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**Texas Transportation Legislation
Overview of the 84th Legislative Session**

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Heading into the 84th Legislative Session the outlook for transportation issues, and tolling in particular, was uncertain. After 14 years under Governor Perry and 12 years under Lieutenant Governor Dewhurst, Texas had a new Governor and Lieutenant Governor. Both Governor Abbott and Lieutenant Governor Patrick ran on conservative platforms which included commitments to increase transportation funding, but without raising taxes, fees, or tolls. While this sentiment fell short of outright opposition to tolling, it marked a notable change from the previous administration which readily embraced tolling as a means of bolstering the state's transportation infrastructure.

The Texas Legislature had a new look as well. The House of Representatives welcomed 24 new members, and the Senate had 8 new members. This marked the largest legislative turnover in recent history. Many of the new members received backing from the "Tea Party" and other conservative groups, and while increased transportation funding was a commonly expressed objective among many, a handful of new members also brought with them a strident anti-toll road agenda. Hence the uncertainty heading into the Legislative Session—a widespread commitment to increase funding, but vocal opposition to tolling.

By the end of the Legislative Session significant progress was made on funding, and tolling was left relatively unaffected. However, while funding was increased, certain bonding authority was restricted and oversight of TxDOT was increased (even though the department is scheduled for Sunset Review during the 85th Legislative Session). And while no anti-toll legislation was passed, there was a continuation of the precedent set in the 83rd Legislative Session of prohibiting certain funds from being used for toll roads, and a study was authorized that will analyze the cost of removing tolls from projects around the state. A closer look at these issues, and legislation that pertains to each, appears below and in the attached Appendices.

Funding

The most significant development with respect to potential funding resulted from SJR 5, advanced by Senate Transportation Committee Chair Robert Nichols and House Transportation Committee Chair Joe Pickett. Sen. Nichols filed SJR 5, which initially called for a constitutional amendment to provide for a dedication of new vehicle sales tax proceeds in excess of \$2.5 billion (the "Base Amount") to the State Highway Fund ("SHF") beginning in 2018. By the time SJR 5 was voted out of the Senate it had been revised to provide for a dedication of up to \$2.5 billion in excess of the Base Amount, with further proceeds in excess of the Base Amount and the \$2.5 billion (collectively \$5 billion) being allocated 50% to the SHF, 30% to general revenue, and 20% to the Available School Fund. The Legislative Budget Board ("LBB") estimated that this approach would generate \$2.7 billion in 2018, \$2.9 billion in 2019, and \$3.1 billion in 2020.¹ After Governor Abbott declared transportation funding an

¹ See Fiscal Note, Tex. SJR 5, Senate Comm. Report, Substituted, 84th Leg. (Feb. 27, 2015).

emergency item during his State of the State address on February 17, 2015², SJR 5 was quickly voted out of the Senate and was received in the House on March 5, 2015.

The House did not share the Senate's sense of urgency and took an alternative approach to using motor vehicle sales tax proceeds. Rep. Pickett filed HJR 13, which called for a constitutional amendment to authorize \$3 billion of general sales tax proceeds to be deposited to the SHF, plus 2% of sales tax collections in excess of the \$3 billion. The LBB's estimate was that this approach would generate \$3.6 billion in 2018 and 2019, and \$3.7 billion in 2020.³ HJR 13 was heard and left pending in the House Transportation Committee until April 21, 2015, at which time SJR 5 was considered and Rep. Pickett amended it by substituting the language of HJR 13 for the text of SJR 5. SJR 5 was then passed by a vote of 138 to 3 in the House (with minor modifications) and returned to the Senate.

Not surprisingly the Senate did not concur in the changes made to SJR 5 by the House. That set the stage for a conference committee to resolve the differing approaches (general sales tax versus motor vehicle sales tax). After what were reportedly some fairly tense negotiations, the ultimate compromise was a blending of the two concepts. As passed, and subject to a constitutional amendment that will be on the November 3, 2015 ballot (as Proposition 7), SJR 5 provides for \$2.5 billion in general sales tax proceeds in excess of \$28 billion to be deposited to the SHF beginning in fiscal year 2018, along with 35% of motor vehicle sales tax proceeds in excess of \$5 billion beginning in fiscal year 2020. The LBB estimates that (if passed by the voters) the impact will be \$2.5 billion deposited to the SHF in 2018 and 2019, and close to \$3 billion in 2020 (no estimates were provided beyond 2020).⁴ Additional details regarding timing and limitations on the funding are discussed in Appendix "A".

One other funding measure was passed in addition to SJR 5, and this one is not contingent on a constitutional amendment. After several sessions of discussion (and some progress in 2013), the Legislature succeeded in ending the diversion of SHF proceeds to pay for the Department of Public Safety ("DPS") policing of public roadways, which will result in an increase in funding for road projects of approximately \$600 million per year. This was accomplished in part by HB 20 (Rep. Ron Simmons/Sen. Nichols), which removes from statute the authority to fund these DPS activities from the SHF, along with an appropriation of general revenue in the budget to fund the DPS activities. In other words, the policing of roadways by DPS will be funded from general revenue rather than from TxDOT's budget, leaving that money for TxDOT to spend on roads.

² See H.J. of Tex., 84th Leg., R.S. 407 (2015). (Note that in the proclamation, Governor Abbott expanded on his conservative campaign pledge by calling for an increase in transportation funding without raising debt, in addition to taxes, fees, or tolls).

³ See Fiscal Note, Tex. SJR 5, House Comm. Report, Substituted, 84th Leg. (April 22, 2015).

⁴ See Fiscal Note, Tex. SJR 5, Conf. Comm. Report, 84th Leg. (May 27, 2015).

Aggregate Impact of Funding Measures

Assuming Proposition 7 passes, the combined funding increase from SJR 5 and ending the DPS diversion will be an annual amount of \$3.1 billion in 2018 and 2019, and close to \$3.6 billion in 2020. And in keeping with the campaign promises of both the Governor and the Lieutenant Governor, none of the increased funding is the result of increases in taxes, fees, or tolls; it is all derived from existing (and future) sources of revenue.

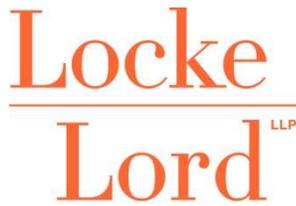
Tolling

While tolling received a considerable amount of attention, the most significant development may be what did not happen. A number of legislators filed anti-toll bills, aimed at everything from requiring the elimination and removal of tolls to precluding system financing. One bill would even have repealed the enabling legislation for regional mobility authorities (“RMAs”). Much of the anti-toll sentiment came from legislators in the Metroplex area, which has seen a proliferation of toll roads over the last decade and where passions were inflamed by a (now abandoned) proposal to re-designate an HOV lane on US 75 as a managed (toll) lane.

As the Legislative Session progressed two things happened which derailed much of the anti-toll agenda. First, political rhetoric collided with financial reality. In various committee hearings the financial needs analysis that started with the 2030 Committee report (first issued in 2009) received considerable attention. That report concluded that Texas would need an additional \$4 billion per year in transportation funding to merely maintain the current congestion levels throughout the state. Since then the significant negative impacts of oil and gas exploration on state and county roads have increased that number to \$5 billion per year. Although lawmakers made progress in closing the funding gap with Proposition 1 from the 83rd Legislative Session (dedicating a portion of oil and gas severance tax revenues to transportation), the 2030 Committee estimates were based *on the assumption* that toll roads would continue to be used to fund added capacity projects. TxDOT’s CFO, James Bass, testified in one hearing that if tolling were eliminated as an option for developing projects, the amount needed to maintain current congestion might increase an additional \$10 billion per year.⁵ And that is just the amount required to maintain the status quo, a condition which in many areas is already viewed as unacceptable.

Second, lawmakers from areas around the state began to resist the notion of having tolling eliminated (or undermined) as an option for their regions. The anti-toll agenda being advanced by some lawmakers was largely the result of local issues of “toll fatigue” in the Metroplex, and the problem with solving local issues through statewide policy changes quickly became apparent. Several areas around the state have existing toll authorities which have proven successful at delivering projects, and many areas have plans for additional toll projects. Lawmakers in those areas balked at having that local option removed for their region simply because of discord in north Texas.

⁵ Testimony of James Bass, House Transportation Subcommittee on Long Term Infrastructure Planning Hearing (March 24, 2015).



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For the present time tolling remains as a tool available to TxDOT and various local toll project entities around the state. No new projects were authorized to be developed through comprehensive development agreements (“CDAs”), meaning that currently authorized projects (except the Grand Parkway) have until August 31, 2017 to be procured and under contract by TxDOT or an RMA.⁶

Beyond the legislation discussed above, there were relatively few bills addressing transportation-specific issues passed by the Legislature and signed by the Governor. Nevertheless there are some bills worth noting, and others that, while not transportation specific, may affect the business of RMAs, other toll authorities, and those who do business with those entities. In addition, there are several bills of note which did not pass, meaning that certain outstanding issues were not resolved (e.g., county transportation reinvestment zones), and various threatened actions were not enacted (e.g., sunset reviews of local toll project entities). Those bills are described in the following appendices:

Appendices

Appendix “A”	Transportation Funding & Related Legislation (SJR 5; HB 122; HB 20, HB 1)
Appendix “B”	TxDOT Oversight & Required Studies (HB 20; HB 2612; HB 790)
Appendix “C”	Toll Operations and Other Related Legislation (SB 57; HB 2549; HB 565; SB 1467)
Appendix “D”	Open Government Legislation (HB 685; HB 283; HB 2134; HB 3357; SB 1237; HB 2633; SB 57)
Appendix “E”	Contracting, Procurement, and Other Legislation of Interest (HB 23; HB 2049; HB 1295; SB 408; SB 1281; SB 1812; HB 1378; HB 3683)
Appendix “F”	Legislation of Interest Which did Not Pass

The foregoing and the attached appendices are only intended to be a summary of the results of the 84th 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: C. Brian Cassidy, (512) 305-4855 (bcassidy@lockelord.com); Lori Winland, (512) 305-4718 (lwinland@lockelord.com); or Brian O’Reilly, (512) 305-4853 (boreilly@lockelord.com).

⁶ NTTA and county toll road authorities take the position that they have unrestricted CDA authority.

Appendix “A”

TRANSPORTATION FUNDING AND RELATED LEGISLATION

Below is a brief summary of transportation funding legislation passed by the 84th Legislature.

- **SJR 5 (Nichols/Pickett)** – Proposes a constitutional amendment which, if passed, will:
 - dedicate to the State Highway Fund (“SHF”) in each fiscal year:
 - ✓ *\$2.5 billion of the general sales tax revenue* in excess of \$28 billion beginning in FY 2018; and
 - ✓ *35% of the revenue from motor vehicle sales taxes above \$5 billion* beginning in FY 2020.
 - include a restriction providing that the funds may only be used to:
 - ✓ *construct, maintain, or acquire rights-of-way for public roadways other than toll roads*; or
 - ✓ repay the principal of and interest on Proposition 12 general obligation bonds (as authorized by Sec. 49-p, Art. III., Texas Const.)
 - provide a safeguard that future legislatures may, by a two-thirds vote of each house, direct the comptroller to reduce the transfers to the SHF by up to 50% in the state fiscal year in which the resolution is adopted or in either of the following two state fiscal years.
 - provide that the *deposit of motor vehicle sales taxes will cease in 2029*, and the *deposit of general sales tax revenue will cease in 2032*. However, either or both of these *deadlines can be extended in 10 year increments* by the legislature through the adoption of a resolution approved by a majority of the members of each house.

The constitutional amendment approving SJR 5 will be submitted to the voters at an election to be held November 3, 2015 and will be identified as Proposition 7.

- **HB 122 (Pickett/Nichols)** (*Effective date: September 1, 2015*) – The Texas Mobility Fund (“TMF”) was first authorized by the voters through a constitutional amendment approved in 2001. The Texas Transportation Commission was authorized to issue debt supported by the TMF to finance the development and construction of roads on the state highway system, publicly owned toll roads, and other public transportation projects. The TMF is one of the more flexible sources of money available for use by TxDOT.

HB 122 imposes significant restrictions on the use of the TMF. Specifically:

- The TTC is *prohibited from issuing any additional TMF debt*, except to refund outstanding obligations (to provide savings), refund outstanding variable rate obligations, and to renew or replace credit agreements relating to variable rate obligations.
- Additional funds on deposit in the TMF in excess of what is needed to satisfy existing obligations or credit agreement requirements may be used for any of the statutory purposes *other than for toll roads*.

As a consequence, the TMF will cease to function as a revolving fund in the nature that it has since 2001, and available funds will not be available for use on toll projects.

- **HB 20 (Simmons/Nichols)** (*Effective immediately*) – In addition to the various oversight provisions described in further detail under Appendix “B”, **HB 20 removes the statutory authority for SHF revenues to be used by the Department of Public Safety** (“DPS”) to police the state highway system and to administer state laws relating to traffic and safety on public roads. By ending this diversion, *approximately \$600 million per year* of TxDOT’s budget that was previously allocated to DPS funding *will now be available for SHF purposes*. Note that the constitutional authorization for the use of SHF revenues by DPS has not been changed; the removal of authority for the DPS diversion was accomplished by a statutory change (which could be revised again by future legislatures).
- **HB 1 (Otto/Nelson)** (*Effective date: September 1, 2015*) – Various riders to the TxDOT budget approved for the 2016-2017 biennium contain provisions which affect funding and operations. These include:
 - Rider 44- prescribes the manner in which Proposition 1 funds included in the budget are to be allocated. Specifically, funds are to be allocated as follows:
 - ✓ 45% for mobility and added capacity projects in urban areas;
 - ✓ 25% for projects that improve regional connectivity along strategic corridors in rural areas
 - ✓ 20% for statewide maintenance and preservation projects; and
 - ✓ 10% for safety and maintenance projects in areas affected by energy sector activity.

Note that these percentages vary somewhat from those previously announced by TxDOT.

- Rider 49- provides that from funds collected from TxDOT’s sale of surplus property:
 - ✓ discounts are to be funded for qualified veteran’s using the Central Texas Turnpike System and other toll projects operated and maintained by TxDOT; and
 - ✓ toll discounts are to be funded for large trucks using Segments 1-4 of SH 130 and SH 45 Southeast.

Appendix “B”

TxDOT OVERSIGHT AND REQUIRED STUDIES

There were several bills filed during the 84th Legislative Session that were intended to increase oversight of TxDOT and certain of the decision-making processes of the Texas Transportation Commission (“TTC”). In general there were two justifications offered for this: First, that with significantly increased funding it was appropriate to increase oversight; and second, that previous decisions of the TTC with respect to changes to the Unified Transportation Plan (“UTP”) were made without adequate scrutiny and public notice.

HB 20 (Simmons/Nichols) (*Effective immediately*) was the principal oversight bill, although it incorporated other subjects as well (i.e., TxDOT design/build authority, planning procedures of metropolitan planning organizations (“MPOs”), and repeal of the DPS diversion language (see Appendix “A”)). It is summarized by the different subject-matter areas below:

TTC Rulemakings

The bill requires the TTC to conduct rulemakings *on 6 different enumerated topics*, some of which could have a *significant impact on project selection, approval, and funding* processes. Given the potential impacts, local planners, project implementers, and other stakeholders should be prepared to participate in the rulemakings. It is unclear how and when the rulemakings will be conducted and whether some or all of the rulemaking subjects will be combined or addressed in different processes.

- HB 20 requires the *TTC to adopt and implement rules relating to:*
 - the *prioritizing and approval of projects in the State Transportation Improvement Program (“STIP”)* in order to provide financial assistance.
 - establishment of a *performance-based process for setting funding levels* in the UTP.
 - establishment of a *scoring system for prioritizing projects for which financial assistance* is requested by an MPO (or TxDOT district for an area without an MPO). Note that:
 - ✓ the criteria must consider TxDOT’s strategic goals as approved by the TTC in accordance with federal law; and
 - ✓ the scoring system must account for the diverse needs of the state to fairly allocate funding to all regions.
 - a performance-based *planning and programming process* which:
 - ✓ includes indicators that “quantify and qualify” progress toward attaining TxDOT goals and objectives established by the TTC and the Legislature; and
 - ✓ provides this information to the executive and legislative branches of government.

- performance *metrics and performance measures* as part of the:
 - ✓ review of strategic planning in the Statewide Transportation Plan, UTP, and Rural Transportation Plan;
 - ✓ *evaluation of the decision-making on project funding selections* under the STIP and UTP; and
 - ✓ evaluation of project delivery in TxDOT’s letting schedule.

- performance *metrics and measures* that will:
 - ✓ assess how well the transportation system is performing under federal law;
 - ✓ provide TxDOT, the legislature, stakeholders, and the public with accessible and understandable information supporting TTC decisions;
 - ✓ assess the *effectiveness and efficiency of transportation projects* and services;
 - ✓ demonstrate *transparency and accountability*, and
 - ✓ address other issues as determined by the TTC.

In addition to the required rulemakings, HB 20 also *limits the TTC’s discretionary funding decisions* to no more than 10% of TxDOT’s biennial budget.

MPO Requirements

In addition to the myriad of requirements imposed on TxDOT, HB 20 requires certain actions by MPOs (and by TxDOT districts in areas where there is not an MPO). The planning organizations are required to:

- *develop a 10 year plan for the use of funding* allocated to the region:
 - the first 4 years of the plans should be developed to meet the Transportation Improvement Program requirements of federal law.
 - TxDOT must assist in the effort by providing information reasonably requested by the MPO.
 - for areas not in an MPO, the TxDOT district shall prepare the plan with input from city and county elected officials and other transportation officials in the area (e.g., officials in a political subdivisions responsible for project planning and implementation).

- *develop project recommendation criteria* (note that “project”, as used in this context, refers only to connectivity or new capacity projects; not safety, bridge, maintenance, or preservation projects). The *criteria must consider*:
 - projected *improvements to congestion and safety*;

- projected *effects on economic development* opportunities;
- available *funding*;
- *environmental* (including air quality) *impacts*;
- *socioeconomic effects*, including adverse health or environmental effects on minority or low-income neighborhoods; and
- other factors deemed appropriate by the planning organization.

TxDOT Design/Build Impacts

HB 20 also became a vehicle for certain *changes to TxDOT's design/build authority*. Specifically, the bill:

- *retains the limit of 3 design/build projects per fiscal year* for TxDOT (the limit was set to expire on August 31, 2015; HB 20 repealed the expiration date, thus retaining the 3 per year project limit).
- *increases the minimum project size* for a TxDOT design/build project *to \$250 million* (up from \$50 million). (Note that HB 20 actually states a \$150 million minimum project size, however rider 47 to TxDOT's budget (HB 1) establishes a \$250 million minimum project size, which TxDOT has indicated it is bound by for the duration of the biennium.).
- *authorizes the inclusion of a maintenance agreement* in a design/build contract, provided that such agreements do not exceed 5 years (but those agreements may be renewed in up to 5 year option periods with no limit on the number of renewal terms).
- *defines a project which may be the subject of a design/build contract* to be a single highway between two defined points in a corridor or two or more contiguous highway facilities, and *precludes including more than one project in a design/build contract*. This was apparently in response to concerns that TxDOT had bundled multiple projects into one design/build contract.
- *precludes TxDOT from using design/build for a project which is "substantially designed"* by TxDOT or another entity other than the design/build contractor. "*Substantially designed*" appears to mean *in excess of a schematic design more than approximately 30% complete*.
- Note that the *foregoing changes only apply to TxDOT's design/build authority*; not to the authority of regional mobility authorities ("RMA's") or any other entities. Also, rider 47, referenced above, provided for a 10 project per biennium limit on TxDOT design/build projects; however, as to this aspect the general law provisions of HB 20 described above prevail over the rider language.

Appointment of Special Legislative Committees

As an additional element of the oversight being implemented through HB 20, the legislation calls for the *appointment of Select House and Senate Committees to review* various aspects of *TxDOT's planning and operations functions*. The Committees are required to submit a report in advance of the 85th Legislative Session, which may be an indication of the types of legislation which may be pursued. Details of the committee process include:

- Appointment of Committees:
 - The Speaker will appoint a **9 member House Select Committee on Transportation Planning** and will designate the chair.
 - The Lt. Governor will appoint a **5 member Senate Select Committee on Transportation Planning** and will designate a chair.
 - The committee appointments should consider diverse constituencies with respect to:
 - ✓ geographic areas;
 - ✓ urban and rural areas; and
 - ✓ ethnicity.
 - The committees may meet separately or jointly.
 - The committees shall prepare a written report on the subject matter of their review, to be completed by November 1, 2016.
- Scope of Committee Reviews: The committees are directed to *review, study and evaluate*:
 - *TxDOT financial projections* of amounts needed to *maintain* current maintenance, congestion, and connectivity conditions.
 - the *development of funding categories*, and with respect to those categories:
 - ✓ the allocation of funding to the categories by formula;
 - ✓ project selection authority for each category; and
 - ✓ development of project selection criteria for the TTC, TxDOT, and TxDOT district selected projects.
 - TxDOT rules and policies for development and implementation of performance-based scoring for project prioritization and selection of projects.
 - utilization of previously authorized *alternative methods of financing*.

- performance metrics and measures being used by TxDOT to evaluate the performance of TxDOT projects.
- TxDOT’s collaboration, when adopting rules or formulating policies, with:
 - ✓ state elected officials;
 - ✓ local governments;
 - ✓ MPOs;
 - ✓ RMAs;
 - ✓ government trade associations; and
 - ✓ other entities.
- proposed rules, policies, programs, or plans of TxDOT or the TTC of statewide significance.
- possible benefits of using zero-based budgeting.
- any other matters deemed appropriate by the committees.

There is clearly a wide range of subject matter to be considered by the Select Committees. RMAs and other toll authorities will likely be called upon for input on some items and should be prepared to participate in committee hearings when requested or when the subject matter is of significance to funding and operational issues.

HB 2612 (Pickett/Hall)¹ (*Effective date: September 1, 2015*) - Perhaps in response to the myriad of anti-toll road legislation that was filed, and in an effort to *put into context the idea of eliminating tolls on roads* in Texas, Rep. Pickett filed a bill requiring a study of just what that would entail.

- The study is to be completed by TxDOT before September 1, 2016, with a report to be presented to the House and Senate Transportation Committees. The report is required to:
 - identify the *amount of debt service on bonds* issued *for each toll project* in the state.
 - *identify bonds* that would be appropriate (based on TTC-adopted criteria) *for accelerated or complete lump sum payment* of debt service.
 - *propose a plan to eliminate all toll roads*, excluding those constructed, operated and maintained with proceeds from the issuance of bonds by a toll project entity other than TxDOT, by methods including:
 - ✓ accelerated or complete lump sum payment of debt service on bonds; or

¹ See also, Tex. H.B. 1, 84th Leg., R.S. (2015) (Rider 46 to TxDOT’s budget providing for an identical requirement.).

- ✓ requiring a toll project entity to commit to eliminate tolls on a project for which financial assistance is requested.

The study raises several questions in terms of scope. By requiring identification of debt service for “each” toll project in the state, the scope is not limited to TxDOT projects—it appears to cover all toll projects. However, for the plan to eliminate tolls, the scope applies only to TxDOT projects and any others which have received financial assistance from TxDOT, and may include any others which are not 100% bond financed. While most RMA and several North Texas Tollway Authority (“NTTA”) projects have received some form of financial assistance from TxDOT, projects in the Harris County Toll Road system have largely been built without TxDOT support.

HB 790 (Burkett/Hancock) (*Effective immediately*) - As noted in the overview section, many of the anti-toll bills stemmed from disputes in the Metroplex area. ***One of those disputes involves a sound wall*** (or more precisely, the absence of a sound wall) on an NTTA project. This bill, as filed, was limited to NTTA and would have required a study to be conducted, a sound wall to be constructed if the study showed certain noise levels, and a set aside of 5% of tolls collected to address traffic noise on projects. That clearly would have had negative implications for NTTA and would have established an untenable precedent for other projects and entities. Therefore HB 790 was modified significantly to merely require a study as follows:

- By November 1, 2016, ***the Texas Transportation Institute (“TTI”) is required to complete a study relating to the implementation and effectiveness of sound mitigation*** measures on highways that are part of the state highway system and toll roads developed by any toll project entity. The study is to include:
 - an analysis of ***how sound mitigation measures are selected***, and an evaluation of how effective the selection process and actual mitigation measures are in reducing traffic noise levels on neighboring properties.
 - an analysis of ***whether live testing is conducted*** to determine noise levels for neighboring properties.
 - an evaluation of the ***effectiveness of implemented sound mitigation measures***.
- The TTI report is to be presented to the Governor, Lieutenant Governor, Speaker, and Chairs of the House and Senate Transportation Committees.

Note that projects which receive federal funding must follow fairly strict Federal Highway Administration guidelines for sound mitigation. It is unclear how this study will interact with those requirements.

Appendix “C”

TOLL OPERATIONS AND OTHER RELATED LEGISLATION

Below is a brief summary of toll operations legislation passed by the 84th Legislature.

- **SB 57 (Nelson/Simmons)** (*Effective immediately*) – ***Extends the current protection of certain customer information*** collected by a regional tollway authority (“RTA”), regional mobility authority (“RMA”), regional transportation authority, metropolitan rapid transit authority, or coordinated county transportation authority from disclosure under Chapter 552, Government Code (the Public Information Act). ***The newly protected information includes contact, payment and other account information, and trip data pertaining to vehicles receiving a toll exemption, which generally encompasses emergency vehicles.***

- **HB 2549 (Davis/Hancock)** (*Effective date: September 1, 2015*) – Establishes that:
 - ***a toll project for which an RTA provides tolling services under a tolling services agreement is considered a toll project of the RTA for the purposes of applying toll enforcement rights and remedies.***
 - ✓ This addresses scenarios where an RTA may be providing tolling services for TxDOT or a CDA developer, and ***makes clear that the same toll enforcement remedies are available to the RTA as those which may be exercised for the RTA’s own projects.***
 - ✓ This ***should also extend to RMAs and other local toll project entities*** by virtue of “most favored nations” clauses in their enabling legislation.
 - The bill also adjusts customer toll payment periods to allow for monthly billing (25-day billing cycles) and creates paperless, electronic-only billing notification options for customers.
 - Further, it aligns the due date of an RTA’s annual report to its member counties with the availability of audited financials.

- **HB 565 (Burkett/Kolkhorst)** (*Effective date: September 1, 2015*) – This was a fairly high profile bill dealing with the ability of a ***private toll road corporation*** (operating under a franchise granted under laws which have since been repealed) to ***exercise the power of eminent domain.*** As filed the bill would have stripped that right; as passed, it provides that:
 - ***a private toll road corporation may not exercise the power of eminent domain, but it may enter into an agreement with a public toll project entity to finance, construct, maintain, or operate a toll road (i.e., so that a public toll project entity is the one exercising eminent domain authority).***

- before the TTC approves a private turnpike or toll project, they must hold a public meeting concerning the project in the region in which the project will be located.
- **SB 1467 (Watson/Gonzalez)** (*Effective date: September 1, 2015*) – States that a person that enters into an agreement with TxDOT to provide services for a customer to pay their toll bill at a location other than a TxDOT office may collect from the customer a service charge in addition to the amount paid on their toll bill. TxDOT will determine the amount of the service charge, but it may not exceed \$3.00 for a payment transaction. This will *facilitate the ability to pay toll bills at remote locations*, such as participating grocery stores, and avoid having to go to a TxDOT facility.

Appendix “D”

OPEN GOVERNMENT LEGISLATION

Below is a brief summary of open government legislation passed by the 84th Legislature.

Open Meetings Bills

- **HB 3357 (Lucio/Eltife)** (*Effective date: September 1, 2015*) – Allows a *district or political subdivision (including a regional tollway authority (“RTA”), regional mobility authority (“RMA”), or other local toll project entity)* to provide notice of its meetings on the district or political subdivision’s website instead of providing notice to the county clerk(s). Specifically:
 - A political subdivision extending into *fewer than four counties* is *required to post notice* of its meetings:
 - ✓ at a place *convenient to the public in the administrative office of the entity*; and
 - ✓ either with *county clerk of each county* in which the entity is located or on the entity’s website.
 - A political subdivision extending into *four or more counties* is *required to post notice* of its meetings:
 - ✓ at a place *convenient to the public in the administrative office of the entity*;
 - ✓ with the *Secretary of State*; and
 - ✓ *either* with *county clerk of the county in which the administrative office* of the entity is located *or on the entity’s website*.

The effect of this legislation is to *simplify and ease the burdens of posting* notices of open meetings. For RMAs and other local toll project entities with less than four counties, posting at the administrative office and on the entity’s website is all that will be required. If the RMA or other entity has more than four counties, posting will be required at those same places plus the Secretary of State’s office.

- **SB 1237 (V. Taylor/Sanford)** (*Effective date: September 1, 2015*) – *Requires a metropolitan planning organization (“MPO”)* that serves one or more counties with a population of 350,000 or more *to broadcast the live video and audio of each open meeting* held by the MPO policy board *on the Internet* and to *make the archived video and audio available on the MPO’s website*.

- **HB 283 (Fallon/Creighton)** (*Effective date: January 1, 2016*) – Requires various governmental bodies¹(*excluding RMAs and RTAs*) to:
- make a *video and audio recording of each regularly scheduled open meeting*.
 - make an *archived copy* of the recording *available* on the Internet *not later than 7 days after* the recording was made.
 - *maintain the archived recording* on the Internet for *not less than 2 years* after the date the recording was first made available.

Note that while HB 283 does not apply to RMAs or RTAs (but does apply to a county toll authority to the extent it is a department of the county), it is similar to other bills that were filed this session that would have encompassed RMAs and RTAs. It is worth watching as possible precedent for future legislation.

Public Information Bills

- **HB 685 (Sheets/Hancock)** (*Effective date: September 1, 2015*) – Provides that:
- a political subdivision *complies with the* production requirements of the *Public Information Act (“PIA”)* by *referring a requestor to an exact Internet location* or a uniform resource locator (URL) *on a website maintained by the political subdivision and accessible to the public* if the requested information is identifiable and readily available on that website.
 - if the person requesting the information prefers a manner other than access through the Internet location or URL, the political subdivision must supply the information as otherwise required by the PIA.
 - if the political subdivision provides the Internet location or URL by e-mail, *the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication* or by receipt through United States mail.
- **HB 2134 (Burkett/Hall)** (*Effective date: September 1, 2015*) – Provides that:
- if a request for public information is sent by e-mail and *the governmental body requests clarification* by sending an e-mail to the same e-mail address (or to another e-mail address provided by the requestor), *the request may be considered to have been*

¹ Governmental bodies subject to the requirement include a transit authority or department subject to Chapter 451, 452, 453, or 460, Transportation Code; an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more; an elected governing body of a home-rule municipality that has a population of 50,000 or more; or a county commissioners court for a county that has a population of 125,000 or more.

withdrawn if the governmental body *does not receive a written response* to its e-mail *within 60 days*.

- HB 2134 has the effect of amending the previous requirement that a governmental body send its request for clarification to the requestor's physical or mailing address by certified mail in order for the request to be considered withdrawn due to lack of a response.
- **HB 2633 (Hernandez/Perry)** (*Effective immediately*) – Amends the Transportation Code to provide that TxDOT *or another governmental entity* must, upon written request and payment of any required fee, provide a motor vehicle accident report or accident report information to:
 - the *law enforcement agency* that employs the peace officer who investigated the accident;
 - *the court* in which a case involving a person involved in the accident *is pending* if the report is subpoenaed; or
 - any person “directly concerned in the accident or having a proper interest therein”²

Also requires TxDOT or the governmental entity to create a redacted report with all personal information removed. *The redacted report may be requested by any person*. This bill is intended to address issues arising from attorneys making use of access to motor vehicle accident reports to solicit potential clients by amending a provision of the law that previously allowed anyone who provided two of three pieces of information about an accident to receive an accident report containing the personal information and contact information of those involved.

- **SB 57 (Nelson/Simmons)** (*Effective immediately*) – Amends laws regarding disclosure of toll customer account information. See description in Appendix “C”.

² Those individuals include a driver or any person involved in the accident; the authorized representative of someone involved in the accident; an employer, parent, or legal guardian of a driver involved in the accident; the owner of a vehicle or property damaged in the accident; a person who has established financial responsibility for a vehicle involved in the accident; an insurance company that issued a policy to cover a vehicle or person involved in the accident; a person under contract to provide claims or underwriting information to a person described above; a radio, television station, or newspaper; or any person who may sue because of death resulting from the accident.

Appendix “E”

CONTRACTING, PROCUREMENT AND OTHER LEGISLATION OF INTEREST

Below is a brief summary of legislation related to contracting and procurement passed by the 84th Legislature, as well as other bills of interest to regional mobility authorities (“RMAs”), local toll authorities and those who do business with those entities.

Contracting and Procurement Bills

- **HB 2049 (Darby/Eltife)** (*Effective date: September 1, 2015*) – This bill pertains to *contracts for engineering or architectural services* to which a governmental agency is a party and *prohibits a governmental agency from imposing a “duty to defend”* upon an architect or engineer. “Governmental agency” is defined for purposes of this legislation to include a city, county, school district, conservation and reclamation district, hospital organization, or other political subdivision of the state. *These new limitations to and requirements for engineering and architectural services contracts therefore apply to RMAs, regional tollway authorities (“RTAs”), and other local toll project entities.*

This legislation contains some *significant reforms to contracting for architectural and engineering services* and will likely require modifications to the forms of contracts currently being used RMAs, RTAs, and other toll authorities for such services.

Specifically, the bill:

- provides that a covenant or promise in connection with a contract for engineering or architectural services is *void and unenforceable if it requires the engineer or architect to defend a party*, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, its agent, or its employee or another entity over which the governmental agency exercises control.
- allows for a covenant or promise that provides for the *reimbursement of a governmental agency’s reasonable attorney’s fees* in proportion to the engineer or architect’s liability.
- provides that a contract for engineering or architectural services *may require that the engineer or architect name the governmental agency as an additional insured* under the engineer’s or architect’s general liability insurance policy and provide any defense provided by the policy.

- establishes a standard of care that must be required under a contract for engineering or architectural services such that the services must be performed:
 - ✓ *with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality* and under the same or similar circumstances; and
 - ✓ as *expeditiously as is prudent* considering the ordinary professional skill and care of a competent engineer or architect

Note that 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, 2015.

- **HB 23 (S. Davis/Huffman)** (*Effective date: September 1, 2015*) – This bill includes several significant changes to Chapter 176 of the Local Government Code regarding the disclosure of certain relationships between local government officers or agents and vendors. Note that Chapter 176 applies to any county, municipality, school district, charter school, junior college district, or other political subdivision of this state. *RMA*s, *RTA*s, and other local toll project entities therefore need to familiarize themselves with the revised disclosure requirements and *ensure that their officers, agents, and vendors are aware of their obligations and file the appropriate disclosures*.

Among other changes, HB 23:

- extends the disclosure requirements for local government officers to *any agents of the governmental body who exercise discretion* in the planning, recommending, selecting, or contracting of a vendor.
- requires the disclosure of the receipt of one or more *gifts with an aggregate value of more than \$100* (lowered from \$250 previously), *including lodging, transportation, and entertainment accepted as a guest* (but not including a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient). Food accepted as a guest and political contributions do not have to be disclosed.
- requires the *disclosure of a “family relationship” with a vendor*, defined to mean a relationship within the third degree by blood¹ and second degree by marriage².
- includes analogous changes to the disclosure requirements for vendors.

¹ Generally: children, parents, brothers, sisters, grandparents, grandchildren, uncles, aunts, nephews, nieces, great grandparents, great grandchildren.

² Generally: spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother, stepfather, brother-in-law, sister-in-law, spouse’s grandparent, spouse’s grandchild, grandchild’s spouse, spouse of grandparent.

- requires a local governmental entity to *maintain a list of officers of the entity* and make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire.
 - creates *new penalties* for non-compliance including:
 - ✓ making failing to comply with the disclosure requirements of Chapter 176 within 7 business days after the date on which the officer or vendor becomes aware of the facts that require filing a conflict disclosure statement or questionnaire a Class C - Class A misdemeanor (depending on the amount of the contract at issue);
 - ✓ providing that a local governmental entity may reprimand, suspend, or terminate an employee who knowingly fails to comply with the requirements of Chapter 176; and
 - ✓ providing that a local governmental entity *may, declare a contract void* if the governing body determines that a vendor failed to file a conflict of interest questionnaire.
- **HB 1295 (Capriglione/Hancock)** (*Effective date: September 1, 2015*) – Provides that a governmental entity (defined to include a municipality, county, public school district, or *special-purpose district or authority*):
- is prohibited from entering into a contract with a value of \$1 million or more with a business entity unless the business entity submits *a disclosure of interested parties*³ to the governmental entity at the time the business entity submits the signed contract.
 - must *submit a copy of the disclosure of interested parties to the Texas Ethics Commission not later than the 30th day* after the date that the governmental entity receives the required disclosure.

Note that while it is not entirely clear whether an RMA or RTA is a “special-purpose district or authority” for purposes of HB 1295 (as that phrase is not defined in the bill), those entities at least *arguably fall within the scope of this legislation and should therefore require their contractors to submit disclosures of interested persons* on the form prescribed by the Texas Ethics Commission (to be made available by December 1, 2015). The bill is only applicable to contracts entered into on or after January 1, 2016.

³ “Interested party” is defined as a person who has a controlling interest in the business entity or who actively participates in facilitating the contract or negotiating the terms of the contract between the business entity and the governmental entity, including a broker, intermediary, adviser, or attorney for the business entity.

Other Bills of Interest

- **SB 1281 (Zaffirini/Coleman)** (*Effective immediately*) – Permits a local government (defined to include a county, municipality, special district, school district, junior college district, regional planning commission, or other political subdivision of the state—therefore ***including RMAs, RTAs, and other local toll project entities***) to participate in a cooperative purchasing program with another local government in another state.

- **SB 1812 (Kolkorst/Geren)** (*Effective immediately*) – SB 1812 concerns the creation of an eminent domain database and related reporting requirements. Specifically, it:
 - requires the comptroller to create, annually update, and make available online a database containing information regarding all entities having eminent domain authority.

 - requires ***an entity with eminent domain authority*** to, ***not later than February 1*** of each year, ***submit to the comptroller a report*** containing records and other information for the purpose of providing information to maintain the eminent domain database.
 - ✓ The report must be submitted in a form and in the manner prescribed by the comptroller.
 - ✓ Failure to submit the required report can result in fines, but does not affect the entity’s authority to exercise the power of eminent domain.
 - ✓ An entity in existence for at least 180 days on September 1, 2015 ***must submit its initial report by February 1, 2016***. An entity in existence for less than 180 days on September 1, 2015, must submit its initial report not later than the later of the 180th day after the date of the entity’s creation or February 1, 2016.

Note that this legislation will ***require RMAs, RTAs, and other toll project entities with eminent domain authority to file the required report***. Those entities should watch for the adoption of rules and/or establishment policies and procedures by the comptroller regarding the implementation of this new requirement.

- **HB 1378 (Flynn/Bettencourt)** (*Effective date: January 1, 2016*) – Requires ***political subdivisions (including RMAs, RTAs, and other local toll project entities)*** to annually compile and ***report information concerning their debt obligations to the comptroller***, including information concerning:
 - the amount of authorized debt;

 - the principal of all debt outstanding;

 - the principal of each outstanding debt obligation;

 - the principal and interest payments needed to repay all outstanding debt;

- the principal and interest payments needed to repay each obligation;
- the issued or unissued amount, spent or unspent amount, maturity date, and purpose of each debt obligation; and
- the political subdivision's credit rating.

Instead of replicating in the annual report information that is posted separately on the political subdivision's website, the political subdivision may provide in the report a direct link to, or a clear statement describing the location of, the separately posted information. The political subdivision must *make its annual report available for inspection and post it on their website* until the political subdivision posts the next annual report. Alternatively, the political subdivision may provide all required debt information to the comptroller and have the comptroller post the information on the comptroller's official website.

RMAs, RTAs, and other local toll project entities will need to comply with these new reporting requirements. Note that the reporting requirement *applies only to a fiscal year ending on or after January 1, 2016*.

- **HB 3683 (Geren/Zaffirini)** (*Effective date: September 1, 2015*) – ***Requires a personal financial statement filed with the Texas Ethics Commission to be filed electronically*** (either by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format). Note that this requirement applies to all persons currently required to file personal financial statements with the Ethics Commission, including *directors of RMAs* (with the exception of directors of RMAs for which each member county has a population of less than 200,000).

Appendix “F”

LEGISLATION OF INTEREST WHICH DID NOT PASS

Below is a brief summary of legislation of interest which was not passed by the 84th Legislature.

Toll Entity Oversight & Operations

- **SB 1150 (Hall)** – Would have *repealed the regional mobility authority (“RMA”) enabling act* (Chapter 370 of the Transportation Code).
- **HB 528 (Larson)/SB 721 (Burton)/HB 572 (Burkett)¹** –
 - Would have *subjected regional tollway authorities (“RTAs”) and RMAs to review by the Sunset Advisory Commission* as if they were a state agency (but they could not have been abolished through the review).
 - RTAs and RMAs would have been *responsible for paying the cost of the sunset review*.
- **SB 1184 (Huffines)/HB 3114 (Dale)** – Would have *subjected RMAs to audit* by the state auditor’s office.
- **HB 1837 (Sanford)** – Would have required a local toll project entity (“LTPE”) or metropolitan planning organization (“MPO”) *to obtain, by a three-fifths vote, approval of the commissioners court* of the county in which a toll project is proposed to be located *before* the LTPE or MPO could conduct a feasibility study for the project; develop a design for the project; or enter into a construction contract for the project. Separate approval would have been required before each of these three actions.
- **HB 1183 (Shaheen)** – Would have required TxDOT, RMAs, and RTAs to *obtain an order approving a proposed comprehensive development agreement (“CDA”) from the county commissioners court of each county containing a portion of the project* that is the subject of the CDA.
- **HB 2620 (Burkett)/SB 939 (Kolkhorst)/SB 1046 (Hall)** – Would have made *financial studies and reports associated with a toll project*, including financial forecasts and traffic and revenue reports, subject to disclosure under the Public Information Act *regardless of whether a final contract for the project has been entered into*.

¹ An effort was made in the final days of the Legislative Session to include the provision subjecting RTAs to Sunset review under the conference committee report on HB 3123 (the sunset catch-all bill). Ultimately the resolution to authorize the conference committee to go outside the bounds failed in the House and the provision was not adopted.

- **HB 1257 (Shaheen)/SB 711 (Burton)/SB 1862 (Burton)** – Would have prohibited certain political subdivisions, specifically including RMAs and other toll road authorities from *spending public money to directly or indirectly influence or attempt to influence the outcome of any legislation* pending before the legislature.
- **HB 650 (Isaac)/HB 894 (Miller)/HB 1056 (Rodriguez)/HB 1985 (Capriglione)** – Proposed various amendments to the optional veteran toll discount program currently in statute so that it would have become a *mandatory veteran toll waiver program* or expanded the group of people qualifying to participate in the program.
- **HB 1835 (Sanford)/SB 937 (Kolkhorst)** – Intended to *prohibit TxDOT from developing managed lanes* and from using state right-of-way for added capacity toll projects.
 - SB 937 stated that TxDOT could *only consider a general-purpose lane that is part of the highway* and may not include a lane of a frontage road when determining the number of nontolled lanes when converting a nontolled highway to a toll project.
- **HB 1838 (Sanford)** – Would have required TxDOT to provide each member of the legislature with a *plan to eliminate all toll roads in Texas by 2046*, including 23 specific projects listed in the bill.

Restrictions on Uses of Funds

- **HB 2611 (Pickett)** – Would have *required an LTPE to repay to TxDOT* any funds contributed by TxDOT for the development of a turnpike project.
- **HB 3674 (Anchia)/SB 1182 (Huffines)** – Attempted to place *restrictions on the use of the State Highway Fund for toll projects*. HB 3674 would have allowed TxDOT to provide financial assistance for a turnpike project *only if the project is on the state highway system* and designed, constructed, operated, repaired, or maintained by the LTPE *on behalf of TxDOT*.
- **HB 1350 (Burkett)/HB 1734 (Shaheen)/SB 485 (Kolkhorst)/HB 1834 (Sanford)/HB 3725 (Sanford)** – These bill sought to:
 - repeal and amend various statutory provisions applicable to LTPEs allowing for the *use of surplus revenues on other projects*.
 - require that either *tolls be removed* when bonds are paid off, or allow *tolls to remain but only for operations and maintenance*.
 - HB 1834 would have required *county approval of toll projects*.

- The following bills would have dedicated money to transportation but contained *explicit restrictions against using the funds for toll roads*:

- HB 202 (Leach)
- HB 203 (Leach)
- HB 1031 (Leach)
- HB 1836 (Sanford)
- HB 2686 (Shaheen)
- SB 341 (Huffines)
- HB 373 (Simmons)
- HB 1370 (Phillips)
- HJR 13 (Pickett)
- SJR 62 (Nichols)
- HB 395 (McClendon)
- HB 401 (Harless)
- HJR 24 (Harless)
- HB 1673 (Guillen)

Transportation Reinvestment Zones

- **HJR 109 (Pickett)** – Proposed a constitutional amendment authorizing the legislature to permit a *county to issue bonds or notes to finance transportation and infrastructure projects* in a defined area to be repaid from increases in revenue from ad valorem taxes in the area. This would have addressed and clarified issues raised in various Attorney General Opinions regarding the use of TRZs by counties.
- **HB 4025 (Keffer)/SB 1788 (Uresti)** – Sought to resolve the issue which HJR 109 attempted to address but through a statutory change rather than a constitutional amendment.
- Revised the County Energy Transportation Reinvestment Zone (“CETRZ”) statute so that a CETRZ could be created and be used for projects *not just within the CETRZ but within the entire county*.
 - HB 4025 was passed by both the Senate and House, but *Governor Abbott vetoed the bill* on June 20.
 - In objecting to the bill, Governor Abbott stated that “[HB] 4025, in part, is an attempt to do what the Texas Constitution and multiple Attorney-General opinions prohibit. If the Legislature wants counties to have the authority to create tax-increment reinvestment zones, it must again ask the voters to amend the Constitution.”²

² Veto Message of Gov. Abbott, Tex. HB 4025, 84th Leg., R.S. (2015).