

## Memorandum

Discussion during committee hearings has indicated that there may be some uncertainty as to the various types of toll authorities currently operating in Texas.

The attorney's at Lock/Lord, who represent various transportation entities have provided a synopsis of the differences and briefly describe the formation and governance structure for each.

I have also included a map, provided by TxDOT of the tolled roads and tolled bridges in Texas. You are welcome to share with anyone who might be interested. I will also be sending to all House members as and FYI alert. We also post on the Committee website.

Joe C Pickett

### I. PRIMARY TYPES OF PUBLIC TOLL AUTHORITIES IN TEXAS

There are four primary types of governmental entities authorized to develop and operate toll projects under Texas law: (1) county toll road authorities; (2) regional tollway authorities; (3) regional mobility authorities; and (4) TxDOT. The statutory authority, formation procedures, and governance structure for each type of entity are summarized below.

#### County Toll Road Authorities ("CTRA")

- **Statute:** Governed by Chapter 284 of the Transportation Code.
- **Formation:** Formed by a county, acting through its commissioner's court. A CTRA may only be formed by a county with a population of 2 million or more, a county adjacent to a county with a population of 2 million or more, a county that borders Mexico, or a county with a population of at least 50,000 that borders the Gulf of Mexico. Texas Transportation Commission approval is *not required* for formation.
- **Governance:** May be governed directly by a county commissioners court or by board of directors appointed by the commissioners court.
- **Scope of Projects:** Authorized to develop and operate a causeway, bridge, tunnel, turnpike, highway, ferry, or any combination of those facilities, or a turnpike project or system as it is defined under Chapter 370 of the Transportation Code.

- **Existing CTRAs:** County toll road authorities have been established in Brazoria, Collin, Fort Bend, Harris, Montgomery, and Waller Counties.

### Regional Tollway Authorities (“RTAs”)

- **Statute:** Governed by Chapter 366 of the Transportation Code.
- **Formation:** Formed by two or more contiguous counties, at least one of which must have a population of at least 300,000, by order of their commissioner’s courts. The Transportation Commission must approve the creation of a RTA unless one of the counties has a population of 2 million or more.
- **Governance:** Governed by a board of directors, with one director appointed by the governor and at least one director appointed by each county in the RTA. Directors serve staggered two-year terms. The board selects its presiding officer.
- **Scope of Projects:** Authorized to develop and operate turnpike projects or systems. May also use surplus revenue from a turnpike project or system to develop certain non-tolled highways or similar facilities situated in a county in which the RTA is authorized to operate a turnpike project.
- **Existing RTAs:** The North Texas Tollway Authority (composed of Collin, Dallas, Denton and Tarrant counties) is the state’s only RTA.

### Regional Mobility Authorities (“RMAs”)

- **Statute:** Governed by Chapter 370 of the Transportation Code.
- **Formation:** Formed at the request of one or more counties (or a municipality that borders the United Mexican States and has a population of 105,000 or more). Approval of the commissioner’s court of each county that will be a part of the RMA is required, and formation must be approved by order of the Transportation Commission.
- **Governance:** Governed by a board of directors, with the presiding officer appointed by the governor; at least two directors appointed by each county that initially forms the RMA; and one director appointed by each county that subsequently joins the RMA. Directors serve staggered two-year terms.
- **Scope of Projects:** Authorized to develop and operate: turnpike projects; passenger or freight rail facilities; a ferry; certain non-commercial airports; pedestrian or bicycle facilities; an intermodal hub; an automated conveyor belt for the movement of freight; border crossing inspection stations; air quality improvement initiatives; public utility facilities; transit systems; projects and programs listed in the most recently approved state implementation plan for the

area covered by the RMA; or a system consisting of a combination of two or more projects.

- **Existing RMAs:** Nine RMAs have been established throughout the state, including:
  - Alamo RMA (Bexar County)
  - Cameron County RMA
  - Camino Real RMA (City of El Paso)
  - Central Texas RMA (Travis and Williamson Counties)
  - Grayson County RMA
  - Hidalgo County RMA
  - North East Texas RMA (Bowie, Cherokee, Gregg, Harrison, Kaufman, Panola, Rusk, Smith, Titus, Upshur, Van Zandt, and Wood Counties)
  - Sulphur River Regional Mobility Authority (Delta, Hopkins, Hunt, and Lamar Counties)
  - Webb County-City of Laredo RMA

### **Texas Department of Transportation (“TxDOT”)**

- **Statute:** Authority to develop and operate toll projects is set forth in Chapter 228 of the Transportation Code.
- **Formation:** The implementation and operation of toll projects by TxDOT occurs through existing divisions within the department’s organizational structure. The Toll Operations Division handles transaction processing and TxTAG issues; the Special Projects Division handles procurement and construction of projects; and the Innovative Finance and Debt Management Division handles much of the toll road financing issues. Other divisions may provide support as well.
- **Governance:** Governed by the Transportation Commission.
- **Scope of Projects:** Authorized to develop and operate a toll project or system consisting of a combination of two or more toll projects.

Collectively CTRAs, RTAs and RMAs are commonly referred to as “local toll project entities”, or “LTPEs”. When TxDOT is included, the collective reference is to “toll project entities”, or “TPEs”.

## **II. OTHER PUBLIC ENTITIES WITH TOLLING AUTHORITY**

In addition to the TPEs described above, there are other governmental entities in Texas that may play a more limited role in the development and operation of toll projects. These include:

- certain local government corporations;
- road districts in counties with a population of 175,000 or more (Chapter 365 of the Transportation Code);
- road utility districts (Chapter 441 of the Transportation Code);
- agricultural development districts (Chapter 60 of the Agriculture Code);
- City of Laredo Port of Entry Authority;
- certain water control and improvement districts;
- certain water improvement districts;
- certain county and city operated toll bridges (including international toll bridges).

### III. PRIVATE TOLL ROAD DEVELOPERS

There are limited instances in which non-governmental entities may develop and operate toll roads:

- **CDA Projects:** Certain projects may be developed through a “Comprehensive Development Agreement”, or “CDA”. In general, a CDA grants a private entity (typically a consortium of companies) the right to design, build, finance, operate and maintain a project for a specified period of time (not to exceed 52 years). A CDA project is never owned a private entity; the CDA developer operates a project through a long-term lease of the facility. CDA agreements are required to include termination for convenience clauses (meaning they can be terminated at any time, subject to obligations to compensate the CDA developer for the value of their interest in the project). Currently TxDOT and RMAs may only develop projects through CDAs which have been identified in statute. RTAs and CTRAs may have the ability to develop other projects through the CDA model.
- **Toll Road Corporations:** Previous statutes granting private entities the right to develop and operate toll roads were repealed in 1991. However, prior to the repeal several corporations were formed in order to preserve, or grandfather, the rights granted under the previous statutes. Although it is unclear whether any of those previously formed corporations currently have valid rights to exercise the powers of a private toll road corporation, at least one, the Texas Turnpike Corporation, has attempted to do so in connection with the Northeast Gateway project in north Texas.

Please feel free to contact me if you have any further questions or would like additional information. I can be reached at (512) 305-4855, or via email at [bcassidy@lockelord.com](mailto:bcassidy@lockelord.com).