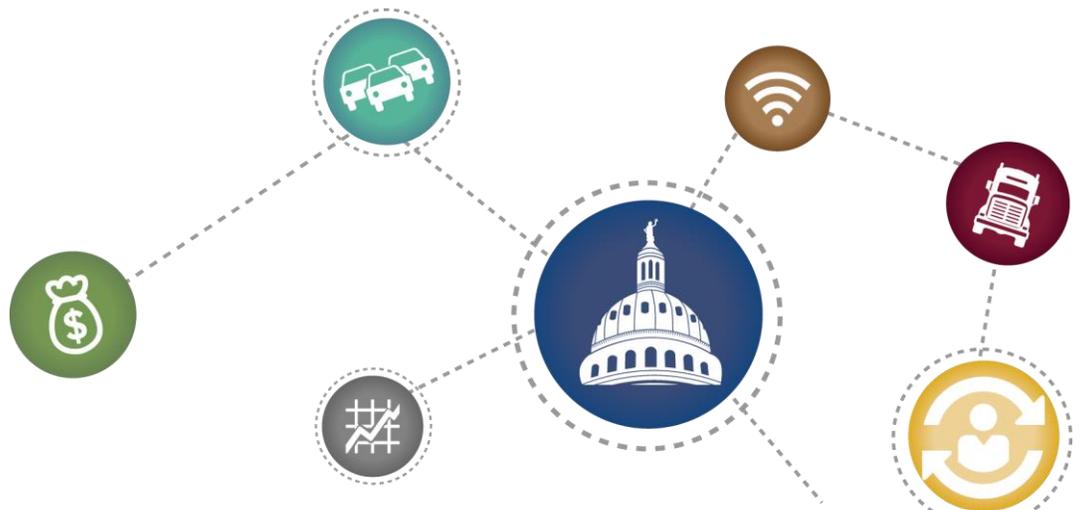


Transportation Reinvestment Zones: Texas Legislative History and Implementation

Final Report

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Texas A&M Transportation Institute

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Executive Summary

Texas legislation enacted in 2007 created transportation reinvestment zones (TRZs), an innovative tool that allows local governments to raise funds to help pay for transportation improvements using all or part of the incremental growth in property and sales taxes from a designated area around the project. Legislation passed in subsequent legislative sessions has made significant changes to the law, facilitating greater use of the tool by local governments and expanding the scope of possible incremental tax dedication to include local sales tax.

TRZs create transportation project funding by capturing and leveraging the real estate/land development value resulting from a transportation project. Development and expansion of transportation projects like highways and transit often spur land development in areas around the project. A TRZ allows a city or county to designate an area around a project as an impact zone to capture some or all of the increment in local property and sales tax revenues resulting from the growth in the zone's tax base. That incremental tax revenue is used to support funding and financing of the project by combining it with traditional and non-traditional transportation funding sources (i.e., federal and/or state funds, tolls, etc.) to assemble a complete project funding package. In this manner, the land development attributable to the project is used to help fund the project. Since TRZ legislation was first enacted to allow the creation of municipal and county TRZs, a number of municipal and county TRZs have been established in different communities throughout the state.¹

Research Objective

This document presents the results of research conducted to evaluate the use of TRZs by local governments throughout the state.² This evaluation had three main objectives:

- Summarize the legal framework, including the modifications made to the framework since it was first adopted.
- Describe the advantages and limitations of this financing tool through lessons learned during the implementation of municipal and county TRZs throughout the state and documented through interviews with stakeholders.
- Develop a model to analyze TRZ opportunities.

¹ All the municipal and county TRZs that have been established to date have only pledged property tax increments. No local government has considered pledging sales tax increments. Therefore, any references to tax increments made in this report refer to property taxes unless otherwise noted.

² This research involved only regular municipal and county TRZs. It did not involve county energy TRZs, a different funding mechanism.

Legislative Summary

This report provides a summary of adaptations and modifications to the TRZ legislative framework since its inception in the 2007 legislative session through the recently concluded 2015 regular session. Senate Bill (SB) 1266 in the 80th Legislative Session in 2007 amended Chapter 222 of the Transportation Code, and the TRZ provisions appear in Sections 222.105–107.

Since then, the legislation for TRZs has been evolving as a response to first implementers and their experiences with technical issues that were present in the legislation as originally conceived in SB 1266. One issue in particular was the fact that development of TRZs in SB 1266 was specifically tied to projects receiving pass-through financing from the Texas Department of Transportation (TxDOT), which are limited to only those that meet the requirements set forth under Section 222.104 of the Transportation Code. SB 1266 also laid the foundation for the development of two types of TRZs: municipal TRZs and county TRZs.

Since 2007, the Texas Legislature has considered and approved several bills that have modified or expanded the use and types of TRZs, or simply clarified the process or requirements to establish one. Some of the most active areas for the TRZ bills pertain to project definition, boundary changes (limits), and the ability to rescind pledges. The bills that had the most influence in shaping the current legislative framework after SB 1266 include the following:

- House Bill (HB) 563 was passed during the 82nd Regular Session, which made major changes to the TRZ law. This bill made many procedural changes regarding implementation to allow for increased flexibility in the adoption and implementation for both municipal and county TRZs.
- As part of the 83rd Legislative Session, changes were made to the TRZ law through SB 1110. With regard to TRZ implementation, SB 1110 made significant modifications by allowing for the multimodality of TRZs' applicability to rail, transit, parking lots, ferries, and airports. SB 1110 also allows for the consideration of multiple projects and for joint administration of TRZs.
- SB 971, passed during the 83rd Legislative Session, further expanded authority to allow for port and navigation projects, suggesting that these may be applicable for a variety of other navigation projects according to the definitions provided in the Transportation Code.

This report also discusses the bills that introduce and define port and navigation TRZs and county energy TRZs. No changes were made to the municipal and county TRZ legal framework during the 84th Legislative Session of 2015.

Assessment of Implementation Experience

The researchers contacted representatives of local governments and other agencies throughout the state that have considered TRZ financing in their communities. The goal of this outreach effort was to document their experiences with TRZs as a potential funding and financing mechanism in their region or community, with a focus on advantages and limitations including lessons learned.

Participants in the study were selected among those with interest or experience in the use of TRZs in their own community or elsewhere in the state. Researchers received interview responses from 11 stakeholders representing five counties and six cities that were well distributed by jurisdiction and geography throughout the state:

- By type of jurisdiction represented:
 - City (four respondents).
 - Metropolitan planning organization (MPO) (one respondent).
 - Regional mobility authority (RMA) (four respondents).
 - TxDOT (two respondents).
- By geography:
 - West Texas (three respondents).
 - Lower Rio Grande Valley (two respondents).
 - East/northeast (three respondents).
 - Central Texas (three respondents).

Researchers found that local communities consider TRZs a good tool for expression of a community's commitment to transportation funding. However, certain challenges and complications associated with TRZs' implementation are perceived to dilute the advantages they may have over simply pursuing regular general obligation (GO) bonding to fund the local share of a project. These challenges and complications can be summarized as follows:

- County TRZs face a significant implementation challenge. Counties are constitutionally prevented from being able to use TRZ revenue to repay debt issued for a project (including a transportation project) aimed at developing or redeveloping a specific area within the county. Specifically:
 - Several attorney general (AG) opinions have made it clear that use of county TRZ revenue to secure debt could be constitutionally challenged.

- The most recent AG opinion (KP-0004) indicates that merely collecting and using funds for a county TRZ on a pay-as-you-go basis may be subject to constitutional challenge (*I*).
- Virtually all local governments considering TRZ financing are also considering the use of a State Infrastructure Bank (SIB) loan for their projects because it offers the most favorable long-term financing option when using TRZ revenue as collateral. However, the use of an SIB loan also limits the projects that can be TRZ financed:
 - The use of SIB loans is by law currently limited to projects that are on the state highway system, which by extension limits the ability of local governments to use the TRZ mechanism on off-system projects.
 - The use of SIB loans federalizes the projects where the TRZ mechanism is used, increasing delivery costs and delaying implementation due to federal compliance requirements (e.g., National Environmental Policy Act requirements apply to all federally funded projects).

Development of TRZ Planning Model

Researchers developed a model to analyze TRZ opportunities. The model incorporates algorithms that account for changes in land use over time to assist in assessing the potential value capture revenue of a TRZ. The model can be used to support state and local government sponsors interested in using TRZ financing. A significant element of the model is the recognition that existing land uses are key drivers of future development patterns and hence of the expected tax revenues generated from new developments.

Background and Introduction

TRZs are a funding mechanism first established by the 80th Texas Legislature in 2007. TRZs are an innovative tool for creating transportation project funding by capturing and leveraging the real estate/land development value resulting from a transportation project. Development of new projects and the expansion of existing transportation projects like highways and transit often spur land development in areas around the project. A TRZ allows a city or county to designate an area around a project as an impact zone. The purpose of the TRZ is to capture some or all of the increase in incremental property and sales tax revenues resulting from the increase in tax base for use in connection with the funding and financing of the project.³ In this manner, the land development attributable to the project is used to help support the funding and subsequent financing of the project. The TRZ funds are generally combined with other traditional and non-traditional transportation funding sources (i.e., federal and/or state funds, tolls, etc.) to assemble a complete project funding package. Figure 1 illustrates the concept of value capture and tax increment in a TRZ, and Figure 2 shows the conceptual flow of funds in a typical TRZ as defined in the law.

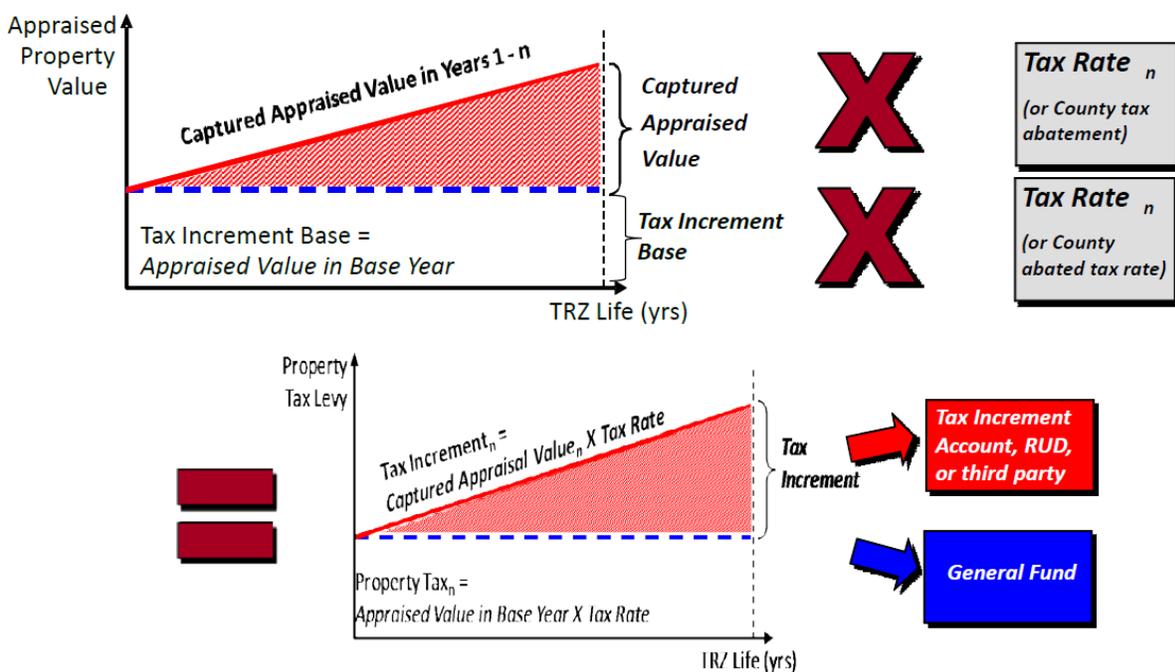


Figure 1. Value Capture Mechanism in a TRZ: How It Works.⁴

³ All the municipal and county TRZs that have been established to date have only pledged property tax increments. No local government has considered pledging sales tax increments. Therefore, any references to tax increments made in this report refer to property taxes unless otherwise noted.

⁴ This figure is updated from S. Vadali, R. Aldrete, and A. Bujanda, "Financial Model to Assess Value Capture Potential of a Roadway Project," *Transportation Research Record: Journal of the Transportation Research Board*, No. 2115, 2009, pp. 1–11.

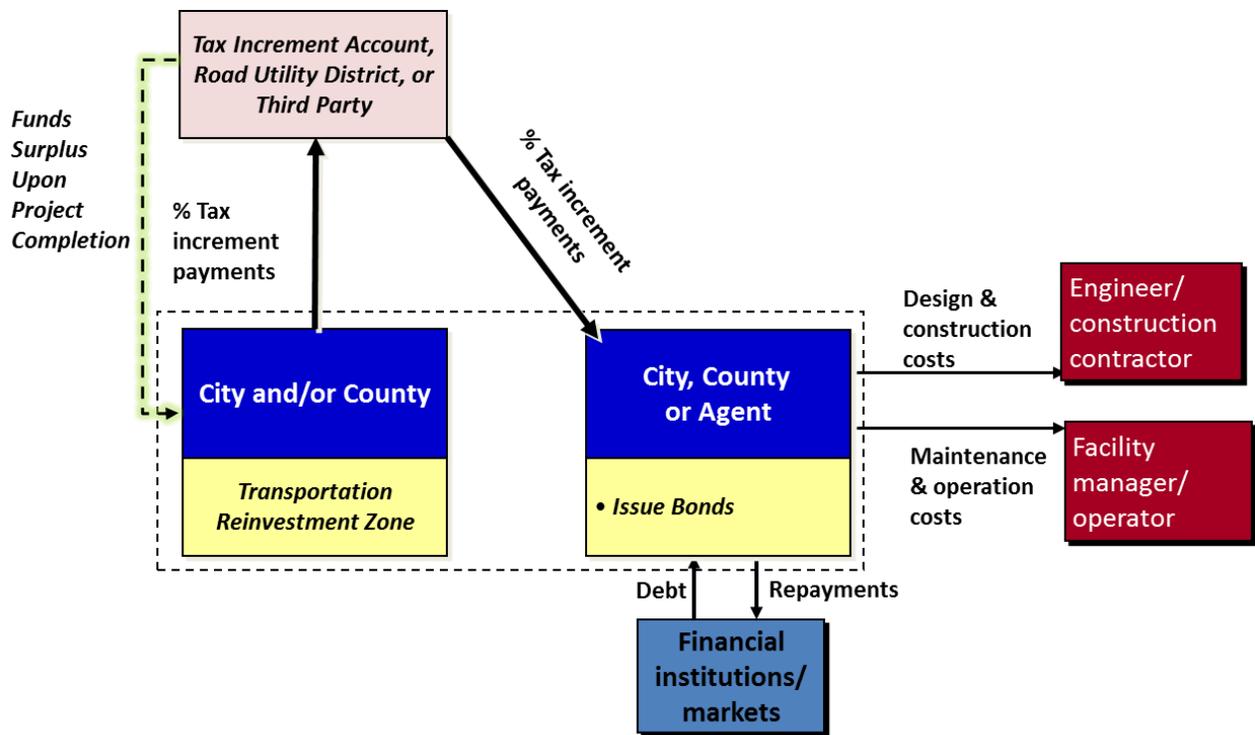


Figure 2. Flow of Funds in a TRZ: How It Works.⁵

TRZs are similar to tax increment financing but still fundamentally different. The differences are that conventional tax increment financing may include tax increases, is governed by a board, and is often used to support development growth anywhere in a municipality (2). In other words, tax increment financing is not really linked to transportation. This does not apply to TRZs because:

- TRZs do not involve new taxes.
- TRZs are dedicated to transportation; the increments in transportation corridors can be set aside to support infrastructure investment and do not require a board for oversight.
- Since no new taxes are levied, a TRZ (unlike a transportation infrastructure fund or tax increment reinvestment zone) does not necessarily lead to a new revenue source per se. By their nature, TRZ revenues start small and increase over time. If the transportation project does not spur new development or if revenues fall short in the first several years of TRZ life, it is simply a transfer of a portion of local funds. A TRZ only leads to net new revenues to the extent that the transportation project spurs new development and increases the core tax base.

Since TRZ legislation was first enacted to allow the creation of municipal and county TRZs, a number of municipal and county TRZs have been established and are currently active in different communities throughout the state. Table 1 lists the municipal and county TRZs that the

⁵ This figure is adapted from S. Vadali, R. Aldrete, and A. Bujanda, *Transportation Reinvestment Zone Handbook*, 0-6538-P1, Texas Transportation Institute, College Station, Texas, September 2012.

researchers are aware of that have been established since 2008. Although county governments are constitutionally prevented from using the incremental tax revenue within the zone to repay debt issued in connection with the project, a number of municipalities have successfully secured debt using their TRZ revenue as collateral.⁶

Table 1. Active Transportation Reinvestment Zones (as of November 2015).

Location/TRZ	Date Established	Notes
City of El Paso TRZ No. 2	December 2010	Main corridor on I-10 (Transmountain) to Sunland Park to Mesa to Montana to LP 375 to I-10. TRZ No. 1 was established in 2008, repealed in 2010 due to technical issues, and then replaced by TRZ No. 2.
City of El Paso TRZ No. 3	December 2010	Main corridor on LP 375 from Dyer to west of US 54 and other corridors.
City of El Campo TRZ No. 1	December 2012	Corridor along US 59 and future I-69.
Town of Horizon City TRZ No. 1	November 2012	Eastlake from Darrington Road to Horizon Boulevard.
City of Socorro TRZ No. 1	October 2012	Old Hueco Tanks Road from I-10 to Socorro Road.
City of San Marcos TRZ No. 1	December 2013	FM 110 from I-35 to I-35.
Cameron County TRZ No. 1	December 2010	Main corridor follows SH 550, East Loop, Outer Parkway, General Brandt, FM 509, and US 281 connector projects. Includes US 77 from FM 509 to SH 550.
Hidalgo County TRZ No. 2	December 2011	Varies. Follows the Hidalgo loop project. TRZ No. 1 was established in 2008 but was never implemented, and was replaced by TRZ No. 2.
El Paso County TRZ No. 1	December 2012	Berryville to Eastlake to Old Hueco Tanks (with other corridors).
Hays County TRZ No. 1	December 2013	FM 110 from I-35 to I-35.

Source: Compiled by the Texas A&M Transportation Institute with input from TxDOT.

⁶ Counties are currently constitutionally prevented from being able to use TRZ revenue to repay debt incurred for a project (including a transportation project) aimed at developing or redeveloping an area within the county. Several AG opinions have made it clear that use of county TRZ revenue to repay debt could be constitutionally challenged (see the letter from Texas Attorney General Ken Paxton to Representative Joseph C. Pickett [1]). The legislature approved a constitutional amendment in 2011 to address this issue, but voters defeated the amendment in the election (Proposition 4). Furthermore, the AG's most recent opinion (KP-0004) indicates that even collecting and using funds for a county TRZ on a pay-as-you-go basis may be subject to constitutional challenge.

Statutory Framework

This section summarizes the changes that the legal framework of TRZs went through from the inception of the TRZ law in the 80th Legislative Session in 2007 until the 83rd Legislative Session in 2013. Although several TRZ-related bills were filed and considered during the recent 84th Legislative Session, none of them were approved. A brief summary of these bills is also included.

SB 1266 to HB 563 and SB 1110: The Evolution (2007–2013)

TRZs were first authorized by SB 1266. The 80th Texas Legislature enacted SB 1266 in 2007 (3). SB 1266 amended Chapter 222 of the Transportation Code, and the TRZ provisions appear in Sections 222.105–107. Since then, the legislation around TRZs has evolved as a response to first implementers and their experiences with technical issues in the legislation as originally encapsulated in SB 1266. The development of TRZs in SB 1266 was specifically tied to projects receiving pass-through financing from TxDOT, and projects were limited to those under Section 222.104 of the Transportation Code.⁷ SB 1266 also laid the foundation for the development of two types of TRZs: municipal TRZs and county TRZs.

Since 2007, the legislature has considered and approved several bills that have modified or expanded the use and types of TRZs, or simply clarified the process or requirements to establish one.

HB 563 (4), which made major changes to the TRZ law, was passed during the 82nd Regular Session. HB 563 (described in the appendix) made many procedural changes regarding implementation to allow for increased flexibility in the adoption and implementation for both municipal and county TRZs. As part of the 83rd Legislative Session, further changes were made to the TRZ law through SB 1110 (5). No changes were made to the TRZ legal framework during the 84th Legislative Session of 2015.

Table 2 shows the key changes made to SB 1266 and the transition from SB 1266 to HB 563 in regard to TRZ adoption and municipal and county TRZ development. Also included in Table 2 are the changes made to the TRZ law during the 83rd Legislative Session by SB 1110. The appendix provides a more detailed description of each of these key changes.

⁷ Section 222.104 of the Transportation Code, codified at <http://codes.lp.findlaw.com/txstatutes/TN/6/B/222/E/222.104>, refers to pass-through projects.

Table 2. Summary of Key Changes Made in the TRZ Law in 2011 and 2013 (SB 1266, HB 563, and SB 1110).

Category	2007 SB 1266 Original Provisions (80th Legislative Session)	2011 HB 563 (82nd Legislative Session)	2013 SB 1110 (83rd Legislative Session)
Applicable to Both Municipal and County TRZs			
Transportation Project Types	Requires a pass-through agreement with TxDOT for use. This requirement also means that the TRZ tool can only be used on projects on the state highway network.	Drops the provision for the pass-through requirement. Expands the definition of eligible transportation projects to include any transportation project as defined in the Transportation Code and not only on roadway projects on the state highway system. Sets transportation project definition to include any project under Chapter 370.003, Transportation Code, Section 370.003. <i>Discussed in the text.</i>	Amends Subsections (c), (g), (i), (i-2), and (j) (Section 222.106 Transportation Code) to provide for <i>one or more</i> transportation projects, rather than a project in a TRZ (one or more projects in one contiguous TRZ). The governing body of a county or city may designate a TRZ for a transportation project located outside the boundaries of the county or city if certain conditions are met. <i>Discussed in the text.</i> Repeals Section 222.108, Subsection (d), which defined <i>transportation project</i> as linked to Transportation Code Section 370.003. This is amended by SB 971. <i>Discussed in the text.</i>

Table 2. Summary of Key Changes Made in the TRZ Law in 2011 and 2013 (SB 1266, HB 563, and SB 1110) (Continued).

Category	2007 SB 1266 Original Provisions (80th Legislative Session)	2011 HB 563 (82nd Legislative Session)	2013 SB 1110 (83rd Legislative Session)
Project Purpose	Establishes the purposes for which a TRZ may be formed, including to promote public safety, facilitate development and redevelopment of property, facilitate movement of traffic, and enhance a local entity's ability to sponsor a pass-through project (Transportation Code Section 222.105).		Amends the purpose by dropping the need to link to pass-through projects (Transportation Code Section 222.105). <i>See the appendix.</i>
Increment Type	Is driven by the increment of real property values.	Expands types to include sales tax increments in addition to real property tax increments. <i>Discussed in the text.</i>	Modifies Section 222.110, Subsection (e), so that sales and use tax deposited into a tax increment account may be disbursed only to pay for projects authorized under Transportation Code Section 222.104 or 222.108.
Contracting with Public/Private Entity for Project Delivery		Authorizes the governing body of a municipality to contract with a public or private entity to develop, redevelop, or improve a transportation project in a TRZ and to pledge and assign all or a specified amount of money in the tax increment account to that entity.	Authorizes contracting with a public/private entity for project delivery.

Table 2. Summary of Key Changes Made in the TRZ Law in 2011 and 2013 (SB 1266, HB 563, and SB 1110) (Continued).

Category	2007 SB 1266 Original Provisions (80th Legislative Session)	2011 HB 563 (82nd Legislative Session)	2013 SB 1110 (83rd Legislative Session)
Bonding against Increment		Allows municipalities and counties to bond against the increment for the project.	Allows municipalities and counties to bond against the increment for a project and pledge a part of the increment to repayment.
Joint Administration of TRZs			Introduces joint administration of TRZs, meaning two local governments who have designated TRZs may enter into joint administrative agreements allowing for a board and joint account, among others.
Applicable to Municipal TRZs Only			
Allocation Set Aside	Establishes the full increment or 100 percent increment of real property values to be designated to the TRZ.	Allows municipal TRZs to devote all or portions of the increment.	
Termination Date	Designates the termination date as December 31 of the year in which the municipality completes a contractual requirement that included the pledge to the increment account.	Designates the termination date as December 31 of the year in which the municipality completes a contractual requirement, <u>or</u> December 31 of the 10th year after the year the zone was designated, if before that date the municipality has not entered into a contract for a project within the zone or not used the zone for the purpose for which it was designated.	Designates the termination date as December 31 of the year when the city completes all contractual requirements that included the pledge or assignment of all or a portion of money deposited to a tax increment account, <u>or</u> the repayment of money owed under an agreement for development, redevelopment, or improvement of the project or projects for which the zone was designated.

Table 2. Summary of Key Changes Made in the TRZ Law in 2011 and 2013 (SB 1266, HB 563, and SB 1110) (Continued).

Category	2007 SB 1266 Original Provisions (80th Legislative Session)	2011 HB 563 (82nd Legislative Session)	2013 SB 1110 (83rd Legislative Session)
Base Year Designation/ Project and TRZ Benefit Establishment/ TRZ Name Assignment		Designates the base year for the purposes of establishing the tax increment.	Designates the base year as the year of passage of the ordinance or some year in the future establishing the base for the tax increment.
Recognition of Preexisting Obligations		Requires the municipality, from taxes collected on property in a zone, to pay into the tax increment account for the zone the tax increment produced by the municipality, less any amount allocated under previous agreements.	
Boundary Modifications/ Amendments		Allows for boundary changes to be possible once a TRZ is formed, but only allows properties to be added and not deleted.	Amends the code (Section 222.106 [i-2]) to note that TRZ boundaries may not be amended to remove or exclude property from the zone if any part of the tax increment account has been assigned or pledged directly by the city or through another entity to secure bonds or other obligations for the project. Property can only be added if the municipality is in compliance with Subsections (e) and (g).
No Financial Penalty for TRZ Use		Prohibits TxDOT from reducing traditional and/or committed transportation funding due to the use of a TRZ.	

Table 2. Summary of Key Changes Made in the TRZ Law in 2011 and 2013 (SB 1266, HB 563, and SB 1110) (Continued).

Category	2007 SB 1266 Original Provisions (80th Legislative Session)	2011 HB 563 (82nd Legislative Session)	2013 SB 1110 (83rd Legislative Session)
Restrictions on Rescinding of Pledges		Prohibits the governing body of the municipality, after a pledge or assignment is made, if the entity that received the pledge or assignment has itself pledged or assigned that amount to secure bonds or other obligations issued to obtain funding for the transportation project, from rescinding its pledge or assignment until the bonds or other obligations secured by the pledge or assignment have been paid or discharged.	Prohibits the governing body of the municipality, after a pledge or assignment is made, from rescinding its pledge or assignment until the bonds or other obligations secured by the pledge or assignment have been satisfied.
Use of Surplus Increment upon Termination of Zone	Establishes that surplus is to be used for transportation projects in the zone.	Establishes that the remaining surplus in a tax increment account on termination of a zone can be used for other purposes as determined by the municipality.	
Applicable to County TRZs Only			
Abatement		Establishes that a commissioner's court can abate all or a portion of the tax for a real property.	
Alternative Mechanisms for Collection/ Contracting with Local Entity		Provides an alternative collection mechanism for a county TRZ (as an option to be used in place of abatement of taxes and creation of a road utility district) through the imposition of assessments. Alternatives to road utility districts.	

Table 2. Summary of Key Changes Made in the TRZ Law in 2011 and 2013 (SB 1266, HB 563, and SB 1110) (Continued).

Category	2007 SB 1266 Original Provisions (80th Legislative Session)	2011 HB 563 (82nd Legislative Session)	2013 SB 1110 (83rd Legislative Session)
Termination		Provides that a TRZ terminates on December 31 of the year in which the county completes any contractual requirement that included the pledge or assignment of assessments.	
Base Year Designation/ Project and TRZ Benefit Establishment/ TRZ Name Assignment		Designates the base year for the purposes of establishing the tax increment. Establishes a tax increment account for the zone and documents findings of benefits from the project.	Designates the base year as the year of passage of the ordinance or some year in the future, establishing the base for the tax increment.
Use of Surplus Increment	Establishes that surplus is to be used for transportation projects in the zone.		Establishes that any tax increment not pledged or assigned can be used for any purpose for the project or any other area in the zone as determined by the commissioner's court.
Abatements			Establishes that all granted abatements or relief must be equal in rate. In any ad valorem tax year, the total amount abated cannot include payments under previous agreements.

Creation of New Types of TRZs

In addition to the legislative amendments to the original TRZ legislation, three other bills that extended the TRZ concept to other types of projects and/or jurisdictions were filed and enacted into law during the 83rd Legislative Session (2013). These bills include the following:

- SB 971 (port authority TRZs).
- SB 1747 (county energy TRZs).
- HB 2300 (county energy TRZs).

This section discusses the major legislative changes introduced by each of these bills.

SB 971—Port Authority and Navigation District TRZs

SB 971 amends the TRZ statutes by authorizing port authorities and navigation districts to form a TRZ after finding that the area within the TRZ is unproductive and underdeveloped and that forming the TRZ will “improve the security, movement, and intermodal transportation of cargo or passengers in commerce and trade” (6). With this change, the TRZ concept is expanded to all modes of transportation (see the appendix for a discussion of SB 971).

SB 971 also amends Section 222.108, Subsection (d), to modify the definition of *transportation project* to include port security, transportation, or facility projects described by Transportation Code Section 55.001(5) (7). Hence, according to SB 971, port authority TRZs are applicable to port security projects and transport projects.

TRZ revenue is generated from the incremental ad valorem taxes collected by the port pursuant to the statutes. As a result, port facility improvements can be supported by a port-created TRZ and by municipal and/or county TRZs. Under the bill, a port project is defined as a project that is necessary or convenient for the proper operation of a maritime port or waterway and that will improve the security, movement, and intermodal transportation of cargo or passengers in commerce and trade, including dredging, disposal, and other projects.

Procedurally, the formation and administration of a TRZ under this legislation are similar to the existing TRZ process available for cities and counties (with some of the improvements made by SB 1110). The bill requires joint administration of TRZs created for multiple local governments.

SB 1747—County Energy TRZs (Shale Related)

SB 1747 (8) establishes a state transportation infrastructure fund (TIF) to administer a grant program for county energy transportation reinvestment zones (CETRZs) to alleviate pavement deterioration to roads, bridges, and other infrastructure caused by oil and gas exploration. The TIF is dedicated in the state treasury and consists of federal grants, state matching funds, funds appropriated by the legislature, gifts and grants, fees paid into the fund, and investment earnings on deposits in the fund.

HB 1025 (the supplemental appropriations bill) included \$450 million to be used to fund the repair and maintenance of roads and bridges in these areas. Of that total, \$225 million was to be used by TxDOT for roads on the state highway system, and \$225 million was to be transferred to the TIF for the purpose of assisting counties to fund the repair and maintenance of their roads damaged by energy-related activity.

In summary, SB 1747 provides for a grant-based fund (TIF) to be administered by TxDOT for transportation infrastructure projects located in areas of the state affected by oil and gas production, with regions having to satisfy eligibility requirements. County TRZs have the same restrictions concerning the ability of counties to pledge TRZ revenue to secure debt to finance the project. Therefore, counties are limited to using CETRZ revenue on a pay-as-you-go basis (9).

Eligibility for Grants from TIF

Eligibility to receive a grant from the TIF is contingent on a county that has:

- Established a CETRZ.
- Created an advisory board to advise the county on the establishment and administration of the CETRZ. The advisory board must be comprised of the following (appointed by the county judge and approved by the commissioner’s court):
 - Up to three oil and gas company representatives who “perform company activities in the area and are local taxpayers” (8).
 - Two members of the public.
- Provided matching funds of at least 20 percent of the grant (10 percent for economically disadvantaged counties). The county funds spent for road and bridge purposes may be counted as part of these matching funds. Additionally, the tax increment collected in a CETRZ may serve as matching funds.

Grants from the TIF distributed during a fiscal year must be allocated among affected counties according to the following guidelines:

- 50 percent based on well completions (the ratio of well completions in the county to the total number, as determined by the Railroad Commission).
- 20 percent based on weight tolerance permits (the ratio of weight tolerance permits issued in the preceding fiscal year for the county to the total number of permits issued in the state, as determined by the Department of Motor Vehicles).
- 20 percent based on oil and gas production taxes (the ratio of taxes collected in the preceding fiscal year in the county to the total amount of taxes collected in the state for that fiscal year, as determined by the comptroller).
- 10 percent based on the oil and gas waste (the ratio of the volume of oil and gas waste injected in the preceding fiscal year in the county to the total volume of such waste injected in the state, as determined by the Railroad Commission).

The law also prescribes that 5 percent of grant funds received may be used for administrative costs (not to exceed \$250,000), and various reporting requirements are imposed on grant recipients.

Steps for Establishing CETRZs

Forming a TRZ is a requirement for a county to be eligible for a TIF grant. Although the process to create a CETRZ is very similar to the process followed to create a municipal or county TRZ, there are several differences in their administration, including the following (10):

- Creating a CETRZ requires documenting that the area in question is “affected because of oil and gas exploration and production activities.”
- Contiguous CETRZs formed in adjoining counties may be jointly administered for the same project (or projects).
- The entire tax increment collected within a CETRZ must be pledged to transportation infrastructure projects (as opposed to “all or a portion” of the increment allowed for other TRZs).
- The life of a CETRZ is 10 years, with the possibility of extending it up to five additional years. At termination, any funds remaining must be transferred to the county road and bridge fund.
- A county cannot pledge the tax increment collected in a CETRZ to secure bond debt, but the increment may be transferred to a road utility district (RUD), which can issue bonds secured by the tax increment.

HB 2300—County Energy TRZs (Shale Related)

HB 2300 requires a county to determine the tax increment amount for a CETRZ in the same manner the county would determine the tax increment for a county TRZ. A county may designate a contiguous geographic area to be a TRZ to promote a transportation project. The bill also establishes a board of directors for the zone and for the creation of an RUD that would manage the financing of the transportation project, including bonding authority (10, 11).

Most of HB 2300 consists of adding Sections 222.1071 and 222.1072 to the Transportation Code. These sections relate to the formation of CETRZs, and the provisions of the bill generally tracked those changes introduced by SB 1747, with the exception of the changes that incorporated the TIF. Due to the potential for conflicts between the provisions of both bills, SB 1747 contains a provision that explicitly states that the amendment adding Sections 222.1071 and 222.1072 prevails over the amendment in HB 2300 and that Section 1 of HB 2300 has no effect. This means that the only HB 2300 sections that are effective are Sections 2 and 3, and those sections mostly reiterate or provide additional detail to the provisions in SB 1747 (10, 11).

Summary of TRZ-Related Activity in the 84th Legislative Session

As noted previously, no changes were approved during the 84th Legislative Session to the legal framework of municipal and county TRZs, CETRZs, and port TRZs. There was, however, significant legislative activity around the issue. Most TRZ-related legislative activity revolved around county TRZs and CETRZs.

HB 4025 was the only TRZ-related bill that was approved by both chambers. HB 4025 attempted to address the constitutional limitation that counties have in using TRZ revenue to repay debt for

a specific project. The governor vetoed the bill on June 20, 2015, because in order to give counties authority to do this, the legislature must again ask voters to amend the constitution.

Along the same lines, House Joint Resolution (HJR) 109 was noteworthy in that it attempted to address this issue through a constitutional amendment similar to the one defeated by voters in 2011 (Proposition 4) but with more precise, transportation-specific language. The amendment would authorize counties to issue bonds or notes to finance transportation and infrastructure projects in a defined area to be repaid from increases in revenue from ad valorem taxes in the same area. The Texas Transportation Committee approved HJR 109, but it did not reach a full House of Representatives vote. Table 3 provides a summary of TRZ-related legislation that was considered during the 84th Legislative Session.

Table 3. Summary of TRZ-Related Activity in the 84th Legislative Session.

Bill	Relevant to	Description
HJR 109	County TRZs and CETRZs	HJR 109 proposed a constitutional amendment authorizing the legislature to permit a county to issue bonds or notes to finance transportation and infrastructure projects in a defined area to be repaid from increases in revenue from ad valorem taxes in the area. The bill was approved by the House Transportation Committee but did not reach the full House of Representatives vote stage.
HB 2866	CETRZs (eligibility for and allocation of grants from TIF)	HB 2866 proposed amending Section 256.101 (Subsection [2]) and Section 256.103 (Subsection [a]) of the Transportation Code relating to eligibility for and allocation of grants for county infrastructure projects from the TIF. The proposed amendments would expand the grant program to include infrastructure projects other than those intended to address the impact of oil and gas production. The bill would also amend the formula allocating grant funds by decreasing the allocation based on well completions from 50 percent to 40 percent and adding a 10 percent allocation relating to international bridge crossings. The bill did not reach the committee vote stage at the International Trade and Intergovernmental Affairs Committee.
HB 3371	CETRZs (eligibility for and allocation of grants from TIF)	HB 3371 proposed amending Section 256.103, Subsection (b), of the Transportation Code to modify the allocation of grants among counties. Grants allocated according to weight tolerance permits would be reduced to 15 percent, grants allocated according to oil and gas production taxes would be reduced to 15 percent, grants allocated according to well completions would be reduced to 40 percent, and grants allocated according to the volume of oil and gas waste injected would be increased to 30 percent. The bill did not reach the committee vote stage at the House Transportation Committee.

Table 3. Summary of TRZ-Related Activity in the 84th Legislative Session (Continued).

Bill	Relevant to	Description
HB 3769	Port authority TRZs	HB 3769 proposed amending Chapter 201, Subchapter H, by adding Section 201.623 of the Transportation Code to add a description designating priority corridors or segments of highways in the state highway system that have international importance. HB 3769 also proposed modifying Section 222.1075, Subsection (1), by adding Section (B), as well as Subsection (3) by adding a description to include <i>inland port</i> in the definition of <i>port project</i> . Finally, it proposed amending Section 222.1075 by adding Subsection (n) to include a description related to designating a port authority TRZ for a port project located outside the boundaries of the port authority only if certain conditions are met. The bill did not reach the committee vote stage at the International Trade and Intergovernmental Affairs Committee.
HB 4025	CETZs	HB 4025 proposed modifying Section 222.1071, Subsections (b), (f), (i), and (m), of the Transportation Code to replace the word <i>zone</i> with the word <i>county</i> or <i>counties</i> . It also proposed amending Section 222.1072, Subsection (a), to remove the condition to apply for a grant under Chapter 256, Subchapter C, by saying a county may create an advisory board. The bill was approved by both the House and Senate but vetoed by the governor because in order to give counties the authority to use TRZ revenue to repay project-specific debt, a constitutional amendment would be required.
SB 1788	CETZs	SB 1788 proposed making modifications on the same terms as HB 4025. The bill was approved by the Senate Committee on Transportation but was not placed on the intent calendar for a full Senate vote.
SB 1875	CETZs	SB 1875 was considered similar (not identical) to HB 4025. SB 1875 also proposed amending Chapter 256, Subchapter C, of the Transportation Code to add a description to the definition of well completion to include both a traditional and horizontal oil and gas well. The bill also proposed amending Section 256.106, Subsections (a) and (b). Subsection (a) adds another condition for counties applying for second or subsequent grants to provide an update and brief description of the status of all ongoing projects. Subsection (b) removes “one half of one percent” and replaces it with “one percent.” The bill was approved by the Senate but not further pursued after the receipt of HB 4025 approved by the House.

Summary of Legislative Evolution

This section describes the evolution of TRZ law as it was originally conceived in SB 1266. It compares SB 1266, passed in the 2007 80th Legislative Session, to other bills passed in the 82nd and 83rd Legislative Sessions (HB 563 and SB 1110, respectively) along several implementation criteria as they may apply to both municipal and county TRZs. Some of the most active areas for the TRZ bills pertain to project definition, boundary changes (limits), and the ability to rescind pledges. One of the most significant contributions made by HB 563 is to recognize that local

entities cannot be penalized by a reduction in state transportation funds for providing local match contributions to projects from TRZ-generated revenues.

With regard to TRZ implementation, SB 1110 made significant modifications by allowing for the multimodality of TRZs' applicability to rail, transit, parking lots, ferries, and airports, while SB 971 went a step further to allow for port and navigation projects, suggesting that these may be applicable for a variety of other navigation projects according to definitions provided in the Transportation Code. SB 1110 also allows for the consideration of multiple projects and for joint administration of TRZs.

This section discusses the bills that introduce and define port and navigation TRZs and CETRZs. Although a number of bills with proposed amendments to current TRZ legislation were considered in the 84th Legislative Session of 2015, none of them were approved.

Assessment of TRZ Implementation Experience

Researchers contacted representatives of local governments and other agencies throughout the state that have considered or may be considering pursuing TRZ financing in their communities. The goal of this outreach effort was to document their experiences with TRZs as a potential funding and financing mechanism in their region or community, with a focus on advantages and limitations including lessons learned.

Participants in the study were selected among those who responded to the recruitment email notice or phone call as having interest or experience in the use of TRZs in their own community or elsewhere in the state. Researchers received interview responses from 11 stakeholders representing five counties and six cities that were well distributed by jurisdiction and geography throughout the state as follows:

- By type of jurisdiction represented:
 - City (four respondents).
 - MPO (one respondent).
 - RMA (four respondents).
 - TxDOT (two respondents).
- By geography:
 - West Texas (three respondents).
 - Lower Rio Grande Valley (two respondents).
 - East/northeast (three respondents).
 - Central Texas (three respondents).

Challenges in Implementation of County TRZs

County TRZs mainly provide partial funding and sometimes local matching dollars for projects in smaller communities, where the participation of the county with funding is often critical to make a project come to fruition. The main challenges identified in the implementation of county TRZs by the respondents were the following:

- Respondents reported that counties are constitutionally prevented from using TRZ revenue to pledge to the repayment of debt issued for a project (including a transportation project) aimed at developing or redeveloping an area within the county. Several AG opinions have made it clear that use of county TRZ revenue to secure debt could be constitutionally challenged, and the most recent opinion (KP-0004) indicates that merely collecting and using funds for a county TRZ on a pay-as-you-go basis may be subject to constitutional challenge (1). A constitutional amendment was filed to address the issue

but was defeated in the 2011 election (Proposition 4). In the interim, some other efforts are being undertaken:

- Identifying other allowable uses for early-stage TRZ revenues. TRZ revenues in early years are relatively small and cannot be used to fund project construction, but they may be sufficient to pay for soft project development costs (e.g., engineering design costs). Some counties are currently using early TRZ revenues to pay for some of these costs.
- Establishing county TRZs as an accounting tool. A few other counties are looking at simply setting up a TRZ for accounting purposes (e.g., tracking of revenue related to development spurred by the project) and using GO bonds to pay for their share of the project.
- Respondents suggested that legislation be modified to explicitly allow counties to use TRZ revenue to pay for maintenance and operation expenses. The law currently does not prohibit this use but does not explicitly allow it, which discourages counties from considering this use.

TRZs and SIB Loans

According to respondents, SIB loans offer local governments the most favorable and cost-effective option to secure long-term project financing when using TRZ revenues as collateral. As a result, virtually all local governments considering TRZ financing are also considering the use of an SIB loan for their projects. The outreach effort provided an opportunity to understand the constraints in the use of SIB financing in conjunction with TRZ revenues. The key points noted by respondents were:

- Most communities considering TRZ financing are also considering pursuing an SIB loan along with it to secure debt under favorable conditions. However, the use of SIB loans is by law currently limited to projects that are on the state highway system, which by extension limits the ability of local governments to use the TRZ mechanism on off-system projects.
- The use of SIB loans federalizes the projects where the TRZ mechanism is used, increasing delivery costs and delaying implementation in order to comply with federal regulations (e.g., National Environmental Policy Act requirements).⁸
- In 2013, in order to address the issues with the use of SIB on off-system projects, some RMAs requested that the legislature consider setting up a separate SIB with state-only money, or set up two accounts in the current SIB (one with the current mixed

⁸ These requirements for SIB financing are detailed by TxDOT at <http://www.txdot.gov/inside-txdot/office/innovative-finance/sib.html>. This information also notes that the project should be in the Texas Statewide Transportation Improvement Plan.

federal/state fund blend and one with state-only funds). However, no legislative action was taken.

- TRZ revenue cash flows are by nature characterized by a slow start with small increments over the base that grow over time. On the other hand, debt service requirements of loans (and/or bonds) are often structured as equal periodic payments (i.e., annual or semi-annual). This asymmetry often means that in the first several years of TRZ life, revenues are likely to fall short of the required debt service, and in the late years, TRZ revenues are likely to exceed the required debt service. Therefore, if the transportation project does not spur new development or if by design revenues fall short, in the first several years of TRZ life, TRZ debt service will require a transfer of a portion of local funds. This situation may create a (negative) perception that the TRZ in question requires a subsidy and therefore is not a desirable funding mechanism.

In summary, local communities consider county TRZs a good tool for expression of a community's commitment to transportation funding, but the implementation-related complications (i.e., limitations of county TRZs and SIB loan requirements) are perceived to dilute the advantages the TRZ may have over simply pursuing regular GO bonding to fund the local share of a project. Further, the series of AG opinions addressing county TRZs has undermined their use in connection with project financing. This is because there is a perception that these AG opinions on county TRZs may also be relevant to municipal TRZs.

Appendix: Key Changes Made to Municipal and County TRZ Legislation since Its Inception

This appendix expands on Table 2 and discusses in further detail the key changes that municipal and county TRZ legislation experienced from 2007 (when SB 1266 was first enacted into law) through the legislative sessions of 2011 and 2013. Three bills are discussed jointly—the original TRZ bill (SB 1266) and later bills passed in 2011 and 2013 (HB 563 and SB 1110, respectively). The discussion centers on changes made in the implementation or administration of municipal and county TRZs.

The changes in the legislation that governs municipal and county TRZs can be classified into two main categories:

- Administrative changes, which relate to how different local jurisdictions (municipalities and counties) that are involved in a transportation project interact with themselves and with TxDOT.
- Procedural changes, which relate to how a TRZ is implemented or modified through its life cycle. Procedural changes have been directed to making the implementation process easier for local governments to consider pledging local dollars as a funding mechanism for projects.

This section discusses the following changes:

- Administrative and procedural changes generally applicable to both municipal and county TRZs.
- Administrative and procedural changes applicable to either municipal *or* county TRZs.

Administrative Changes Applicable to Both Municipal and County TRZs

Support of Projects in an Adjacent or Contiguous Region

In 2013, SB 1110 allowed support of a project in an adjacent or spatially contiguous jurisdiction. The bill provides for the formation of a TRZ in an adjacent jurisdiction to support a project located outside the TRZ boundaries (provided the project serves a public purpose and will benefit persons and property within the zone). The ability to create a TRZ to support a project in an adjacent area is based on the notion that the benefits of a project do not stop at a city limit or county line. In essence, a local government may designate a TRZ for a transportation project located outside the local government's boundaries if certain criteria are met as defined by the provisions of the bill. SB 1110 expands the uses of a TRZ by providing that:

- The governing bodies of two or more local governments that have designated a zone may enter into an agreement to provide for the joint administration of two or more adjacent zones.
- The governing body of a county or city may designate a TRZ for a transportation project located outside its boundaries if:
 - The project will benefit the property and residents located in the zone, and the creation of the zone will serve a public purpose of that county or city.
 - A zone has been designated for the same project by one or more counties or cities in whose boundaries the project is located.
 - An agreement provides for joint support of the designated zones (effective September 1, 2013).

Multiple Projects

In 2013, SB 1110 made a further modification to allow one or more projects to be considered in one contiguous zone. SB 1110 also clarifies the language regarding the commitment of TRZ revenues to satisfy contractual obligations, and provides for increased consistency between municipal- and county-created TRZs (10). SB 1110 provides that notwithstanding any other law, the governing body of a county or city may designate a TRZ for a transportation project located outside the boundaries of the county or city if certain conditions are met (12). These specified conditions are:

- The county or city finds that the project will benefit the property and residents located in the zone.
- The creation of the zone will serve a public purpose of that county or city.
- A zone has been designated for the same project by one or more counties or cities in whose boundaries the project is located.
- An agreement for joint support of the designated zones is entered into by the county or city whose boundaries do not contain the project and one or more of the counties or cities that have designated a zone for the project and in whose boundaries the project is located.

In summary, the evolution of the TRZ legislation from SB 1266 to HB 563 and SB 1110 (Table 2) shows the term *transportation project* itself has evolved from being limited to pass-through roadway projects to including all types of multimodal projects under Section 370.003 of the Transportation Code. The language has also evolved to include one or more transportation projects and adjacent region projects under certain conditions. This area has been one of the most active and amended sections of the legislation originally encapsulated in SB 1266.

Local Governments' Ability to Contract with a Public or Private Entity/Alternate Collection Mechanisms

The law originally enabled counties to create RUDs and establish a combination of tax abatements and assessments. Under the RUD alternative, the abatements and assessments are supposed to be established in an amount equivalent to the expected future tax increments for all properties within the zone, with the assessments being used to fund the RUD. Under HB 563, the municipality or county may contract with a public or private entity to develop, redevelop, or improve a transportation project in a TRZ and may pledge and assign all or a portion of the tax increment revenue received from assessments to that entity. HB 563 prohibits a municipality or county from rescinding that pledge once made if the entity that received the pledge has in turn pledged or assigned the amount to secure bonds or other obligations. SB 1110 develops this alternative collection mechanism capability further.

SB 1110 provides counties with an alternative collection mechanism aside from the RUD option originally provided by SB 1266. The alternative provided by SB 1110 includes the ability to pay into a tax increment account or collect revenue from assessments on property within the zone. Furthermore, the law allows a county to contract with a public or private entity to carry out the project, and to pledge and assign to that entity all or a specified amount of the revenue the county receives from the tax increment or the assessment payments for the payment of the costs associated with the project.

Joint Administration of TRZs

SB 1110 addresses governance aspects of potential joint administration of TRZs that can arise in the context of multijurisdictional TRZs or multiple TRZs (i.e., both a municipal TRZ and a county TRZ). Section 222.111 is added to Subchapter E of the Transportation Code. The governing bodies of two or more local governments that have designated a TRZ under Sections 222.106 and 222.107 for the same project may enter into agreement to provide for joint administration of TRZs. The agreement can include:

- A board of directors.
- A joint increment account.
- Separate accounts for projects under Sections 222.106 and 222.107.
- Commitments to transfer the increment account or assessment to joint administration.
- To the extent legally permissible, the pledge of the portion of increment dedicated to the project to the joint administration account.

No Reduction in Traditional Funding Sources

A major change introduced by HB 563 was the removal of any language suggesting that traditional transportation funding sources would be jeopardized if local funds were used. This

change can be perceived as a significant motivator for considering TRZ funding because there is no financial penalty for a local entity to put forth local resources.

Requiring Delegation of Project Development Authority

SB 563 notes that if a transportation project is subject to oversight by TxDOT, then the department may have the option and may be permitted to delegate project development authority to municipalities or counties.

Bond Issue

HB 563 and SB 1110 authorize a municipality or county to issue bonds secured by a pledge of the tax increment. However, the constitution does not allow counties to issue bonds.⁹ On the financial side, capital markets continue to be somewhat skeptical of bonds because revenue projections are considered inherently risky, regardless of the quality of projections.

Procedural Changes Applicable to Both Municipal and County TRZs

Decoupling TRZs from Pass-Through Projects and Altering Definition and Scope of Applicability—Transportation Project and Location and Number of Projects

SB 1266 limited projects to only those included in Section 222.104 of the Texas Transportation Code (pass-through projects). HB 563 officially decoupled TRZs that capture tax increments from pass-through projects and provided for the formation of a TRZ for any transportation project identified in Section 370.003 of the Transportation Code.¹⁰ The definition of the term *transportation project* includes a range of multimodal project types:

- A turnpike project.
- A passenger or freight rail facility.
- A ferry.
- An airport.
- A pedestrian or bicycle facility.
- An intermodal hub.
- An automated conveyor belt for the movement of freight.
- A border-crossing inspection station.

⁹ The use of increment financing by counties to issue bonds has been noted as unconstitutional or a violation of the Texas Constitution (Chapter 311, Tax Code).

¹⁰ Transportation projects authorized under Transportation Code Section 370.003 include tolled and nontolled roads, passenger or freight rail facilities, certain airports, pedestrian or bicycle facilities, intermodal hubs, parking garages, transit systems, bridges, certain border-crossing inspection facilities, and ferries, according to the 2013 TxDOT report *Regional Mobility Authorities: A Partnership for Progress*, located at <http://ftp.dot.state.tx.us/pub/txdot-info/tpp/rma/regional-mobility-authorities-report-2013.pdf>.

- A transit system.
- A parking area, structure, or facility, or a collection device for parking fees.

Projects that are on the state highway system or located on state highway rights of way must continue to comply with applicable state and federal requirements for project development and design. In 2013, SB 1110 repealed Section 222.108, Subsection (d), which defined *transportation project* as linked to Transportation Code Section 370.003. This was amended by another bill also passed in 2013, SB 971, which modified the definition of *transportation project* in Subsection (d) to include transportation projects described by Transportation Code Section 370.003 as well as port security, transportation, or facility projects described by Transportation Code Section 55.001(5) (12).

Decoupling Pass-Through Requirements for Sales Tax TRZs

While HB 563 introduced the concept of a sales tax TRZ, SB 1100 goes one step further and decouples the use of sales tax TRZs from the pass-through program (so that a sales tax TRZ may be used for any transportation project as defined in Section 370.003).

Sales Tax Increment for Use in Funding Pass-Through Projects

Under HB 563, the governing body of a municipality or county may determine (in an ordinance or order designating an area as a TRZ, or in an ordinance or order adopted subsequent to the designation of a zone) the portion or amount of sales tax increment generated from the sales and use taxes imposed by a municipality attributable to the zone, above the sales tax base. A county that designates a portion or amount of the sales tax increment under the subsection must establish a tax increment account. The applicable projects are only those authorized under Section 222.104 of the Transportation Code. SB 1110 goes one step further and adds applicable projects as those under Section 222.108. Specific provisions with respect to the sales tax increment are as follows:

- Sales tax base. HB 563 defines the sales tax base for a TRZ as the amount of sales and use tax imposed by a municipality or county attributable to the zone for the year in which the zone was designated (this does not encompass the state portion of the sales tax).
- Portion of the sales tax increment to be set aside. A municipality or county determines (in the order or ordinance creating a TRZ, or in a subsequent order or ordinance) the portion of the tax increment generated from sales and use taxes imposed by the municipality or county attributable to the zone, above the sales tax base.
- Local government–state comptroller agreement. A municipality or county enters into an agreement with the comptroller to provide for the withholding of the sales tax increment and deposit of the money into a tax increment account.
- Payments. A municipality or county is authorized to use the sales and use tax deposited into the tax increment account to pay for pass-through projects and to satisfy claims of

holders of tax increment bonds, notes, or other obligations issued or incurred for pass-through projects.

- Public hearing. A public hearing on the designation of the sales tax increment is required.

TRZ Boundary Amendments

Another major way in which HB 563 changed TRZ law was to allow changes in boundaries after establishment only to the extent that properties could be added but not deleted or excluded from the original boundary. SB 1110 confirms this and adds another requirement that it is only possible as long as no part of the tax increment account has been assigned or pledged directly by the city or through another entity to secure bonds or other obligations for the project. It also limits conditions when property can be added.

Section 3 of SB 1110 amends Sections 222.106 (i-2) of the Transportation Code to allow boundaries of a zone to accommodate changes in the limits of a project for which a reinvestment zone was designated, at any time. However, property is prohibited from being removed or excluded from a designated zone if any part of the tax increment account has been assigned or pledged directly by the municipality or county, or through another entity, to secure bonds or other obligations issued to obtain financing, rather than funding, of the project or provide funding for the development of a project. Property is also prohibited from being added to a designated zone unless the governing body of the municipality complies with Subsections (e) and (g). This takes HB 563 recommendations further by allowing zonal modifications at any time until revenues have been pledged. Once revenues have been pledged, no further changes are possible.

Administrative Changes Applicable to either Municipal or County TRZs

Flexible Increment Set Aside for Municipal TRZs

The governing body of the city or county creates the TRZ by adoption of an ordinance, order, or resolution following a public hearing. In the case of a municipal TRZ, the law under SB 1266 originally required cities to pay the entire tax increment produced from taxes collected on property in the TRZ into a tax increment account, which could then be used to fund a pass-through project. HB 563 made changes to these SB 1266 provisions by allowing portions of the increment instead of the full amount of the tax increment to be allocated toward the TRZ. Therefore, a significant change included removing the requirement that all of the money deposited to the tax increment account be used to fund a project so that a municipality may specify the portion of the tax increment that is to be used for project purposes (allowing the rest to be used for general fund purposes). This is carried over by SB 1110.

Restrictions on Rescinding Pledges of Increment for Municipal or County TRZs

SB 1110 amends the provision introduced by HB 563 to prohibit the governing body of the municipality, after a pledge or assignment is made, from rescinding its pledge or assignment until the bonds or other obligations secured by the pledge or assignment have been satisfied.

Use of TRZ Surplus

HB 563 and SB 1110 allow any surplus remaining in a tax increment account on termination of a zone to be used for other purposes as determined by the municipality or the county commissioner's court.

Procedural Changes Applicable to either Municipal or County TRZs

Declaration of Base Year and Preexisting Commitments

The revisions require that the base year for analysis be established and that an ordinance or resolution whenever adopted identify the base year for freezing the increment portion. Preexisting obligations and commitments like tax increment finance zones or abatements are required to be considered in the development of TRZs.

TRZ Termination

SB 1110 makes a change to HB 563 with respect to the termination date of municipal or county TRZs: A TRZ will terminate on December 31 of the year in which the municipality completes a contractual requirement, if any, that included the pledge or assignment of money deposited to a tax increment account or the repayment of money owed under an agreement for development, redevelopment, or improvement of the project for which the zone was designated, or on December 31 of the 10th year after the year the zone was designated, if before that date the municipality has not entered into a contract with a public or private entity to develop a transportation project within the zone or otherwise not used the zone for the purpose for which it was designated.

References

1. Paxton, K. Letter to Joseph C. Pickett, Texas House of Representatives, Re: The Authority of a County to Form and Operate Transportation Reinvestment Zones, Tax Increment Reinvestment Zones, or County Energy Transportation Reinvestment Zones in Various Circumstances (RQ-1215-GA). February 26, 2015. <https://www.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0004.pdf>.
2. Vadali, S., R. Aldrete, A. Bujanda, S. Samant, Y. Li, T. Geiselbrecht, B. Kuhn, S. Lyle, K. Dalton, M. Zhang, and S. Tooley. *Planning Tools to Assess the Real Estate Leveraging Potential for Roadways and Transit*. Report FHWA/TX-11/0-6538-1, Texas A&M Transportation Institute, College Station, Texas, 2011.
3. Texas Legislature Online. SB 1266. <http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=80R&Bill=SB1266>.
4. Texas Secretary of State. HB 563. <http://www.sos.state.tx.us/statdoc/bills/82nd/hb/HB563.pdf>.
5. Texas Legislature Online. SB 1110. <http://www.legis.state.tx.us/tlodocs/83R/analysis/html/SB01110S.htm>.
6. Texas Legislature Online. SB 971. <http://www.legis.state.tx.us/tlodocs/83R/analysis/html/SB00971S.htm>.
7. Texas Legislature Online. Transportation Code, Title 4, Chapter 55, Funding of Port Security, Projects and Studies. <http://www.statutes.legis.state.tx.us/Docs/TN/html/TN.55.htm>.
8. Texas Legislature Online. SB 1747. <http://www.legis.state.tx.us/tlodocs/83R/analysis/html/SB01747S.htm>.
9. Abbott, G. Letter to Marco A. Montemayor, Webb County Attorney, Re: Constitutional Questions Related to Funding of County Energy Transportation Reinvestment Zones (CERTZ) (RQ-1187-GA). August 14, 2014. <https://www.texasattorneygeneral.gov/opinions/opinions/50abbott/op/2014/pdf/ga1076.pdf>.
10. Locke, Lord, LLP. *Texas Transportation Legislation: Overview of the 83rd Regular Legislative Session*. June 17, 2013. http://www.mobilityauthority.com/monkeewrench/files/board_books/12_16.pdf.
11. Texas Legislature Online. HB 2300. <http://www.legis.state.tx.us/tlodocs/83R/billtext/html/HB02300I.htm>.
12. Combs, S. Texas Property Tax Law Changes 2013, Property Tax Bills: 83rd Texas Legislature, Regular. October 2013. http://www.window.state.tx.us/taxinfo/proptax/laws/96-669_2013.pdf.