

AGENDA ITEM 21

Discuss and consider Texas Department of Transportation's proposed rules for Regional Mobility Authorities.

Road Bond Manager Mike Weaver gave copies of the proposed RMA rules to the court and stated that the public hearing on the rules will be held tomorrow. He expressed concern about a provision that TxDOT interprets as allowing the Highway Commission to appoint new members to the RMA board at any time. He believes that this could change the dynamics of the board and affect the completion of projects as well as the long-term operation of the RMA. He also stated that, while they had been assured that surplus toll revenues could be spent on other projects within the region, the rules have been written to allow the Highway Commission to decide how some of the surplus money is spent.

Representative Mike Krusee thanked the court for its involvement, stating that the county is farther ahead than anyone in the state on the RMA process. He stated that there are still some issues that need to be cleared up in the process, and asked for input from the court on any new issues that need to be addressed as the process moves along.

Commissioner Heiligenstein thanked Representative Krusee for his work on the Regional Mobility Authority issue.

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PROPOSED RMA RULES
Outline for Public Hearing Comments
February 27, 2002

A. The proposed RMA rules raise several issues which may negatively impact an RMA's ability to access the capital markets. Many of these relate to a perceived lack of autonomy of an RMA to make and honor financial commitments without the risk of potential interference from third parties. These issues and rules include:

1. Rules Adding Additional Restrictions on the Use of Surplus Revenues.

26.55 – Project Constructed by the Department (26.55(d)): provides that the Commission may "restrict" the use of surplus revenue derived from a toll project transferred by TxDOT to an RMA.

- generally the permitted uses of surplus revenue are broad enough to assure adequate operations, maintenance and improvements to a turnpike project from which the revenues are derived.
- the possibility for additional "restrictions" may undermine this perception and cause concerns among the capital markets
- Recommendation: there should be *no* reference to the possibility of additional restrictions on the use of surplus revenue anywhere in the rules.

26.74 – Use of Surplus Revenue: 26.74(b) purports to restrict use of surplus revenues from free segments of state highway system converted to tolled segments only to improvements of the state highway system (subject to waiver under subparagraph (c)).

- restriction may preclude the use of surplus revenues for important functions such as development of light rail or commuter rail within an RMA or improvements to non-state highway roads
- Recommendation: remove any presumptive restriction against the use of surplus revenue; surplus revenue converted segments should be treated the same as surplus revenue from RMA developed projects

2. Rule Restricting Ability to Pool Projects Operating Within an RMA.

26.47 – Pooling: this rule provides that Commission approval will be required for an RMA to pool turnpike projects

- pooling is usually done to achieve financial (and operational) efficiencies

- investors in RMA projects will want RMAs to have autonomy to make pooling decisions without interference from the Commission
- Recommendation: Commission approval should not be required as a prerequisite to an RMA decision to pool projects

3. Rule Regarding Source of Payment of RMA Administrative Expenses.

26.32 – Administrative Expenses: rule provides that expenses necessary to administer an RMA are the responsibility of those political subdivisions represented on the board.

- unclear as to whether such expenses, as they relate to a project, can be paid from toll revenues or granted or loaned money received from TxDOT.
- Recommendation: clarify that toll revenues or granted or loaned funds can be used to pay expenses.

4. Rule Regarding Involuntary Dissolution of RMAs.

26.25 – Dissolution of RMA: provides for voluntary and involuntary dissolutions of RMAs; involuntary dissolution can be ordered by Commission provided all debts, obligations, and liabilities have been paid “or adequate provision” has been made therefore.

- vests discretion in the Commission as to what is “adequate provision” for payment of debts
- too much uncertainty for capital markets; need assurances that outstanding debt will be paid prior to any dissolution (not just that adequate provision for payment, in the opinion of the Commission, has been made)
- Recommendation: consider removing Commission ordered involuntary dissolution entirely; creates too much operational uncertainty

5. Restrictions Imposed Upon Formation of RMAs.

26.14 – Commission Action: provides for the adoption by the Commission of a minute order authorizing creation of an RMA and designating restrictions and limitations on RMA development, operations and maintenance

- capital markets will object to potential Commission interference with RMA operations

- Recommendation: need assurances in the rule that restrictions “designated” by the Commission will not, directly or indirectly, interfere with obligations to investors

B.. Other of the proposed rules also have the potential to negatively affect RMA operations. These include:

1. Necessary Legislative Powers

26.31 – General Powers: purports to vest RMAs with some power as the Texas Turnpike Authority division and the former board of the TTA. Presumably includes TTA eminent domain, bonding, and exclusive development agreement (EDA) authority. Certain *legislative* changes should be made to fully vest RMAs with those powers.

- eminent domain and bonding authority for RMAs will likely require specific legislative authorization (Chapter 361.003 does not grant those powers to RMAs)
- EDAs are prohibited for any projects receiving grants or loans from “constitutionally dedicated funds.” As a practical matter EDAs are therefore prohibited. This legislative restriction (Ch. 222.103(i)) should be removed, as EDAs are an important tool for turnpike project development.

2. Excessive TxDOT/Commission Control Over Operations.

26.41-26.56 (Subchapters E & F) – Development of a Turnpike Project/Maintenance and Operation of a Turnpike Project: Subchapter E contains rules governing processes and procedures which must be followed by an RMA during development of a project. Subchapter F contains rules governing operations and maintenance. In general, both subchapters contemplate *extensive* Commission/TxDOT involvement, with Commission and TxDOT approvals required at numerous points during project development and operations.

- Examples of required Commission approvals are:
 - = approval of each environmental review prior to advertising construction contract (26.41(c))
 - = final Commission approval of project (26.43)
 - = approval for pooling of turnpike projects (26.43)
 - = approval of speed limits (26.53(b))
- Examples of required TxDOT approvals are:
 - = deviations from design criteria (26.44(b))
 - = use of frontage roads (26.44(c))

- = data for FHA approval of access to interstate highways (26.44(c))
 - = 30% complete design plans (26.44(d))
 - = alternative construction specifications (26.44(e))
 - = final design plans and contract administration procedures (26.44(f))
 - = plans, specifications, and engineer's estimate (26.44(f) & (g))
 - = contract revisions (26.44(i))
 - = use alternative maintenance standards (26.52(a))
 - = coordination of development of intelligent transportation system (26.53)
 - = municipal restrictions on use of lanes of traffic (26.53)
 - = permitting of oversize/overweight vehicles (26.53)
 - = use of electronic toll collection system (26.53)
- Each of the required approvals creates (1) uncertainty that the project will proceed; and (2) potential for delays.
 - Project development risk and delay risk are serious concerns in turnpike project financing; as written the rules create too many opportunities for third parties (including the Commission and TxDOT) to stop a project or cause unreasonable delays—capital markets will view this as too risky.
 - Recommendation: rules need significant modifications to reduce degree of Commission/TxDOT involvement and to specify prompt timeframes for reviews and approvals where statutorily required.

3. Forced Transfers of RMA Projects

26.56 – Department Assuming Jurisdiction of a Project: this rule dictates when an RMA project will be transferred to TxDOT.

- appears to force a transfer once all debt is paid off
- RMA may desire to retain a project and continue to charge a toll (as the Commission is authorized to do under 26.56(b)) to help with other projects permitted under surplus revenue uses
- Recommendation: remove requirement that project be transferred when debt paid; allow RMAs the option of retaining and continuing to operate a project

4. Appointments of Additional Directors

26.16 (Also 26.14(A)(5)) – Board of Directors: rule provides for appointments to an RMA board by the petitioning counties (consistent with Transp. Code § 361.003) and also for the appointment of “additional directors” from political subdivisions that the Commission decides should be represented on the board.

- creates uncertainty as to the composition and stability of the board

- no apparent restrictions on the number of “political subdivision” appointees or the timing of their appointment(s)
- capital markets will object to uncertain composition (and dynamic nature) of governing body
- Recommendation: remove Commission ability to appoint additional directors

26.21 – Addition of Counties: establishes the process for the addition of a county to an exiting RMA. Also provides for the possibility of Commission appointment of additional directors (pursuant to 26.16) if the addition of a county to an RMA affects other political subdivisions

- creates same potential uncertainty as identified under 26.16
- will discourage RMAs from expanding to add counties
- Recommendation: remove Commission ability to appoint additional board members following addition of a county to an RMA

AGENDA ITEM 22

Consider and adopt resolution requesting that Texas Department of Transportation (TxDot) authorize Williamson County to let and manage the construction contract for CR 300 improvements within the FM 972 right-of-way and for the addition to the drainage structure under FM 971, such structure to be contracted with the CR 300 improvements, and that TxDOT reimburse the County for the cost of the State request for guardrail.

Moved: **Commissioner Limmer**

Seconded: **Commissioner Heiligenstein**

Motion: To adopt a resolution requesting that Texas Department of Transportation (TxDot) authorize Williamson County to let and manage the construction contract for CR 300 improvements within the FM 972 right-of-way and for the addition to the drainage structure under FM 971, such structure to be contracted with the CR 300 improvements, and that TxDOT reimburse the County for the cost of the State request for guardrail.

Vote: **5 - 0**

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