52 pre-filed amendments, many of which were attempts to revive zombie bills, by the time SB 312 was heard on the House floor.

When Chairman Gonzales presented SB 312 on the House floor he stated his preference that amendments which had not been vetted through the committee process not be added to the bill. That preference was not shared by his House colleagues, and the result was that 15 amendments were added to SB 312. Several of those amendments were zombie bills with significant policy implications, and they were poised to become law without ever having received committee hearings and an opportunity for public input.

Conference Committee
Following passage by the House of SB 312 (as amended), it was up to the Senate to decide whether to concur in the amendments or request the appointment of a conference committee. If no conference committee had been requested, SB 312 would have passed without any revision to the House amendments. Fortunately, Senator Nichols requested a conference committee, although he left open the possibility of concurring in the House amendments if necessary to assure the bill passed before the session ended.[5]

The Senate appointed its conferees on May 22nd. They were Senators Nichols, Watson, Hinojosa, Hancock, and Van Taylor. The House appointed its conferees on May 24th, only three days before the deadline for each chamber to consider conference committee reports. The House conferees were Representatives Gonzales, Morrison, Burkett, Raymond, and Senfronia Thompson. Led by Senator Nichols and Representative Gonzales, the conferees were able to quickly reach agreement on several key issues, and a conference committee report was adopted by each chamber on May 27th, the last day to do so.

Amendment No. 12— Prohibition on Grants of TxDOT Funds for Toll Projects
For regions that support tolling as an option to deliver projects, the most significant and potentially damaging provision of SB 312 (as finally passed) was "Amendment No. 12", which was added by Representative Joe Pickett. That amendment changes existing law by precluding TxDOT from granting funds for toll projects. In contrast to previous practice (and constitutional authority[6]), all funds directed to a toll project that flowed from or through TxDOT will have to be repaid—even funds allocated to a metropolitan planning organization ("MPO"). Amendment No. 12 was similar to Representative Pickett's HB 303, which had never received a committee hearing in the House, and its Senate companion SB 812 by Senator Lois Kolkhorst, which passed the Senate but was never considered in a House committee. Amendment No. 12 narrowly passed on the House floor by a vote of 73 to 65.[7]

Toll projects around the state are typically financed through a combination of toll revenue bonds and funds allocated to a project by an MPO. Toll revenue bonds represent a form of local funding, as the bonds are issued by a local entity (e.g., a regional mobility authority ("RMA"), the North Texas Tollway Authority ("NTTA"), or a county toll road authority). Repayment is supported solely by user fees generated from the project. This money does not come from TxDOT or the state highway fund.

The MPO-allocated funds come from the portion of funds that TxDOT directs to an MPO through the statewide, formula-based allocation of state funds. MPOs (and the elected officials on MPO boards) make decisions locally regarding how to utilize funds to support projects in their region, which may include dedicating funds to support a toll project. Doing so may accelerate an important project for the region by many years (even decades) as a result of not having to wait on traditional state funding. However, even though the decision to dedicate funds to a toll project is made locally, the funds originate from the state highway fund which is administered by TxDOT. That means notwithstanding the local decision-making process, MPO-allocated funds are considered a "grant" of funds from TxDOT and will be subject to Amendment No. 12 and its repayment requirement.

[5] *See* Ben Wear, *TxDOT sunset bill's fate remains unclear as session ebbs,* Austin Am. Statesman, May 24, 2017.
[6] See p. 7 below.
[7] "Statements of Vote" in the House Journal indicated that four members who voted "yes" had intended to vote "no", which, had the votes been cast that way, would have resulted in a tie vote and the amendment failing. H.J. of Tex., 85th Leg., R.S. 3507 (2017).

The long-term implications of Amendment No. 12 will likely be to delay projects or render them financially infeasible to develop as regional toll projects. The repayment requirement simply adds more debt to a project—beyond the maximum debt capacity that has already been determined in assessing the amount of toll revenue bonds that can be issued. Projects that cannot be developed at the local level will then rely on state funding which is already inadequate to meet the state's growing needs. Trading local funding of projects for an increase to the state's burden of doing so hardly seems like a wise trade-off in a state struggling to address the impacts of congestion on mobility, economic development, and quality of life for its citizens.

Exceptions to Amendment No. 12

Because of the potential for negative impacts of Amendment No. 12 on pending projects, discussion during the conference committee process included ways to mitigate those impacts. Several major projects have been in the development phase for many years, and those projects have been advanced on the assumption that grant funding would be available. Suddenly precluding grants could have undermined that work and delayed (or killed) those projects. Led by Senators Nichols and Watson and Representative Gonzales, the conference committee revised the language of Amendment No. 12 to exempt projects from the repayment requirement if the environmental review process had commenced prior to January 1, 2014. This revision protects several pending RMA projects[8] and may benefit certain projects in the Houston and Dallas–Fort Worth areas as well.

Comprehensive Development Agreements

CDAs are the Texas form of public-private partnership for roadway projects. Generally a CDA involves a contract with a private sector entity to design, construct, finance, operate, and maintain a project for some period of time (up to a maximum of 52 years).[9] CDAs transfer financing, revenue, and construction risk to the private sector. In some instances there is an up-front payment received from the private sector entity for the right to develop and operate the project, and often there is an agreement to share revenues between the private sector and the public entity as well. Ownership of any roadway subject to a CDA must, by law, remain with the public sector, so there is never any private ownership of public roadways under a CDA.

The CDA delivery method has been used for five projects in Texas with an aggregate capital cost of $8.5 billion. One project (SH 130, Segments 5 & 6) went into bankruptcy after several years of operation; however, the restructuring process for that project is nearly complete. Notwithstanding the bankruptcy, the roadway has continued in operation. The state has not been forced to assume any financial obligations, demonstrating that even in the worst-case scenario the risk transfer inherent in CDAs worked and the public was protected. Two of the five CDAs included up-front payments for the rights to develop and operate the projects, and that money has been used by the regions where the projects are located to support the financing of additional projects. All five CDA projects also provide for revenue sharing, which provides further funding for additional projects.

Beginning with their initial authorization in 2003, CDAs have had a tumultuous legislative history. There was considerable political and local government resistance to early efforts by the Texas Transportation Commission to force regions and local tolling entities to consider CDAs (instead of conventional financing) for proposed toll projects. This resistance was exacerbated by the role of CDAs in the controversial (and now dead) Trans-Texas Corridor. The progression of CDA authorization has taken the following path:

- 2003: CDAs were authorized for TxDOT and RMAs[10] as part of HB 3588.[11]
- 2005: Statutorily required CDA terms were modified; CDAs could have a maximum term of 52 years and must include a requirement to include a toll rate setting methodology in the agreements.
- 2007: A moratorium was imposed on further CDAs, although several projects were exempted and were granted development authority through August 31, 2011.
- 2009: CDA authorization was not extended, but the previously authorized projects continued to have CDA authority through August 31, 2011.

[8] RMA projects exempted from the repayment requirement include: Oak Hill Parkway, Loop 1 South, and 183 North (CTRMA); Second Causeway, Outer Parkway and SH 550 (CCRMA); and Loop 1604 (Alamo RMA).
[9] This discussion does not include "design/build CDAs", which include only the design and construction elements and do not involve financing or operation of projects by private entities.
[10] NTTA and county toll road authorities take the position that they have unrestricted CDA authority.
[11] Act of June 1, 2003, 78th Leg., R.S., ch. 1325, §§ 2.01, 15.57, 2003 Tex. Gen. Laws 4884, 4922, 4969 (filed and enacted as H.B. 3588).

- 2011: CDAs were authorized for various projects specifically identified in statute. That authority was granted through August 31, 2015.

- 2013: The list of authorized CDA projects was revised, and development authority was extended through August 31, 2017.

- 2015: CDAs were not considered, but the previously authorized projects continued to have CDA authority through August 31, 2017.

- 2017: CDAs were not re-authorized.

With the expiration of CDA authority set for August 31, 2017, several House bills were filed in the 85th Legislative Session to identify new projects eligible for delivery through a CDA. Those bills were ultimately consolidated into one omnibus CDA bill: HB 2861 by Representative Larry Phillips. HB 2861 included a total of 18 projects with an aggregate cost of $30 billion, including several critical projects on congested interstate corridors. HB 2861 would have extended CDA authority through August 31, 2021.

The debate on the House floor over HB 2861 was fairly contentious. Representative Phillips emphasized that even with the progress made through Propositions 1 and 7 there was not nearly enough funding for transportation; that CDAs were a permissive tool (not a requirement); and that CDA authority might be necessary in order to access federal programs under the Trump administration infrastructure plan. Representatives Pickett and Jonathan Stickland were the most vocal opponents of the bill, with Representative Pickett arguing that the expansive list of projects was creating false hope for regions with projects on the list that would likely never see a CDA, and Representative Stickland invoking the specter of foreign investment (a tactic widely used during the Trans-Texas Corridor debates) and warning his Republican colleagues that they might well face a primary challenge if they supported the bill. Neither offered any alternatives as to how to fund the projects identified in HB 2861.

Ultimately HB 2861 was defeated by a vote of 79 to 52. Even if the bill had passed the House it would have faced an uphill battle in the Senate, as there appeared to be little appetite among Senate leadership to even consider CDAs (only one project-specific bill was filed, and it was not given a hearing).

While private sector investment has been successfully utilized to deliver significant projects in Texas, the current political climate has forced a retreat from use of the CDA tool. As congestion worsens in areas where there is inadequate funding for major projects, it will be interesting to see how the state's leadership responds. Likewise, if a federal program is implemented which rewards use of the P3 model, leadership will have to decide if it is willing to forgo those opportunities while project needs go unmet.

Contributing Factors to Legislative Actions

The actions described above, and further reflected in certain other amendments to the TxDOT Sunset bill (see Appendix "A"), evidence a turn away from tools which have helped to address the state's significant transportation infrastructure needs. It is difficult to see how eliminating or restricting the ability to use these tools will not hamper the state's ability to meet the growing demand for roads to accommodate growth, particularly in the urban areas and in the Rio Grande Valley. Although there is no single reason for this trend, some potentially contributing factors are discussed below.

Funding— Perception and Reality

The actions of the legislature in undermining tolling and refusing to authorize CDAs may, in part, be explained by a ***perception*** among some members (and their constituents) that Propositions 1 and 7 have addressed the state's funding needs, and therefore P3s and tolling are no longer necessary or desirable tools. Evidence of this view lies in the fact that there were no bills filed to increase the gas tax, index the gas tax, or otherwise raise new funds at the state level for transportation. In past years, and based on a study by the "2030 Committee"[12], TxDOT had indicated it needed $4 billion in additional funding per year–$3 billion for new capacity and $1 billion per year for maintenance.[13] During his campaign and shortly after his election in 2014, Governor Abbott committed to finding that $4 billion "without raising taxes, fees, tolls or debt."[14] Propositions 1 and 7 were intended to address the $4 billion need and appear to have gone a considerable way toward doing so. The FY 2019 budget (SB 1) passed by the Legislature[15] indicates that Proposition 1 will account for

[12] 2030 Committee, *It's About Time: Investing in Transportation to Keep Texas Economically Competitive* (March 2011), *available at* http://texas2030committee.tamu.edu/documents/final_03-2011_report.pdf; *see also* Tex. Dep't of Transp., *2015–2019 Strategic Plan* 25 (July 7, 2014), *available at* http://ftp.dot.state.tx.us/pub/txdot-info/sla/strategic-plan-2015-2019.pdf.
[13] Later that number was increased by $1 billion in annual funding needs to address roads affected by energy sector activity.
[14] H.J. of Tex., 84th Leg., R.S. 407 (2015) (Proclamations by the Governor of the State of Texas).
[15] FY 2019 is the first year that funding from Proposition 7 takes effect.

$739 million in additional funding[16], and Proposition 7 will account for more than $2.5 billion. Propositions 1 and 7 have therefore come close to meeting the $4 billion target, and are likely to exceed that number in future years. The impacts have already been noticed, and there has been much fanfare surrounding the fact that TxDOT's 10 year Unified Transportation Plan ("UTP") accounts for $70 billion, which includes $38 billion in additional funding.[17]

The ***reality*** is that Propositions 1 and 7 were never intended to solve the state's funding needs without tolling or P3s.[18] The 2030 study from which the $4 billion number was derived assumed that toll roads and P3s would continue to be used to develop projects. TxDOT's current Executive Director (then CFO) testified in 2015 that if toll roads and P3s were not available, the $4 billion annual need would increase to up to $10 billion annually.[19] As a result, the Legislature's actions in precluding P3s and creating impediments to tolling may have exacerbated a problem that many thought had been solved. Unfortunately that may manifest itself in critical projects being deferred, local toll entities facing challenges in securing project funding, and an inability to access potential federal funding programs.

Anti-toll Sentiment

The perception among some members that the state's funding problem has been solved may have also fueled already growing anti-toll sentiment. The previous (84th) Legislative session saw a large turnover in the House and Senate. Several of the new members received the backing of "Tea Party" groups, many of which have expressed strident anti-toll views (though few, if any, have articulated any policy for increasing transportation funding). In light of the perception of adequate funding described above, anti-toll rhetoric resonates more loudly. Additionally, some members have voiced strong anti-toll positions as a result of being, in their view, overburdened with toll roads in their areas. Yet tolling is an option, not a requirement, and the Dallas (and Houston) areas have developed robust roadway networks which rely heavily on tolled facilities. Given that tolling is a local decision, it is difficult to understand why Austin, San Antonio, Brownsville, McAllen, and other areas of the state should be denied the opportunity to develop projects with local support just because some believe there are too many toll roads in another part of the state.

Moreover, while it may be politically expedient to be opposed to toll roads, that opposition leaves unanswered the question of how to fund projects without using tolls and/or CDAs. It is highly unlikely that the same political constituency that so vocally opposes tolling will advocate for raising the gas tax or imposing other fees to fund new infrastructure. As tools for funding transportation projects are removed from the toolbox, the state will be forced to find other solutions or risk seeing its infrastructure decline to the detriment of its citizens, to public safety, and to the economy.

Contravening Voter-Approved Actions

The 85th Legislative Session also saw a continued trend of legislative action contrary to the expressed will of Texas voters. In 2001, voters approved Proposition 15, which created the Texas Mobility Fund (the "TMF") and authorized grants of funds for toll roads. The TMF was one of the more flexible sources of money available for use by TxDOT; however, with the passage of HB 122 in the 84th Legislative Session, the TMF lost the ability to function as the revolving fund contemplated at the time Proposition 15 was approved.[20]

The erosion of voter-approved authority from Proposition 15 continued in the 85th Legislative Session under Amendment No. 12 to the TxDOT Sunset bill. Prior to Proposition 15, the Constitution required the repayment of funds advanced for the use of toll projects. In addition to creating the TMF, Proposition 15 amended Art. 3, sec. 52-b of the Texas Constitution by:

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[16] The Proposition 1 funds are dependent on oil and gas severance tax collections, and that number has been variable in recent years due to a downturn in the energy industry.

[17] The Chair of the Texas Transportation Commission wrote a widely published op-ed that articulated this opinion. *See, e.g.,* Tyron Lewis, *Historic transportation plan gets another boost*, Austin Am. Statesman, May 8, 2017; Tyron Lewis, *Historic transportation plan gets a boost*, Rockdale Reporter, May 4, 2017; Tyron Lewis, *More funds coming for Texas roads*, San Antonio Express News, April 24, 2017.

[18] On the House floor, Representatives Phillips and Pickett shared the following exchange:

> Rep. Pickett:. . . [Y]ou said Prop 1 and Prop 7 is not enough. Do you agree with that?
> Rep. Phillips:Yes.
> Rep. Pickett:I do too.

See Debate on Tex. H.B. 2861 on the Floor of the House, 85th Leg., R.S. (May 5th, 2017), *available at* http://www.house.state.tx.us/video-audio/chamber/85/ (tape available from the House Video/Audio Services Office).

[19] Hearing on Tex. H.B. 20 Before the House Transportation Subcommittee on Long Term Infrastructure Planning, 85th Leg., R.S. (March 24, 2015) (statement by TxDOT Executive Director James Bass).

[20] Act of May 19, 2015, 85th Leg., R.S., ch. 387, § 1, 2015 Tex. Gen. Laws 1613, 1613–1614 (filed and enacted as HB 122) (codified at Tex. Transp. Code § 201.943).

> authorizing **grants** and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects.[21]

At the time, the House Research Organization noted that the amendment "would repeal the constitutional requirement to repay Fund 6 from tolls or other turnpike revenue."[22] In other words, by approving Proposition 15, the voters specifically approved allowing grants. Yet, Amendment No. 12 precludes exactly what the voters authorized.

While these departures from voter-approved policies could be dismissed as merely isolated actions related to initiatives pursued 15 years ago, it should be noted that the more recently expressed will of the voters was in the crosshairs as it relates to Proposition 7 funds (which are specifically prohibited from being used on toll projects). House Appropriation Chair John Zerwas filed HCR 108 on March 31st which, subject to a two-thirds vote of the members in each of the House and Senate, would have reduced Proposition 7 revenues that would be deposited in the state highway fund by 50% for FY 2018 and 2019. In other words, Proposition 7 funds, notwithstanding overwhelming voter approval for highway use in 2015, would have instead been used to balance the state's budget. HCR 108 sparked a significant outcry from various transportation industry stakeholders who had supported Proposition 7, and ultimately it was dropped as a potential tool in the House and Senate budget debates.

In the sections that follow are summaries of transportation-related legislation which was enacted during the 85th Regular Legislative Session, as well as summaries of other legislation possibly impacting toll authority operations. For ease of reference these summaries are separated by bill number and/or topic as indicated.

Appendices

Appendix "A"SB 312- TxDOT Sunset Legislation
Appendix "B"Contracting and Procurement Legislation
Appendix "C"Open Government & Ethics Legislation
Appendix "D"Other Bills of Interest (TNCs, Texting, Rail/Transit P3, etc.)
Appendix "E"Legislation Which Did Not Pass

The foregoing and the attached appendices are only intended to be a summary of the results of the 85th Regular Legislative Session. Interested parties should consult the text of specific legislation concerning the scope and application of new laws, changes to laws, and provisions of previously enacted laws. Questions may be directed to: Brian Cassidy, (512) 305-4855 (bcassidy@lockelord.com); Lori Winland, (512) 305-4718 (lwinland@lockelord.com); Brian O'Reilly, (512) 305-4853 (boreilly@lockelord.com); or Sarah Lacy, (512) 305-4780 (slacy@lockelord.com).

[21] Tex. Const. art. III, § 52-b (emphasis added).
[22] House Research Organization, *Focus Report: Amendments Proposed for November 2001 Ballot* 45 (Aug. 13, 2001), *available at* http://www.hro.house.state.tx.us/pdf/focus/amend77.pdf.

Appendix "A"

SB 312- TxDOT Sunset Legislation

The TxDOT Sunset bill becomes effective on September 1, 2017 (although there are varying transition provisions for different areas), and it extends TxDOT for 12 years. There are several provisions in SB 312 which will have an impact on tolling and project development or might otherwise be of interest to project planners and implementers. These are described below (section references are to SB 312).

In addition, SB 312 covers a wide variety of other topics, including project planning and reporting measures, highway naming, accident reporting, management of the state aircraft pool, and other administrative functions. These more routine provisions are beyond the scope of the summary below.

- **Sections 39-42**: Prohibitions Against Grants of TxDOT Funds for Toll Roads:

  - amends Chapter 366 (NTTA) and Chapter 370 (RMAs) to ***require repayment of funds contributed*** by the Texas Transportation Commission ("TTC") or TxDOT;

  - provides that the TTC or TxDOT ***may*** require ***funds to be repaid from tolls or other revenues from the project*** on which the funds were spent;

  - amends Chapter 372 (***applicable to all toll project entities***) to reflect the repayment requirement;

  - requires TxDOT to allocate to a district the same amount of money that was received from repayments from a project in the district for use on other transportation projects; allows TxDOT to "reasonably allocate" between districts if a project is in more than one district;

  - ***exempts*** from the repayment requirement any ***projects for which a toll project entity commenced the environmental review process prior to January 1, 2014.*** Note that a technical correction to SB 312 clarified that ***any*** toll project entity (including TxDOT) ***could have commenced the environmental review process*** even if that is not the entity developing the project; and

  - exempts from the repayment requirement funds that are held in a subaccount under Sec. 228.012 of the Transportation Code (for CDA payments).

  Note: As described in the introductory portion of this overview, the prohibition against grants has the potential to negatively impact project financing by local toll project entities. The prohibition includes funds allocated to MPOs which have, in many instances, been the source of grant funds. There is no guidance in the statutory changes regarding repayment terms and whether the terms can be flexible so as to ease the impacts of adding more debt to projects. The changes do require that repayments received be used for other projects in the TxDOT district where the project receiving the loan is located, and funds held by TxDOT in subaccounts (i.e., up front CDA concession payments) for the benefit of a region and disbursed to support a toll project are exempt from the repayment requirement. Per Section 76, the repayment obligation applies only to loans, grants, or other TxDOT contributions made after September 1, 2017.

- **Sections 28-35**: Limits on TxDOT Toll Collection Administrative Fees:

  - TxDOT must send an invoice to collect tolls for the use of a TxDOT toll project, stating the amount due, the due date, and that failure to pay will result in assessment of an administrative fee;

- ***TxDOT*** can add an administrative fee (to be determined by rule), but ***can charge no more than $6 in administrative fees for each invoice*** and ***no more than $48 in administrative fees during a 12 month period;*** and

- retains previous law providing that a person who receives ***2 or more invoices*** from TxDOT for unpaid tolls that are ***not paid*** within 30 days of the date of the second invoice can be ***charged with a misdemeanor punishable by a fine of no more than $250. A person may not be convicted of more than one offense during any 12 month period.***

Note: These changes severely restrict the amount of administrative fees that TxDOT may charge for failure to pay invoices for toll road use (i.e., pay-by-mail charges) when received. This has the potential to undermine a disincentive for non-payment of tolls. While this change only applies to TxDOT toll roads, other tolling entities may be affected by the confusion and inconsistency concerning the rules related to use of roads operated by different tolling entities, as well as the assumption by some users that they have limited financial exposure for the non-payment of tolls on any toll road. This is also a change that may be of concern to the credit markets as they see a state action that undermines effective toll enforcement. ***The change is not effective until March 1, 2018*** (presumably to give TxDOT time to re-program its systems accordingly. These changes were the result of an amendment on the House floor, and the conference committee actually moderated their impact as the adopted version would have "de-criminalized" toll violations (making them only a civil offense) and would have precluded TxDOT from using the habitual violator remedies set forth in Chapter 372. The conference committee refused to accept these changes and retained previous statutory provisions as noted above

- **Section 37**: Prohibitions on Conversions:

  - adds Sec. 228.201(c) to provide that for purposes of reconstructing a highway and adding tolled capacity, ***frontage roads may not be considered in determining the amount of non-tolled capacity existing before or after the reconstruction***; and

  - ***removes Secs. 228.201(a)(5) and (b) and the authority to convert a high occupancy vehicle ("HOV") lane existing prior to May 1, 2005 to a high occupancy toll ("HOT") lane***; however the following are ***excluded*** from this prohibition (and will remain governed by the prior law):

    - ✓ projects ***operated by TxDOT*** or an entity under contract with TxDOT prior to September 1, 2017; and

    - ✓ projects ***included in the state's air quality state implementation plan*** prior to September 1, 2017.

Note: The addition of Sec. 228.201(c) simply removes frontage roads from the computation of non-tolled capacity before and after the reconstruction of a corridor where existing lanes are "converted" to toll lanes. In general this is intended to preclude displacing general purpose lanes with frontage roads. It will have little practical effect on existing practice. The repeal of Sec. 228.201(a)(5) and (b) precludes the conversion of pre-existing HOV lanes to HOT lanes. Since there are existing projects for which that is a possibility as part of air quality programs in non-attainment areas (primarily in the Houston area), transition language in Section 78 sets forth the exclusions described above.

- **Section 38**: Removal of Tolls— Cesar Chavez Freeway (El Paso):

  - ***allows*** the Camino Real RMA to ***"convert" the portion of the Cesar Chavez project that is tolled to non-tolled***

    - ✓ provides that any funds advanced by TxDOT for construction or maintenance that are unexpended shall be transferred to the Border Highway West Project; and

    - ✓ TxDOT shall be required to maintain the Cesar Chavez project as part of the state highway system if tolls are removed.

Note: This permits, but does not require, the Camino Real RMA to remove tolls from the Cesar Chavez project. That project has no outstanding bonded indebtedness. Removing tolls from this project would accomplish a long-term goal of Representative Joe Pickett.

- **Section 37**: Removal of Tolls— Camino Colombia:

  - ***precludes*** TxDOT from operating SH 255 (the Camino Colombia project in Laredo) ***as a toll facility***.

  Note: This requires TxDOT to remove tolls from the Camino Colombia bridge. That project has no outstanding bonded indebtedness.

- **Section 24**: E-verify Requirements:

  - amends Sec. 223.051 to ***require that TxDOT contractors and subcontractors participate in the E-verify program*** to verify employee information; and

  - TxDOT is required to develop procedures for administration and enforcement of the requirement.

- **Section 23**: Contractor Performance

  - Sec. 223.012 is amended to require the TTC to adopt rules to:

    - ✓ establish contract remedies to be included in all ***low-bid*** highway improvement contracts, including criteria for ***precluding contractors*** with significant project completion delays ***from bidding on new projects***;

    - ✓ implement a schedule for liquidated damages; and

    - ✓ develop performance evaluation tools that contain criteria for ***modifying a contractor's bidding capacity***.

  - in developing the rules the TTC is required to consult with industry contractors, other state agencies, and other state departments of transportation;

  - the rules must include criteria for identifying projects with a significant impact on the public and require that ***project-specific liquidated damages be developed*** to reflect the true cost of travel delays; and

  - the rules must also provide a process for contractor appeals of evaluation criteria for TxDOT's use of the evaluations and require TxDOT to consider events outside of the contractor's control before assessing penalties.

- **Section 14**: UTP Transparency and Reporting:

  - the TTC is required to adopt rules that explain TxDOT's approach to public involvement and ***transparency related to the UTP***; and

  - the rules must ***require TxDOT to make a report on any change to the UTP*** and to make it available on TxDOT's website as well as be the subject of a report to the TTC in a public meeting.

- **Section 20**: Roles and Responsibilities of TxDOT and MPOs:

  - the TTC is required to adopt rules governing:

    - ✓ the ***alignment of TxDOT's funding forecasts with MPO funding forecasts***;

    - ✓ the ***alignment of statewide project recommendation criteria with project recommendation criteria developed by MPOs*** that relate to statewide goals, particularly for major mobility projects;

    - ✓ TxDOT's timelines and review process for 10-year plans;

    - ✓ TxDOT's process for allowing MPOs direct access to TxDOT information systems, software, etc.; and

- ✓ TxDOT's process for collaborating with MPOs to evaluate the quality of the data and information needed to develop a performance-based planning and project selection system.

➢ **Section 21**: Hearing Requirement for Project Impacts:

- the TTC must adopt rules that ***require a hearing for projects that substantially change the layout or function of an existing roadway***, including the addition of ***managed lanes, HOV lanes, bicycle lanes, bus lanes, and transit lanes***.

Appendix "B"

Contracting and Procurement Legislation

Below is a brief summary of contracting and procurement legislation passed by the 85th Legislature.

- **HB 53 (Romero/Huffman)** *(Effective date: September 1, 2017)* – Prohibits an attorney representing a governmental unit (including political subdivisions, RMAs, and regional tollway authorities ("RTAs")) from entering into a settlement for more than $30,000 ***if a non-disclosure agreement is a condition of the settlement***. This prohibition applies when the money used to pay the settlement is derived from taxes, state funds, or insurance proceeds with a premium paid with taxes or state funds.

  Note: This law is intended to dissuade governmental units from entering into settlement agreements (which are generally subject to disclosure under the Public Information Act) that do not contain sufficient detail to ensure transparency. The change does not affect information that is privileged or confidential under other law.

- **HB 89 (King/Creighton)** *(Effective date: September 1, 2017)* – Prohibits a governmental entity (defined to include a state agency or political subdivision, which includes RMAs and other local toll entities) from entering into a contract for goods or services without first obtaining written verification in the contract that the vendor:

  - ***does not boycott Israel***; and
  - ***will not boycott Israel*** during the term of the contract.
  - A boycott of Israel means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

  Note: This provision could potentially impact the vendors with which a toll authority or other governmental entity may contract. Under a separate provision of the law, the comptroller will maintain a list of all companies that boycott Israel. However, a more obvious impact of this legislation is the ***required change in government contracting practices. To comply with this law, government contracts must now include a provision complying with this new law***.

- **HB 3021 (Phelan/Hughes)** *(Effective date: September 1, 2017)* – This bill pertains to ***contracts for engineering or architectural services*** to which a ***state agency*** is a party and ***prohibits the state agency from imposing a "duty to defend"*** upon an architect or engineer. A law enacted in the 84th Legislature (HB 2049) previously imposed this prohibition on a city, county, and other entities, including RMAs, RTAs, and other local toll project entities. HB 3021 now extends the prohibition to state agencies.

  In addition, HB 3021 ***modifies*** the law that now applies to both state agencies and local government entities (including RMAs, RTAs, and other local toll project entities) by ***clarifying that a governmental agency is not prohibited from including and enforcing conditions that relate to the scope, fees, and schedule*** of a project ***in a contract for engineering or architectural services***.

  Note: These changes in the law apply only to a contract for which a request for proposals or a request for qualifications is first issued on or after September 1, 2017.

- **SB 1289 (Creighton/Paddie)** *(Effective date: September 1, 2017)* – Requires that the bid documents and contracts for certain ***state government projects*** mandate the use of American-produced iron or steel in the project. This new provision in the Government Code is called a "Buy America" law, and many highway projects are already subject to similar requirements.

- The new Buy America provision applies to any ***iron or steel product*** used in a project. (SB 1289 also amends the existing Buy America law that applies to TxDOT-awarded state highway system projects to include an iron preference in addition to the steel preference.)

- The Buy America requirement ***applies to state entities*** that:

  ✓ contract to construct, remodel, or alter a building, structure, or infrastructure (including a road or highway);

  ✓ contract to supply material for such projects; or

  ✓ ***contract with a political subdivision to provide state funding for such projects***.

- The bill permits exceptions to the Buy America requirement if:

  ✓ these products are not produced in sufficient quantities, reasonably available, or of satisfactory quality in the United States;

  ✓ the use of products produced in the United States will increase the total cost of the project by more than 20 percent; or

  ✓ complying with the requirement is inconsistent with the public interest.

Note: While TxDOT projects and highway projects using federal funds are required to comply with existing Buy America laws, those existing laws do not apply to projects undertaken by local entities using non-federal funds. SB 1289 changes the law by ***requiring a local entity to include a Buy America provision in bid documents and contracts for projects that utilize state funding under an agreement with TxDOT***. A local entity developing a project ***using only local funding*** may continue to forgo inclusion of a Buy America provision for state highway system projects.

The requirements imposed in this bill only apply to bid documents submitted or contracts entered into on or after September 1, 2017.

Appendix "C"

Open Government & Ethics Legislation

Below is a brief summary of open government legislation passed by the 85th Legislature.

Open Meetings Bills

- **HB 3047 (Dale/Schwertner)** *(Effective date: September 1, 2017)* – Clarifies that under the Open Meetings Act ("OMA"), a member of a governmental body who participates in a meeting by videoconference call is ***considered absent from any portion of the meeting for which audio or video communication is lost*** or disconnected. A governmental body ***may only continue the meeting if a quorum remains*** without the disconnected member.

  Note: This bill is intended to address confusion under existing law, which provides that a governmental body conducting a meeting with one or more members participating via videoconference must recess until the problem is resolved if a problem occurs that causes a meeting to no longer be visible and audible to the public. HB 3047 clarifies that that if one member's connection is lost, a quorum of the governmental body may continue to meet; however, if a quorum does not remain without the disconnected member, the meeting cannot continue.

- **HB 8 & SB 564 (Nichols/Capriglione)** *(Effective date: September 1, 2017)* – Provides that the governing body of a governmental entity is ***not required to conduct an open meeting*** to deliberate certain information related to ***information technology security practices***, including:

  - security assessments or deployments relating to information resources technology;
  - network security information; or
  - the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

  Note: The effect of this bill is to make an exception to the open meeting requirement that was previously available only to the Department of Information Resources applicable to all governmental bodies. (Note that HB 8, a more extensive bill known as the Texas Cybersecurity Act, was amended on the Senate floor to incorporate the same open meeting provision found in SB 564.)

- **SB 1440 (Campbell/Larson)** *(Effective date: September 1, 2017)* – Clarifies that the ***attendance by a quorum*** of a governmental body at a ***candidate forum, appearance, or debate to inform the electorate does not constitute a meeting*** for the purposes of the OMA.

Pubic Information Bills

- **HB 1861 (Elkins/Watson)** *(Effective date: June 18, 2017 unless acted upon by the Governor at an earlier date)* – Makes ***information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident***, including information contained in or derived from an information security log, ***confidential under the Public Information Act*** ("PIA") and requires a state agency to redact such information from contracts posted online.

  Note: Under existing law, (1) computer network vulnerability reports, (2) other computer vulnerability assessments, and (3) copies of government employee ID badges are protected from disclosure under the PIA. HB 1861 adds a fourth category to the IT security exception under the PIA to protect routine IT security reports and logs.

- **HB 3107 (Ashby/Nichols)** *(Effective date: September 1, 2017)* – Amends provisions governing the production of information in response to a PIA request to:

- provide that a PIA request is ***considered withdrawn if a requestor fails to copy or inspect the responsive documents within 60 days*** of the date that they are made available;

- allow ***multiple PIA requests*** received from an individual requestor on the same calendar day to be ***treated as a single request*** for purposes of calculating costs;

- allow for the establishment of ***monthly limits on the amount of time*** that a governmental body is required to spend producing information for a single requestor without recovering personnel costs with the monthly limit required to be no less than 15 hours (existing law allows for the establishment of a yearly limit of no less than 36 hours);

- provide that a governmental body is not required to respond to a new request from a requestor who has an ***unpaid statement*** issued in connection with a previous request; and

- allow a requestor to file a complaint under the PIA with the attorney general on or after the 90th day after the date the requestor files the complaint with a district or county attorney if the district or county attorney has not brought an action or returned the complaint by that time.

Note: The monthly and yearly limits on the amount of time a governmental body is required to spend responding to requests must be established by the governmental body and do not apply to journalists or others seeking information for dissemination by a news medium or communication service provider.

- **SB 705 (Birdwell/Price)** *(Effective date: May 29, 2017)* – Excepts from disclosure under the PIA the home address, home telephone number, and social security number of an ***applicant for appointment by the governor***.

- **SCR 56 (Watson/Lucio III)** – Asks that the Lieutenant Governor and the Speaker of the House create a ***joint interim committee to examine all state open-government laws, including the PIA***, and that the committee submit its findings and recommendations to the 86th Texas Legislature before it convenes in January 2019. This resolution came about after the failure of efforts to close perceived "loopholes" in the PIA, particularly with respect to the exceptions to disclosure applicable to third parties doing business with the government.

  Note: This resolution resulted from the failure of several significant PIA bills, including SB 407/HB 792 (Watson/Capriglione) (limiting protections applicable to third-party information), SB 408/HB 793 (Watson/Capriglione) (expanding the definition of "governmental body" for purposes of the PIA), and SB 1347/HB 2328 (Watson/Lucio) (proposing an expedited review process that would allow governmental bodies to withhold information under certain circumstances without first seeking a determination from the attorney general). It is likely that efforts will be made to address these issues in the next legislative session.

Other Transparency and Ethics Bills

- **HB 501 (Capriglione/Button/M. González /Fallon/V. Taylor)** *(Effective date: January 8, 2019)* – Requires that a ***Personal Financial Statement ("PFS")*** filed with the Texas Ethics Commission ("TEC") include disclosure of:

  - any ***business entity*** in which the officer held, acquired, or sold ***five percent or more of the outstanding ownership***; and

  - ***contracts that an officer, his/her immediate family member, or a business entity of which the officer or his/her family member has at least a 50% ownership interest has with a governmental entity*** for the sale of goods or services in the amount of at least $2,500, if the aggregate cost of goods or services sold under one or more applicable contracts exceeds $10,000 in the year covered by the report.

  Note: This bill also creates a ***process by which an officer may amend his or her PFS after initial submission to the TEC***, provided that the amendment is made within 14 days of the date that the officer learns of the error or omission and that the original PFS was made in good faith. The new requirements would apply only to PFSs filed on or after January 8, 2019.

- **SB 622 (Burton/Rodriguez)** *(Effective date: June 9, 2017)* – Requires a political subdivision (including RMAs, RTAs, and other local toll entities) to include a ***line item in its budget for expenditures for notices*** required to be published in newspapers ***and a year-to-year comparison of these expenditures***.

Note: This bill is intended to make it easier to distinguish between expenditures for statutorily required notices and general advertising expenses.

- **SJR 34 (Birdwell/Geren)** – Proposes a constitutional amendment to ***limit the service of gubernatorial appointees*** such that an appointee would cease to perform the duties of office on the last day of the first regular session of the Legislature that begins after the expiration of the appointee's term. The amendment would only apply to officers appointed by the Governor with the advice and consent of the Senate and who do not receive a salary, which would include RMA board chairs and gubernatorial appointees to the NTTA board. The proposed constitutional amendment will be submitted to the voters at an election to be held ***November 7, 2017***.

  Note: If passed, this would limit the permissible term for holdover appointees (i.e., those serving in appointed positions after their terms have expired while awaiting reappointment or appointment of a successor). If the officer is not re-appointed and no new appointment is made prior to the end of the next legislative session, the position would become vacant.

Appendix "D"

Other Bills of Interest

- **HB 377 (Oliverson/Campbell)** (*Effective date: September 1, 2017*) – Entitles the surviving spouse of a person who would be eligible for certain ***specialty license plates for veterans*** to register one vehicle for use of the plates as long as the spouse remains unmarried.

- **SB 441 (Rodriguez/Blanco)** (*Effective date: September 1, 2017*) – Allows the surviving spouse of a person who had been entitled to ***specialty plates for veterans with disabilities*** to be eligible to register for use of the plates, regardless of whether the deceased spouse was issued plates.

  Note: A surviving spouse meeting the criteria in the two bills above would then be included in a toll project entity's toll discount program, if any.

- **HB 2646 (Martinez/Hinojosa)** (*Effective date: June 18, 2017 unless acted upon by the Governor at an earlier date*) – Allows for the ***advance acquisition*** by the TTC of real property or an interest in real property for possible use in a transportation facility ***before*** a final decision has been made as to whether the transportation facility will be located on the property or ***environmental clearance*** has been issued for the facility. In the event the TTC disposes of property acquired by advance acquisition that is no longer needed for a transportation facility, the bill requires the property first be offered for sale to the person from whom the TTC acquired the property at the lesser of the price the TTC originally paid the person or the current fair market value.

- **HB 62 (Craddick/Zaffirini)** *(Effective date: September 1, 2017)* – Bans "texting while driving" by making it a misdemeanor offense for the operator of a motor vehicle to use a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. A first offense is punishable by a fine of $25 to $99, with subsequent offenses punishable by a fine of $100 to $200. An offense for which it is shown at trial that the defendant caused the death or serious injury of another person is punishable by a fine not to exceed $4000. The statute establishes a number of affirmative defenses to prosecution that allow a portable wireless communication device to be used for certain purposes, including:

  - with a hands-free device;
  - to navigate using GPS;
  - to report illegal activity or summon emergency help;
  - to read a message concerning an emergency;
  - to relay information to a dispatcher or a digital network or software application service in the course of the operator's occupational duties; or
  - to activate a function that plays music.

  Note: The statute also requires TxDOT to post highway signs regarding the ban and makes knowledge of the effects of texting while driving and distracted driving a part of the driver's license examination. Clarifies that ***cities, counties, and other political subdivisions*** that prohibit the use of wireless communication devices while operating a motor vehicle ***are required to state whether use of a hands-free device is allowed***.

- **HB 100 (Paddie/Schwertner)** (*Effective date: May 29, 2017*) – Requires Transportation Network Companies ("TNCs") to register with the Texas Department of Licensing and Regulation ("TDLR"). The bill also ***preempts***

local law, creating a state-wide regulatory framework for the operation of TNCs. To receive a permit from the TDLR, the TNC must:

- pay an annual fee in an amount determined by TDLR rule;
- maintain a $1,000,000 commercial auto liability policy; and
- comply with state-wide regulations that:
  - ✓ require drivers to undergo a local, state, and national criminal background check;
  - ✓ require TNCs to provide a driver's name, picture, vehicle information, and license plate number to the consumer before each ride;
  - ✓ require TNCs to provide electronic receipts to passengers;
  - ✓ enforce a zero-tolerance intoxication standard for drivers;
  - ✓ prohibit discrimination based upon location, destination, race, color, national, origin, religious beliefs, sex, disability, or age;
  - ✓ require TNCs to accommodate service animals; and
  - ✓ prohibit additional charges because of a passenger's disability.

➢ **SB 1524 (Nichols/Morrison)** (*Effective date: January 1, 2018*) – Allows heavyweight trucks weighing up to 100,000 pounds to pay a $6,000 annual permit fee to haul loads through certain Texas coastal counties.

The permit authorizes the movement of a sealed intermodal shipping container moving in international transportation ***not more than 30 miles from an applicable port authority or port of entry***. The transport is allowed ***only in a county contiguous to the Gulf of Mexico or with a bay opening to the gulf.*** The truck must operate only on highways and roads approved by TxDOT. Additionally, the law explicitly excludes the transport of heavy loads in a county that borders Mexico. The truck and semitrailer must have six to seven axles, be equipped with a roll stability support safety system, and, in certain circumstances, a truck blind spot system.

The permit must designate the specific county and municipality in which the permit will be used. Improper display and evidence of the permit results in a misdemeanor offense. The $6,000 permit fee is to be:

- ***deposited into the state highway fund*** (50%);
- distributed to the county (30%);
- distributed to the municipality (18%); and
- deposited to the credit of the Texas Department of Motor Vehicles fund (4%).

In 2028, the fee can be increased by TxDOT after consultation with entities that are studying the effect of damage to the roads. The law also instructs TxDOT to study other impacts of this law on mobility.

Note: While the fees required under this law may minimally increase transportation funding to the state highway fund, the harmful impact on infrastructure could be substantial.

➢ **SB 2205 (Hancock/Geren)** (*Effective date: September 1, 2017*) – Seeks to implement a statutory framework to implement minimum safety requirements related to automated motor vehicles ("AMVs").

Provides for the ***exclusive governance*** of AMVs, ***including any commercial use or operation*** of automated motor vehicles. A political subdivision or a state agency is ***precluded from imposing a franchise or other regulation*** related to the operation of an automated driving system ("ADS") or the AMV on which it installed.

The ADS is defined to mean the hardware and software that, when installed on a motor vehicle and engaged, are collectively capable of performing, without any intervention or supervision by a human operator:

- all operational and tactical aspects of operating a vehicle on a sustained basis; and
- any fallback maneuvers necessary to respond to a failure of the system.

When the ADS is engaged, the owner of the ADS is considered the operator of the AMV solely for the purpose of assessing compliance with applicable traffic or motor vehicle laws, ***regardless of whether the person is physically present in the vehicle*** while the vehicle is operating. Further, a licensed human operator is not required to operate a motor vehicle if an ADS installed on the vehicle is engaged.

An AMV ***may not operate on a highway with the ADS engaged unless*** the vehicle is:

- capable of operating in compliance with applicable traffic and motor vehicle laws;
- ***equipped with a recording device*** installed by the manufacturer of the AMV or ADS for the purpose of retrieving information from the vehicle after an accident;
- equipped with an ADS in ***compliance with applicable federal law and federal motor vehicle safety standards***;
- registered and titled in accordance with state law; and
- covered by ***motor vehicle liability coverage or self-insurance*** in an amount equal to the amount of coverage that is required by law.

The legislation further specifies that in the event of an accident involving an AMV, the AMV or any human operator of the AMV shall comply with all legal duties applicable to the operator of a vehicle involved in an accident under current law.

- **SB 28 (Creighton/Deshotel)** (*Effective date: May 26, 2017*) – Permits the TTC to use money from the Texas Mobility Fund to provide funding for a ***port access improvement project*** which is defined as "the construction or improvement of public roadways that will enhance connectivity to ports." The number of members on the Port Authority Advisory Committee is increased from seven to nine, with the additional two members consisting of one member to be appointed by the Lieutenant Governor and one by the Speaker of the House.

  The bill also provides for the creation of the ***Ship Channel Improvement Revolving Fund***, which will be used for a revolving loan program to finance qualified projects for navigation districts, including to deepen or widen a ship channel but not for maintenance dredging.

- **SB 1305 (Nichols/Darby)** (*Effective date: December 31, 2017*) – Repeals the statutory authorization for county energy transportation reinvestment zones ("CETRZs"). Changes the funding allocations in the grant program using money from the Transportation Infrastructure Fund to remove the requirement that money go only to counties that have designated a CETRZ.

- **SB 1523 (Nichols/Y. Davis)** (*Effective date: June 1, 2017*) – In response to certain requirements in recent federal surface highway transportation legislation, SB 1523 requires TxDOT to implement a ***State Safety Oversight Program*** for rail fixed guideway public transportation systems. These systems include rail, monorail, and trolley projects not subject to the jurisdiction of the Federal Railroad Administration. TxDOT is permitted to enter into an agreement with a contractor to act on behalf of TxDOT in carrying out its duties in the creation of this program.

High Speed Rail

There were approximately two dozen bills filed this session aimed at placing various restrictions on a proposed high-speed rail ("HSR") project between Houston and the Dallas–Fort Worth ("DFW") area. It was a similar dynamic seen in the fight against the Trans-Texas Corridor in that legislators representing landowners in the rural areas between Houston and DFW voiced the loudest opposition to HSR. Ultimately only two bills were adopted. In both pieces of legislation the term

"high-speed rail" was defined to mean "passenger rail service that is reasonably expected to reach speeds of at least 110 mph."

- **SB 975 (Birdwell/Schubert)** (*Effective date: June 18, 2017 unless acted upon by the Governor at an earlier date*) – Requires an operator of HSR to implement certain security measures and to coordinate with federal, state, and local law enforcement agencies. The Department of Public Safety is authorized to administer, enforce, and adopt rules to implement the safety provisions.

- **SB 977 (Schwertner/Ashby)** *(Effective date: September 1, 2017)* – Except as provided by federal or other state law, prohibits the Legislature from appropriating, or a state agency from accepting or using, state money to pay for the planning, facility construction or maintenance, security, promotion, or operation of a privately operated HSR. State agencies are required to report each expense related to a HSR to the TTC, the Comptroller, the Legislature, the Speaker, the Lieutenant Governor, and the Governor. The bill was revised in the Senate to clarify that it does not preclude or limit TxDOT's existing legal responsibilities pertaining to regulation, oversight, environmental review, policy development, communication with public officials, and coordination with a private operator of a HSR.

  Note: Similar provisions limiting expenditures for HSR were included as a rider in TxDOT's budget in SB 1.

Public-Private Partnership Legislation

Despite the strong opposition to comprehensive development agreements discussed in the Introduction above, the legislature adopted two pieces of legislation amending Chapter 2267 of the Government Code which allows for the use of P3s on infrastructure projects developed by Houston Metro and the Brazoria-Fort Bend County Rail District.

- **HB 2557 (Miller/Kolkhorst)** (*Effective date: June 18, 2017 unless acted upon by the Governor at an earlier date*) – Authorizes Brazoria and Fort Bend Counties, acting through their commissioners court or a local government corporation, to adopt an order authorizing the county and a navigation district to ***develop a rail facility under Chapter 2267*** and to issue bonds for rail facilities, secured by a pledge of the revenues of the facilities. Further, the bill allows the Brazoria-Fort Bend Rail District to exercise these powers if both the Brazoria and Fort Bend County Commissioners Courts authorize such action.

  - HB 2557 provides for considerable revisions to the ***definition of a "rail facility"*** under Chapter 172 of the Transportation Code so that is now includes:

    - ✓ ***passenger*** or freight rail facilities;
    - ✓ an intermodal hub;
    - ✓ an automated conveyor belt for the movement of freight;
    - ✓ an intelligent transportation system that operates with or as part of these types of facilities; or
    - ✓ a system of these types of facilities.

  - The newly (and broadly) defined term "***intelligent transportation system***" means:

    - ✓ an innovative or intelligent technological transportation systems, infrastructure, or facilities, including elevated freight transportation facilities in proximity to, or within, an existing right-of-way on the state highway system or that connect land ports of entry to the state highway system;
    - ✓ communications or information processing systems that improve the efficiency, security, or safety of freight movement on the state highway system, including improving the conveyance of freight on dedicated intelligent freight lanes; or
    - ✓ a transportation facility or system that increases truck freight efficiencies in the boundaries of an intermodal facility or hub.

  Note: The significantly broadened definition of a rail facility under HB 2557 (and incorporated in Transportation Code Chapter 172) is not among the list of permissible projects under Chapter 2267. Therefore, it appears that ***Brazoria and Fort Bend Counties in partnership with a navigation district located wholly or partly in those***

counties, or the Brazoria-Fort Bend Rail District are the only governmental entities with the authority to develop this newly defined type of rail facility as a P3 under Chapter 2267. Note that Chapter 2267 does allow for development of other types of rail projects such as a mass transit facility.

- **SB 255 (Zaffirini/Simmons)** (*Effective date: September 1, 2017*) – This bill primarily addresses purchasing and contract management training for certain state governmental entities and vendors. On the final day the House could consider Senate bills on 3rd reading (May 24), Representative Senfronia Thompson amended SB 255 with the text of her HB 3252 which had stalled in the Senate. The amendment ***allows Houston Metro to utilize the P3 authority under Chapter 2267***. Transit entities are otherwise specifically excluded from the applicability of Chapter 2267.

Appendix "E"

Legislation of Interest Which Did Not Pass

Below is a brief summary of legislation of interest which was not passed by the 85th Legislature.

Restrictions on System Financing

- **HB 772 (Burkett)** – Would have repealed and amended various statutory provisions applicable to local toll project entities ("LTPEs") allowing for the use of surplus revenues on other projects. Provided that after all outstanding bonds and other obligations secured by toll revenue of a toll project have been repaid or otherwise satisfied, tolls collected for use of the project could be used only for the operations and maintenance ("O&M") of the portion of the project for which the tolls were collected. Tolls would have been set at an amount which provides revenue sufficient, but not more than necessary, to pay for O&M costs and the principal of any interest on any outstanding bonds issued for the transportation project.

- **HB 1282/ SB 668 (Shaheen/(Kolkhorst)** – Would have repealed and amended various statutory provisions applicable to LTPEs allowing for the use of surplus revenues on other projects. Provided that after all outstanding bonds and other obligations secured by toll revenue of a toll project have been repaid or otherwise satisfied, the toll project would be transferred to the state highway system and will be maintained by the TTC. Further, an LTPE would have been prohibited from amending a financing agreement in order to extend the date at which the toll project would become part of the state highway system.

- **HB 1518/SB 639/SB 1909 (Leach/Huffines/Campbell)** – Would have prohibited use of money in the state highway fund for the construction, maintenance, or acquisition of right-of-way for toll projects or systems. Limited the use of general obligation bonds issued by the TTC for the improvement of a toll road. Repealed and amended various statutory provisions allowing for the use of surplus revenues on other projects. Further, limited the use of money an RMA receives from the state highway fund so that it may only be used for a roadway with a functional classification greater than a local road or rural minor collector.

- **SB 1555 (Kolkhorst)** – Would have required the TTC to adopt procedures to require TxDOT to consider financing and operating each state highway system toll project as financially independent and not part of a system.

Toll Entity Oversight & Operations

- **SB 1643 (Watson)** – Would have allowed a toll project entity to provide ***customer account information*** to another toll project entity by contract. After concerns raised in the Senate Transportation Committee hearing it was amended to require a contract for customer account data to ensure confidentiality, exclude information related to account payment arrangements or banking information, and not allow for use of the information for commercial purposes.

- **SB 637 (Huffines)** – Would have prohibited TxDOT from making a grant or loan to an RMA unless the RMA agrees to allow state audits as if it were a state department at any time until the completion of the transportation project for which the funds are granted or loaned. The audit would have been completed at the discretion of the legislative audit committee.

- **HB 766 (Burkett)** – Would have subjected NTTA to review by the Sunset Advisory Commission as if they were a state agency. NTTA would have been responsible for paying the cost of the sunset review, as determined by the Sunset Advisory Commission. However, the bill would have prohibited the abolishment of a the NTTA through the sunset review process.

- **HB 2368 (Muñoz)** – Would have subjected RMAs to review by the Sunset Advisory Commission as if they were a state agency. The RMA would have been responsible for paying the cost of the sunset review, as determined by

the Sunset Advisory Commission. However, the bill would have prohibited the abolishment of a RMA through the sunset review process.

- **SB 493 (Hall)** – Would have subjected all RMAs to review by the Sunset Advisory Commission as if they were state agencies. Unless continued in existence by the Sunset Advisory Commission, all RMAs could have been abolished and Chapter 370, Transportation Code, could have expired September 1, 2019. The RMA would have been responsible for paying the cost of the sunset review.

Lobby Prohibitions

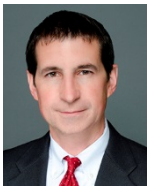
- **SB 241 (Burton)** – Would have prohibited a political subdivision that imposes a tax, or a RMA, toll road authority, or transit authority from spending public money to directly or indirectly influence or attempt to influence the outcome of any legislation. The bill would have also required that a political subdivision only spend public money on membership fees for associations and organizations that benefit the local government and not on association or organizations that lobby or support political campaigns.

- **SB 445 (Burton)** – Would have required the governing body of various political subdivisions, including a RMA or RTA, to approve the use of money for lobbying activities by a majority vote in an open meeting. The bill would have also required a political subdivision to report to the Texas Ethics Commission and post on the political subdivision's website:

  - ✓ the amount of lobby expenditures;
  - ✓ the names of the lobbyists;
  - ✓ the contracts for lobby services; and
  - ✓ the amount of memberships fees in associations that lobby.

  If the political subdivision did not comply with these requirements, a party could have sought an injunction to prevent further lobbying activities. Senator Burton attempted to add a similar provision to HB 2305 (Guillen). The amendment was successfully added to the bill in the Senate; however, the bill later died on the House floor.

ABOUT THE AUTHORS



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