



# TEXAS COUNCIL OF ENGINEERING COMPANIES

## 79<sup>th</sup> LEGISLATURE

### FINAL ACTION

June 21, 2005

**NOTE: You can obtain the text of any bill by going to the Legislature's web site – [www.capitol.state.tx.us/](http://www.capitol.state.tx.us/) -- and entering the bill number (i.e., HB 400) in the space for "Quick Bill Status" and clicking on "Text".**

### MAJOR ISSUES

**Changes to Qualifications-Based Selection:** HB 2673 did not pass. HB 2525 would have strengthened the PSPA by adding a requirement that the Act may be enforced through injunctive or declaratory relief but that bill was vetoed (see below).

**Design-Build/Project Delivery:** Expansion of design-build to local government transportation facilities (HB 2703) did not pass. Expansion of design-build for desalination facilities did not pass (SB 1335). Legislation that initially authorized Houston METRO to use comprehensive development agreements for transit projects passed, but with significant revisions agreed to by Houston CEC changing the process to a special hybrid delivery system with significant protection for engineering judgment and contracts. By and large, changes to design-build are restricted to changes to TxDOT's comprehensive development agreement authority.

The most significant changes in the project delivery area were included in HB 2525, but that bill was vetoed by Governor Perry for reasons that had little or nothing to do with the merits of the bill itself. HB 2525 would have consolidated a number of alternate project delivery statutes into a new Chapter 2264, Government Code, and made a number of other changes. Most significantly, the bill would have authorized the use of certain alternate project delivery methods such as competitive sealed proposals for construction services and construction management-at risk in the infrastructure or horizontal construction area. The effect is to leave project delivery options for cities and counties largely as they existed prior to the session.

**Tort Reform/Certificate of Merit:** HB 1573 strengthens the law passed in 2003 that requires that any lawsuit for negligence against a design profession must include an affidavit from a design professional attesting to the negligent action. HB 1573 adds a requirement that the person filing the certificate must hold the same professional license as the defendant. In at least one case, a judge had allowed an architect to file a certificate in a case involving engineering. The bill also expands the

coverage of the law beyond actions alleging negligence to include any action or arbitration proceeding arising out of the provision of professional services. Finally, the bill makes dismissal of the lawsuit mandatory rather than permissive when the certificate is not timely filed.

HB 857 adds land surveyors to the certificate of merit statute.

In a related change, HB 1817 amends the definition of the practice of engineering in Chapter 1001, Occupations Code, to make clear that providing an engineering opinion or analysis related to a certificate of merit is the practice of engineering. This clarifies that inadequate practice in reference to the filing of an affidavit is subject to the TBPE's disciplinary powers.

**Transportation:** HB 2702 is the omnibus transportation bill of this session. In addition to a significant revision of the Transportation Code, it makes a number of substantive changes. Many of the changes are limitations on the Trans-Texas Corridor or toll conversion. These include

Other changes of interest include:

- Expansion of TxDOT's authority to construct rail projects.
- Modification of the authority to use comprehensive development agreements to include projects with both toll and nontoll components and projects funded with private activity bonds. (Congress is debating whether to allow the use of private activity bonds for transportation in the pending federal highway bill.)
- A requirement for TxDOT to develop an expedited process for CDAs that do not involve a finance component –e.g., pure design-build CDAs.
- Expands cap on toll equity from \$800 million annually to an average annual expenditure of \$2 billion annually averaged over four fiscal years.
- Authorizes “reverse pass-through toll agreements” with private entities under which the private entity can reimburse the department for project costs over a period of years.
- Allows the department, under pass-through toll agreements, to delegate full project responsibility for design, bidding, oversight and inspection to local entities, to the maximum extent permitted by law.
- Allows a public entity to contract with a private entity to manage a pass-through toll project. The private entity must comply with all bidding and procurement laws that apply to the public entity. Also allows clarifies that counties may issue bonds secured by pass-through toll agreements.
- Requires county and voter approval of toll conversions.
- Allows regional mobility authorities to operate mass transit systems, in some instances.
- Forms regional transit system review committee in DFW area.

SB 1, the state's General Appropriations Act, appropriates \$470 million in FY06 and \$375 million in FY07 in the budget strategy for “Contracted Planning and Design.” This is a significant increase over the approximately \$250 million in annual spending in FY04-05; the increase is primarily driven by bond spending. SB 1 also requires TxDOT to produce an annual report outlining the percentage of projects in the state's three-year plan that are let on or before the scheduled letting date.

## ***OTHER ISSUES***

### ***I. PROFESSIONAL/ENGINEERING ISSUES***

**Engineering Practice Act:** In addition to the certificate of merit changes noted above, HB 1817 clarifies that information related to frivolous complaints is not public information, clarifies the Board's authority to charge late fees, and clarifies that a license holder is not required to seal plans for a project to be constructed in another state,

## **II. PROCUREMENT**

**Disclosure by State Purchasing Personnel:** HB 2932 requires state agency purchasing personnel to disclose any relationship with owners, employees or consultants of contractors. A standard form developed by the State Auditor will be used.

**Disclosure of Relationships with Local Government Officials:** HB 914 requires local government officers to file a conflicts disclosure statement with respect to a contractor if the contractor has a business relationship with the officer or a family member or if the contractor has provided gifts of more than \$250 in a year, excluding food, transportation, entertainment, or lodging provided as a guest. The requirement does not apply to employees of local governments unless it is extended to them by the governmental entity. A vendor or contractor must file a form disclosing business relationships with each local government officer. Forms are to be developed by the Ethics Commission.

**Time Extension for Ports to Rank Proposals:** HB 769 allows 90 days (currently 45 days) for ports and navigation districts to evaluate and rank competitive sealed proposals for certain construction services.

**Competitive Sealed Proposals for Certain Construction Projects:** HB 2661 allows cities and counties to use the competitive sealed proposal method for construction projects less than \$1.5 million. (This change in law is essentially trumped by HB 2525 above which allows the same process for a broader range of contracts.)

**Disclosure Statements for Ports:** SB 945 requires vendors to file disclosure statements with port authority or navigation district regarding affiliations or business relationships that might cause a conflict of interest. The bill also requires conflict statements to be signed by members of the governing body.

**Energy Efficiency Studies:** SB 982 requires energy efficiency studies and consideration of energy-efficient engineering and architectural design alternatives for certain state facilities.

## **III. TRANSPORTATION**

**Study Commission on Transportation Financing:** SB 1713 creates a study commission on transportation finance. The commission will include two members of the Senate and a public member appointed by the Lt. Governor, two House members and a public member appointed by the Speaker, and three public members appointed by the Governor. The commission will conduct a study of the financing of transportation projects, including a review of the state motor fuels tax and a review of sources of funding for rail projects,

**Project Delivery by Transit Agencies:** HB 2300 allows a transit agency where the principal municipality has a population of 1.2 million and which has a project in excess of \$100 million to use a special hybrid project delivery system.

**Rail Relocation Fund:** HJR 54 and HB 1546 establish the rail relocation fund and outlines its uses. The ability of the fund to issue bonds requires a constitutional amendment to be voted on in November 2005.

**List of Projects Eligible or Feasible for Tolling:** HB 962 requires TxDOT to include a list of projects eligible or feasible for tolling in the Unified Transportation Plan.

**Houston-Area Rail District:** HB 2958 allows Harris and surrounding counties to create a freight rail district. The district may exercise the powers of a regional mobility authority for rail projects or those of an intermunicipal commuter rail district.

**Pass Through Tolls:** HB 2139 provides that a public entity may contract with a private entity to act as its agent in pass-through toll agreements. The private entity is required to comply with all professional services procurement and bidding laws. The bill allows TxDOT to delegate the full responsibility for design, bidding, construction, oversight, and inspection to an entity with which it enters into a pass-through toll agreement. Most of the language in HB 2139 is also included in HB 2704.

**Local Government Participation in Toll Projects:** HB 2650 authorizes local governments to participate in the financing of a toll project in exchange for participation in the revenue from the project.

**Tax Increment Financing for Transportation:** HB 2653 allows tax increment funds to pay part of the cost of acquiring land or development rights outside a reinvestment zone if the zone is benefited by a bus rapid transit or rail project.

#### **IV. WATER/ENVIRONMENT/NATURAL RESOURCES**

**Process for CCN's:** HB 2876 revises the process by which water and sewer utilities must obtain a certificate of convenience and necessity. The bill expands the information that must be submitted to obtain a CCN, including a requirement that a list of large landowners in the area be supplied. Notice to these landowners is required. A CCN may not be granted within the territory or ETJ of a city over 500,000 in population without the city's consent, unless the city cannot or has not made a good faith effort to provide service. The bill adds additional considerations in the granting of a CCN, including financial capability to serve anticipated growth. Landowners may elect to exclude property. Clarifies that cities can condemn certain facilities in annexed areas. Provides for expedited release from a certificated area upon petition.

**Repeal of TWDB's Capital Spending Plan:** SB 374 repeals the requirement of the Water Development Board to develop a capital spending plan for state-funded programs.

**Exclusion of Land From Water District:** HB 1207 extends the sunset date for a petition for exclusion of land from a water district from 2005 to 2007.

**Limitation on Eminent Domain by MUD's:** HB 1208 restricts MUD's from using eminent domain outside district boundaries to construct or maintain a district facility or to acquire a recreational easement.

**Limitation on Eminent Domain by MUD's:** SB 509 repeals the cap on water infrastructure fund to be used for low interest loans for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project.

**PST Program:** SB 485 makes slight modifications to TCEQ's petroleum storage tank program and extends it from 2006 to 2008.

**TCEQ Jurisdiction over Water Corporations:** HB 1358 gives TCEQ jurisdiction over water supply or sewer service corporations if certain conditions are met and creates the La Joya Special Utility District.

**Water Development Programs and Federal Funds:** HB 1657 expands the type of water development programs that can be funded through the Water Development Board by federal funds.

**Storage Tanks:** HB 1987 extends the life of the PST remediation account from 2005 to 2007, allows TCEQ to place any sites remaining in the program after 2007 into the state-lead program, removes the requirement that transporters of motor fuel be held responsible for depositing motor fuel into underground storage tanks not certified by TCEQ, and makes other technical corrections.

**Coastal Water Authority:** HB 2267 expands the powers of the Coastal Water Authority and allows it to create a local government corporation to implement its projects.

**Brownfield Cleanup:** SB 1413 provides local governments the authority to establish a fund through a tax or fee for investment in site clean-up and preparation

## **V. GENERAL BUSINESS/EMPLOYMENT/TAXES**

**Workers' Compensation:** HB 7 abolishes the Workers' Compensation Commission and creates a new division for workers' compensation within the Texas Department of Insurance, increases the cap on weekly benefits for injured workers beginning in 2006, creates the Office of Injured Employee Counsel, and provides employers financial relief on insurance costs.

## **VI. CITY/COUNTY ISSUES**

**Expansion of Projects by Certain Development Corporations:** HB 2755, HB 2928, and SB 1304 expand the types of projects that development corporations can do.

**Oversight of Construction by Certain Cities:** HB 960 states that Harris county does not have to notify or get a building permit from certain cities if a construction is supervised by a licensed engineer or architect.

**Economically Disadvantaged County Procedures:** HB 1107 clarifies procedures for the Transportation Commission to certify counties as economically disadvantaged thereby allowing them relief from local matching transportation funds.

**County Fee for Road Cuts**: HB 1610 allows counties to charge a fee not to exceed \$500 for road cuts.

**Municipal Infrastructure Costs**: HB 1835 places limitations on requirements for developers to bear a portion of the cost for municipal infrastructure improvements and creates an appeals process.

**Contracts with Governmental Entities**: HB 2039 clarifies the legislature's intent that all local governmental entities that are given the authority to enter into contracts shall not be immune from suits arising from those contracts with certain limitations.

**Tarrant Regional Water District**: HB 2639 expands the powers of the Tarrant Regional Water District.

**Six Year Terms for RMA Directors**: HJR 79 proposes a constitutional amendment that would allow the legislature to set six year terms for directors of RMA's.

**Hotel Taxes**: HB 1734 allows the Hotel Occupancy Tax to be used for upgrading of sports facilities in certain municipalities.

## **VII. MISCELLANEOUS**

**Directors of RMA's**: HB 1708 makes state ethics laws applicable to directors of RMA's.

**State Building Code**: SB 1458 adopts the International Building Code as the uniform commercial building code for Texas.

**Land Surveying**: HB 2179 states that the practice of professional surveying includes the acquisition of survey data and the preparation of certain technical reports.

**Expansion of Project for Defense Base Development Authority**: SB 1090 expands the types of projects that defense base development authority can do.

## **VIII. BILLS THAT DID NOT PASS**

- **Elimination of the Requirement that the TxDOT Executive Director be a P.E.**
- **Exemptions from TBPE Firm Registration Requirements**
- **Inspectors-General for State Agencies**
- **Authorization for Counties to Protect Transportation Corridors**
- **Prohibition on Contingent Pay Agreements in Construction Contracts**