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OPINION COMMITTEE

The State of Texas  
House of Representatives



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I.D. # 48237

Capitol Office: 1W.5  
P.O. Box 2910  
Austin, Texas 78768-2910  
512-463-0596  
Fax: 512-463-6504

Joseph C. Pickett  
El Paso • District 79

District Office:  
1790 Lee Trevino  
Suite 307  
El Paso, Texas 79936  
915-590-4349  
Fax: 915-590-4726

October 31, 2017  
Attorney General Ken Paxton

RQ-0190-KP

Dear Attorney General Paxton:

I am seeking an opinion regarding the requirements of Senate Bill 312 from the 85th Regular Session.

Section 222.103(a), Transportation Code, was amended to read as follows:

(a) The department may participate, by spending money from any available source, in the cost of the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission. The commission **shall** require the repayment of any money spent by the department for the cost of a toll facility of a private entity.

(b) Section 366.301(c), Transportation Code, was amended to read as follows:

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. The commission or department **shall** require money contributed by the commission or department under this section to be repaid.

In conference committee, the following language was added:

Funds contributed by the department for a project of the if the toll project entity commenced the environmental review process for the project on or before January 1, 2014.

A project has been brought to my attention that needs clarification.

It has come to our attention that the Loop 1604 toll project in Bexar County was recently granted \$17 million in state funds for the environmental review and development costs (MO# 115051).

The department made comments at the September 28 commission hearing that indicate it believes the Loop 1604 project is not subject to SB 312 because of the exception that was added into the bill in conference committee exempting projects where the environmental study commenced prior to January 1, 2014.

According to the Alamo Regional Mobility Authority (ARMA) at the time, news reports, and members of the citizens advisory committee for the Loop 1604 Environmental Impact Statement (EIS), that study was halted in February 2013. The department is currently pursuing an Environmental Assessment (EA) for Loop 1604, which is a completely different level of environmental study and covers a different project termini than the original document pursued by

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the ARMA in 2009. In fact, the FHWA halted the 2009 EIS due to changes in the scope of the project and it required a new EIS to begin, but it never did.

What appears to be happening now is the ARMA is commencing a completely new study after the Commission granted the ARMA \$17 million. The ARMA will likely be hiring a new consultant to begin a new EA for the Loop 1604 environmental document. The department and the ARMA cannot have it both ways - grandfathering in the old EIS yet technically starting a new lower level study for a different project termini (now from SH 16 to I-35 E) so it can skirt a newly passed law, SB 312, that could affect the toll viability of the project. It does not appear the department or the ARMA is being compliant with the National Environmental Policy Act (NEPA) either since it, too, requires a full EIS and a new study to commence when a significant change in scope occurs.

My request for an opinion is just that. Should this project be subject to repayment of monies being contributed by the department and is the department condoning a method of trying to skirt the changes SB 312 made to state law?

Respectfully,

A handwritten signature in black ink that reads "Joe C. Pickett".

Joe C. Pickett  
Chairman, Environmental Regulation Committee