



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #12 SUMMARY

Briefing on legislation affecting the Mobility Authority considered by the 83rd Texas Legislature (Regular and Special Session).

Strategic Plan Relevance: Economic Vitality; Sustainability; Innovation

Department: Law

Associated Costs: None

Funding Source: None

Board Action Required: Yes

Description of Matter:

This item is to brief the Board on any issues that may affect the Mobility Authority and to update the status of the Mobility Authority Legislative Program adopted in October 2012 by the Board in Resolution No. 12-070.

Documentation for reference: Legislative Program

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**Texas Transportation Legislation
Overview of the 83rd Regular Legislative Session**

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Updated: June 17, 2013

Transportation issues saw decidedly mixed results during the 83rd Regular Legislative Session. While important policy issues related to project development, toll operations, and transportation reinvestment zones (“TRZs”) were addressed, very little was accomplished to deal with the obvious funding needs for transportation infrastructure in the state. The fact that funding was largely unaddressed was particularly disappointing in light of an \$11.2 billion (12.4%) increase in available budget revenues over the previous biennium,¹ a burgeoning Economic Stabilization Fund (a/k/a, “Rainy Day Fund”), and public statements by state leadership that transportation funding would be a priority this session.

The final budget adopted by the Legislature includes \$450 million to be used for repair of state and county roads in areas where energy development is occurring and roads are being damaged by trucks carrying heavy equipment and supplies associated with hydraulic fracturing (see Appendix “C” below). The budget also provides for \$400 million of general revenue to be used for Department of Public Safety (“DPS”) funding, thereby reducing the diversion of some funds that previously came from Fund 6 (the State Highway Fund) to support DPS operations. However, these measures will do little to offset what TxDOT Executive Director Phil Wilson identified as a need for a \$4 billion increase in annual funding • \$3 billion for new construction and \$1 billion for maintenance • to meet the demands of the state transportation system.²

The lack of progress on a statewide funding solution will increase the pressure on local governments to generate funding for projects through user fees and other sources. In this regard the Legislature offered some help by expanding the list of projects authorized to be developed through comprehensive development agreements (“CDAs”), clarifying the ability of regional mobility authorities (“RMAs”) to work with other governmental partners, and expanding the scope of projects that can be supported through certain types of TRZs. The authority to assess a local option vehicle registration fee for the purpose of funding transportation projects was also expanded to three more counties (bringing the total to five). While these measures are helpful, their very nature underscores the fact that the burdens of transportation funding are going to be increasingly borne at the local level.

Soon after adjourning *sine die* on May 28, 2013, Governor Perry called the Legislature back for the First Called Session of the 83rd Legislature (the “Special Session”). The initial purpose of the Special Session was to ratify and adopt certain judicially-developed interim redistricting maps as the permanent plans for electing members of the Texas House of Representatives, Texas Senate, and United States House of Representatives. On June 10, 2013, the governor added transportation infrastructure funding to the topics the legislature was directed to address during the Special Session. The funding option receiving the most attention is a proposal by Senators Nichols and Williams to direct to the state highway

¹ Texas Comptroller of Pub. Accounts, Biennial Revenue Estimate, 2014-2015 Biennium at 12 (Jan. 2013), available at: www.window.state.tx.us/finances/Biennial_Revenue_Estimate/bre2014/BRE_2014-15.pdf

² Testimony of Phil Wilson, House Transportation Committee Hearing (Feb. 12, 2013)

fund a portion of oil and gas severance tax revenues that would otherwise be deposited into the Rainy Day Fund. That proposal (SJR 2) has been passed by the Senate Finance Committee (where it was revised to assure that there would be a minimum of \$6 billion in the Rainy Day Fund before any money went to transportation) and is scheduled to be considered by the full Senate on June 18, 2013. The House companion, HJR 9 by Representative Phillips, has been referred to the House Appropriations Committee. The Special Session ends on June 25, 2013, so funding issues will need to be addressed quickly. Numerous other funding-related proposals have been filed, but it is unclear whether any of those will be considered. As funding issues are addressed and resolved (or left unresolved) this document will be updated or supplemented. For updates, please feel free to contact one of the authors³ or check the following link:

<http://www.lockelord.com/files/uploads/documents/TXtransleg83rdsummary.pdf>

In the sections that follow are summaries of significant transportation legislation which was enacted during the Regular Session; an overview of the various funding options that were advanced but which failed to pass, and a brief review of other bills of interest (some of which passed, some of which did not). For ease of reference these are separated by bill number and/or topic as indicated.

Appendices

Appendix “A”	SB 1730 – Comprehensive Development Agreements
Appendix “B”	SB 1792 – Toll Enforcement Remedies
Appendix “C”	Transportation Reinvestment Zones (TRZs) SB 1110 – Municipal/County TRZs SB 971 – Port Authority TRZs SB 1747 – County Energy TRZs HB 2300 – County Energy TRZs
Appendix “D”	SB 1489 – Regional Mobility Authority Operations
Appendix “E”	SB 466 – Environmental Reviews of Federalized Projects
Appendix “F”	Summary of Transportation Funding Bills
Appendix “G”	Summary of Other Transportation-related Legislation of Interest

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Appendix “A”

SB 1730 – Comprehensive Development Agreements
(Effective September 1, 2013)

The approach to CDA authorization developed during the previous (82nd) legislative session was to give TxDOT and RMAs project-specific CDA authority.⁴ This was done as part of the TxDOT sunset bill.⁵ The project-specific approach to CDA authority was continued this session in SB 1730 by Senator Nichols and Representative Phillips.

While the previous legislation gave TxDOT authority for 7 CDA projects, *SB 1730 contains authorization for 12 TxDOT projects*, 6 of which are new and 6 of which were previously authorized (or which may contain slight revisions to project limits). The previous legislation gave 2 RMAs (Central Texas Regional Mobility Authority (“CTRMA”) and Cameron County Regional Mobility Authority (“CCRMA”)) and/or TxDOT a total of 4 projects, while *SB 1730 contains authorization for 10 RMA/TxDOT projects*, 6 of which are new and 4 of which were previously authorized. Among the added projects, authorization was given to the North East Texas Regional Mobility Authority (“NET RMA”), Camino Real Regional Mobility Authority (“CRRMA”), Alamo Regional Mobility Authority (“ARMA”), and Hidalgo County Regional Mobility Authority (“HCRMA”) as noted below.

The projects authorized to be developed through CDAs under SB 1730 are:

TxDOT Projects

- Ø State Highway 99 (Grand Parkway)
- Ø IH 35E Managed Lanes (from IH 635 to US 380)
- Ø IH 35W (from IH 30 to SH 114)
- Ø SH 183 Managed Lanes (from SH 121 to IH 35E)
- Ø IH 35E/US 67 “Southern Gateway Project” (including IH 35E from 8th Street to IH 20 and US 67 from IH 35E to FM 1382 (Belt Line Road))
- Ø SH 288 (from US 59 to south of SH 6)
- Ø US 290 Managed Lanes (from IH 610 to SH 99)
- Ø IH 820 (from SH 183 to Randol Mill Road)
- Ø SH 114 (from SH 121 to SH 183)
- Ø Loop 12 (from SH 183 to IH 35E)
- Ø Loop 9 (from IH 20 to US 67)
- Ø US 181 Harbor Bridge (between US 181 at Beach Avenue and IH 37)

⁴ NTTA and county toll road authorities take the position that they have unrestricted CDA authority.

⁵ The TxDOT sunset bill also gave RMAs independent design/build/finance authority and gave TxDOT design/build authority in order to separate those procurement methods from the more controversial CDA process.

The **deadline for TxDOT to enter into a CDA** for the above-referenced projects is **August 31, 2017**, except for the Grand Parkway Project (no deadline) and SH 183 Managed Lanes Project (August 31, 2015). The deadline for securing environmental clearance (other than for Grand Parkway (no deadline) and SH 183 Managed Lanes Project (August 31, 2015)) for all or the initial scope of a phased CDA project is August 31, 2017.

TxDOT or RMA Projects (RMA noted)

- Ø Loop 1 “Mopac Improvement Project” (from FM 734 to Cesar Chavez) - CTRMA
- Ø US 183 “Bergstrom Expressway” (from Springdale Road to Patton Avenue) - CTRMA
- Ø A project consisting of the Outer Parkway Project (from US 77 to FM 1847) and South Padre Island Second Access Causeway Project (from SH 100 to Park Road 100) - CCRMA
- Ø Loop 49 (from IH 20 to US 69- the “Lindale Relief Route,” and from SH 110 to US 259 (“Segments 6 and 7)) - NET RMA
- Ø Loop 375 “Border West Highway Project” (from Race Track Drive to US 54) - CRRMA
- Ø “Northeast Parkway Project” (from Loop 375 east of the Railroad Drive overpass to the Texas-New Mexico border) - CRRMA
- Ø Loop 1604 - ARMA
- Ø Hidalgo County Loop Project - HCRMA
- Ø International Bridge Trade Corridor Project - HCRMA

The **deadline for securing environmental clearance and for entering into a CDA** for the above-referenced projects is **August 31, 2017**. Note that this eliminates the separate environmental clearance and contracting deadlines that were part of the previous legislation.

Other Changes to CDA Provisions

In addition to the changes noted above to the list of authorized CDA projects, SB 1730 made several revisions to the statutes governing CDAs. These include:

- Ø Granting TxDOT **CDA authority over non-tolled state highway system projects** authorized by the legislature;
- Ø Granting TxDOT the ability to **combine 2 or more of its CDA projects** into 1 CDA; and
- Ø Significantly **revising the “termination for convenience” requirements** for a CDA, so that a CDA proposer will be required to submit, as part of the procurement process, a breakdown (in 2 to 5 year intervals, as specified in the request for proposals) **specifying the price at which their interest in a CDA project may be purchased**.
 - The breakdown must be assigned points and scored during the proposal evaluation process, and the schedule must be incorporated into a final CDA.
 - The required termination for convenience clause of a CDA must allow for the exercise of termination for convenience rights at the lesser of: the stated interval price corresponding to the termination date; or the greater of the fair market of the private interest (as adjusted pursuant to the CDA) or the amount of outstanding debt specified in the CDA (as adjusted pursuant to the CDA).

Appendix “B”

SB 1792 – Toll Enforcement Remedies
(Effective June 14, 2013)

In February 2013, the Senate Committee on Transportation issued its “Interim Report to the 83rd Legislature” addressing the interim charges previously identified by Lieutenant Governor Dewhurst. Among the charges was a directive to study the potential for toll collection and enforcement tools to pursue toll scofflaws for toll authorities throughout the state. The Interim Report included a finding that: “There is little debate that toll entities need additional enforcement tools. Existing mechanisms are highly ineffective and do little to deter bad behavior.”⁶

Among the reasons given for the finding contained in the Interim Report were the potential difficulty toll authorities may experience in accessing the capital markets,⁷ the need for a more efficient process that will serve as a more effective deterrent to toll violators, and the significant volume of toll violators on existing systems. (NTTA reported more than \$370 million in accumulated unpaid tolls and fees as of November 2012, and TxDOT reported a backlog of 374,000 cases seeking enforcement of toll violations.)⁸

As a result, multiple bills were filed addressing enhanced toll enforcement remedies. These included HB 3048 (TxDOT, RMAs, NTTA) by Representative Phillips; SB 1792 (initially RMAs) & SB 1793 (TxDOT) by Senator Watson; and SB 1329 (NTTA) by Senator Paxton. While bills were filed for different types of toll entities, it was the clear directive of the sponsors to create a single bill that would encompass toll enforcement remedies for all types of toll authorities, with a goal of increased consistency throughout the state. Senator Watson and Representative Phillips took the lead in this effort, and the vehicle was SB 1792.

SB 1792 contains the following features:

- Ø Authorization for toll authorities to ***publish the names of registered owners (or lessees) of nonpaying vehicles*** who are liable for past due and unpaid tolls or administrative fees (note that there is no threshold level required before publication may occur);
- Ø Authorization for toll authorities to enter into agreements providing for ***toll violation payment plans*** (with toll violators who are unable to satisfy accrued obligations in a single payment) and to file suit in district court to enforce the agreements;

⁶ The Senate Transportation Committee, Interim Report to the 83rd Legislature at 21 (Feb. 2013), available at <http://www.senate.state.tx.us/75r/senate/commit/c640/c640.InterimReport82.pdf>.

⁷ Investors and rating agencies consider the ability of toll entities to collect tolls on projects in assessing creditworthiness. *Id* at 15.

⁸ *Id.*

- ∅ A *process for determining “habitual violators”* • generally a registered owner of a vehicle who was issued *at least 2 written notices* of nonpayment that contained an aggregate of 100 or more events of nonpayment within 1 year (subject to defenses of theft of the vehicle or a lease to a third party);
- The 2 written notices must have contained a *warning that the failure to pay* could result in the exercise of *“habitual violator remedies”*.
 - After a person fails to pay in response to the 2 written notices, a toll authority shall notify the person that they have been determined to be a habitual violator, and that they have **30 days in which to request a hearing** to contest that determination. If a hearing is requested:
 - the *hearing will be before a justice of the peace* in a county where at least 25% of the events of nonpayment occurred (note that a justice of the peace court is authorized to adopt administrative hearings processes to expedite these types of hearings);
 - the *toll authority must pay a \$100 filing fee*; the fee is subject to reimbursement to the toll authority by the habitual violator if the toll authority prevails (note that responsibility for initial payment of the filing fee by the toll authority was the subject of clarification through legislative intent on the Senate floor⁹);
 - the toll authority must show, by a preponderance of the evidence, that (1) the registered owner was issued at least 2 written notices of 100 or more events of nonpayment within a year (excluding those due to theft or leasing of the vehicle); and (2) that the total amount due for tolls and fees was not paid in full and remains not fully paid as of the date of the hearing; and
 - an *adverse finding* (confirming that a person is a habitual violator) *is appealable*.
 - Failure to request a hearing, or the failure to appear for a hearing after one was requested, will result in the toll authority’s determination of habitual violator status being deemed final and not appealable).
- ∅ Identification of *“habitual violator remedies”*. Once a habitual violator determination has been made (and confirmed through a hearing, if requested), a toll authority may:
- report the habitual violator determination to a county assessor collector or to the Texas Department of Motor Vehicles and *request that the vehicle registration (or renewal) be refused* (compliance with the request is not mandatory); and
 - adopt an *order* (by action of its governing body) *prohibiting the operation of a vehicle on a toll project* of the authority and mail notice of the order to the habitual violator.
 - A person commits an offense (*Class C misdemeanor*) if they operate a vehicle on a toll project in violation of the order of prohibition.
 - A person may have their *vehicle impounded* if the vehicle was previously operated on a toll project in violation of an order of prohibition and personal notice was given to the registered owner of the vehicle of the toll authority’s intent to have the vehicle impounded for a second or subsequent violation of the order of prohibition at (i) the previous hearing (if any) on habitual violator status; (ii) at a previous traffic stop involving a violation of the order of prohibition; or (iii) by personal service. Prior to release of a vehicle all

⁹ Senate Journal, 83d Reg. Sess., at 2002-05 (Tex. 2013).

impoundment, towing and storage fees must be paid, and the toll authority must make a determination that unpaid tolls and fees have been paid or have been otherwise addressed.

- Ø A process for addressing *nonresident violators*. A toll authority may serve written notice of nonpayment in person to an owner of a vehicle not registered in Texas. This can include a *notice served by an employee of a governmental entity operating an international bridge* as a vehicle seeks to enter or leave the state.
 - The notice must include a warning that failure to pay may result in the exercise of habitual violator remedies.
 - Each owner who receives a notice of nonpayment and fails to timely pay the toll and fee commits an offense (each failure to pay is a separate offense • a misdemeanor punishable by a fine not to exceed \$250).
 - A toll authority may seek to exercise habitual violator remedies (including vehicle impoundment) against a nonresident vehicle if: (i) the person is served with 2 or more notices of nonpayment and the amounts remain unpaid; and (ii) notice of intent to seek habitual violator remedies was served on the person in the same manner as allowed for a notice of nonpayment.
 - A nonresident who receives a notice of intent to seek habitual violator remedies may request a hearing in the same manner as provided for a resident habitual violator.
 - A justice of the peace conducting a hearing against a nonresident violator must find that the person was served with 2 or more notices of nonpayment and the amounts remain unpaid, and that a notice of intent to seek habitual violator remedies was served.

- Ø The provisions of SB 1792 are *not applicable to county toll road authorities*, and are *optional* (and cumulative of other remedies available) *for all other toll authorities*.

It was a difficult task to garner consensus among all of the affected toll authorities and other parties for a topic as potentially controversial as toll collection and enforcement. Senator Watson, Representative Phillips, and their respective staffs are to be commended for their efforts, as SB 1792 was passed easily (Senate vote: 28-1; House vote: 140-2). SB 1792 makes meaningful improvements to toll enforcement remedies and should address the issues identified in the Senate Interim Committee Report.



Attorneys & Counselors

Appendix “C”

Transportation Reinvestment Zones

SB 1110 – Municipal/County TRZs

SB 971 – Port Authority TRZs

SB 1747 – County Energy TRZs

HB 2300 – County Energy TRZs

Transportation reinvestment zones (“TRZs”) are a concept that RMAs and others have championed for the past several legislative sessions. TRZs are an innovative tool for generating transportation project funding by capturing and leveraging the economic growth that results from a transportation project. Development of new projects, and the expansion or improvement of existing projects, often spurs increased economic development in areas around the project. This can be in the form of construction of new homes and businesses in previously undeveloped areas or through the redevelopment of existing areas which, as a result of a project, experience improved access to homes and businesses. As development or redevelopment occurs, property values in those areas increase. A TRZ allows a city or county to designate an area around a project and to capture the increase in ad valorem tax revenues resulting from the increase in property values for use in connection with the financing of the project. In this manner the economic growth attributable to the project is used to support the funding of the project.

It is important to note that a TRZ does not result in a tax increase- it is merely a specific dedication of the incremental tax revenues generated within the boundaries of a TRZ. A TRZ operates in a similar manner to a tax increment reinvestment zone (“TIRZ”) and the related tax increment financing that is often used by local governments to support economic development within an area. However a TRZ is focused specifically on transportation project funding, and the process for forming and administering a TRZ is much simpler than for a TIRZ.

TRZs were first authorized in 2007. However, they were limited in that their use was specifically tied to projects receiving pass-through financing from TxDOT. Fortunately that limitation was eliminated as a result of legislation passed during the 82nd Regular Session. HB 563 (Representative Pickett/Senator Nichols) “de-coupled” TRZs that capture ad valorem tax increases from pass-through projects and provided for the formation of a TRZ for any transportation project identified in Section 370.003 of the Transportation Code.¹⁰ Many other beneficial changes were made regarding procedure and implementation, and HB 563 also introduced the concept of a sales tax TRZ (capturing incremental sales tax in an area around a project instead of ad valorem taxes), although the sales tax TRZ remained linked to the pass-through program. Several TRZs have now been formed around the state (Locke Lord has been involved in most of those) and are supporting the development of transportation projects.

¹⁰ Transportation projects authorized under Transportation Code, Sec. 370.003 include: tolled and nontolled roads, passenger or freight rail facilities, certain airports, pedestrian or bicycle facilities, intermodal hubs, parking garages, transit systems, bridges, certain border crossing inspection facilities, and ferries.

The TRZ concept has proven to be popular. Several bills were filed this session addressing the existing TRZ legislation and making the TRZ model available for other projects. Those bills which passed are described below.

SB 1110 (Effective September 1, 2013)

SB 1110 (Senator Nichols/Representative Pickett) made additional improvements to the TRZ statutes. Specifically, SB 1110 included the following:

- Ø Provides for the formation of a ***TRZ in an adjacent jurisdiction*** to support a project ***located outside of the TRZ boundaries*** (provided the project serves a public purpose and will benefit persons and property within the zone);
- Ø ***De-couples*** the use of ***sales tax TRZs*** from the pass-through program (so that a sales tax TRZ may be used for any transportation project as defined in Sec. 370.003);
- Ø Clarifies that a TRZ may be formed for ***“one or more” projects*** within a zone;
- Ø Clarifies language regarding the commitment of TRZ revenues to satisfy contractual obligations; and
- Ø Provides for increased consistency between municipal and county created TRZs.

The ability to create a TRZ to support a project in an adjacent area is particularly significant and recognizes the reality that the benefits of a project do not stop at a city limit or county line. This should facilitate a more regional approach to project planning and development, and should also enhance the ability to generate local funding for a project with regional impacts.

SB 971 (Effective September 1, 2013)

The TRZ statutes described above authorize a city or county to form a TRZ. Those statutes do not refer to port authorities (which have taxing authority) or port improvements (although port improvements were added to the list of transportation projects in Sec. 370.003 by virtue of SB 1489 described in Appendix “D”). SB 971 (Senator Williams/ Representative Deshotel) amends the TRZ statutes by ***authorizing port authorities and navigation districts to form a TRZ*** after finding that the area within the TRZ is unproductive and underdeveloped and that forming the TRZ would ***“improve the security, movement, and intermodal transportation of cargo or passengers in commerce and trade”***. The TRZ revenue would be generated from the incremental ad valorem taxes collected by the port pursuant to the statutes. As a result, port facility improvements can be supported by a port-created TRZ and by municipal and/or county TRZs.

Procedurally, the formation and administration of a TRZ under this legislation is virtually identical to the existing TRZ process available for cities and counties (without some of the improvements made by SB 1110). In addition, SB 971 (in a similar fashion to, but different statutory location from, SB 1489) adds port security, transportation, or facility projects to the list of projects that can be supported by a city or county TRZ.

SB 1747 (Effective September 1, 2013)

Much attention was given during the legislative session to the rapidly deteriorating conditions of roads in the areas of the state with shale reserves and active hydraulic fracturing activity caused by the oversized vehicles and overweight loads needed to pursue energy development. To address this issue HB 1025 (the “supplemental appropriations” bill) included \$450 million to be used to fund repair and maintenance of roads and bridges in these areas. Of that total, \$225 million is to be used by TxDOT for roads on the state highway system, and \$225 million is to be transferred to a “Transportation Infrastructure Fund” for the purpose of assisting counties to fund the repair and maintenance of their roads damaged by energy-related activity.

SB 1747 is the implementing vehicle to this funding. Some of the features of SB 1747 are:

- Ø Provides for the establishment of a “**Transportation Infrastructure Fund**” (“TIF”), to be administered by TxDOT;
- Ø The purpose of the TIF is to make grants to counties for transportation infrastructure projects located in areas of the state affected by oil and gas production;
- Ø **Eligibility** to receive a grant from the TIF *is contingent on*:
 - a county **establishing a “County Energy Transportation Reinvestment Zone”** (“CETRZ”);
 - **creation** by the county *of an advisory board* to advise the county on the establishment and administration of the CETRZ. The advisory board must be comprised of the following (appointed by the county judge and approved by the commissioners court):
 - up to 3 oil and gas company representatives who “perform company activities in the area and are local taxpayers”; and
 - 2 public members
 - a county providing **matching funds** of at least 20% of the grant (10% for economically disadvantaged counties):
 - county funds spent for road and bridge purposes may be counted as matching funds.
 - the tax increment collected in a CETRZ may serve as matching funds
- Ø Grants from the TIF distributed during a fiscal year must be allocated among counties as follows:
 - 50% based on well completions (the ratio of well completions in the county to the total number, as determined by the Railroad Commission);
 - 20% based on weight tolerance permits (the ratio of weight tolerance permits issued in the preceding fiscal year for the county to the total number of permits issued in the state as determined by DMV);
 - 20% based on oil and gas production taxes (the ratio of taxes collected in the preceding fiscal year in the county to the total amount of taxes collected in the state for that fiscal year, as determined by the Comptroller);
 - 10% based on the oil and gas waste (the ratio of the volume of oil and gas waste injected in the preceding fiscal year in the county to the total volume of such waste injected in the state as determined by the Railroad Commission);
- Ø 5% of grant funds received may be used for administrative costs (not to exceed \$250,000);
- Ø Various reporting requirements are imposed on grant recipients.

As noted above, to be eligible for a TIF grant a county must have formed a CETRZ. The process for forming a CETRZ is identical in some respects, and similar in others, to the process for forming a municipal or county TRZ under existing statutes. There are, however, some differences in administration, including:

- Ø A CETRZ requires a finding that an area is “affected because of oil and gas exploration and production activities”;
- Ø A CETRZ may be *jointly administered with a contiguous CETRZ* formed in an adjoining county for the same project (or projects);
- Ø *All of the tax increment* collected in a CETRZ must be pledged to transportation infrastructure projects (in contrast to “all or a portion” of the increment in other TRZs);
- Ø A CETRZ has a *life of 10 years*, with a possible extension of up to 5 years. Any funds remaining at termination must be transferred to the county road and bridge fund; and
- Ø The *tax increment* collected in a CETRZ *may not be pledged to secure bond debt*, but it may be *transferred to a road utility district* which can issue bond and pledge the tax increment.¹¹

TxDOT is required to adopt rules for the implementation of the grant program. Those rules will likely be proposed in the summer of 2013 so that they can be adopted shortly after the anticipated September 1, 2013 effective date of SB 1747.

HB 2300 (Effective September 1, 2013)

HB 2300 is, essentially, the House version of SB 1792, but was passed before the enactment of HB 1025 and the establishment of the TIF. The bulk of HB 2300 was the addition of Sections 222.1071 and 222.1072 (relating to the formation of CETRZs) to the Transportation Code, and the provisions generally tracked those of SB 1747 (except for the changes in SB 1747 necessary to incorporate the TIF). In order to avoid potential conflicts SB 1747 contains a provision which explicitly states that the amendment adding Sections 222.1071 and 222.1072 prevails over the HB 2300 and that Section 1 of HB 2300 has no effect.

That means that only Sections 2 and 3 of HB 2300 are effective, and they are largely duplicative (or are a subset) of what is contained in SB 1747. The bottom line is that although enacted, HB 2300 has little or no significance.

¹¹ It is unclear whether the pledge of a county-generated tax increment by a road utility district will satisfy constitutional issues previously raised by the Office of the Attorney General (see: Tex. Att’y Gen. Op. No. GA-0980 (2012); “2008 Economic Development Laws Handbook for Texas Cities” (Office of the Texas Attorney General), p. 117 (fn. 551)

Appendix “D”

SB 1489 – Regional Mobility Authority Operations

(Effective May 18, 2013)

As RMAs have grown and RMA operations have expanded, issues have been raised as to the permissible geographic scope of those operations. RMAs have contracted with each other to facilitate a more efficient and economic approach to toll collection and transaction processing; RMAs have been asked by neighboring jurisdictions to develop projects outside of the RMA’s boundaries; and in one instance an RMA operates a traveler motorist program which extends beyond the borders of the two counties which formed the RMA.¹² All of these efforts have raised questions as to the authority of an RMA to “operate” outside of its boundaries, and have highlighted certain ambiguities in statutory provisions which have been barriers to achieving the potential benefits of RMAs partnering with other governmental entities.

SB 1489, by Senator Watson and Representative Phillips, serves to resolve those issues. SB 1489 makes clear that *an RMA may enter into an agreement* (including an interlocal agreement) *with another governmental entity* to acquire, plan, design, construct maintain, repair, or operate a project *on behalf of that entity* if:

- Ø the *project is located in the RMA’s jurisdiction or in a county adjacent* to the RMA;
- Ø *the project is* being acquired, planned constructed, designed, operated, repaired, or *maintained on behalf of TxDOT or another tolling entity* (including another RMA); *or*
- Ø *TxDOT approves* of the acquisition, planning, construction, design, operation, repair, or maintenance *of a project* by an RMA that is *not in its jurisdiction or an adjacent county and is not a project of another toll entity*.

In short, SB 1489 allows an RMA to: operate a project of another toll entity anywhere in the state; partner with local governments within their jurisdiction and within a neighboring county; and operate a project in another area pursuant to an agreement with another governmental entity and with the approval of TxDOT. As a result of these changes, the former statutory requirement that an RMA give an adjacent county the chance to join the RMA if an RMA project was going to extend into the county has been eliminated, as all of the RMA’s actions outside of its boundaries will have to be the subject of agreements with the other governmental entity (including an adjacent county into which a project may be extended).

SB 1489 also makes some additions to the definition of transportation projects that an RMA may pursue. The additions include:

- Ø bridges (to clarify that non-tolled bridges are a permissible RMA project);

¹² CTRMA “Highway Emergency Response Operator “ (“HERO”) Program covering 55 miles of IH 35 and 12 miles of US 183; see <http://www.mobilityauthority.com/information/hero-program.php>

- Ø border safety inspection stations located within 50 miles of an international border (to address a potential problem with trucks crossing into the US from Mexico but diverting away from international bridges in El Paso to a border crossing in New Mexico to avoid inspections conducted at Texas border crossings); and
- Ø port security, transportation, or facility project (to allow RMAs to be a potential tool for developing port improvements and expansions, which is important as ports are facing increasing needs with the Panama Canal expansion).

Appendix “E”

SB – 466 Environmental Reviews of Federalized Projects

(Effective May 18, 2013)

One of the most significant causes of delay in the development process for transportation projects is securing the necessary environmental approval. Most projects of any significant size are required to comply with a federally prescribed process under the National Environmental Policy Act of 1969 (“NEPA”), as administered by the US Department of Transportation (through the Federal Highway Administration (“FHWA”)). Federal environmental approvals are typically required because a project receives some federal funding or because there is some other federal nexus that triggers a review under NEPA.

The process required under NEPA can be time-consuming and cumbersome, in part because of limits on federal resources available to devote to the projects. However, some hope for relief was made possible by provisions of the “Moving Ahead for Progress in the 21st Century Act” (“MAP 21”) - the most recent federal highway funding reauthorization bill. MAP 21 includes a provision that, in effect, allows a state to step into the role of the FHWA in conducting environmental reviews.¹³ As administered by a state the process would still need to follow all of the same federal regulations and requirements, but allowing states to assume the FHWA role could significantly reduce the time required to complete the environmental review process.

In order to implement the MAP 21 provisions states need to have adopted legislation providing for the assumption of certain duties and responsibilities. This was done in SB 466 by Senator Hinojosa/Representative Harper–Brown.

SB 466 provides that:

- Ø ***TxDOT may assume*** the role of the US Department of Transportation with respect to ***duties under NEPA*** and other environmental laws;
- Ø TxDOT may enter into agreements with the federal government regarding designation of categorical exclusions from federal requirements related to environmental assessments and environmental impact statements, and related to project delivery programs; and
- Ø The ***sovereign immunity of the state*** from suit and liability in federal court ***is waived*** as it relates to ***claims in administering the environmental review process.***

The last referenced provision above is necessary to assure that the state can be sued, in the same manner that the federal government could be, for alleged violations of NEPA in conducting or granting environmental approvals. In order to fully step into the shoes of the federal government those seeking to challenge an action of the state, acting under the provisions of SB 466, must have the same remedies as they would against the federal government performing the same functions the state has assumed.

¹³ 23 USC §327

Appendix “F”

Transportation Funding Bills¹⁴

Proposals to dedicate new vehicle sales taxes to transportation, increase the vehicle registration fee, and use part of the Rainy Day Fund (the balance of which is estimated to be \$8 billion) to support transportation all failed to garner enough consensus to get the needed support of the Legislature.

Set forth below is a description of bills which did pass (addressing state and local funding), and a description of several of the funding bills which did not pass. There were many others which were filed but saw little movement – those described below are representative of the various concepts advanced by same legislators.

Adopted Statewide Transportation Funding Legislation

- HB 1025 – Representative Pitts/Senator Williams (Effective June 17, 2013 (excluding items subject to line-item vetoes)) - This is the supplemental appropriations bill which was negotiated in the final days of the session. The bill includes \$225 million for TxDOT for maintenance and safety, including repairs to roadways and bridges *within the state highway system* for damage caused by oversized vehicles or overweight loads used in the development and production of energy, and \$225 million for *county transportation projects*, including projects of CETRZs. See Appendix “C” (and discussion of SB 1747) for details of implementation and requirements for use of the funds by counties.
- SB 1 – Senator Williams/Representative Pitts (Effective September 1, 2013 (excluding items subject to line-item vetoes)) – This is the overall budget for the state. In addition to TxDOT’s general budget provisions, the bill provides for a swap of \$400 million of general revenue dollars to Fund 6 (thereby reducing the “diversion” of Fund 6 dollars).

Adopted Local Transportation Funding Legislation

The following bills all amended Section 502.402, Transportation Code, which permits the Commissioners Courts of certain bracketed counties (currently Hidalgo and Cameron) to implement an optional \$10 vehicle registration fee. By statute the optional fee is sent to the regional mobility authority of the county to fund long-term transportation projects.

- HB 1198 – Representative Raymond/Senator Zaffirini (Effective September 1, 2013) – Amends the population requirements for a county that is eligible to impose the optional county vehicle registration fee to include El Paso and Webb Counties. Originally, the bill only added Webb County but Senator Rodriguez amended it on the Senate floor to include El Paso County. The amendment also clarified that the revenue could be sent to the RMA “located in the county”, rather than “of the county”, since the CRRMA is a municipal RMA.

¹⁴ Additional funding options are currently being considered during the Special Session.

- HB 1573 – Representative McClendon/Senator Van de Putte (Effective September 1, 2013) – Amends the population requirements for a county that is eligible to impose the optional county vehicle registration fee to include a county that has a population of more than 1.5 million that is coterminous with a RMA (Bexar County). At the request of Senator Campbell (and with the support of Senator Nichols), a restriction was placed on the use of the fee so that it can only be used to fund long-term transportation projects consistent with the purposes permitted for the use of the motor fuels tax under the Texas Constitution. The restriction will apply to *all* counties operating under this section.
- HB 3126 – Representative Lucio/Senator Lucio (Effective September 1, 2013) – Permits Cameron County to increase the amount of the optional county vehicle registration fee to not more than \$20, *subject to* approval of the increase by a referendum submitted to the voters. The fee imposed by the other counties operating under this section remains at the current amount of \$10.

The collective result of the bills authorizing local option vehicle registration fees is that Bexar, Webb, and El Paso Counties are added to the list of counties previously authorized to adopt the \$10 fee (Cameron and Hidalgo), and Cameron County can increase its fee to \$20, but only pursuant to a referendum. Note also that the reference to a constitutional limitation on the use of the funds incorporated in HB 1573 will apply to the statute in its entirety. Therefore, the limitation, which has the effect of *restricting the use of funds to acquiring right-of-way and constructing, maintaining, and policing public roadways*,¹⁵ will apply to all counties. As noted above, discussion in the Senate Transportation Committee when this provision was included indicated that it was intended to assure that the funds were not used for rail or streetcar projects. It is unclear whether the restriction is applicable to previously authorized fees.

Failed Transportation Funding Legislation¹⁶

- SB 1632 – Senator Hinojosa/HB 3665 – Representative Darby – These bills would have amended various aspects of the state infrastructure bank related to a revolving fund and providing for credit enhancements. The hope of supporters was to have the credit enhancement supported by an allocation of a portion of the Rainy Day Fund. There was significant opposition to these bills in both the House and the Senate. Senator Nichols publically expressed his concern with the credit enhancement portion of the bill while many conservatives in the House saw the bill as a means for creating more debt. In a last minute push, SB 1632 was voted out of the Senate Transportation Committee, without the credit enhancement language, but was ultimately never called up on the Senate floor before the deadline.
- HB 782 – Representative Phillips/SB 287 – Senator Nichols – These bills would have provided for the reallocation of motor vehicle sales tax revenue from the general revenue fund to the state highway fund. Beginning in 2015, the allocation would equal 10% of the tax revenue collected for that year and would increase by 10% on an annual basis until 2024 when the allocation would be 100%. These

¹⁵ TEX. CONST. ART. VIII, § 7-a

¹⁶ With the exception of SB 1632 and HB 3665, these bills were either never heard in committee or received a hearing but were never reported out of committee.

funds could only be used for the purposes authorized for use of the motor fuels tax under the Texas Constitution or to repay the principal and interest on TxDOT general obligation bonds (Prop 12 bonds). HB 782 never received a hearing in the House Appropriations Committee while SB 287 did receive a hearing in Senate Finance but was left pending without ever receiving a vote.

- HB 2316 – Representative Pickett – The bill would have provided for the imposition of an additional \$50 fee at the time of application for registration or renewal of registration of a motor vehicle that would be deposited into the Texas Mobility Fund.
- SB 1790 – Senator Watson – The bill would have provided for a \$50 increase to the registration fee for a motor vehicle to be used to fund right-of-way acquisition, feasibility studies, project planning, engineering, construction, and reconstruction. TxDOT would have been authorized to issue bonds and other public securities secured by a pledge of and payable from revenue.
- HB 1309 – Representative Guillen and HB 3836 by Rep Harper-Brown – These bills would have established a vehicle miles traveled fee.
- HB 3363 – Representative Callegari – The bill, also referred to as the “Century Bonds bill”, would have permitted TxDOT to issue up to \$3 billion in general obligation bonds, subject to passage of the accompanying constitutional amendment (HJR 139), to pay all or part of the costs of constructing, reconstructing, acquiring, and expanding state highways, including any necessary design and acquisition of rights-of-way; to provide participation by the state in the payment of part of the costs of constructing and providing publicly owned toll roads and other publicly owned transportation projects; and certain costs related to administering and issuing the bonds. They were referred to as Century Bonds because they could have had maturities of up to 100 years.
- SJR 47 – Senator Eltife – This joint resolution proposed a constitutional amendment that would increase the state sales tax by one-half of one percent more than the rates prescribed by general law to be used to repay the principal of and interest on general obligation bonds issued by or on behalf of TxDOT on or before January 1, 2013, or the principal of and interest on any refunding bonds issued to repay those bonds.

Numerous bills were filed at the beginning of session in response to Governor Perry’s call his State of the State address for an end to diversions. To a limited degree the issue was addressed in SJR 1. Some of the stand-alone bills and resolutions filed to address the issue (but saw little movement) included SJR 25/SB 309 (Senator Paxton), SJR 31 (Senator Davis), SJR 46 (Senator Lucio), HJR 22 (Representative Pickett), HJR 29/HB 106 (Representative Larson), HJR 95/HB 1627 (Harper-Brown), and HJR 136/HB 3157 (Representative Harless).

Appendix “G”

Other Legislation of Interest

Below is an overview of other transportation-related legislation, some of which passed, some of which did not.

Miscellaneous Enacted Legislation

While all of the major transportation bills which were passed by the Legislature are addressed in detail in the preceding appendices, there were a variety of other bills of interest which passed as well. These include:

HB 2585 – Representative Harper-Brown/Senator Paxton (Effective June 14, 2013) – The bill removes the current expiration date of Sept. 1, 2013 from the provisions stating TxDOT and a utility must share equally the cost of the relocation of a utility facility that is (i) required by the improvement of a nontolled highway to add one or more tolled lanes; (ii) required by the improvement of a nontolled highway that has been converted to a turnpike project or toll project, or (iii) is required by the construction on a new location of a turnpike project or toll project or the expansion of such a turnpike project or toll project. If this bill had not passed, utilities would have paid 100% of the relocation costs on TxDOT toll projects after September 1, 2013. Needless to say the utility companies lobbied hard for this bill. Senator Nichols and Representative Pickett each vocally opposed the bill, with Senator Nichols offering numerous amendments on the Senate floor which were each voted down. The bill ultimately passed by wide margins in both the House and the Senate.

SB 1029 – Senator Campbell/Representative Phillips (Effective June 14, 2013) – As originally filed, this bill would have prevented TxDOT from operating or transferring to another entity *any* nontolled state highway or segment as a toll road. The result would have been a significant limitation on the ability to add tolled capacity in existing corridors. The bill received a hearing in the Senate and was the subject of opposition from RMAs and others, as well as concerns expressed by committee members. The bill was left pending for over a month before it was significantly restructured and voted out. In its final form the bill does little except eliminate the ability to convert a non-tolled road to a tolled road after approval of a commissioners court and a vote of the public. This eliminated an exception to the conversion prohibition which had never been used. The remaining provisions of statute (allowing for the addition of tolled capacity in existing corridors) remain unaffected.

HB 1123 – Representative Herrero/Senator Rodriguez (Effective September 1, 2013) – As originally filed, the bill *required* that all toll project entities establish a discount program for electronic toll collection customers, which in turn would have triggered a provision stating that certain veterans must be given discounted or free use of toll projects under the program. The bill received harsh criticism from both members and witnesses when it was heard in the House Defense and Veteran's Affairs Committee who noted that in a session where transportation funding was scarce, there was little support in further reducing the funds that currently exist. In addition, concerns were expressed that this would lead to further requests for discounts or exemptions for additional groups in the future. After several months of negotiations, the bill was significantly amended. As finally passed, it now only amends the types of vehicle registrations which must receive a free or discounted use of toll entity's toll project *if* a discount program is created to include vehicles registered with specialty license plates for the Air Force Cross or Distinguished Service Cross, the Army Distinguished Service Cross, the Navy Cross, the Medal of Honor, and recipients of the Purple Heart.

SB 1757 – Senator Uresti/Representative Zedler (Effective June 14, 2013) – The bill creates an offense (Class B misdemeanor) for using, selling, offering to sell, purchasing, or even possessing a license plate flipper device. The device is defined as a mechanical device installed on a vehicle designed to switch between two or more license plates for the purpose of allowing the vehicle operator to change the license plate displayed on the vehicle or to flip the plate so that the numbers are not visible. While primarily an issue for law enforcement, this will also help toll authorities since flippers can be used to evade toll collection. The bill passed unanimously in both the House and the Senate.

SB 276 – Senator Watson/Representative Crownover (Effective June 14, 2013) – The bill permits a rapid transit authority or a coordinated county transportation authority to create a local government corporation (“LGC”). This bill was pushed by a partnership between the Denton County Transportation Authority and the Capital Metropolitan Transportation Authority as the use of a LGC would permit them to offer services to growing areas outside their jurisdictional boundaries. DART had previously secured this authorization.

SB 510 – Senator Nichols/Representative A. Martinez (Effective September 1, 2013) – The bill requires a motorists who sees a TxDOT vehicle on or near a busy roadway, to move over into the next nearest lane to safely pass the vehicle, or if unable to pass, to then slow down to 20 miles below the posted speed limit.

Miscellaneous Failed Legislation

There are a large number of transportation-related bills which did not pass. Below is a description of several which, had they passed, would have had an impact on transportation issues and on entities implementing transportation projects.

SB 449 – Senator Hinojosa/Representative Flynn – As originally filed, the bill would have prohibited a county, municipality, special district, school district, junior college district, or other political subdivisions (including toll authorities) from issuing capital appreciation bonds. The bill was amended in the Senate Intergovernmental Relations Committee to exclude transportation projects from this prohibition. It was passed by the Senate and voted favorably from the House Ways and Means Committee but was never set on the House Calendar.

SB 1650 – Senator Campbell – The bill would have required a RMA, RTA, and MPO to broadcast any of its open meetings over the internet. An appropriation for the cost of implementing this technology was not provided, meaning these entities would be responsible for locating the funding to comply with the bill. The bill was amended on the Senate floor by Senator Eltife to exclude an RMA comprised of three or more counties (the NET RMA). The bill was passed by the Senate and voted favorably from the House Government Efficiency and Reform Committee but was never set on the House Calendar.

HB 3343 – Representative Kolkhorst - The bill would have provided that all toll projects become part of the state highway system and must be maintained by TxDOT without tolls when the costs of acquisition and construction have been paid and all bonds and interest secured by the revenues of the project have been paid or a sufficient amount for payment of all bonds and interest has been set aside. Further, the bill prohibited a toll project entity from amending a financing agreement in a manner that would extend the date by which bonds would be paid off and removed references to use of “surplus revenues” of toll projects in Chapters 228, 366, and 370 (thus precluding system financing). If passed this legislation would have had very significant adverse impacts on tolling authorities and regions of the state which have decided to adopt user fees as a way to address infrastructure needs. The bill received a hearing in the House Transportation Committee but was left pending without a vote.

SB 1253 – Senator Zaffirini – The bill would have prevented TxDOT from designing, constructing, or operating a toll project that, without a clear engineering justification, would incentivize the use of the project by discouraging the use of free adjoining roads through modification of speed limits or traffic signals on the adjacent free roads. This was directed at allegations that TxDOT had artificially lowered speed limits on frontage roads adjacent to SH 130 in order to encourage use of the road. The bill was problematic because of subjective language that would have made it difficult for TxDOT to make necessary changes to roadways for safety or congestion mitigation reasons without being subject to alleged violations of law. The bill passed out of the Senate on the local calendar and received a hearing in the House Transportation Committee but was left pending without a vote.

HB 3650 – Representative Harper-Brown – The bill would have authorized the use of availability payments which would permit TxDOT to enter into an agreement with a private entity for the design, development, financing, construction, maintenance, or operation of a toll or nontolled facility on the state highway system under which the private entity is compensated through milestone or periodic payments based on the private entity's compliance with performance requirements defined in the agreement. The bill was reported favorably from the House Transportation Committee but was not set on the House Calendar until May 9, the deadline for the House to consider House bills on 2nd reading. The bill was not brought up before the midnight deadline.

HB 2870 – Representative Capriglione – The bill would have repealed the provision which currently provides that before a CDA is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure. The bill received a hearing in the House Transportation Committee but was left pending without a vote.

HB 1134 – Representative Darby/SB 638 – Senator Paxton – Would have amended the statutory provisions applicable to CDAs entered into by RMAs, RTAs, and TxDOT to provide that the performance and payment bond provided by a private entity entering into CDA must be issued by a corporate surety authorized to issue bonds in Texas. It would have eliminated the ability of those tolling entities to use alternative forms of security (e.g. parent guarantees) for projects less than \$250 million. While compromise language was eventually agreed to, it was too late in the process to allow for passage of the legislation.

HB 116 – Representative Larson – The bill would have provided that RMAs are subject to review by the Sunset Advisory Commission as if the RMAs were a state agency. An RMA could not be abolished but would be required to pay the cost incurred by the Sunset Advisory Commission in performing the review. This bill was substantially similar to HB 2951 filed by Representative Larson in the previous legislative session. The bill was never set for a hearing by the House Transportation Committee.

SB 1794 – Senator Watson – The bill would have authorized the Capital Area Metropolitan Planning Organization (“CAMPO”) to establish a revolving fund to loan or grant money to cities, counties, the State of Texas, regional mobility authorities, rail districts, or metropolitan transit authorities within the planning jurisdiction of CAMPO to pay expenses of planning, developing, acquiring right of way, constructing, implementing, and maintaining transportation projects approved by the metropolitan planning organization. The impetus for this legislation was the agreement between CAMPO and the CTRMA and the establishment of a Regional Infrastructure Fund to be maintained by CTRMA with revenues from the MoPac Improvement Project. The bill received a hearing in the Senate Transportation Committee but was left pending without a vote.

SB 1018 – Senator Carona/HB 2247 – Representative Harper-Brown – This bill would have amended numerous provisions in Chapter 366 of the Transportation Code, governing the operations of RTAs. Several of the changes were based on provisions in the RMA Act (Chapter 370 of the Transportation Code). The amendments included authorizing the transfer of revenue from one or more turnpike projects to a general fund of the RTA to be used for any purpose authorized under Chapter 366, payment of a property owner by means of a participation payment (a percentage of one or more identified fees related to a segment constructed by the authority) for an interest in real property, and allowing a RTA to enter into agreements with other governmental entities to pledge revenue for the issuance of bonds, whether inside or outside the RTA’s jurisdiction. NTTA pushed this legislation but it was ultimately held up in the House Transportation Committee because of concerns by Representative Yvonne Davis.

SB 1333 – Senator Carona – The bill would have created the Cotton Belt Rail Improvement District, a municipal management district intended to facilitate the development of the \$2 billion Cotton Belt Corridor commuter rail project in the DFW area. The bill appears to have failed because of a lack of local consensus among all of the cities in the corridor. It received a hearing in the Senate Intergovernmental Relations Committee but was left pending without ever receiving a vote.