

THE FIRST WORD

May, 2005

Legislature Enters Final Month of Action

Highway Finance, Tort Reform & Workers Comp Still Pending

As the 2005 Legislative Session begins its final month, several major issues for ACEC OKLAHOMA still face final resolution. Funding for ODOT's construction and maintenance program, Reverse Auctions, Tort Reform, and Worker's Comp reform still face final legislative action with the May 27th Constitutional adjournment deadline growing ever closer.

Here's the latest on these and other issues which ACEC OKLAHOMA has been working and following:

HIGHWAY FUNDING – H.B. 1218

For several years the Oklahoma Legislature has "toyed" with various highway funding proposals only to finish previous sessions with no resolution to the overall funding crisis.

This year a "soap opera", of sorts, began playing out with House and Senate Republicans and Democrats each offering up their own highway funding plans.

At the beginning of the 2005 Session, H.B. 1218 was introduced by Representative Jim Newport who offered up the House Republican plan, which was also embraced by the Senate Republicans. A few weeks later, led by newly-elected President ProTem Mike Morgan and Senator Kenneth Corn, the Senate Democrats announced their plan to direct "growth revenue" totaling approximately \$150 million a year to ODOT. House Democrats then announced that their plan would be put on the table the following week, but no plan has yet to surface.

Under the Newport/Republican bill, \$170 million of the so-called "diverted" motor vehicle taxes and registration fees would be redirected to ODOT and dedicated to construction and maintenance. The bill would have

provided a constant stream of money to ODOT as it specified that a "specific" percentage of tax and registration fees would be directly deposited in the ODOT construction and maintenance fund without going through the appropriations process. House Republicans further expressed the desire to create a "lockbox" for the funds, which would further shield the funding stream from legislative intervention through the appropriations process.

The Senate Democrat plan, on the other hand, dedicated "growth revenues" from the state general fund to ODOT. While similar in total dollars to the Republican plan, the Senate Democrat's plan was dependent on continued "growth revenues" and would have to be "appropriated" each year.

Well, much to many peoples surprise, the newly Republican-controlled House of Representatives passed the bill on a vote of 95-5 and sent it to the Democratically-controlled Senate. Even more surprisingly, the bill was heard in the Senate Appropriations Committee, which passed the bill by a fairly large majority, and last week, by a vote of 36-8, the bill passed the full Senate. The bill will now go to a House/Senate Conference Committee.

Almost concurrently with the Senate passage of the Newport bill, the House and Senate Leadership announced agreement on a \$5.9 billion state budget for 2006. Within that announcement was an agreement between the House Republican and Senate Democratic Leadership to increase highway funding \$170 million over a five-year period.

Details of the House/Senate Leadership agreement will be worked out in Conference Committees over the next couple of weeks, but for the first time in many years, it looks like a new, significant funding stream will be going to ODOT for construction and maintenance.

(Cont. on Page 2)

May Legislative Report (Cont)

In 2004 a broad coalition of organizations, under the umbrella of Oklahomans for Safe Bridges and Roads, circulated an initiative petition calling for an increase in the state motor fuel taxes with all of the proceeds going into a "lockbox" to be used only for highway construction and maintenance.

On Wednesday, April 27th, Governor Henry announced that State Question 723 (SQ 723) will be on a special election ballot on Tuesday, September 13th.

Many believe that the Petition process was the catalyst that pushed the Legislature to seriously address highway funding for the first time in many years. The Oklahoma Legislature stands to lose complete control of the road building program should SQ 723 pass due to the safeguards built into 723 such as the "lockbox." Roads and bridges in Oklahoma have always been the "peanut" that legislators could give their constituents.....remember the Capital Improvement Program and the laundry list of projects included in the authorizing legislation. SQ 723 would bring that to an end, and some believe that the Legislature will do anything possible to undermine the need for SQ 723 in an effort to retain their power of highway construction.

Regardless of the who, what, when, where, or whys of the issue, it looks as though something is finally going to be done!!!!

ACEC OKLAHOMA will closely watch this and will do everything possible in the coming weeks to see that significant funding is secured.

REVERSE AUCTIONS – H.B. 1754.

As reported in a special "Legislative Alert" last week, Senator Garrison, as promised, amended the bill on the Senate Floor by removing the reference to "services." With this, the bill would now only allow counties to use reverse auctions when purchasing "goods" such as office supplies, etc.

ACEC OKLAHOMA met with Senator Garrison April 19th to express our appreciation for his willingness to make our requested changes. At that time, the Senator told us the bill was running into some additional problems even with the "goods" portion of the bill as the implement dealers were now opposing the bill.

We appreciate everyone's quick response to our initial "Legislative Alert"!!!! Your response was tremendous

with calls and letters to Senator Garrison and other members of the Oklahoma Senate. We know that your message was heard loud and clear, as Senator Garrison said that he would make our requested changes and asked that we "call off the dogs."

The bill as amended has now passed the Senate, and has been sent to a House/Senate Conference Committee. ACEC OKLAHOMA is confident that the "services" provision will remain out of the final version of the bill, but the entire bill's fate is up in the air due to the opposition of the equipment dealers and others. ACEC OKLAHOMA will closely monitor the bill as the session draws to a close.

STATE BOARD OF REGISTRATION – H.B. 1607

This bill provides for an update of the State Registration Statutes for Professional Engineers and Land Surveyors. It is the first time in over 10 years that significant updates have been proposed.

The bill easily passed both the House and the Senate, and was signed by the Governor on April 27th.

WORKER'S COMPENSATION

The House Judiciary Committee has approved the Governor's workers' compensation proposal, sending Senate Bill 846 to the House floor and to an eventual showdown with Senate Democrats in Conference Committee.

The governor's bill is the result of a bipartisan task force he appointed and worked for more than a year to come up with a package of reforms. Governor Henry has asked lawmakers to send him a compromise bill with the best proposals from both parties.

TORT REFORM

As with Worker's Comp, this is headed to a House/Senate Conference Committee where there may be even greater division than with Worker's Comp.

While there was some Tort Reform last session, including a major step forward regarding Joint & Several Liability, many issues are still on the table, including: Class Action Lawsuit reform; Collateral Source; Food

(Cont. on Page 3)

May Legislative Report (Cont)

& Drug Liability; Frivolous Lawsuit; Completely Abolish Joint & Several Damages; Junk Science Reform; Non-Economic Damages Capped at \$300,000; Product Liability Reform; Punitive Damages; and, Summary Judgment to mirror federal rules with no modifications.

The Governor has publicly stated his desire to have "Texas-Plus" tort reform, which doesn't necessarily set well with members of his party as well as his colleagues from the trial bar. And, while the Republicans are ready to embrace the "Texas-Plus" concept, they are leery of the proposal coming from a Governor of the opposition party who himself was a trial lawyer.

Needless to say, all of the dynamics involved with this issue make agreement between all of the interested parties very difficult. Only time will tell if some type of an agreement can be hammered out before May 27th.

GOOD SAMARITAN ACT – S.B. 413

Separate from the Tort Reform discussions, Senate Bill 413 by Sen. Johnnie C. Crutchfield, D-Ardmore and Rep. Kevin Calvey, R-Del City, provides immunity to licensed architects and professional engineers who voluntarily provide architectural or engineering services during a declared national, state or local emergency at the request of a national, state or local public official, law enforcement official, public safety official or building inspection official. Design professionals will be immune from liability for personal injury, wrongful death, property damage or other loss of any nature related to acts or omissions in the performance of professional services EXCEPT for gross negligence or willful or wanton misconduct.

While engineers and architects had sought this immunity for many years, especially following the April 19, 1995 Oklahoma City bombing, trial lawyers had always raised strong opposition.

This year, however, with virtually no opposition, the bill passed the Senate 41-0 and the House 99-0, and is now awaiting the Governor's signature.

That's the update. We'll keep a close eye on things during the final four weeks of the session, and alert you as necessary as things change.

As always, if you have any questions or want any additional information, please feel free to call.

OFFICIAL NOTICE OF ACEC OKLAHOMA ANNUAL MEETING

As required by the ACEC OKLAHOMA By-Laws, this shall serve as official notice of the Annual Meeting of the Council, scheduled for 9:00am, Friday, June 10, 2005. The meeting will be held at the Westin Resort, St. John, U.S.V.I.

The 2005-06 ACEC OKLAHOMA Annual Budget will be presented for consideration and approval, annual reports will be presented, and election of officers for the 2005-06 year will be conducted.

All members are urged to attend.

NOMINATING COMMITTEE REPORT

The ACEC OKLAHOMA Nominating Committee has completed it work with the following slate of officers for the 2005-06:

- Chairman-Elect - Jim Stewart, PSA Consulting Engineers, Oklahoma City
- Vice Chairman of Membership - Darold Davis, Garver Engineers, Tulsa
- Treasurer - Steve Ford, Zahl-Ford, Inc., Oklahoma City
- Vice Chairman of Business Practice - Tom Hendrick, Wallace Engineering, Tulsa
- Vice Chairman of Education/P.R. - Jim Benson, Poe & Associates, Oklahoma City

Jerry Farrar, EarthTech, Tulsa, will automatically assume the position of Chairman of the Board at the conclusion of the Annual Meeting, Mike Arand will continue as ACEC National Director beginning the third year of his three year term, and Don Vick will serve as Past Chairman.

The election of officers will take place during the Annual Meeting of the Council on June 10th.

Members not attending the Convention may vote by mail ballot. If you desire to vote, please mail a letter to ACEC OKLAHOMA expressing your vote no later than Tuesday, June 7th.

Motor Fuel Tax Statewide Vote Set for September 13th

Oklahoma voters will decide a proposed fuel tax increase Sept. 13th. Gov. Brad Henry set that date for a special statewide election on State Question 723 (SQ 723).

SQ 723 would raise up to \$170 million more for highway and bridge construction and maintenance when fully implemented by raising the motor fuel taxes from the current 17¢ on gasoline and 14¢ on diesel tax to 22 cents each. The tax would increase incrementally over a three-year period.

If approved, the measure would:

- * Create additional funds to build and rebuild bridges and highways, and also prevent the Legislature from ever decreasing state funding for transportation below current levels.

- * Establish a bridge and highway trust fund. Eighty percent of the new gasoline tax and a portion of existing gasoline and diesel fuel taxes would go into the trust fund. All new diesel fuel taxes would go into the trust fund.

- * Send 10 percent of the new gasoline tax to county highway funds and 10 percent to cities and towns for roads and bridges.

- * Dictate that available trust money could fund only be used for ODOT's direct costs of building and rebuilding highways and bridges. No money from the new taxes could be used for capital purchases or debt service.

- * Create a oversight committee comprised of state officials who are not directly affiliated with ODOT or the transportation industry to oversee the use of the funds to assure that the funds are being used only for highway and bridge construction and maintenance.

Chairman of Oklahomans for Safe Bridges and Roads Neal McCaleb spoke at last weeks ODOT/ACEC Partnering Conference. McCaleb said that while the recent rise in gas and diesel prices to over the \$2.00 per gallon level will weigh heavy on the minds of the voters, early polls show that a "well informed" public will support the increase.

ACEC OKLAHOMA will be heavily involved in the effort to secure passage of SQ 723, and all members will be encouraged to participate.

Bruton Retires After Over 50 Years of Engineering Service

After 43 years of leadership of BKL, Inc. of Tulsa, Bob Bruton is retiring from the firm he helped found.

Bob has been at the forefront of engineering in Tulsa and Oklahoma for over 50 years, by being involved in the planning and design of expressways, streets, developments, utilities, industrial parks, and buildings.

Bob has also been an active, strong supporter of ACEC OKLAHOMA throughout his career, serving as President of the Council in 1975-76, as well as serving on numerous committees and task forces over the years.

ACEC OKLAHOMA congratulates Bob on his outstanding career, expresses our deepest thanks to him for his service to the profession and ACEC OKLAHOMA, and wishes him well in his retirement years.

Time Running Short on Federal Highway Funding Bill

A major objective of ACEC's Consulting Congress Day was achieved when the Senate began consideration of the \$284 billion Safe, Efficient, Flexible, and Efficient Transportation Equity Act (SAFETEA — S. 732) on April 26.

The House has already passed their version of SAFETEA, and is awaiting action by the Senate so that Conference Committee work can begin.

Only a handful of amendments were considered this week, leaving a number of major issues on the docket when the Senate returns from a week-long recess on May 10.

May 31st is a critical deadline as on that date, federal highway and transit funding will cease flowing to the states unless a final package is signed into law, or another extension is passed.

Senators are also expected to act on amendments dealing with state funding formulas, expanded bonding authority, and tolling provisions.

In the meantime, the Bush Administration this week again reiterated its threat to veto any final TEA-21 reauthorization bill that exceeds \$284 billion in spending.