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Brian Cassidy represents regional mobility authorities and other public and private entities involved in the development of toll roads and other transportation infrastructure. His activities include advising clients on complex procurements, public/private partnerships, state and federal project approval, project financing, innovative financing options, right-of-way acquisition, intergovernmental agreements, open meetings issues, and Public Information Act compliance. He has been involved in the development of major transportation legislation (including HB 3588, HB 2702, and SB 792), and has testified in many legislative hearings on transportation policy issues. Mr. Cassidy also works on matters relating to utility infrastructure, including telecommunications tower siting, forced access issues, franchise fee and right-of-way disputes, and utility service agreements. In addition, he is a frequent speaker and writer on transportation issues and legislation, regional mobility authorities, utility infrastructure and property rights issues, and administrative law.

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**Invited Testimony of Brian Cassidy
Before the
Senate Committee on Transportation and Homeland Security**

**Interim Charge 2: TxDOT's Organizational Structure and Working Relationship with
Regional Mobility Authorities**

Texas State Capitol
Committee Hearing Room E1.016
Austin, Texas
October 13, 2010

My name is Brian Cassidy, and I am a partner in the law firm of Locke Lord Bissell & Liddell LLP. Our firm represents many of the tolling authorities throughout the state, including six regional mobility authorities (RMAs). Since the first RMA was formed 8 years ago, I have worked extensively with these entities.

I appreciate the opportunity to testify before the Committee. My testimony, which addresses issues related to Interim Charge 2, is set forth below.

RMA OVERVIEW

There are currently eight RMAs in the state. They are:

1. Alamo RMA (Bexar County)
2. Cameron County RMA (Cameron County)
3. Camino Real RMA (City of El Paso)
4. Central Texas RMA (Travis and Williamson Counties)
5. Grayson County RMA (Grayson County)
6. Hidalgo County RMA (Hidalgo County)
7. North East Texas RMA (12 counties: Smith, Gregg, Cherokee, Harrison, Rusk, Upshur, Bowie, Cass, Panola, Titus, Van Zandt, and Wood)
8. Sulphur River RMA (Delta, Hopkins, Hunt and Lamar Counties)

RMAs are formed at the request of local entities—in most cases by one or more counties that have chosen to form an RMA for a specific project or purpose. They are governed by a board of directors appointed by the entities forming the authority, with the chairman of the board appointed by the Governor. The result is that RMAs are *locally* formed and *locally* controlled, and these are characteristics which have been vital to their success. As the lack of adequate funding has forced the state to rely on tolling as a means of financing new roads (or the expansion of capacity in existing corridors), potential toll projects have been met, in some areas, with political and citizen opposition. However, the prospect that tolling will be implemented and administered by a locally controlled entity has helped to garner the support and confidence of local leaders and elected officials. That support has resulted in several important projects being advanced notwithstanding the lack of traditional funding.

DISCUSSION

The first RMA was created in 2002 and since that time, RMAs and TxDOT have worked together on many different levels. While local control has been instrumental in fostering acceptance of tolling, the partnership between RMAs and TxDOT has been just as essential in successfully advancing RMA projects. In nearly all instances where RMAs have been able to move projects forward, the local TxDOT district has been an active and supportive partner in the process. Much of what RMAs do is subject, at some level, to TxDOT oversight, and a strong working partnership between an RMA and TxDOT is critical to the success of a project.

RMAs' interaction with TxDOT is extensive. RMAs, more than any other regional toll entity, deal with TxDOT on a continuous basis. RMAs, especially in the initial stage of their creation, are dependent on TxDOT for project funding and for certain administrative funding. Beyond that, RMAs interact with TxDOT on everything from approval of projects, project development agreements, planning, coordination of maintenance activities, State Infrastructure Bank and toll equity financing, and participation in various aspects of procurement and project delivery processes. By and large RMAs have had a good working relationship with TxDOT and have received positive support from the Texas Transportation Commission (Commission).

Despite the strong working relationship between TxDOT and RMAs, there are some areas that could benefit from changes. Those include consistency, funding, the environmental review process, and the process for assuring local control over project delivery.

Consistency

TxDOT's organizational structure can create inconsistencies in the implementation of policies and programs at the local level. This stems from the fact that TxDOT is divided into 25 districts which oversee the construction and maintenance of state highways within their jurisdictions. The districts function fairly autonomously, which is appropriate given the varied needs and unique characteristics of various parts of the state. In large part, the district engineers in areas where RMAs have been formed have been supportive of RMA projects, and RMAs generally have good working relationships with their district engineers. However, the lack of consistency between districts (and the approach to RMA project) can create difficulties and inefficiencies when working on issues that should have a common and consistent approach.

Funding

With respect to funding, TxDOT's financial challenges have made it difficult to get reliable long-term commitments of funding for regions and for particular projects. TxDOT has been forced to reduce some funding commitments, and often times that happens after an RMA has done a considerable amount of financial planning based on the funding level they have been told will be available. When anticipated funding is subsequently reduced, RMAs are forced to re-evaluate a project and its feasibility. These changes can be difficult to explain to a region that has been expecting a project for many years.

Another funding-related area which needs to be examined is the Commission's involvement in the approval of toll equity "grants" from Category 2 funds. Category 2 funds are distributed statewide to local Metropolitan Planning Organizations ("MPOs") based on a formula consisting of several criteria. The intent is that once these funds are distributed, each local MPO will independently select which projects to fund with their share of the Category 2 distribution. Despite this policy, RMAs are required to seek Commission authorization for the use of Category 2 monies even though the local MPO has already approved the RMA's proposed use of those funds. This additional step leads to unnecessary delays while the RMA must seek approval from the Commission.

Environmental Review

The environmental review process is challenging to navigate and has been a source of frustration for RMAs and other local governments. TxDOT has oversight responsibility for reviewing and approving all of the environmental clearances for a project, and often it is the entity performing the work required to secure environmental clearance. The process can be cumbersome and time-consuming, and the number of reviews, the comments received, and the inefficiencies in the process for exchanging and reviewing comments can add to the time it takes to secure an environmental approval. Extended delays in project approvals can result in cost escalations and risk exposure to changing conditions in financial and commodities markets.

While TxDOT administers much of the environmental review process, it is not necessarily responsible for delays and inefficiencies in the process. In fact, TxDOT's role could be improved if other state coordinating agencies were required to respond in a timely manner to documents and requests for comments.

Project Delivery and Sponsoring Entity

The working relationship between RMAs and TxDOT benefitted from the right-of-first refusal which was an essential part of SB 792 (80th Legislative Session). This option, also referred to as "primacy", has had a positive impact on the support for project development at a local level because of the deference to local control. While the market valuation process currently associated with that process is time consuming and inefficient, the fundamental concept of a first option at the local level to develop a toll project is something that should be continued. RMAs were supportive of SB 17 during the previous session (and worked with Sen. Nichols and his staff on that legislation), and would encourage the legislature to consider similar legislation this session.

SUMMARY OF RECOMMENDATIONS

- Encourage interaction between districts to assure consistency in approach to RMA project delivery procedures.
- Provide for more reliable funding commitments to regions and to RMA projects.

- Implement procedures and give TxDOT tools to increase efficiency in the environmental review process.
- Pursue legislation similar to SB 17 from the previous session to clarify local control over the project delivery process.