

Fall Conference 2022
October 4, 2022

Presented by:
Eric Woomer

ERIC **WOOMER**
Policy Solutions
—★—

Texas Crane Owners Association

Presentation Overview

Legislative Update

Elections 2022

Interim Charges

HB 2223 Study

Federal Funds

Potential Legislation 2023

88th Legislative Session Outlook

Legislative Update

July 14th Comptroller Updated Biennial Review Estimate: *Historic Economic Growth in Texas*

- \$27B Surplus for Fiscal Year ending 8/2023; Previous estimate was \$12B.
- \$14B Economic Stabilization Fund (“Rainy-Day”) Balance; Previous estimate \$12B.

State Agency Legislative Appropriations Requests (LARs):

- Legislative Budget Board released agency instructions without a request to reduce 2022-23 budgets.
- Budget hearings underway.
 - Texas Department of Motor Vehicles:
 - Requesting slight increase in baseline funding within the motor carrier permits and registration for salaries to help employee retention.
 - Revenue from special-vehicle registrations (oversize/overweight-vehicle permits) is projected to increase 1.5% per year in FYs23/24/25, coinciding with a strengthening of the oil-and-gas and construction sectors.
 - Texas Department of Transportation:
 - The increased costs of doing business due to inflation is noted throughout the agency’s LAR from continued roadway maintenance to internal capital budget projects.

Interim Charges

House Transportation has held two hearings to date (April and September) :

- DPS talked safety, licensing, and inspections, and the need for CDL drivers.
- TxDOT detailed truck safety issues, border trucking issues, and damages to roadways.
- Texas Trucking Association testified on supply chain issues including issues with obtaining equipment for trucks; CDL shortages, and the need for greater parking options for trucks.
- Texas State Technical College (TSTC) provides CDL certifications and noted the backlog of students for the program. TSTC graduates 300-400 CDL students a year; explained that with an additional \$20M, could graduate 2,000 a year.
- Discussion on autonomous vehicles and the trucking industry concentrated on the need for CDL drivers and that a human driver is still necessary.

Next scheduled for October 6th in Corpus Christi to discuss transportation safety efforts, federal funds including the new infrastructure investment and job funds, and seaports.

Senate Finance met in May regarding the issue of inflation and the cost to the business community and state government.

HB 2223 Study

Legislation requires TxDOT, in consultation with the Texas A&M Transportation Institute (TTI) and the University of Texas Center for Transportation Research (CTR), to conduct a study on the impacts of passenger and commercial vehicles, including OS/OW vehicles, on Texas roads and bridges. Legislation also directs TxDOT to consult with transportation industry representatives.

For each vehicle type, the study reviewed:

- # of vehicles that drive on the roads and bridges.
- # of miles driven on the roads and bridges.
- Total revenue contribution from taxes and fees to the construction and maintenance of the roads and bridges.
- Financial impact due to costs associated with construction and maintenance as well as congestion.
- Total revenue contribution exceeds or falls short of the financial impact.
- Assess the overall economic benefits of commercial motor vehicles and oversize or overweight vehicles.
- Recommend changes to existing tax or fee structures to ensure vehicle categories contribute revenue in an amount at least equal to their financial impact.

HB 2223 Study - *Findings*

On September 26th, TxDOT held the final stakeholder meeting to share findings and hear from stakeholders.

- Study used 2019 data at 2022 cost levels to account for inflation and other economic factors such as supply chain and workforce issues.

Big Takeaway:

- Comparing cost to revenue, commercial vehicles' have a revenue gap is **\$131M**; and OS/OW vehicles is **\$167M**.
- This means the state will look at options for filling that gap by **raising fees or permit costs**.
- Other cost recovery scenarios may include - **changes to vehicle registration fees by weight (by type or blanket increase); and proposing new fee assessments such as weight distance tax or vehicle mile fee for all vehicles**.
- Next step is to develop cost recovery scenarios due by October 21st
- **Public Comments** to study findings and cost recovery scenarios are due **October 23rd**.

Federal Funds

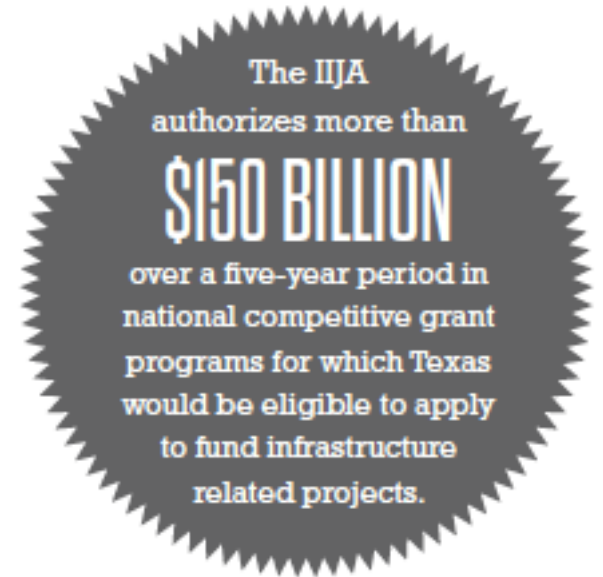
The **Infrastructure Investment and Jobs Act (IIJA)** is a \$1.2 trillion federal investment in the nation's infrastructure which was signed into law on Nov. 15, 2021. So far, the Act has allocated approximately \$36 billion for existing and new programs in FYs 2022-26.

Key Funding Opportunity for Texas:

- **Transportation:** IIJA provides \$110 billion in new spending in this section of the bipartisan infrastructure agreement addresses the aging infrastructure needs of the nation's roads & bridges.
 - *Texas is expected to receive \$577M for bridge Investment Program, a bridge replacement, rehabilitation, preservation, protection and construction program.*
 - *Texas is expected to receive \$407M for Electric Vehicle Charging Infrastructure Program to provide funding to deploy EV charging infrastructure.*

Other Funding Provisions of Interest: IIJA provides \$2.24B in increased contract authority for FMCSA and NHTSA.

- **Federal Motor Carrier Safety Administration (FMCSA):** *FMCSA safety grants are available to state and local government agencies working on commercial motor vehicle safety activities and demonstrate a capacity to work with highway traffic safety stakeholders that focus on commercial motor vehicle safety and training issues, and other industry stakeholders.*



88th Legislative Session Outlook

New Members and a Learning Curve

New Committee Chairs and Members

Revenue Surplus and Rainy-Day Fund

Remaining ARPA Federal Funds

New Federal Funds - IIJA

Property Tax Relief

Medicaid

Border Crisis

State Related Cost Overruns

Electricity Reforms

Water

Infrastructure

Foster Care System

Women's Health

Gender Affirming Care

Potential Legislation 2023: *Texas Department of Motor Vehicles*

At the August meeting, TxDMV Government Relations proposed legislative recommendations to the TxDMV Board:

- Total of 15 general recommendations, eight of which have been previously recommended in past sessions.
- Board's final approval will be during the October 2022 meeting. Approved recommendations will be communicated to various legislative offices for consideration during the 88th Texas Legislative Session.

Potential Legislation 2023: *Texas Department of Motor Vehicles*

Oversized/Overweight Legislative Recommendations:

- **Clarify fees for certain OSOW permits**

- *clarifies the allocation of weight tolerance fee revenue to counties.*
- *clarifies that both types of annual envelope permits are exempt from the highway maintenance fee.*
- *clarifies that the Department may waive fees by rule for permits issued to governmental entities.*

- **Clarify the use of unladen lift permits**

- *This proposal is clarifying that both self-propelled and trailer-mounted equipment are eligible for unladen lift equipment permits.*
- *Chiefly cleanup; Aligns agency rules with current practice, and is not meant to expand agency authority.*

Potential Legislation 2023: *Texas Construction Association*

Incorporation by Reference:

PROBLEM: Documents incorporated by reference into a contract become part of the contract as if it were set out therein. Unfortunately, contractors are often don't know what they are being asked to contract for because they are not furnished documents incorporated by reference into the contract. The contractor can negotiate the terms and conditions in their contract, but they will also be bound by terms and conditions they have no control over because they were negotiated by an upstream party.

SOLUTION: Clarify in statute that documents that are incorporated by reference must be provided to the requesting party for review prior to contract execution.

Public Land/Private Project Bond Requirements:

PROBLEM: Payment and Performance Bonds should be required for all projects constructed on publicly-owned lands regardless of the public or private nature of the developer. There is an unintended gap in current law that occurs when a private entity enters into a lease to construct a building on publicly-owned land. Because publicly-owned land cannot be subjected to a mechanics or materialman's lien, absent a payment bond, subcontractors and suppliers are left without any real protections against non-payment for labor performed or materials provided.

SOLUTION: Extend provisions in Gov't Code §2253.021 to cover private contracts on public lands.

Potential Legislation 2023: *Texas Construction Association*

Survival of Retainage Post-foreclosure:

PROBLEM: If the owner fails to remit retainage pursuant to the terms of the contract, the contractor may file a lien against the property to secure their right to funds. However, if a bank forecloses on its mortgage, the contractor's lien for retainage is wiped out as if it never happened.

SOLUTION: Clarify that a materialman's lien for retainage survives foreclosure by a bank.

Lien Law Clarification:

PROBLEM: Significant lien reforms were passed in 2021, but there was a timeline provision change that has created some confusion about when liens are to be filed under certain circumstances.

SOLUTION: Clarify timelines in statute through a small tweak to the statute.

Cost Overruns: *Texas Department of Transportation*

In April, TxDOT released a memo regarding how to address inflationary pressure and cost overruns, and offering nine points to consider by District Engineers to relieve burdens on contractors:

- **Material On Hand (MOH):** Consider paying MOH as early as possible. MOH can be paid as soon as the contract is activated in Site Manager- There is no need to wait for a preconstruction meeting or for work to begin. Also consider offering department-owned locations for storage of materials that will be incorporated into the projects.
- **Quantity Increases:** When the department finds it necessary to increase quantities of a material that has experienced a significant price increase, the department should strongly consider paying the increased material costs. Increased payment should be considered when there are change orders adding work, design errors, and significant overruns.
- **Price Increases Due to TxDOT Delay:** When the department is responsible for delays that caused materials to be ordered at a time when prices were higher, the department will pay the increased material costs.
- **Substitutions:** For materials with significant increases in cost or unavailability, give strong consideration for substitution of materials when the substituted material and design serves the same function of the original design.

Cost Overruns: *Texas Department of Transportation*

Nine points to consider by District Engineers (*cont.*):

- **Item Deletions:** Consider deletion of work or materials from the contract when materials are unavailable or have experienced significant price increases when the deletion will not affect the safety of the completed project. This consideration should also be made for non-site-specific contracts.
- **Delayed Starts:** Utilize delayed start provisions as necessary for contracts that require materials that are experiencing availability issues. Consider increasing the length of the delayed start to give contractors more time to procure long-lead items.
- **Avoid Sole Sourcing:** Avoid using contract provisions that limit a contractor to a single producer or manufacturer. Allow equivalent materials and products to be used when possible.
- **Time Considerations:** Consider granting additional time when material availability negatively affects the critical path.
- **Last Resort:** If none of the above options are possible, price increases can be referred to TxDOT Administration for further consideration. The Construction Division will coordinate the submission of any requests for Administration consideration.

Elections 2022

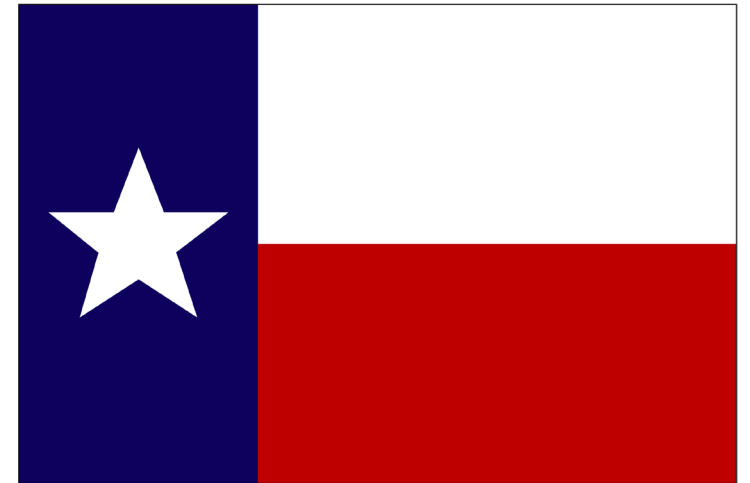
- All Statewide Office Ballot:
 - Gov. Greg Abbott v. Beto O'Rourke
 - Lt. Gov. Dan Patrick v. Mike Collier
 - Attorney General Ken Paxton v. Rochelle Garza
 - Sen. Dawn Buckingham v. Jay Kleberg for General Land Office (GLO) Commissioner
 - Agriculture Commissioner Sid Miller v. Susan Hays
 - Railroad Commissioner Wayne Christian vs. Luke Warford
 - Comptroller Hegar does not have an opponent for the General Election in November
- 27 State Representatives decided not to return; 6 Senators did not seek re-election.
- Texas Senate is composed of 18 Republicans and 13 Democrats; in 2023, likely 19 to 12, favoring the GOP.
- Texas House will have approximately 30 new members; current composition is 86 Republicans and 64 Democrats; the GOP is likely to pick up a few seats.

TCOA PAC Giving

- General Election PAC budget of more than \$12,000
- Contributions are given on a bipartisan basis, reflective of the membership of the body
 - Emphasis on lawmakers with transportation background and/or serve on key committees (*Transportation, Business & Industry, State Affairs*)
- Expected to contribute to 12 Representatives and 5 Senators
 - With 25% of the House and Senate likely to be new members, the learning curve on issues important to TCOA is steep;
 - Lots of interests competing for lawmakers' time – PAC keep TCOA visible

88th - Legislative Timeline

- November 8, 2022 – General Election Day
- November 14, 2022 - Prefiling of Legislation
- December 13, 2022 – Fundraising Moratorium
- January 10, 2023 – Session Begins (140 days)
- March 11, 2023 – Bill filing deadline (60th day)
- May 30, 2023 – Sine Die
- June 19, 2023 – End of the Governor’s Veto Period



ERIC WOOMER

Policy Solutions



Eric Woomer



Katy Cramer

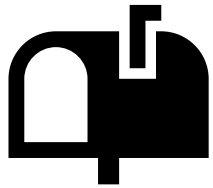


Courtney Williamson



Gertie Wilson

Contact Information



1604 San Antonio
Austin TX 78701



www.ericwoomer.com



512-845-9552



Eric Woomer
Courtney Williamson
Gertie Wilson
Katy Cramer

eric@ericwoomer.com
courtney@ericwoomer.com
gertie@ericwoomer.com
katy@ericwoomer.com

HACKNEY

Government Affairs Group

Clint Hackney

Contact Information



816 Congress Ave
Suite 1125
Austin, TX 78701



www.cphackney.com



(512) 472-9022



Clint Hackney: clint@cphackney.com



Questions?