



*Tarrant Regional Transportation Coalition*

## **82<sup>nd</sup> Texas Legislature**

### **Legislative Update April 8, 2011**

Three proposed constitutional amendments (SJR 22, SJR 23 and SJR 38) that would significantly increase revenue available to fund transportation investment were heard in Senate Finance April 4. They were again placed on the committee agenda April 7 with the expectation that the committee would vote on them. Instead Chairman Ogden announced that there were conflicting provisions in the bills and that they would need some more work before being ready for vote. Urging the authors (Senators Nichols, Wentworth and Davis) to collaborate in developing amendments or substitutes that reconcile the three joint resolutions is the task before us now.

TLOTA (HB 3518 by Eddie Rodriguez) is up for hearing Wednesday in House Transportation.

RED LIGHT CAMERA bill news: HB 887 (Geren), eliminating the ability to withhold vehicle registration as a fine collection tool, was reported favorably from House Transportation April 6.

#### **Committee Meetings Week of April 11:**

**House Transportation, 3W.15, formal meeting during reading and referral of bills Monday, to consider pending business**

**Senate Transportation and Homeland Security, 10:00am Monday, April 13, E1.028**

SB 730 (Nichols) reduces the ability to convert a non-tolled state highway to a toll road.

SB 1102 (Wentworth) establishes a pilot program to require TxDOT to work with transit agencies, DPS, and municipalities to establish and operate a motor-bus-only lane pilot program for highways in Bexar, Denton, El Paso, and Travis Counties that are part of the state highway system and have shoulders of sufficient width and structural integrity.

SJR 13 SJR 13 (Harris, Davis, Shapiro) proposes a constitutional amendment to require that toll revenues be used only for debt service of the toll project or for the acquisition, construction, operation, maintenance, or improvement of transportation projects.

**House Transportation, 8:00am Wednesday, April 13, E2.028**

HB 2802 (Pickett) relating to use of the Texas Mobility Fund

HB 2884 (Solomons) relating to DCTA, making DCTA-requested changes

HB 3218 (Phillips) relating to administration, financing, and use of the state infrastructure bank

HB 3390 (Lavender) permits the Governor to opt out of the federal aid highway program and receive in lieu the state's portion of federal gas tax payments, directs the Comptroller to study the costs and benefits of each opt out method and report her findings to legislators

HB 3518 (Eddie Rodriguez) the Texas Local Transportation Act (TLOTA)

HB 3623 (Darby) relating to Environmental Review of projects by TxDOT

**Senate Transportation and Homeland Security, 8:30am Wednesday, April 13, E1.016**

SB 513 (Ellis) requires the Texas Transportation Commission to adopt and implement a policy (complete streets policy) providing for the accommodation of pedestrians, bicyclists, persons with disabilities, children, senior citizens, users of public transportation, movers of commercial goods, and motorists on streets and highways.

**Senate Committee on Transportation and Homeland Security:** Tommy Williams, Chair; Kirk Watson, Vice-chair; Wendy Davis, Rodney Ellis, Chris Harris, Juan "Chuy" Hinojosa, Robert Nichols, Florence Shapiro, Jeff Wentworth.

**House Committee on Transportation:** Larry Phillips, Chair, Drew Darby, Vice Chair, Dennis Bonnen, Yvonne Davis, Allen Fletcher, Linda Harper-Brown, George Lavender, Armando Martinez, Ruth Jones McClendon, Joe Pickett, and Eddie Rodriguez.

**BILLS GRANTING CDA AUTHORITY FOR NORTH TEXAS PROJECTS**

At the session outset, SCTHS Chairman Williams advised that he wanted a short, clean bill for each individual project--one bill per project with no additional provisions in the bill.

SB 1017 (Davis, Harris, Nelson) & HB 1941 (Geren, T Smith, Truitt) extend CDA authority for the North Tarrant Express Project (IH 35W, IH 820, SH 183). SB heard March 23 in SCTHS, substitute adopted, sent to senate with recommendation that it pass, certified for the local and uncontested calendar, passed in the senate April 7. HB heard in Transportation March 30, amendment considered, left pending.

SB 1144 (Shapiro, Harris, Nelson) & HB 2985 (Parker) extend CDA authority for IH 35E from IH 635 to US 380. SB heard March 23 in SCTHS, substitute adopted, sent to senate with recommendation that it pass, certified for the local and uncontested calendar, passed in the senate April 7. HB heard in Transportation March 30, substitute considered, left pending.

SB 1145 (Shapiro, Harris, Nelson) & HB 2186 (Harper-Brown) extend CDA authority for SH 183 from SH 161 to IH 35E. SB heard March 23 in SCTHS, substitute adopted, sent to senate with recommendation that it pass, certified for the local and uncontested calendar, passed in the senate April 7. HB heard in Transportation March 30, substitute considered, left pending.

House Transportation Committee Chairman Phillips filed a single bill (HB 2255) to extend CDA authority for nine projects including the North Texas projects covered by the above bills. It was heard in Transportation March 30 and left pending.

#### **TRANSPORTATION REVENUE BILLS – BILLS THAT REDUCE DIVERSIONS**

HB 815 (Paxton) amends Section 151.801 of the Tax Code to allocate to the state highway fund proceeds from the tax on the sale, storage or use of new and used motor vehicle tires and new and used motor vehicle parts to fund transportation excluding highway policing; effective September 2013; subject to passage of constitutional amendment (HJR 75).

HB 3793 (Phillips) removes “policing” of public roadways as an allowable use of monies in the state highway fund, subject to passage of a related constitutional amendment, and directs the Comptroller to deposit in the state highway fund revenues derived from the sales tax on vehicle tires and vehicle parts

HJR 64 (Pickett) proposes a constitutional amendment to cap and reduce the diversion of transportation funding. It reduces incrementally over time beginning on or after September 1, 2013 the amount of transportation revenue to fund highway policing (DPS). For a biennium, the Legislature may not appropriate funds derived from vehicle registration fee or motor fuel tax revenues for a purpose other than acquiring rights-of-way or constructing or maintaining public roadways in an amount that exceeds the lesser of (1) the total amount of those funds appropriated for a purpose other than acquiring rights-of-way or constructing or maintaining public roadways in the preceding biennium; or (2) 20% of the amount in (1) when the Comptroller’s revenue estimate exceeds the current biennium revenue by more than three times the amount to be reduced. Heard March 21 in Ways & Means and left pending.

HJR 66 (Pickett) is the same as HJR 64 except that it also eliminates the allocation of transportation revenue to the available school fund, i.e., the 25% of motor fuel tax receipts that now goes to education would go to the state highway fund.

HJR 75 (Paxton) proposes a constitutional amendment to eliminate highway policing as a permitted use of vehicle registration fee and motor fuel tax revenues and to dedicate exclusively to fund public roadway right-of-way acquisition, maintenance and construction the revenue collected from the tax on new and used motor vehicle tires and new and used motor vehicle parts, effective with the fiscal year that begins on or after September 1, 2015, with some proportional reduction of the “diversion” of these revenues in the fiscal year beginning on or after September 1, 2013.

HJR 77 (Harper-Brown) proposes a constitutional amendment adding Section 7-c to Article VIII to allocate to the state highway fund 25% of the net revenues derived from the tax imposed on the sale, use, or rental of motor vehicles on or after January 1, 2012.

HJR 78 (Harper-Brown) proposes an amendment to Article VIII, Section 7-a of the constitution to eliminate on or after September 1, 2013 the provision that allocates to the available school fund 25% of the net revenue collected from the state tax on motor fuels; if the amendment passes, these monies would go to the state highway fund.

HJR 157 (Phillips) proposes a constitutional amendment regarding uses permitted of certain transportation-related revenues: (a) vehicle registration fee and vehicle tire and vehicle parts sales tax revenue shall be used for roadway maintenance, construction and right-of-way acquisition; (b) one fourth of motor fuel tax revenue shall be allocated to the available school fund; (c) three fourths of the motor fuels tax revenue shall be used for roadway maintenance and construction; (d) for a biennium, the Legislature may not appropriate more funds derived from these transportation revenues for another use than it did in the preceding biennium and the maximum amount it appropriates for another use shall be reduced by 25 percent from the previous biennium if the Comptroller’s revenue estimate at the beginning of the legislative session exceeds the total amount of revenue for all sources for the preceding biennium by more than three times the amount of the reduction.

SB 135 (Wentworth) & HB 1131 (Larson) amends Transportation Code Section 222.001 to remove policing of the state highway system by the Department of Public Safety as a permissible use of state highway fund revenues; effective September 2013; subject to passage of constitutional amendment (SJR 8 / HJR 84). SB heard March 17 in Finance and left pending. HB heard April 6 in Transportation, left pending.

SB 523 (Nichols) moves revenue from the state sales tax on motor vehicles from the general revenue fund to the state highway fund at the rate of ten percent annually from September 2013 to September 2022, subject to passage of a constitutional amendment (SJR 22)

SJR 8 (Wentworth) & HJR 84 (Larson) propose a constitutional amendment to eliminate policing of highways as an allowable use of vehicle registration fee and motor fuel tax revenues beginning September 2013 if approved by voters November 2011. SJR heard in Finance March 17, left pending. HJR heard in Transportation April 6, left pending.

SJR 22 (Nichols) proposes a constitutional amendment that would move revenue from the state sales tax on motor vehicles from the general revenue fund to the state highway fund at the rate of ten percent annually from September 2013 to September 2022. Heard April 4 in Finance, left pending, placed on April 7 Finance agenda, no action taken.

SJR 38 (Davis) proposes a constitutional amendment to stop any increase in diversion of monies from the state highway fund and incrementally reduce the diversions over time as monies in the general revenue fund increase from one biennium to the next--very similar to HJR 64. Heard April 4 in Finance, left pending, placed on April 7 Finance agenda, no action taken.

**TRANSPORTATION REVENUE BILLS – BILLS THAT INCREASE REVENUES**

HB 1538 (Pickett) & HB 1214 (McClendon) amend chapter 623 of the Transportation Code to require TxDOT (i) to evaluate highway use by oversize or overweight vehicles, calculate the cost of damage to highways caused by those vehicles and determine whether the fees charged for permits are adequate to offset the costs of damage caused, (ii) to determine if vehicles currently exempt from permit requirements should be required to obtain a permit, (iii) and report its findings to the LBB and Governor by Oct 1 of even-numbered years; strikes the statutory fee schedule and requires TxDOT by rule to establish a schedule of rates, based on miles traveled, for all vehicle weight categories that provides for an increase in the rates according to the weight of a vehicle.

HB 2074 (Mando Martinez) removes the exemption from the motor fuel tax for diesel fuel for railway engines and applies the revenue to the rail relocation and improvement fund.

HB 2381 (Reynolds) amends the Transportation Code to permit the Fort Bend County Commissioners to impose an additional vehicle registration fee of \$10 for a vehicle with a value of \$10,000 or less plus an additional \$1 for each additional \$1,000 of value

HB 2917 (McClendon) raises the \$10 optional county vehicle registration fee to \$20. Heard April 6 in Transportation, left pending.

HB 3092 (Rodriquez, Eddie) (aka TLOTA) authorizes counties in the Austin region to hold an election to impose up to seven different revenue options to fund mobility improvement projects; a county tax on motor fuel and a local option mobility improvement fee be imposed only if HJR 131 passes and is approved by voters; HJR 131 proposes a constitutional amendment to allow the expenditure of motor vehicle fuel taxes and vehicle registration fees to construct, maintain, and operate passenger rail, transit, and freight rail

HB 3417 (Darby) & SB 1585 (Ogden) require the statewide transportation plan to include a component that evaluates future federal funding opportunities for all modes of transportation and identifies actions necessary to maximize the total amount of federal funds received in the future for Texas transportation improvements in this state; require TxDOT to evaluate highway use by oversize or overweight vehicles, calculate the cost of damage to highways in caused by those vehicles, and determine whether the fees charged for permits issued are adequate to offset the costs of damage to highways caused by those vehicles and recommend any fee adjustments for the permits to reflect the costs of damage to highways caused by those vehicles and further determine if vehicles currently exempt from permit requirements should be required to obtain a permit and report its findings by October 1 in even-numbered years to the LBB and the Governor; and require the Commission to adopt by rule a schedule of permit fees for overweight vehicles for highway maintenance based upon vehicle weight and distance traveled. HB heard April 7 in Appropriations, left pending.

HB 3518 (Rodriguez, Eddie) also known as the Texas Local Option Transportation Act, authorizes counties to hold an election to seek approval of mobility projects and methods of funding those projects including a county tax on gasoline and diesel fuel and a mobility improvement fee in an amount not less than \$1 or more than \$60; the county motor fuels tax begins at the per gallon rate of 4 cents, increases 2 cents per year, and caps at 10 cents in the fourth year; requires the initial implementation costs of the system for collection, administration and enforcement of a county motor fuels tax be funded through an interlocal agreement between the Comptroller and one or more local entities. TLOTA takes effect on the date voters approve the constitutional amendment (HJR 131) allowing the expenditure of motor vehicle fuel taxes to construct, maintain, and operate passenger rail, transit, and freight rail. TLOTA expires January 1, 2021. Set for hearing April 13 in Transportation.

HB 3723 (Guillen) permits counties to impose an additional fee of \$5 (\$15 instead of the current \$10) to register a vehicle in the county; also permits a certain border county to enact an additional registration fee of \$50.

HJR 15 (Rodriguez, Eddie) proposes a constitutional amendment increasing the per gallon rate of the tax on gasoline and diesel fuel by two cents annually beginning January 1, 2012 through January 1, 2017, establishing a rate of 30 cents per gallon in years beyond 2017 and empowering the Legislature by general law to increase the rate, and indexing the rate to the CPI beginning September 1, 2020; requires the net revenue from the tax at any rate above the rate January 1, 2011 be used for the sole purpose of designing, constructing, and maintaining public roadways.

HJR 131 (Rodriguez, Eddie) proposes a constitutional amendment to allow the expenditure of motor vehicle fuel taxes, registration fees, and federal reimbursement for those revenues for passenger rail, transit, and freight rail

SB 556 (Davis) amends Transportation Code chapter 623 to require TxDOT to establish by rule a schedule of rates for a highway maintenance fee for permitted overweight

vehicles that considers vehicle weight, vehicle miles traveled and amount of damage the vehicle does to roads and bridges; requires deposit of the fee revenue to the credit of the state highway fund.

SB 1018 (Davis) makes certain code changes to maximize federal funding for certain transportation projects and activities in Texas.

SB 1346 (Davis) adds, amends and repeals sections of the Transportation Code regarding the deposit of fees paid for oversize and overweight vehicle permits; requiring deposit of all fees to the state highway fund, \$1,000 of which was previously deposited to the general revenue fund.

SB 1428 & SJR 42 (Ogden) authorizes the Transportation Commission, subject to legislative review and approval, to designate an area adjacent to a state highway project as a transportation finance zone, to deposit in a revolving fund state sales tax receipts from within the zone, and to use the funds only to retire debt incurred to develop the adjacent state highway; may not be used for a CDA project with private equity investment, subject to passage of constitutional amendment (SJR 42). Both heard in Finance March 28, left pending, SJR placed on April 7 Finance agenda, no action taken.

SB 1860 (Wentworth & Zaffirini) authorize Bexar County to hold an election for transportation improvements funded by a fee on a driver's license issued to a county resident, not to exceed \$50 and/or a fee on a car rented within the county, not to exceed \$10.

SJR 23 (Wentworth) proposes a constitutional amendment to raise the tax rate on motor fuels by ten cents per gallon, adjust the rate annually to reflect the change in the consumer price index, and dedicate the revenue derived from the rate increase exclusively to design, maintain and construct roadways. Heard in Finance April 4, left pending, placed on April 7 Finance agenda, no action taken.

SJR 30 (Ogden) proposes a constitutional amendment dedicating certain revenue derived from future increases in gasoline and diesel fuel taxes, if any, to the repayment of certain existing and future transportation-related state debt. Would take up to five cents of the revenue from any future motor fuel tax rate increase and apply it to debt retirement, the effective being that such revenue would not be available to fund new project development. Heard in Finance March 17 and left pending; placed on April 7 Finance agenda, no action taken.

### **TRANSPORTATION REVENUE BILLS – TRZ BILLS**

HB 563 (Pickett) provides ease and flexibility in the use of a Transportation Reinvestment Zone (TRZ) to generate revenue to fund transportation improvement projects, eliminates the requirements that projects be on the state highway system and utilize TxDOT's pass through toll program in order to use TRZ financing. Heard in House Transportation Feb 23 and left pending. A substitute was laid out, which applies the provisions of the bill to existing TRZs. Voted out of committee March 2. Passed in the house March 31.

HB 629 (Pickett) permits cities and counties to use municipal or county sales tax increment financing for a transportation reinvestment zone.

HB 2571 (Mando Martinez) permits a municipality or county to establish a transportation reinvestment zone to provide commuter rail services in counties adjacent to the Texas-Mexico border and from the Rio Grande Valley to San Antonio. Set for hearing April 13 in Transportation.

HJR 63 (Pickett) proposes a constitutional amendment authorizing the legislature to permit a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area and to pledge for repayment of the bonds or notes increases in ad valorem taxes imposed by the county on property in the area. (Cities now have this authority; it is needed for counties to use TRZ financing.) Heard March 21 in Ways & Means and left pending. Voted out of Ways & Means March 28 with a recommendation that it pass. Committee report sent to Calendars April 6.

SB 538 (Nichols) amends Transportation Code Sections 222.105 – 222.110 similarly to HB 563 and HB 629 (Transportation Reinvestment Zones) described above.

### **TRANSPORTATION REVENUE BILLS – BILLS THAT DECREASE REVENUES**

HB 299 (Berman), SB 624 (Whitmire) & HB 1609 (L Gonzales) repeal the Driver Responsibility Program. HB 299 heard March 22 in Homeland Security & Public Safety, left pending.

SB 363 (Ogden) eliminates the toll when the debt to build the project is retired and then places the facility on the state highway system for TxDOT to maintain, and eliminates the ability of a regional toll authority to use system financing in project development. Heard March 9 in Transportation & Homeland Security and left pending.

SB 469 (Nelson) & HB 1483 (Patrick) reduce from \$100 to \$25 the administrative fee NTTA may charge to recover the cost of collecting an unpaid toll. SB heard March 23 in SCTHS, substitute introduced, left pending; Davis and Harris added as co-authors; reported favorably as substituted April 4. HB heard April 6 in Transportation and left pending.

## **OTHER TRANSPORTATION BILLS**

HB 116 (McClendon) abolishes the Texas Transportation Commission and creates in its place a commissioner of transportation as an elected statutory state officer.

HB 367 (Orr, Shelton) and SB 534 (Davis) designate State Highway 121 in Tarrant and Johnson counties as the Chisholm Trail Parkway. HB heard in House Transportation Feb 23 and voted out with a recommendation that it be placed on the Local Calendar, passed in the house March 30. SB heard March 23 in SCTHS and sent to senate with a recommendation that it pass, recommended for local and uncontested calendar March 24.

HB 377 (McClendon) allows the expenditure of monies from the General Revenue Fund for rail without a line item appropriation if the money is received from the Texas economic development bank fund or is appropriated to the Texas rail relocation and improvement fund. Heard March 9 in Transportation, left pending, reported favorably March 16, committee report sent to Calendars March 21. Placed on April 4 General State Calendar.

HB 439 (Todd Smith) and SB 531 (Davis) authorize the Department of Public Safety of the State of Texas and certain local law enforcement agencies to establish a checkpoint on a highway or street to determine whether persons are driving while intoxicated. HB Set for April 12 hearing in Criminal Jurisprudence.

HB 468 (Burnam, Veasey) designates Interstate Highway IH 35W between Interstate Highway 20 and State Highway 183 as the Cesar Chavez Memorial Freeway. Heard March 16 in Transportation, substitute considered March 23, reported favorably March 23, committee report sent to local and consent calendar April 1, placed on April 7 Local, Consent, and Res. Calendar, passed in the house April 7.

HB 473 (Todd Smith) and SB 537 (Ellis, Davis) prohibit a person convicted of DUI from operating a vehicle not equipped with an ignition interlock device that precludes operation of the vehicle upon detection of alcohol on the driver's breath. HB Set for April 12 hearing in Criminal Jurisprudence.

HB 506 (Caligari) & SB 842 (Patrick) require the use of an ignition interlock device upon conviction of certain intoxication offenses. Shapiro added as co-author. HB set for April 12 hearing in Criminal Jurisprudence.

HB 630 (Pickett) authorizes TxDOT, NTTA, RMAs and counties to enter into an agreement to provide funds to a state or federal agency to expedite the agency's performance of its duties related to the environmental review process for its transportation projects, including those listed in the applicable metropolitan planning Organization's long-range transportation plan under 23 U.S.C. Section 134. Heard in House Transportation March 2; voted out March 9. Committee report sent to Calendars March 15; placed on April 8 General State Calendar.

HB 664 (Larson) allows only elected officials to cast a vote on an MPO policy board. Heard in Transportation March 23, substitute introduced to permit RTA (transit authority) board members to vote, considerable pro and con testimony offered, left pending.

HB 1105 (Harper-Brown) & SB 513 (Ellis) require the Texas Transportation Commission to adopt and implement a policy (complete streets policy) providing for the accommodation of pedestrians, bicyclists, persons with disabilities, children, senior citizens, users of public transportation, movers of commercial goods, and motorists on streets and highways; require MPOs to reflect the policy in their TIPs, local authorities to comply with the policy whenever a project uses state or federal funds, and the Commission to publish by September 2013 a best practices report that includes a description of how TxDOT, MPOs and local authorities have changed their procedures to implement the policy. Heard March 16 in Transportation, left pending. SB set for April 13 hearing in SCTHS.

HB 1276 (Guillen) requires TxDOT to include a new component in the statewide transportation plan that evaluates future federal funding opportunities for all modes of transportation and identifies actions necessary to maximize the total amount of federal funds received in the future for transportation improvements in this state. Heard in Transportation March 28, left pending, substitute adopted in April 4 formal meeting and reported favorably.

HB 1561 (Orr) amends the Transportation Code to require voter approval to implement a photographic traffic signal enforcement system; requires those municipalities that have such a system to hold a referendum; if not approved by voters, the existing system can continue to operate until the existing contract expires. Referred to Urban Affairs March 3.

HB 1577 (Anchia) subjects NTTA to sunset review; requires NTTA to pay the cost the Sunset Advisory Commission incurs to perform the review; does not permit abolishment of the NTTA by virtue of the review. Heard March 30 in Transportation, left pending.

HB 1636 (Paxton) subjects NTTA to an annual financial audit by the state auditor and requires NTTA to post on its website a check register of its financial transactions. Set for hearing April 6 in Transportation. Heard in Transportation April 6, left pending. Heard April 6 in Transportation, left pending.

HB 1669 (Harper-Brown) requires the DMV to establish a pilot program to charge electric powered motor vehicles a mileage fee for use of public roadways and to report to the Legislature by October 1, 2012 the feasibility of permanently assessing an electric motor vehicle mileage fee; the pilot program ends September 1, 2013. Heard in Transportation March 28, substitute considered, left pending.

HB 1724 (Hamilton) amends the Transportation Code to establish a new account within the state highway fund – the economically driven mobility account – and a new division within TxDOT that employs economic developers; requires TxDOT by rule to develop a process and criteria by September 1, 2012 for project selection using established economic principles for evaluating projects; criteria must prioritize projects that promote economic development including employment and cash flow, have sustainable economic value and create transportation corridors as opposed to isolated projects. Heard in Transportation March 28, substitute considered, left pending.

HB 1898 (Pickett) authorizes what amounts to local option for El Paso....a municipal vehicle registration fee for specified road and bridge improvements subject to voter approval not to exceed the amount of the fee that is imposed by the county. Heard in Transportation March 30, left pending.

HB 1920 (Pickett) changes the 5-member Texas Transportation Commission to one with 3 members appointed by the Governor, one member appointed by the Lieutenant Governor and one member appointed by the Governor from a list provided by the Speaker of the House; aligns the boundaries of the 25 TxDOT districts with the boundaries of regional planning commissions created under Chapter 391, Local Government Code; establishes a 10-member legislative oversight committee on transportation through August 2015; establishes an inspector general appointed by the transportation commission; further empowers MPOs in transportation planning and funding allocations; requires the TxDOT chief financial officer to provide a ten year cash flow forecast; requires the evaluation of transportation improvements based upon performance measures; requires the commission to adopt rules that create funding formulas for transportation projects; requires TxDOT transparency via an interactive web-based system that tracks funding allocations and projects, which can be viewed by the general public via the web; requires TxDOT to adopt a ten year transportation plan and a ten year business work plan; requires TxDOT to adopt a biennial project plan by August 31 or each odd-numbered year that identifies projects schedules and funding sources and includes a performance based evaluation component; requires MPOs to have a policy board with elected officials comprising at least 75 percent of its members and with voting privileges only by elected officials; disallows voting by proxy by members of an MPO policy board.

HB 2350 (Larson) amends the Transportation Code to provide three elected members of the Texas Transportation Commission in lieu of the present five appointed members.

HB 2675 (Harper-Brown, Phillips, Pickett) & SB 1420 (Hinojosa, et al) – the TxDOT Sunset Bill – replaces the 5-member commission with a single commissioner who is appointed for a two-year term (changed in substitute), with the initial appointment to be made not later than December 1, 2011 to a term expiring February 1, 2013; the chief financial officer reports directly to the commissioner; the department will again be subject to sunset review in four years rather than the traditional twelve years; the bill sets forth extensive complaint resolution, reporting, planning, coordination and public involvement requirements; permits TxDOT to use design build procurement for non-tolled projects. Heard in Transportation March 28, left pending, substitute considered April 6, vote announced for formal meeting within a week.

HB 2801 (Pickett) & SB 1651 (Watson) eliminates the provision that TxDOT may accept unsolicited proposals for CDA projects, requires responders to a TxDOT request for detailed proposals for a CDA project to identify companies that will fill key project roles and entities that will serve as key task leaders, lists specific conditions under which a private entity selected for a CDA may make changes to the companies or entities named in the proposal as performing key roles, and provides that any cost savings from un-allowed changes accrue to the state rather than the private entity. Heard in Transportation March 30, left pending.

HB 2802 (Pickett) allows use of Texas Mobility Fund monies for servicing TxDOT short-term notes and Prop 14 bond debt. Set for hearing April 13 in Transportation.

HB 2884 (Solomons) & SB 1422 (Nelson) make changes to the DCTA statute to facilitate enforcing fare payment, to permit contract negotiation without competitive bids for contracts up to \$50,000, to permit service in an area using tax increment financing to generate revenue to fund transit service under certain conditions. Set for hearing April 13 in Transportation.

HB 2972 (Smith, Todd) Permits reauthorization elections for a local sales tax for municipal street maintenance every eight years rather than every four years if voters have previously approved such reauthorization at least twice by a margin of at least 66 percent. Set for April 11 hearing in Ways & Means.

HB 3032 (McClendon) moves from the state highway fund to the rail relocation and improvement fund the revenue received from numerous minor fees associated with vehicle ownership, excess vehicle weight, and vehicle sale or lease.

HB 3036 (Alvarado) permits a municipality to choose to call an election to reauthorize the local sales tax for municipal street maintenance for a period of ten years or for a period of four years.

HB 3218 (Phillips) & SB 1395 (Williams) make numerous refinements to provisions governing the state infrastructure bank. HB set for hearing April 13 in Transportation.

HB 3390 (Lavender) to the extent permitted by federal law, the governor may waive the state's right to receive money allocated under the federal-aid highway program and instead elect to receive the portion of the taxes appropriated to the Highway Trust Fund that is attributable to highway users in the state, as calculated by the federal law permitting the waiver and election. Set for hearing April 13 in Transportation.

HB 3623 (Darby) directs the commission to establish by rule (a) an environmental review certification process to certify persons who work on documents related to state or federal environmental review of projects and to require continuing education for recertification and (b) standards for processing an environmental review document for transportation projects; requires a person who prepares or submits an environmental review document to hold a valid certification issued by TxDOT; mandates that an entity or person submitting a document for environmental review of a project that is not fully funded pay a review fee in an amount of one percent of the estimated project cost. Set for hearing April 13 in Transportation.

HB 3676 (Brown) amends the Government Code regarding contracting for professional services, prescribing that selection shall be based upon demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee and that if other considerations are equal, preference should be given to a service provider whose principal place of business is in Texas or who will manage the contract wholly from a Texas office.

HB 3742 (Schwertner) adds a new subchapter to Transportation Code Chapter 201 to provide for expedited environmental review of locally-sponsored projects; sets up specific time frames for performance; requires a performance report to the Legislature annually by December 1.

HB 3789 (Phillips) adds Chapter 373 to the Transportation Code regarding public-private partnerships for toll roads, authorizes a toll project entity to enter into a public-private partnership that provides for the design, development, financing, construction, maintenance, repair, operation, extension, or expansion of a toll project, requires the project to be within the entity's boundaries, authorizes an entity to negotiate provisions relating to a professional services, requires use of a competitive procurement process that secures best value and publication of a notice of availability of an RFQ or RFP, specifies minimum information that must be in an RFQ, lists information to be included in a request for detailed proposal, allows for submission of alternative proposals, limits the total term to 52 years maximum, allows an entity to withdraw a request for detailed proposals, permits an entity to accept an unsolicited proposal and to charge a nonrefundable fee for review, allows an entity that enters into a CDA with a private party to enter into subsequent agreements with the same party for additional segments of a project without an additional competitive procurement process, exempts PPPs from specific statutory sections regarding procurement, exempts PPPs from public disclosure requirements until a final contract is executed unless the private party consents to release of the requested information, requires the private party entering into a PPP to provide a performance and payment bond or an acceptable alternative form of security, defines that the project provided by a PPP is public property owned by entity, defines that an entity may not incur a financial obligation for a private party that performs a toll project, prohibits a provision limiting construction of a competing facility but allows for negotiation of terms of compensation for revenue loss caused by a competing facility limited to a 30-year time period, requires a provision in the PPP allowing the entity to purchase the private party's interest in the project on mutually agreeable terms, requires the request for detailed proposals to require the proposer to provide with the proposal a proposed termination-by-purchase schedule, repeals the CDA sunset / moratorium provisions in current law. Set for hearing in Transportation March 30, no action taken.

SB 19 (Nichols) & HB 3671 (Smith, Wayne) refine and expand primacy provisions and clarifies state/regional/local agency roles relating the development, financing, construction, and operation of toll projects. SB heard March 16 in STHS, substitute adopted, sent to senate with a recommendation that it pass, passed in the senate March 29.

SB 161 (Shapiro) amends the Transportation Code to require the Texas Transportation Commission to establish a rule to allocate highway project funding by formula based on performance measures and criteria including center lane miles, level of congestion, percentage of population below federal poverty level, population, safety, and vehicle miles traveled; to require TxDOT to develop criteria to determine the feasibility of highway projects that are put into a transportation improvement plan; to require TxDOT to adopt population and highway demand projects for each area for which a transportation improvement plan is developed; and to require MPOs and TxDOT to use the criteria and projections to develop each area's transportation improvement plan. Heard March 9 in Transportation & Homeland Security and left pending.

SB 163 (Shapiro) amends Transportation Code Section 366.303 to prohibit a county from owning, constructing, maintaining or operating a toll road within the NTTA service area unless it has an agreement with NTTA to do so.

SB 197 (West) amends section 548.3065 and 548.6015 of the Transportation Code to provide stronger penalties for violations relating to noncompliance with compulsory vehicle inspections and to require that vehicle inspection stations have a surety bond.

SB 246 (Shapiro) amends Transportation Code Section 366.038 to prohibit NTTA from providing financial security, including a cash collateral account, for the performance of tolling services if (1) the authority determines that providing security could restrict the amount, or increase the cost, of bonds or other debt obligations the authority may subsequently issue or (2) the authority is not reimbursed its cost of providing the security. Heard March 23 in SCTHS, substitute adopted, reported favorably as substituted March 28, passed in the senate March 30.

SB 548 (Nichols) authorizes TxDOT to enter into an agreement to provide funds to a state or federal agency to expedite the agency's performance of its duties related to the environmental review process for the department's transportation projects; directs TxDOT to establish by rule a process to certify district environmental specialists. Heard March 16 in STHS, 2 amendments introduced, left pending; substitute adopted, reported favorably as substituted March 28, passed in the senate March 31.

SB 730 (Nichols) & HB 3700 (Larson) reduce the ability to convert a non-tolled state highway to a toll road. SB set for April 11 hearing in SCTHS.

SB 731 (Nichols) & HB 1280 (Kolkhorst) require a toll project entity to pay a nonrefundable examination fee to the attorney general established by the attorney general for the legal sufficiency review of a comprehensive development agreement and authorizes the toll project entity to require reimbursement of the fee amount from the private developer of the project. SB heard March 9 in Transportation & Homeland Security and left pending, reported favorably as substituted March 28, passed in the senate March 31. HB heard March 30 in Transportation, left pending.

SB 814 (Davis) amends the Transportation Code to allow for surplus toll or CDA revenue to be use in the region rather the district in which the project or system is located; requires 121 surplus revenue to be deposited into an account designated by the MPO; declares the revenue to be local revenue; permits the MPO to determine the distribution of funds.

SB 888 (Carona) & HB 1742 (Harper-Brown) amend Transportation Code chapter 431 to permit DART and the T to create a local government corporation as a tool to enable non-member cities to pay for and receive certain transit services; the LGC can also utilize PPPs to develop projects. SB heard March 23 in SCTHS and sent to senate with a recommendation that it pass, passed in the senate March 29. HB heard March 30 in Transportation, left pending.

SB 1102 (Wentworth) & HB 2327 (McClendon) establish a pilot program to require TxDOT to work with transit agencies, DPS, and municipalities to establish and operate a motor-bus-only lane pilot program for highways in Bexar, Denton, El Paso, and Travis Counties that are part of the state highway system and have shoulders of sufficient width and structural integrity. SB set for hearing in SCTHS April 11. HB heard in Transportation April 6, left pending.

SB 1137 (Watson) requires the Texas Transportation Commission to adopt rules for public hearings and public meetings for transportation projects and sets forth minimal requirements the rules must address; sets forth specific public notice requirements for public hearings and meetings

SB 1138 (Watson) & HB 2574 (Phillips) require an RMA to get specific legislative authority for a CDA if the CDA would entitle the private entity to an ownership or leasehold interest in the transportation project or the right to operate or retain revenue from the transportation project. HB heard in Transportation March 30, left pending. SB heard in SCTHS March 31, left pending.

SB 1282 (Watson) & HB 3571 (Phillips) prohibit the use of revenue sharing as means of repayment of TxDOT cost participation in a toll facility of a public entity. HB heard April 6 in Transportation, left pending.

SB 1323 (Watson) adds a new subchapter to Transportation Code Chapter 201 to provide for expedited environmental review of locally-sponsored projects that undergo state, as opposed to federal, environmental review and approval.

SJR 13 (Harris, Davis, Shapiro) proposing a constitutional amendment to require that toll revenues be used only for debt service of the toll project or for the acquisition, construction, operation, maintenance, or improvement of transportation projects. Set for April 11 hearing in SCTHS.

### **BILLS THAT MAY INCREASE RIGHT-OF-WAY COSTS**

SB 18 (Estes, Duncan), SB 180 (Estes) and HB 279 (Geren) redefines public use and creates a truth in condemnation act that requires good faith negotiations and compensation for economic loss including diminished access; limits eminent domain use to takings only for public use, requires authority to use eminent domain to be granted in a public meeting, requires making a bona fide offer to purchase before initiating condemnation proceedings, applies condemnation rules to all condemning entities, requires notice and disclosure by condemning entities, requires fair compensation to property owners who lose direct access to their remaining property, and allows the previous owner to repurchase the property if it is not used within ten years. Twenty five senators added as co-authors. SB 18 heard in State Affairs February 3; reported favorably February 7, passed in the Senate February 9. SB 18 heard March 7 in House Land & Resource Management and left pending; substitute adopted and reported favorably March 22; considered in Calendars April 6; placed on April 13 emergency calendar; calendars committee rule adopted April 7.

### **CLEAN AIR BILLS OF INTEREST**

HB 1037 (Otto, Anchia, Burkett) & SB 385 (Williams) create of an alternative fueling facilities program to be funded by the Texas emissions reduction plan fund, allocate two percent of the diesel emissions reduction incentive program funding to the new program, limit a grant to the lesser of \$500,000 or 50% of construction costs; the program expires August 31, 2018. SB heard March 22 in Natural Resources, reported favorably and recommended for local & uncontested calendar March 23, Fraser added as co-author, passed in the senate April 4. HB set for April 13 hearing in Environmental Regulation.

HB 2545 (Hancock) adds Chapter 393 to the Health and Safety Code to enact the Regional Air Quality Compact and enter into the compact with all other states whose legislatures adopt the compact, committing each party state to work cooperatively with the other party states to formulate a plan for implementing a program administered by party states and local governments within those states for the prevention of air pollution and the control of air pollution at its source, as a replacement for the functions of the United States Environmental Protection Agency relating to the enforcement of laws regulating air quality. Set for hearing April 7 in Select Committee on State Sovereignty.

HB 3272 (Burnam) makes specific, appropriate refinements to the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. Heard April 6 in Environmental Regulation, left pending.

HB 3399 (Legler) requires TCEQ to provide a grant application form for the Diesel Emissions Reduction Incentive Program of TERP that minimizes, to the maximum extent possible, the amount of paperwork required. Set for April 13 hearing in Environmental Regulation.

HB 3418 (Darby) & SB 1584 (Ogden) eliminate funding for the new technology research and development program of the TERP, directs TCEQ to contract with a nonprofit organization or institution of higher education to establish and administer a program to support research related to air quality and allocate up to \$2 million to support the program. HB heard April 7 in Appropriations, left pending.

SB 102 (Davis) amends sections of the Health and Safety Code pertaining to the Texas Emissions Reduction Plan to establish air quality monitoring as a new use of program funds and to specify percentages of program funds that shall be allocated to the clean fleet program and to air quality monitoring.

SB 527 (Fraser, Estes, Harris, Nelson, Shapiro, West) & HB 1145 (Geren, Nash, Parker) amend the Health and Safety Code regarding the Texas Emissions Reduction Plan (TERP) and require certain uses of the TERP monies allocated to the diesel emissions reduction incentive program. Five percent of the monies shall be used for the clean fleet program and not less than \$3 million or more than \$7 million in 2012 and 2013 and not less than \$1 million or more than \$3 million in subsequent years shall be used to fund the implementation and oversight of a regional air monitoring program in TCEQ Regions 3 and 4 implemented through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area; eliminate the New Technology Research and Development component of the TERP. SB 527 heard March 8 in Senate Natural Resources; substitute adopted and referred to local and consent calendar; reported favorably as substituted March 14; placed on the intent calendar March 16; passed March 17 in the senate with one amendment; received in the House March 21; referred to Environmental Regulation April 4. HB 1145 heard March 9 in Environmental Regulation; substitute laid out; left pending; substitute adopted March 24; reported favorably as substituted March 24; committee report sent to local & consent calendar April 1.

SB 1146 (Estes) requires TCEQ to contract with a nonprofit organization or institution of higher education to establish and administer a program to support research related to air quality, and makes several funding allocation changes for the TERP fund.

Last Bills Reviewed

HB 3843 filed 04/08

HJR 157 filed 03/11

SB 1874 filed 03/11

SJR 51 filed 03/11