

EXECUTIVE SUMMARY
May 19, 2010

Briefing on NTTA Legislative Goals for 82nd Texas Legislature

Government Affairs

Background

- The North Texas Tollway Authority (NTTA) is a regional tollway authority governed by Chapter 366 of the Texas Transportation Code.
- During the interim prior to each legislative session, the NTTA adopts a legislative program which reflects the NTTA's mission as the primary toll road provider for the North Texas region.

General Overview

- Since the conclusion of the 81st Texas Legislature, the NTTA legislative team has worked with internal staff and executive and Board leadership to develop a program of legislative goals for the 82nd Texas Legislature, which convenes January 11, 2011.
- The NTTA legislative team has met with regional and state elected leadership, as well as partner agencies, as part of a comprehensive effort to engage stakeholders in the NTTA's legislative process.
- The following legislative initiatives have been identified for consideration of adoption by the NTTA Board of Directors as items either to support if advanced by others or to pursue directly as part of the NTTA's legislation:
 - Maintain and support continued first option for project delivery for local toll project entities (LTPEs) and address relationship of multiple LTPEs in one service area:
 - Existing first option for local toll project entities via market valuation sunsets in August 2011.
 - The public interest is best served if local and regional governmental transportation entities cooperate in connection with the financing, construction, and operation of toll projects. Recognizing that, the legislature in 2007 enacted Section 370.186, Transportation Code, which requires that regional tollway authorities (RTAs) and regional mobility authorities (RMAs) cooperate and agree before an RMA undertakes a toll project in an area already served by an RTA.
 - To meet the expectations set by the region for the NTTA as the toll provider for North Texas, the NTTA is currently the lead or partner in multiple regional projects with \$7 billion in debt to support these projects.
 - The NTTA has an established toll system of more than 700 lane miles, and a financial, administrative and operational structure that

- is best equipped to deliver toll projects in its four-member county service area.
- Amend Section 552.116 of the Texas Government Code to clarify exemption of internal audit working papers for regional tollway authorities (same as or similar to what was drafted in SB 882 during the 81st Texas Legislature)
 - The Texas Public Information Act currently protects from mandatory public disclosure the audit working papers of the auditor of a state agency (such as TxDOT), institution of higher education, county, municipality, school district, and the DFW Airport. The audit working papers of the NTTA and other local toll project entities should also be exempted from disclosure.
 - Audit working papers are the documents that support the audit – notes, questionnaires, and the like prepared by the auditor.
 - It is important to note that a final internal audit report will remain subject to disclosure through the Public Information Act.
 - With billions of dollars of bonds in the hands of investors, the NTTA should seek the same protection as virtually all similar governmental entities against the dissemination of incomplete, preliminary, and potentially misleading financial information prior to the dissemination of its final, completed audit.
 - Amend Section 366.038 to prohibit a requirement for performance collateral in tolling services agreements (same as or similar to what was included in SB 882 during the 81st Texas Legislature) if providing the security would have a negative financial impact on the NTTA's ability to issue bonds, or if in providing the security the NTTA would not be reimbursed its costs.
 - Performance guarantees, such as Letters of Credit, have become very costly (and occasionally unavailable) in recent years due to market conditions.
 - Further, even if the guarantee is available and the NTTA is reimbursed for its cost, Letters of Credit and other guarantees are contingent liabilities that count against, and eventually reduce, the NTTA's bond capacity.
 - Absent some sort of limit on these guarantees, the NTTA's assistance in the operation of private-sector projects could reduce its ability to deliver roads of its own – the NTTA's principal statutory mission.
 - There are other methods to ensure performance that do not erode the NTTA's financial health. For example, the NTTA and TxDOT have already put performance protections in place by adding provisions to existing Tolling Services Agreements that promptly transfer control of toll collections to TxDOT if the NTTA fails to meet its obligations for any reason.
 - Tolling Services Agreements for IH 635 Managed Lanes and the North Tarrant Express have been negotiated and each contains a different form of performance guarantee. Absent legislation, future

- managed lanes projects would be subject to performance guarantee provisions.
- Repeal obsolete Chapter 366 provisions regarding board member and employee conflicts of interest (same as or similar to what was included in SB 882 during the 81st Texas Legislature)
 - The current Section 366.260 language is unchanged from the state's earliest toll legislation passed in 1953; it is outdated, unclear, and inadequate.
 - The Section 366.260 language predates Chapter 171, Local Government Code, that generally applies to local governments like cities and counties and provides clearer, more detailed, and more demanding ethics requirements..
 - The language of Section 366.260 is not defined elsewhere in Chapter 366 and cannot be interpreted or applied with confidence; because it appears only in the NTTA's enabling statute, there are no cases or AG opinions that shed light on its meaning.
 - This provision would be clean-up of old language to resolve inconsistencies between Chapter 366 and Chapter 171, Local Government Code. That amendment would make it clear that the NTTA's directors and employees are subject to the same conflicts restrictions as similar public officials.
 - In several respects, the Chapter 171 standards are more complete and demanding. For example, the current provision in Chapter 366 makes conflict of interest violations civil matters subject to a \$1,000 fine, an amount unchanged for 57 years. In contrast, under Chapter 171 those conflicts would be Class A misdemeanors (up to one year in jail and \$4,000 fine). Also, Chapter 171 specifically extends its conflicts restrictions to include a director's or employee's family members, mandates disclosure via a conflict affidavit, and explicitly compels abstention – all features absent from current Section 366.260.
 - These provisions could be supported jointly with other local toll project entities throughout the state, including the Harris County Toll Road Authority (HCTRA) and regional mobility authorities (RMAs).
 - The schedule for advancing the NTTA's legislative goals for the 82nd Texas Legislature includes consideration of adoption by the NTTA Board of Directions at its regularly-scheduled meeting on May 19, 2010, and finalizing legislation by pre-filing in November 2010.
 - Proactive outreach to the NTTA's stakeholders will continue throughout the remainder of the legislative interim.

Legal Information

- The NTTA's General Counsel and outside counsel participated in the development of the legislative goals for the 82nd Texas Legislature and have reviewed the legislative materials.

Staff Recommendation

- Staff recommends adoption of the legislative goals for the 82nd Texas Legislature.

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