

MEMORANDUM

To: Glenn Rex, Calvin Jones
From: Eric Woomer
CC: Clint Hackney, Courtney Williamson, Gertie Wilson

TEXAS CRANE OWNERS ASSOCIATION – LEGISLATIVE UPDATE

88th Texas Legislative Session - Overview: The 88th Legislative Session kicked off on Tuesday, January 10th, and to date, members have filed over 2800 bills. We are tracking over 50 bills on behalf of the Association.

The day before session got underway, Comptroller Glenn Hegar presented his Biennial Revenue Estimate, giving the Legislature a look at the funding available for the 2024-2025 biennium. Hegar projected \$188 billion in revenue available for general-purpose spending during the 2024-25 biennium, a 26% increase from the previous biennium. This includes expected tax collections of \$165 billion over the next two years, and an expected 2022-23 ending surplus of \$32.7 billion. In addition to the surplus, the Economic Stabilization Fund, commonly known as the Rainy-Day Fund, is projected to have a record \$27 billion balance at the end of 2024-25 biennium.

Growth in state spending for the next two years is constrained by various constitutional and statutory spending limits, the net result of which is that the increase in appropriations cannot exceed the rate of growth of the state's economy. Prior to each session, the Legislative Budget Board (LBB) must set the growth rate cap, based on these factors, and in November, LBB adopted a growth rate at 12.3% for both spending limits, leaving the Legislature with an available \$12.5 billion for spending in 2024-25 biennium.

Rep. Dade Phelan again was elected House Speaker despite a challenge from Rep. Tinderholt. During his acceptance speech, Speaker Phelan noted several important items of priority, including property tax relief, improved access to health care, criminal justice reform, infrastructure investment, border security, 12-month postpartum eligibility for Medicaid coverage for new mothers, creating safer schools, and protecting children from the "exploitation of their innocence." House rules of procedure include a new section imposing penalties on members being absent without leave, in response to the walkout by Democratic members during the 87th First Called Special Session. In addition, there was a push to eliminate Democrat chairs from House committees, which ultimately failed.

In the Senate, Sen. Kelly Hancock was elected as President Pro Tempore, an honorary position designating the member third in line of succession for the governorship. Senators also drew lots to determine which members will have four or two-year terms as required following a redistricting year. The results were:

TWO-YEAR TERMS: *Alvarado, Bettencourt, Blanco, Campbell, Eckhardt, Hinojosa, Huffman, Johnson, King, LaMantia, Parker, Paxton, Springer, West, Whitmire,*

FOUR-YEAR TERMS: *Birdwell, Creighton, Flores, Gutierrez, Hall, Hancock, Hughes, Kolkhorst, Menendez, Middleton, Miles, Nichols, Perry, Schwertner, Sparks, Zaffirini*

When Governor Greg Abbott and Lt. Governor Dan Patrick were sworn in, both outlined their priorities for the upcoming session. Gov. Abbott proposed a comprehensive plan to increase funding for public schools, expand border security,

reduce taxes, increase the number of charter schools, expand access to vocational training, provide more resources for students with special needs, reduce the cost of college tuition, invest in safe schools, and fight the fentanyl crisis. Lt. Governor Patrick noted the need for tax relief, including increasing the homestead exemption to \$70,000, as well as expanding parental rights including school choice, increasing rural law enforcement pay, expanding the state's mental healthcare hospital system, continuing to invest in border security, and strengthening the electric grid by adding more megawatts of power.

House and Senate released their respective budgets, [HB 1](#) and [SB 1](#). Both chambers have proposed a budget of \$130 billion in general revenue for the 2024-25 biennium, leaving \$50 billion in available funds. The budget totals \$289 billion in combined state and federal funds. Both drafts of the proposed legislation set aside \$15 billion for property tax relief, with the Senate's proposal including an increase of the homestead exemption from \$40,000 to \$70,000 and the House version calling for a reduction of \$2.2 billion in school recapture payments. Both Chambers also set aside \$1.8 billion for state employee raises.

Senate committee assignments were released quickly. A complete list of new Senate committees can be found [here](#). Our key committee is the Senate Committee on Transportation:

Sen. Robert Nichols - Chair
Sen. Royce West – Vice Chair
Members:

Sen. Carol Alvarado
Sen. Sarah Eckhardt

Sen. Kelly Hancock
Sen. Phil King
Sen. Borris L. Miles
Sen. Tan Parker
Sen. Charles Perry

We expect an announcement on House Committees by House Speaker Dade Phelan this week. Governor Greg Abbott is set to give his State of the State speech to the Legislature on February 16.

BILLS OF INTERESTED TO DATE:

Oversized/Overweight:

- [HB 1460](#) by Rep. Guillen - Relating to axle weight limitations for certain vehicles transporting aggregates. Legislation states that a vehicle or combination of vehicles transporting aggregates under the Water Code may operate at an axle weight that is not heavier than the weight equal to the maximum allowable axle weight provided under this statute plus a tolerance allowance of 15% of that allowable weight.

Liens:

- [HB 217](#) by Rep. Murr - limitation on the amount of a subcontractor's lien for labor or materials. New language on the lien limitation may not exceed the lessor of - the contract price minus previous payments received by the original contractor and the claimant on the subcontract.

Electric Vehicle Fees:

- [SB 505](#) by Sen. Nichols – imposing fees on electric vehicles with a gross weight of 10,000 pounds or less; \$400 registration and \$200 renewal.
- [HB 820](#) by Rep. King – imposing electric vehicle fees of \$200 for electric vehicles and \$100 for hybrids; and creates a battery disposal account within the treasury for such funds.
- [HB 960](#) by Rep. Jetton – imposing a \$100 road maintenance fee for electric vehicles in addition to registration and renewal fees.

TxDOT:

- [HB 1638](#) by Rep. Canales - Study by the Texas Department of Transportation on future transportation needs for the year 2045. This is a refile from the 87th. In sum, the agency working with the Texas A&M Transportation Institute will study on projected transportation needs, the cost, and benefits of meeting those needs by 2045.

Employee Classification:

- [HB 1054](#) by Rep. Turner - the classification of certain construction workers and the eligibility of those workers for unemployment benefits. Legislation outlines factors when defining an individual as an employee. Employers must properly classify an employee or face a penalty of \$100 for each employee not classified properly and \$1,000 for each subsequent violation.

Employer Prohibitions on State Contracts:

- [HB 787](#) by Rep. Patterson - prohibition on the receipt of tax incentives by business entities that assist employees to obtain abortions.
- [HB 982](#) by Rep. Toth - prohibition on contracts with certain companies that use certain environmental, social, and governance criteria.
- [HB 1015](#) by Rep. Vasut - prohibition on receipt of state money by businesses that implement COVID-19 vaccination requirements.

Workforce:

- [HB 1755](#) by Rep. Button - relating to the creation of the Lone Star Workforce of the Future Fund.

TEXAS DEPARTMENT OF MOTOR VEHICLES: *ADOPTED 88TH RECOMMENDATIONS FOR OS/OW PERMITS*

At the October 2022 meeting, TxDMV Board approved final legislative recommendations for the 88th. We reached out to TxDMV, and the agency expects legislation to be filed this month as one single bill for OS/OW proposed changes. Recommendations are as follows:

Clarify fees for certain OS/OW 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.*

TEXAS DEPARTMENT OF TRANSPORTATION: *INFLATIONARY IMPACT ON TXDOT PROJECTS*

At the December meeting of the TxDOT Commission, Brian Barth, Deputy Executive Director presented **FY 2023 Price Escalation, Inflation and Potential Future Funding Liability Impacts to the Statewide Portfolio.** Key topics covered included:

- Impact of cost escalation and inflation on the delivery of projects from September 2021 (beginning of FY 2022) to the current month.
- Cost estimating as part of the 2023 Uniform Transportation Plan (UTP) development process.
- Anticipated effects of cost escalation for projects letting through the remainder of FY 2023 (August 2022).

- Impacts of cost escalation on the use of Category 1 funds.
- Mitigation strategies for delivering projects in the current environment and lessons learned.
- Recommended updates to the 2024 UTP development process.

Highlights from the discussion:

- Looking at Market Indices (*Consumer Price Index, Personal Consumption, and Highway Cost Index*), the Highway Cost Index rose 27.6% since 2021, compared to the other two indices with the increase starting to growing around February 2022.
 - The Highway Cost Index does include labor, as this Index is based on the costs presented at the time to the state.
- Beginning around February 2022, bids started coming in over the estimates; from September 2021 to today, a \$1.9B gap exists between low bid estimate and the 2023 UTP funding estimates.
 - Mobility projects comprised over 50% of this gap.
- Looking ahead at 2023 (January – August), today’s costs total \$8.5B, however, the 2023 UTP funding estimates total \$7B for a difference of \$1.5B. Some funding gaps have been addressed.
 - Mobility projects make up 61% of the \$1.5B gap.
- The agency has 10% and 25% funding flexibility to address projects costs and market impacts.

Mitigation Efforts:

TxDOT attempts to mitigate market and inflationary impacts to enable project letting:

- Districts review of project scope and limits
- Material alternatives
- Available project funding; covering the funding gap does not come from project development resources

TxDOT is recommending a change in the 2024 UTP development process to allow TxDOT Districts the ability to update the project cost estimates in late April:

- Only applies to projects anticipated to let in FY 2024
- Minimize the need to adjust project funding following the adoption of the 2024 UTP
- To keep Category 1 pure, recommend to the Commission a sub-account in Category 11 to fund eligible overruns and change orders and develop governance to utilize this sub-account

TxDOT mitigates inflationary impacts to current projects:

- Flexibility with project time using delayed starts or granting additional time
- Increases for additional quantities or delay costs that are TxDOT’s responsibility
- Substituting affected materials or deleting portions of the work
- Payment for material on hand

Commission Discussion:

- Costs are going down, and the indices are beginning to flatten out. Commissioner Ryan asked for the agency to stay updated on the appropriate leading indicators as discussions begin on the 2024 UTP.
 - Mr. Barth noted that where the uncertainty is in projects with longer duration times as these are more vulnerable to market conditions.
- There was concern that there is a 25% increase already built into the future project costs, and the 25% project funding flexibility is like taking from “Peter to Pay Paul” as one projects gains while another loses.
 - A point was made about the possibility of saying, “no” to projects going forward.
- Chairman Bugg closed out the discussion with a few thoughts:
 - Ensure the agency is now using “market to market” comparisons as a more accurate tool to determine fair market value of inputs and to lessen the impact on companies during the bidding process.
 - The inflationary effect is lowering our purchasing power by 27% per the Highway Cost Index.

- He asked for the inputs comprising the Highway Cost Index to understand why the index is dramatically higher than other indices.

You can watch the Commission meeting and discussion by visiting the resources below:

- **TXDOT Commission Meetings:** [Archive \(txdot.gov\)](https://www.txdot.gov/pressroom/2022/08/txdot-commission-meetings-08-2022.aspx)
- **FY 2023 Price Escalation, Inflation and Potential Future Funding Liability Impacts to the Statewide Portfolio Presentation:**
 - [Dec 13, 2022 Texas Transportation Commission Meetings - Texas Department of Transportation \(swagit.com\)](https://www.swagit.com/txdot/2022/12/13/txdot-commission-meetings-12-13-2022)
 - **Presentation Slides:** [Commissioner Robert Vaughn \(txdot.gov\)](https://www.txdot.gov/pressroom/2022/12/13/txdot-commission-meetings-12-13-2022.aspx)

TEXAS CONSTRUCTION ASSOCIATION 88TH PRIORITIES:

Securing Reserved Funds/Retainage:

- [HB 1963](#) by Rep. Leach: Increase security for reserved funds by amending the Trust Fund Act to statutorily classify reserved funds as trust funds. Add the ability to recover attorney fees in a suit by a beneficiary against a trustee for misapplication of funds.

Documents Incorporated by Reference into Construction Contract:

- Amend Business & Commerce Code 272.001 to make a contract provision that incorporates documents by reference voidable if, upon request, the owner/GC/sub fails to provide incorporated documents to the requesting GC/sub within 10 days prior to execution. Allow provision of documents via website or file hosting service. Allow redaction of non-binding provisions in the document such as project pricing.

Excessive Outstanding Change Orders:

- Amend Prompt Pay Act to allow subcontractors the right to stop work if unsigned/outstanding change orders exceed 15% of contract price.

Eliminate Cross-Default/Offset Clauses:

- Amend the private Prompt Pay Act and the Construction Trust Fund Act to clarify that each construction contract stands on its own. Contract clauses that allow the withholding of funds due to a dispute on a separate contract are contrary to Texas law.

Public Land/Private Project Bond Requirements:

- Require any lease of public land to a nongovernmental entity to include a requirement for performance and payment bonds, notice of construction to the public entity, and copies of bonds to the public entity.

Lien Law Clean Up:

- Amend Property Code, Section 53.003(e) to apply to all deadlines, those that are statutorily defined and those that are calculated by counting days.

Consistent Employment Regulations (ASSET coalition bill):

- Prohibit city or county ordinances that require specified employment leave, hiring practices, employment benefits, scheduling practices, or other terms of employment.

TCOA PAC/GENERAL ELECTIONS REPORT

House Contributions: Total \$4,000

- Rep. Cain - \$500
- Rep. Hinojosa - \$500
- Rep. Hull - \$500
- Rep. Jetton - \$500

- Rep. Slawson - \$500
- Rep. E. Thompson - \$500
- Rep. Leach - \$1,000

Senate Contributions: Total \$5,000

- Sen. Creighton - \$1,000
- Sen. Hughes - \$1,000
- Sen. Johnson - \$1,000
- Sen. Nichols - \$1,000
- Sen. Schwertner - \$1,000

Elections 2022: Texas voters went to the polls to cast their ballots on November 8th. There were no major surprises at the top of the state tickets, with the GOP sweeping the statewide offices, just as they have every election cycle since 1994.

Greg Abbott - **Governor**
 Dan Patrick – **Lt. Governor**
 Sid Miller - **Agriculture Commissioner**
 Glenn Hegar - **Comptroller**

Dawn Buckingham - **General Land Office (GLO) Commissioner**
 Ken Paxton – **Attorney General**
 Wayne Christian - **Railroad Commissioner**

Prior to election day, the Texas Senate was an 18 Republicans and 13 Democrats split, but the election delivered a final split of 19 - 12 favoring the GOP. Because the Senate previously reduced the threshold needed to move legislation from 21 to 18, this in and of itself won't change how the Senate functions. *New Senators:*

- **SD 10:** Phil King (R-Weatherford)
- **SD 11:** Mayes Middleton (R-Galveston)
- **SD 12:** Tan Parker (R-Flower Mound)
- **SD 24:** Pete Flores (R-Pleasanton)
- **SD 27:** Morgan LaMantia (D-McAllen)
- **SD 31:** Kevin Sparks (R-Midland)

In the House, the partisan split remained the same post-election day, with 86 Republicans and 64 Democrats – the GOP flipped one seat, as did the Democrats. *Some notable races:*

- **HD 19:** Rep. Ellen Troxclair (D-Austin)
- **HD 30:** Rep. Janie Lopez (R-San Benito) flipped this Valley district previously held by a Democrat
- **HD 70:** Rep. Mihaela Elizabeth Plesa (D-Dallas) flipped this seat previously held by Republican
- **HD 122:** Rep. Mark Dorazio (R-San Antonio)