

ENGINEERING-RELATED BILLS PASSED BY 81st LEGISLATURE

July 6, 2009

BUSINESS AND PROFESSIONAL ISSUES

Statute of Repose for Engineers and Architects (SB 2141 by Wentworth and Hughes): Clarifies that the statute of repose is 10 years for all claims, and that the 60 day period to join a responsible third party to a claim does not apply to claims against architects and engineers after 10 years. This bill overturns an appeals court decision that weakened the statute of repose.

Note: SB 2141 was vetoed by Governor Perry. However, subsequent to the veto the Texas Supreme Court overturned the Galbraith case referenced above, leaving the statute of repose intact.

Practice of Engineering (HB 2649 by Smith and Deuell): Makes several miscellaneous changes to the Engineering Practice Act including removing the residential structure exemptions in the TEPA for:

- the engineering design and inspection necessary to comply with the windstorm certification standards of a residential structure; and
- the engineering design associated the design of slabs on certain expansive soils.

The bill also provides that a P.E. may not be required to have any additional certification other than a P.E. license to seal an engineering plan, specification, plat, or report.

Certificate of Merit (SB 1201 by Carona and Lewis): Makes a number of modifications to the certificate of merit statute for engineers and architects:

- continues the existing requirement that the filer of the affidavit must hold the same professional license as the defendant but adds additional requirements

for the filer – he or she must be knowledgeable in the area of practice and offer testimony based on knowledge, skill, experience, education and practice;

- clarifies that the statute applies not just to negligence but to any action arising out of professional practice (this change had been made in one section but not another); and
- adds landscape architects.

TRANSPORTATION

Extension of TxDOT Sunset Date to 2011 (SB 2, First Called Session): Renews TxDOT until 2011, with no other changes. The agency will face Sunset review in two years. However, the review by the Sunset staff will be limited to the recommendations made last year; a complete review will not be conducted.

Proposition 12 Bonds (HB 1, First Called Session): Provides authorization for the issuance of Proposition 12 general obligation bonds for transportation. The General Appropriations Act further authorizes the issuance of \$2 billion in bonds and provides debt service. Of that amount \$1 billion will be used in the regular highway program and \$1 billion will be used to capitalize the existing State Infrastructure Bank, which can be used for loans, credit enhancements, and similar transactions.

DOT Engineering-Related Staffing (Contained in SB 1, General Appropriations Act, TxDOT Rider 57): The Comptroller, working with CEC, AGC, TBPE, is required to produce a report by January 1, 2010 that covers:

- the number of licensed PEs and graduate engineers in TxDOT by strategy and work function for last 5 years;
- the dollar volume of highway and bridge projects awarded last 5 years;
- the cost, including all direct and indirect cost, per \$100 million of construction each of last five years that were produced by (1) TxDOT personnel (2) consultants;
- analysis of the dollar volume impact to department's budget per \$100 million of project awards for each one percent increase in production by consultants offset by a reduction in production by DOT personnel;
- a recommended staffing and consultant utilization plan for DOT;
- an attrition plan to reach recommended staffing levels by 1/1/13 if lower.

Southern High-Speed Rail Compact (HB 646 by Hughes and Eltife): Authorizes the governor to enter into and provides advance legislative approval for Texas' participation in the Southern High-Speed Rail Compact with the states of Louisiana, Mississippi, and Alabama. A commission is empowered to study the feasibility of interstate rapid rail service, hold hearings, and perform studies.

TxDOT as Contracting Agent for Certain Airports (HB 2314 by Gattis and Ogden): Allows TxDOT to act as the agent for the owner of any eligible airport in contracting for and supervising the improvement of an airport. Under current law, this authority is limited to acting on behalf of local governments. The bill would extend it to any airport eligible to receive grant funds under the federal airport improvement program, which could include privately-owned airports.

Powers and Duties of Regional Toll Authorities (SB 882 by Carona and Geren): Makes a number of changes to the powers and duties of RTAs (such as NTTA), including revising the stipend amount for design-build solicitations over \$50 million.

Restriction of Highway Fund for Toll Facilities (SB 883 by Carona and Pickett): Restricts TxDOT from pledging money in the highway fund to guarantee loans or bonds for public or private toll projects.

TxDOT Rail Authority (SB 1382 by Carona and McClendon): Grants TxDOT broad authority to coordinate activities relating to the planning, construction, and operation of a passenger rail system, including preparation of an annual plan.

Access Management (SB 1609 by Hegar and Callegari): Requires that access decisions by a district engineer must be in writing and provide a process for appeals. Properly platted access points on undeveloped land are subject to access rules in effect when the points were platted, subject to some conditions such as development beginning in five years. Requires the adoption of criteria for variances. Other restrictions.

Standards of Conduct and Ethics Policies for MPO's (SB 585 by Carona and Kent): Requires MPO's to adopt Standards of Conduct and Ethics Policies that prohibit members and employees of MPO's from accepting gifts, benefits, certain outside employment, and other things that might adversely affect their official conduct.

P.E. Requirement for TxDOT E.D. (SB 970 by Seliger and Phillips): Removes the requirement that the Executive Director of TxDOT be a licensed professional engineer.

PROCUREMENT

Civil Design-Build Phase-in (SB 229 by West and Callegari): Addresses a drafting error in the civil design-build statute passed in 2007 to allow entities over 100,000 to continue to use the process after September 1, 2011. (This was the original intent, but the bill as passed inadvertently included language that sunset DB for these entities on this date.)

Design-Build Authority for Certain Entities (SB 1047 by Lucio and Olivera): Gives design-build authority under the civil design-build statute to a municipally owned combined water, electric, and wastewater utility within 30 miles of Gulf. (Intended for Brownsville PUB).

Procurement of Geoscience Services (HB 2820 by Chisum and Wentworth): Includes geoscience services in the Professional Services Procurement Act.

Local Preference (HB 2082 by Isett and Duncan): Under current law, a local government can give a preference to local bidders that are within 5% of lowest bidder. HB 2082 limits this provision to contracts of less than \$100,000.

WATER/WASTEWATER

Water Quality Fees (HB 1433 by Lucio III and Averitt): Effective September 1, 2009 increases the ceiling on the maximum annual water quality fee imposed on holders of waste discharge permits from \$75,000 to \$100,000. The bill also provides that the ceiling increases annually based on inflation but may not exceed \$150,000.

Permits Authorizing Reuse Water System Contributions and Discharges (HB 1922 by Martinez-Fischer and Uresti): Applies to wastewater treatment facilities operated by an agency of a home-rule municipality with a population of one million or more. Allows the TCEQ to authorize a facility to contribute treated wastewater to a reuse water system if the commission has approved the use of reclaimed water from the wastewater facility. Specifies how the commission will treat effluent

limitation violations at an outfall permitted for reuse water system discharges by more than one wastewater treatment facility.

Revolving Fund/Capitalization Grant Authority (SB 2314 by Averitt and Callegari): Provides TWDB rulemaking authority to implement federal capitalization grants under drinking water or clean water revolving funds.

MISCELLANEOUS

Disaster Preparedness and Emergency Management (HB 1831 by Corte and Carona): Comprehensive revision of disaster preparedness and management statutes. Includes a requirement that a supplement to the state emergency action plan be developed with provisions for emergency or backup power to critical water/wastewater facilities, including procedures for the maintenance and deployment of emergency generators. The plan must have a standardized form for a water/wastewater utility provider to provide information about the number and type of generators that will be required and procedures for utility providers to maintain a current list of generators available in the surrounding areas through commercial firms or mutual aid agreements.

The bill also contains a requirement that when constructing or extensively renovating a critical governmental facility, the entity shall evaluate the installation of a combined heating and power system.

Projects of Development Corporations (SB 2052 by Estes and Parker): Provides that eligible transportation-related projects of development corporations may include rail ports, inland ports, and rail switching facilities.

Wharton County Drainage District (SB 637 by Hegar and Zerwas): Creates a county-wide drainage district in Wharton County.

Submission of Architectural Barrier Plans (HB 1055 by Parker and Harris): Extends the deadline for submitting plans and specifications of buildings for the purpose of eliminating architectural barriers from 5 days after issuance to 20 days after issuance.

Local Government Procurement (HB 987 by Creighton and West): Makes a number of changes to school district and local procurement, including increasing

requirements for competitive bidding or procurement from \$25,000 to \$50,000. The bill also allows awards against local governments in breach of contract decisions to include attorneys' fees.

TIF Funds for Certain Projects Benefiting Reinvestment Zones (SB 576 by Davis and T. Smith): Adds "roads, sidewalks, and other public infrastructure in or out of the zone" to the list of projects that can be paid for by revenue from a tax increment fund to benefit a reinvestment zone.

Stormwater Management for Travis County (SB 1299 by Watson and Bolton): Adds Travis County to list of counties able to regulate stormwater management.

Residential Construction Code Standards in Unincorporated Area (HB 2833 by Marquez and Shapleigh): Provides that for counties within 50 miles of an international border, the International Residential Building Code applies to single-family construction. The bill provides that the requirement cannot be construed to allow zoning or prior approval of development.

Military Sustainability Commissions (HB 2919 by King and Fraser): Allows certain counties with unincorporated areas near military facilities to set up commissions to review new projects and develop standards for compatible development.

Public Improvement Districts (SB 978 by West and Elkins): Major expansion of statute for public improvement districts with the ability to fund capital expenditures through assessments.

BILLS/ISSUES THAT DID NOT PASS

- Changes to qualifications-based selection
- Local option transportation funding options
- Business planning and accountability improvements for TxDOT
- State revolving fund for transportation
- Limits on MPO project authority
- Limits on broadform indemnity provisions in design and construction contracts
- Omnibus bill related to groundwater districts and utility districts
- Comprehensive alternate project delivery bill
- Construction manager registration
- Engineering Practice Act exemption for certain volunteer fire departments
- Additional Water Development Board bonds
- CM at Risk for metropolitan rapid transit authorities
- Many, many others.