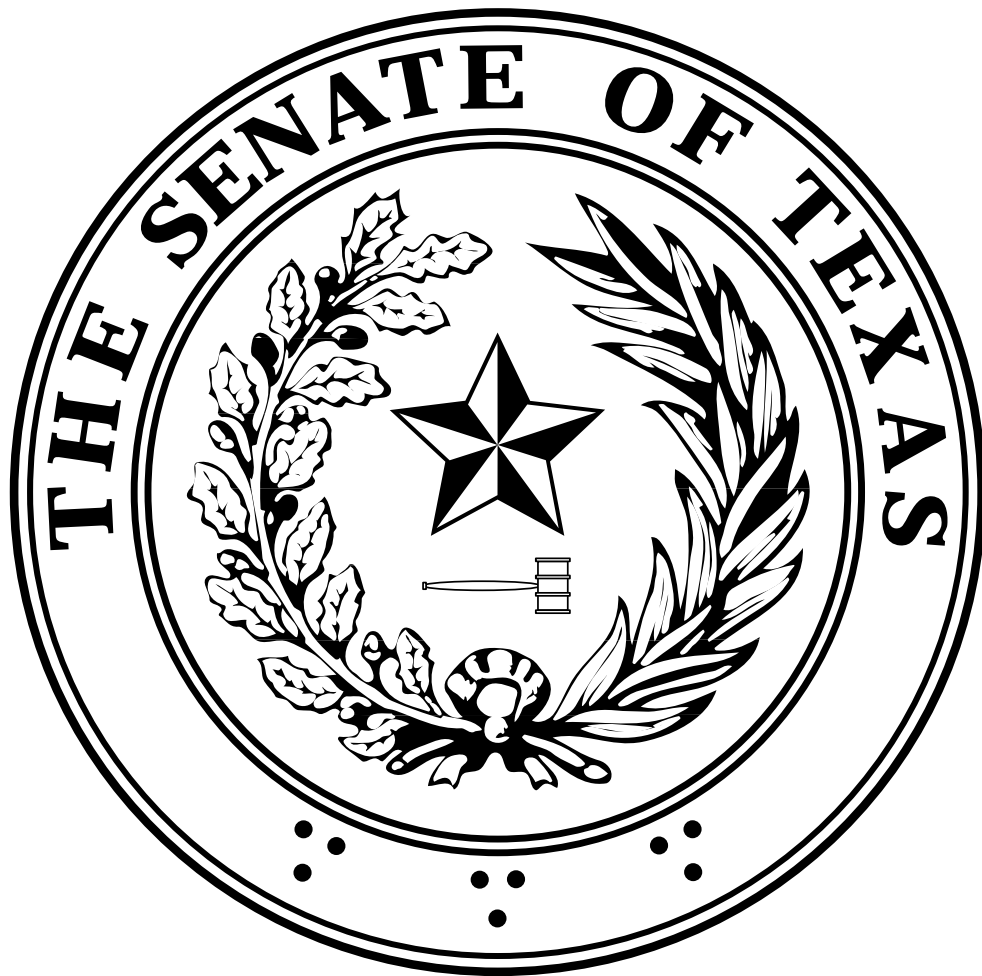


Senate Committee on State Affairs
Report to the 77th Legislature



Charge 1

Intermodal Transportation

Acknowledgments

The Senate State Affairs Committee would like to recognize all the people who assisted with this charge for their hard work and without whose assistance this report would not be possible. A list of the people who gave testimony is contained in Appendix III. In particular the State Affairs Committee would like to thank the following and their representatives: the Texas Transportation Commission, the Texas Department of Transportation, the Legislative Budget Board, the State Comptroller's Office, and the Senate Special Committee on Border Affairs.

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Executive Summary

The Charge: Evaluate the state's intermodal transportation planning efforts with an emphasis on NAFTA-related trade corridors and their impact on both metropolitan and rural areas of the state. The Committee shall address all modes of transportation including highways, farm-to-market roads, turnpikes, mass transit, aviation, railroads and water traffic. The Committee shall determine whether the state is maximizing federal funding levels, and evaluate alternative and innovative methods of transportation funding and develop recommendations for their use. The Committee shall coordinate study of this issue with the Special Committee on Border Affairs. The final preparation of the report will be the responsibility of the State Affairs Committee.

Highway Planning

Findings: The Senate State Affairs Committee recognizes that the development of a multi-year, statewide comprehensive plan in Texas requires the use of complex decision-making processes. But the complexity of the process used to satisfy the transportation needs of Texas must be balanced with the right of Texans to hold decision-making bodies accountable. The current system's complexity often defies assessment regarding the merits of its selection criteria and determinations, creating confusion among citizens wondering why certain projects are built while others are not and speculation regarding the choices made by decision-making bodies.

Recommendations

(1) The Senate State Affairs Committee recommends that the legislature create an interim task force to review the process for project selection used by the Texas Transportation Commission. The task force should be authorized to review the selection process by establishing acceptable minimum levels of transportation service and evaluating how well the commission's current selection process achieves those standards. The minimum levels of service should include such criteria as mobility, accessibility, safety, congestion mitigation, and air quality. The task force should also consider how well the various transportation planning organizations cooperate with each other and whether minimum levels of service

are attainable given current funding sources.

Infrastructure Funding

Findings: The State of Texas dedicates certain funds for the sole purpose of constructing, maintaining, and policing public roadways. Over the years, a substantial portion of these funds have been diverted to marginally related activities. While these activities are vitally important to the State of Texas, their funding represents a subsidy of activities that should be funded from general revenue and not at the expense of the highway fund. Removal of these funds from the intended purpose of the highway fund significantly impacts Texas' ability to fund its infrastructure needs.

Recommendations

(2) The State Affairs Committee recommends returning the taxes and fees generated from the following programs from the general revenue fund back to the highway fund: motor vehicle inspection fees, driver license fees, and driver record information fees. At a minimum, the State Affairs Committee recommends that the amount diverted from the highway fund to administer these programs be deducted from the revenues generated and returned to the highway fund and only the excess revenues be deposited in the general revenue fund.

(3) The committee recommends returning highway fund monies used by DPS for non-highway related purposes, such as capitol security, etc., back to the highway fund. This legislation should carry a caveat that it becomes null and void unless alternative funding sources for DPS can be found resulting in no decrease to DPS funding.

(4) The committee recommends returning to the highway fund vehicle registration fees in an amount equal to five percent of the vehicle sales tax collected that counties currently retain, and conforming current statute to allow counties to retain five percent of the vehicle sales tax collected, as they did prior to 1992. This recommendation does not affect the constitutional dedication of vehicle registration fees to counties.

(5) The committee recommends reviewing benefits received by the state from the increased reporting requirements for motor fuels tax collection and evaluating whether moving the point of collection of motor fuels taxes would bring further benefit to the state.

(6) The committee recommends that the legislature memorialize Congress and the United State Department of Transportation to increase the percentage of discretionary funding granted to Texas in order to raise the state's rate of return of federal gas taxes to the TEA-21 intended 90.5 cents on the dollar.

Innovative Financing Methods

Findings: The ability of Texas to make the most of its transportation dollars will depend greatly on the state's ability to explore and utilize new ways of using current funds. While new avenues of funding, such as Transportation Infrastructure Finance and Innovation Act (TIFIA) loans, have opened under federal law, changes in federal law have closed other avenues, such as the withdrawal of federal funding from the State Infrastructure Bank program. The lack of adequate funding for Texas' infrastructure requires that the state investigate funding methods outside the traditional 'pay-as-you-go' model.

Recommendations

(7) The Senate State Affairs Committee recommends that TxDOT continue exploring federal finance mechanisms, such as Transportation Infrastructure and Innovation Act (TIFIA) loans, within the scope of authority and power granted in the current state statutory framework.

(8) The committee recommends the legislature memorialize Congress to reinstate federal funding for Texas' State Infrastructure Bank.

(9) The committee recommends the legislature establish a Revolving Transportation Bond Fund out of revenue streams returned to the highway fund. The fund should be maintained outside of and in addition to the current highway fund and the amount of bonds purchased through this fund should be limited to the amount that the fund can support, as determined by the legislature.

Toll Authorities

Findings: The Texas Constitution prohibits the Texas Department of Transportation (TxDOT) from contributing partial payment of toll projects, thereby preventing TxDOT from maximizing the building of needed roads in Texas. Further, state requirements prevent the Texas Turnpike Authority (TTA) from maintaining a separate fund outside the general revenue fund, making state toll projects riskier in private investors' minds. This unnecessary risk prevents TTA from maximizing the lowest possible interest rates on bonds purchased to finance toll projects. Finally, disparity in the statutes governing TTA and Regional Toll Authorities creates an anomaly in Texas law.

Recommendations

(10) The State Affairs Committee recommends passing a constitutional amendment to remove the requirement that TTA repay all funds received from TxDOT for construction, operation, and maintenance of toll projects.

(11) The committee recommends enacting legislation to allow TTA to maintain bond proceeds outside the state general revenue fund.

(12) The committee recommends enacting legislation to provide parity between the Turnpike Act (Chapter 361, Transportation Code) and the Regional Tollway Authority Act (Chapter 366, Transportation Code) by incorporating in the Turnpike Act the improvements made during the 75th Legislature in the Regional Tollway Authority Act.

Freight and Passenger Rail

Findings: Rails provide a potential avenue to relieve the burdens facing the Texas highway system. Rails also provide an essential carrier service for many areas of Texas. As the rail industry transforms in the wake of deregulation, shippers are concerned with the possibility of needlessly being held captive due to a lack of available carriers. Rail also represents a resource valuable to the state of Texas which is cost prohibitive to rebuild. It is imperative that the state protect any viable track lines that are in danger of being abandoned.

Recommendations

(13) The State Affairs Committee recommends that the legislature memorialize Congress to relieve the plight of captive shippers (companies with access to only one rail carrier).

(14) The committee recommends the legislature create and fund a program for the state to acquire a rail in danger of abandonment.

Ports

Findings: Texas ports must compete for federal funding with one another as well as ports located in other states. Ports play a major role in intermodalism, yet are not represented by voting members on their local Metropolitan Planning Organizations (MPO).

Recommendations

(15) The State Affairs Committee recommends the legislature encourage TxDOT's Port Authority Advisory Committee to continue working with the Texas Transportation Commission in order to coordinate infrastructure development; and prioritize projects outside of port gates to improve access to and from Texas' competitive inland and coastal ports.

(16) The committee recommends the legislature encourage Metropolitan Planning Organizations that have a port within their jurisdiction to seek and accept input from the port authority when planning future transportation projects.

Senate Committee on State Affairs

Lieutenant Governor Rick Perry directed the Senate State Affairs Committee to: “[e]valuate the state’s intermodal transportation planning efforts with an emphasis on NAFTA - related corridors and their impact on both metropolitan and rural areas of the state. The Committee shall address all modes of transportation including highways, farm-to-market roads, turnpikes, mass transit, aviation, railroads and water traffic. The Committee shall determine whether the state is maximizing federal funding levels, and develop recommendations for their use. The Committee shall coordinate study of this issue with the Special Committee on Border Affairs. The final preparation of the report will be the responsibility of the State Affairs Committee.”¹ In an effort to hear concerns related to this charge from all areas of the state, the State Affairs Committee received testimony in El Paso, Laredo, Irving, Lubbock, Houston, Brownsville, and Austin. Most of these hearings were held in conjunction with the Senate Border Affairs Committee.

Introduction

Transportation edifies the modern world by providing a means of distribution for both people and products. As such, transportation has and is an area of prime importance for governmental bodies. As a sphere of government action, transportation possesses a unique mix of qualities not often found in governmental programs. First, everyone uses some portion of the state’s transportation system daily whether by traversing the system or buying products transported on the system. Thus, while people may disagree on the importance of varying transportation philosophies (e.g. highways versus rails), the system as a whole significantly impacts people’s lives. Second, everyone uses an unspoken evaluation device for the transportation system - how easy is it to get from point A to point B. Because people have dealt with the transportation system all their lives, they intuitively judge how well the system provides for their personal interests in movement. Third, the product of the state’s efforts regarding transportation is tangible. Citizens see the presence of or need for construction of transportation projects. On the surface it appears easy to determine whether the state takes appropriate action when necessary. These variables combine to make

¹ Letter from Lieutenant Governor Rick Perry to the Senate Committee on State Affairs, September 7, 1999.

transportation an issue that touches all Texans on a personal level and in a way that allows them to judge whether the system works.

The convergence of several factors have severely impacted the Texas transportation system. The aging infrastructure, the burgeoning population growth, and the influx of the North American Free Trade Agreement (NAFTA) trade build on each other, further exasperating their impact on Texas' infrastructure. In the wake of these events, the lieutenant governor delivered the intermodal transportation charge to the Senate State Affairs Committee and the Special Committee on Border Affairs. The State Affairs Committee views this charge as a call to determine whether the Texas transportation system is experiencing a crisis situation initiated by the aforementioned events, and if so, to make recommendations that will facilitate the resurgence of the Texas transportation system.

Understanding transportation in Texas requires a brief look at the development of the transportation system. The mid-twenties saw a bleak period of chicanery and political patronage that marred the transportation system,² culminating with the Federal Bureau of Public Roads refusing to participate in Texas highway projects.³ As a reaction to this political fiasco and federal embargo, the Texas transportation agency was reorganized.⁴

The lingering sentiment from the transportation fiascos of the twenties spurred the adoption of the Good Roads Amendment in 1946.⁵ This constitutional amendment created a dedicated highway fund from revenues generated by motor vehicle registration fees and taxes on motor fuels and lubricants which could be used only for "... acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of laws ... pertaining to the supervision of traffic and safety on such roads..."⁶ One-fourth of this revenue was

² Smith, Griffen. "The Highway Establishment and How It Grew. And Grew and Grew." Texas Monthly April 1974.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Article VIII, Section 7-a, Texas Constitution.

and remains reserved for the Available School Fund.⁷

Fueled by a protected funding source, the following years saw an aggressive invigoration of the roadway system in Texas. The creation of a massive system of highways established one of the premier highway systems in the nation. However, the roads' life expectancies are fast approaching their end.

In 1991 the Texas Legislature created the Texas Department of Transportation, merging the responsibilities of the State Department of Highways and Public Transportation with the Department of Aviation and the Motor Vehicle Commission, and bringing highways, aviation, and public transportation under one roof.⁸ Additional transportation responsibilities have been brought into TxDOT, among them tolling capacity in 1997.⁹ These combined responsibilities have established TxDOT as the statewide transportation agency charged with developing a statewide transportation plan that includes all modes of transportation.¹⁰ A recent study indicates that under current revenue streams only an average of one-third of the identified needed highway improvements can be funded.¹¹ Further inquiries show that with funding capabilities at 50 percent of the optimum need, TxDOT could arrest and stabilize further deterioration of the system and sustain current levels of service.¹²

Rapid population growth also places a significant strain on Texas' infrastructure. Texas' population continues to grow faster than the nation as a whole,¹³ and is projected to reach over 20 million in the year 2000 and over 24 million by the year

⁷ Section 7-a, Article VIII, Texas Constitution.

⁸ Texas Department of Transportation. Strategic Plan 1999-2003: Moving Toward a Successful 21st Century. June 15, 1998, page I-28.

⁹ Ibid.

¹⁰ Section 201.601, Transportation Code.

¹¹ Texas Department of Transportation. Strategic Plan 1999-2003: Moving Toward a Successful 21st Century. June 15, 1998, page II-2.

¹² Ibid.

¹³ Ibid.

2010.¹⁴ Current growth trends occur in the major metropolitan areas as well as throughout the Texas - Mexico border region.¹⁵

The increased trade between Mexico and the U.S. due to NAFTA also has a significant impact on the Texas transportation system. Combined imports and exports grew from \$9.6 billion in 1977 to \$129.8 billion in 1996.¹⁶ The largest majority of NAFTA trade traverses the Texas transportation infrastructure system. It is estimated that 79 percent of all truck traffic between the U.S. and Mexico crossed the border at Texas ports of entry in 1995.¹⁷ A TxDOT survey showed that 33 percent of the cross border truck traffic traveled on to other states and Canada.¹⁸ NAFTA-related truck traffic accounted for 16.5 percent of all truck traffic on Texas highways in 1996 and approximately 75 percent of this traffic was on rural interstate highways and other rural highways.¹⁹ Thirteen highway corridors carry almost 90 percent of NAFTA truck traffic in Texas.²⁰ Studies indicate that in 1996, NAFTA imposed on Texas an estimated \$510.8 million in social costs (which include congestion, accidents, pollution and noise).²¹ Studies also show that for 1997, capital costs (which include preservation, mobility and safety projects) to meet the infrastructure demands created by NAFTA traffic required \$349.8 million for optimal needs and \$150.9 million to hold the line.²² As a result, there is a greater public need for all modes of travel as well for a high level of connectivity between modes.²³

¹⁴ Bernard L. Weinstein, Director, Center for Economic Development and Research, testimony presented to the Senate State Affairs Committee, November 19, 1999, p. 9.

¹⁵ Ibid. at p. 6.

¹⁶ Texas Department of Transportation. Effect of the North American Free Trade Agreement on the Texas Highway System. December 1998, p. 1.

¹⁷ Ibid.

¹⁸ Ibid. at p. 3.

¹⁹ Ibid.

²⁰ Ibid. at p. 4. Also see map in Appendix II.

²¹ Ibid.

²² Ibid. at p. 6.

²³ Texas Department of Transportation. The Texas Transportation Plan, Partnerships into the 21st Century. 1994 edition, p. 2.

While it remains easy for individuals to determine whether the transportation system provides for easier or more difficult movement, transportation planning on a state wide level remains complex. State funding of the system must be weighed against other programs that the state administers. Federal regulations limit how federal funds can be used.²⁴ Pollution factors must be accounted for, especially with several areas in Texas in or near non-attainment status under the federal Clean Air Act.²⁵ Furthermore, the Texas Constitution dedicates a large portion of available transportation funds to a single mode of transportation, highways.²⁶

The convergence of the aforementioned variables and factors on Texas' transportation infrastructure has strained the state's ability to meet vital transportation needs. The increasing population has outpaced funding and the massive influx of trade has overburdened the ability of the current system to provide the service to which Texas is historically accustomed. While the manifestations can be seen most acutely in particular areas such as the major metropolitan areas and border ports of entry, the effects are statewide and require statewide solutions. The choke points at the border not only affect that region, but also the destination points of the goods throughout Texas and the entire United States. The increasing congestion of the metropolitan areas stymie the flow of goods and persons. The ailing rural roads and bridge deficiencies impede the ease of movement of goods and persons as they travel to, from, or through rural communities. The result is traffic delays, product shipping delays, dangerous roads, and economic loss as companies seek alternate areas to conduct business. Ultimately, the price is paid by the citizens of Texas.

TxDOT Background

The Texas Department of Transportation is the primary intermodal transportation infrastructure planning agency of Texas. A brief review of the agency's history and organization lays the groundwork for understanding the committee's charge and recommendations.

²⁴ Transportation Equity Act for the 21st Century, Pub. L. No. 105-178 (1998).

²⁵ Clean Air Act, 42 U.S.C. 7401 et seq.

²⁶ Sections 7a and 7b, Article VIII, Texas Constitution.

History:

In 1917 the Texas Legislature created the State Highway Department, governed by a three-member State Highway Commission, to coordinate and support highway construction.²⁷ The legislature dedicated vehicle registration fees for highway purposes, but this funding source proved inadequate, and in 1923 the legislature imposed a one cent per gallon gasoline tax, allocating three-fourths of the revenue to the state highway fund *and one-fourth to the available school fund*.²⁸ During this period, the department acted as a central state planning agency, with the primary role of coordinating and supporting counties in the construction of highways.²⁹ The legislature changed this approach in the 1920's, turning over the maintenance of state highways to the State Highway Commission (1923) and passing legislation providing for the construction and maintenance of a state highway system under the direct control of the department (1925).³⁰

The Interstate system in Texas was developed in 1957. In 1975, the legislature granted the department mass transportation duties and named the department the State Department of Highways and Public Transportation accordingly. A similar change occurred in 1991, with the merging of the combined Department of Highway and Public Transportation with the Department of Aviation and the Motor Vehicle Commission. Texas now had a multi-modal transportation department, governed by the Texas Transportation Commission. The various transportation laws were pulled together into the Transportation Code in 1995, although several pieces, such as the Texas Motor Vehicle Commission Code,³¹ governing vehicle dealers and the Lemon Law,³² are still found elsewhere. Legislative action spurred by the Sunset Advisory Commission's review of TxDOT in 1997, created the Texas Turnpike Authority Division and allowed

²⁷ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Article 4413 (36), Vernon's Texas Civil Statutes.

³² Section 6.07, Article 4413 (36), Vernon's Texas Civil Statutes.

TxDOT to stretch the transportation dollar through such innovative financing techniques as the State Infrastructure Bank.³³

Organization:

TxDOT has an unusual organizational structure in that it has four boards appointed by the governor to set policy.³⁴ The Texas Transportation Commission sets the policy for the department and hires an executive director.³⁵ The commission has three members, one of whom must reside in a rural area.³⁶ The governor designates a presiding officer of the commission,³⁷ who carries the title Commissioner of Transportation.³⁸

The Commissioner of Transportation is also one of seven members of the Turnpike Authority Board, which sets policy for the Turnpike Authority Division of TxDOT. The Motor Vehicle Board is made up of nine members and oversees the licensing and regulation of motor vehicle manufacturers, distributors, converters, and dealers. The Motor Vehicle Division enforces the Motor Vehicle Commission Code, including the Texas Lemon Law, and investigates complaints against licensees. The Automobile Theft Prevention Authority, with six appointees and the Texas Department of Public Safety's director or the director's designee, addresses the issue of automobile theft in Texas by providing grants to law enforcement agencies and conducting educational programs.³⁹ [See Appendix II for an organizational chart.]

³³ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Section 201.053, Transportation Code.

³⁸ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

³⁹ Ibid.

TxDOT Divisions and Offices:⁴⁰

TxDOT's divisions and offices augment the work of 25 regional, transportation districts. A district engineer heads each district and provides direction, management, and engineering oversight of all district activities, including transportation planning, operations, right-of-way, design, construction, inspection, maintenance, safety, and environmental functions.⁴¹ Each TxDOT district participates in the development of a three-year Transportation Improvement Program (TIP), which prioritizes future projects and is updated annually.⁴²

The divisions and offices form a central resource for the regional transportation districts. They develop and implement policy, manage statewide programs, and provide other support and services. TxDOT has 20 divisions, several of which are mandated by statute, including Aviation, Public Transportation, and Vehicle Titles and Registration. Other divisions include Motor Carrier, Right-of-Way, and the Traffic Operations Division. The newest division is the Bridge division, created in 1999 to provide a focus on these vital structures.⁴³

TxDOT's divisions and offices:

- The Aviation Division receives, disburses and administers federal funds for general aviation airports and is responsible for helping small communities build, maintain and upgrade airports.
- The Bridge Division oversees and provides assistance in matters of bridge program development, planning, structural design, plan development, and bridge construction and safety inspection.

⁴⁰ Texas Department of Transportation. "Division and Offices" *Online posting*. [Texas Department of Transportation website](http://www.dot.state.tx.us/insdot/geninfo/geninfo.htm#divspo). July 7, 2000. <<http://www.dot.state.tx.us/insdot/geninfo/geninfo.htm#divspo>>.

⁴¹ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

⁴² Weatherby, Cynthia A. "A Sourcebook - The Texas Department of Transportation and Its Partners Building Better Transportation Together." The Texas Transportation Institute. The Texas A&M University System. March 1999.

⁴³ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

- The Construction Division provides general oversight of the letting, management, and administration of highway construction contracts.
- The Design Division serves as a one-stop clearinghouse for project design of roads, rest areas, and landscapes.
- The Environmental Division is responsible for central coordination and oversight of all TxDOT environmental activities. It also acts as a liaison with state and federal resource agencies, the public, and other groups.
- The Finance Division manages the agency's accounting, contracts, financial planning, and payments.
- The General Services Division purchases, distributes and maintains equipment, materials, services, and facilities for the department. It also monitors the department's recycling program and provides contract services for the department.
- The Human Resources Division manages employee services, oversees employee performance planning and evaluation, and administers the department's training program.
- The Information Systems Division supports the business operations of TxDOT through the innovative application of information systems technology.
- The Maintenance Division provides general oversight for highway maintenance, the vegetation program, ferry operations, and highway rest areas.
- The Motor Carrier Division issues oversize/overweight load permits and temporary 72/144-hour registrations. It also is responsible for motor carrier insurance filings, vehicle storage facilities licensing, and interstate movement authority.
- The Motor Vehicle Division licenses new car dealers, distributors, converters, and manufacturers doing business in Texas. The division also enforces Texas' Lemon Law.
- The Occupational Safety Division promotes worker safety and deals with workers' compensation, insurance matters, and tort claims.
- The Public Transportation Division provides financial and technical assistance to urban, rural, and elderly or disabled transit providers. It represents transit in the planning and programming process and prepares funding-needs projections.
- The Right-of-Way Division acquires land to build highways and regulates

- outdoor advertising and junkyards.
- The Traffic Operations Division oversees safety and traffic management programs.
- The Transportation Planning and Programming Division is charged with statewide urban and rural multi-modal transportation systems planning; long-range programming; the Statewide Transportation Improvement Program; district allocation programs; management of the design Construction Information System (CIS) database; preparation of the presentation for the annual Transportation Commission public hearing of the project selection process; and preparation and distribution of maps. The division also studies state and national transportation issues.
- The Travel Division supports tourism by running travel information centers and publishing travel literature.
- The Turnpike Authority Division is responsible for the study, design, and construction of turnpike and toll projects as part of the state highway system.
- The Vehicle Titles and Registration Division administers a sophisticated, statewide computer system tracking motor vehicle registration information and certificates of title.
- The Audit Office conducts independent reviews of department operations as directed by the commission or executive director.
- The Civil Rights Office ensures equal opportunities in employment, promotions, and training, throughout the department.
- The Contract Services Office provides general oversight and support for the department's non-construction contracts.
- The International Relations Office advises the commission on international transportation in the region on both sides of the 2,000-mile U.S.-Mexico border.
- The Legislative Affairs Office monitors state executive and legislative as well as congressional activities and identifies proposed bills that may affect the department.
- The Office of General Counsel renders legal advice to every office of the department on all subjects relevant to TxDOT and its operations.
- The Public Information Office relates the TxDOT story internally and to the public and addresses the needs of its three audiences: TxDOT employees, the public and the news media.

Highway Planning

While the Texas Department of Transportation is considered an all encompassing transportation department, the main function of the department remains constructing and maintaining the state highway system. This fact may be attributed to the department's history as the Highway Department as well as its projected funding for 2000-01, which devotes over 90 percent of funding to highways.⁴⁴

The crux of testimony received by the committee indicates that the state's biggest problem regarding transportation is a lack of available funds for constructing identified highway needs. The Texas Constitution and various state statutes limit the use of state highway funds to highway related expenses only, yet much of this money has been reappropriated over the years to other purposes marginally related to highway expenditures. Coupled with the fact that Texas has historically been and remains a 'donor' state, meaning that Texas receives less in federal funding than it submits in federal gas taxes, the end result is that Texas can only fund one-third of identified, needed highway projects.

It has been documented that the department does in fact maximize its federal funding streams,⁴⁵ however, there exists the perception that TxDOT does not allocate these funds in a consistent and equitable manner. This perception can in part be attributed to the cumbersome means by which construction projects are selected by the transportation commission. The process for determining what projects will be selected for the limited amount of available funding could be made more discernable to the citizens and leaders of Texas. While Texas' transportation infrastructure development historically revolved around highway construction, transportation infrastructure of the future must have an emphasis on a multi-modal planning approach. TxDOT is required to consider all modes in

⁴⁴ See John Keel and Mark Wiles, Legislative Budget Board, "Department of Transportation and State Highway Fund Overview," testimony presented to the Senate State Affairs Committee, January 11, 2000, where 9.1% of TxDOT funding was devoted to a non-highway related category.

⁴⁵ Office of the State Auditor, A Review of the Use of Federal Funds at the Department of Transportation. Report No. -00-029, May 10, 2000. See Appendix V.

planning transportation.⁴⁶ Despite the constitutional restriction on multi-modal spending,⁴⁷ TxDOT must continue to improve its multi-modal planning efforts in order to reestablish Texas as a premier transportation infrastructure state.

While testimony presented to the committee illustrates TxDOT's ability to maximize use of federal highway funding received, the state is not always able to use its discretion in determining how to spend those funds. For example, as of October 1, 2000, TxDOT no longer had discretion over how it spends approximately \$48 million of incoming federal highway money for Fiscal Year 2001 due to the state's noncompliance with federal law.⁴⁸ TEA-21 requires that states enact legislation relating to the possession of open alcoholic beverage containers and the consumption of alcoholic beverages in the passenger area of any motor vehicle located on a state's public highway or the right-of-way of a public highway.⁴⁹ While the 76th Legislature considered legislation restricting open containers of alcohol from motor vehicles, no open container legislation was passed. In the absence of such legislation as of October 1 each year, the state is required to spend a percentage of its apportioned funds for the next fiscal year (amounting to approximately \$24 million in FY 2001) on alcohol-impaired driving countermeasures or enforcement of laws relating to drunk driving offenses.⁵⁰ Additionally, stiffer penalties against repeat drunk driving offenders are necessary to ensure the state retains maximum discretion in spending another \$24 million of the federal transportation dollars received for Fiscal Year 2001. These monies normally would be spent at TxDOT's discretion on highway construction projects.

TEA-21 also contains requirements for state legislation relating to blood alcohol levels and repeat offenders. Because the legislature passed legislation in 1999 lowering the acceptable blood alcohol content level for motorists, the state has retained discretion over millions of dollars in federal funding. Any failure in the

⁴⁶ Section 201.601, Transportation Code.

⁴⁷ The major source of funding for TxDOT remains the highway fund which is constitutionally restricted to spending on the construction of highways. See the Funding portion of this report for a more in-depth look at the spending restrictions.

⁴⁸ "Highway Robbery." Editorial. Dallas Morning News, September 18, 2000.

⁴⁹ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206 (1998) amending TEA-21.

⁵⁰ Ibid.

future to meet federal requirements may result in the loss of the state's discretionary power in the use of federal highway funds.

The means by which TxDOT plans and develops projects is an extremely complex and often times convoluted process. The procedure for allocating almost \$2 billion each year among its 25 district offices for some three dozen separate categories of highway and bridge projects is little understood outside the department.⁵¹ Due to the intricacies involved and the fact that in recent years Texas has been able to fund only a third of the needed highway projects in the state, project selection is an extremely important process and one that becomes very sensitive when considering various community and regional needs around the state.⁵²

The federal Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991⁵³ and the subsequent federal Transportation Equity Act for the 21st Century (TEA-21)⁵⁴ of 1998 made highway project selection an interactive process between TxDOT and the people within affected communities, including the general citizenry, planners, elected officials, and other leaders.⁵⁵ The foundation of project development is the involvement of community leaders, who enter the planning process at the earliest possible stage.⁵⁶

The selection of transportation projects can be simplistically viewed as two basic processes the department uses based on the size and scope of the project. Generally, the Texas Transportation Commission makes decisions on a statewide basis for larger projects that add new roads or expand existing ones.⁵⁷ The districts

⁵¹ Texas Sunset Advisory Commission. Texas Department of Transportation, Texas Turnpike Authority, Automobile Theft Prevention Authority, Sunset Staff Report. 1996.

⁵² Weatherby, Cynthia A. "A Sourcebook - The Texas Department of Transportation and Its Partners Building Better Transportation Together." The Texas Transportation Institute. The Texas A&M University System. March 1999.

⁵³ Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240 (1991).

⁵⁴ Transportation Equity Act for the 21st Century, Pub. L. No. 105-178 (1998).

⁵⁵ Weatherby, Cynthia A. "A Sourcebook - The Texas Department of Transportation and Its Partners Building Better Transportation Together." The Texas Transportation Institute. The Texas A&M University System. March 1999.

⁵⁶ Ibid.

⁵⁷ Texas Sunset Advisory Commission. Texas Department of Transportation, Texas Turnpike Authority, Automobile Theft Prevention Authority, Sunset Staff Report. 1996.

make decisions regarding more common, recurring needs, such as maintenance and rehabilitation, and smaller mobility projects through what TxDOT calls its bank balance program.⁵⁸ (Discussed later in this section.)

To achieve equitable distribution of project funds, Texas counties are divided into three population categories in which they compete for funding allocations. Federal laws and regulations define these categories as:

- Metropolitan counties - those within a Transportation Management Area (TMA) with a population of more than 200,000.
- Urban counties - those outside TMAs but which have populations of 50,000 or more.
- Rural counties - those with a population of fewer than 50,000 people.⁵⁹

Texas Transportation Commission Project Selection Process

The commission's process for selecting transportation projects is depicted in the flow chart, Texas Transportation Commission Project Selection Process, contained in the Appendix II of this report.⁶⁰

Identify Need for Improvements: Using input from and in cooperation with the state's Metropolitan Planning Organizations⁶¹ and local governments, TxDOT identifies transportation needs. Typically, these needs result from increases in traffic and congestion due to growth, but may also result from safety concerns. Improvements must be consistent with TxDOT's goals in its statewide Texas

⁵⁸ *Ibid.*

⁵⁹ Weatherby, Cynthia A. "A Sourcebook - The Texas Department of Transportation and Its Partners Building Better Transportation Together." The Texas Transportation Institute. The Texas A&M University System. March 1999.

⁶⁰ Texas Sunset Advisory Commission. Texas Department of Transportation, Texas Turnpike Authority, Automobile Theft Prevention Authority, Sunset Staff Report. 1996.

⁶¹ Established by federal law, 49 U.S.C. § 5303, MPOs are local governmental coalitions who plan regional transportation infrastructure projects in coordination with the state and federal government.

Transportation Plan and an MPO's regional plans.⁶²

Identify Specific Projects: TxDOT district offices and MPOs begin planning specific projects to meet transportation needs. Planning activities include identifying solutions such as adding lanes or building new roads, holding public hearings, conducting environmental studies, and routing new roads. Once a project has been identified, TxDOT attempts to match that project with a specific state or federal funding source.⁶³

Transportation Improvement Plans (TIPs) are three-year plans developed at each TxDOT district annually. Projects included in the TIP are the district's highest priority highway improvements, as well as public transit projects, and other transportation improvements. For a highway project to receive a contract date by the transportation commission to go to construction, it must be included in the district TIP. A TIP is required for a locality to receive federal transit and federal highway funds. Most of the design work and right-of-way acquisition is completed before a project is included in a district's TIP.⁶⁴ Projects included in a district's TIP then become part of the state's **Statewide Transportation Improvement Plan (STIP)**.

The State Transportation Plan (STP) provides an overall framework for commission consideration in developing policy. Created with significant input from representatives of other state agencies, MPOs, elected officials, public and private transportation providers, other transportation interests, and the public, it is mandated by federal and state law to be a document

⁶² Texas Sunset Advisory Commission. Texas Department of Transportation, Texas Turnpike Authority, Automobile Theft Prevention Authority, Sunset Staff Report. 1996.

⁶³ Ibid.

⁶⁴ Weatherby, Cynthia A. "A Sourcebook - The Texas Department of Transportation and Its Partners Building Better Transportation Together." The Texas Transportation Institute. The Texas A&M University System. March 1999.

that considers all modes of transportation.⁶⁵ The plan provides goals, policies, strategies, and actions to address highways and bridges, bus transit and intercity bus service, aviation, freight and passenger rail, marine, non-motorized, pipelines, and telecommunication and information technology.⁶⁶

The Project Development Plan (PDP) is divided into two stages: Priority 1 (final three years of project development) and Priority 2 (projects three to ten years from development).

Priority 2: As districts identify specific projects ready for development, TxDOT ranks the projects based on cost/benefit. TxDOT estimates project costs based on preliminary design work and assesses needs based on traffic data. As a result, greater congestion or safety problems lead to higher rankings. Efforts to reduce a project's cost, such as donation of right-of-way or construction dollars, will also improve the ranking. Based on estimates of available future funding, the transportation commission determines the threshold for projects that will enter Priority 2.

Priority 1: Based on cost/benefit, Priority 2 projects compete to enter Priority 1, according to the threshold set by the commission. Federally-funded projects in metropolitan areas must be included in the transportation district's Transportation Improvement Plan. This process ensures that federal funds will be spent only with adequate input from the community. TxDOT then completes remaining design and environmental work and obtains remaining rights-of-way. When a project is ready and has funding available, TxDOT schedules it for bid letting, in essence, a request for contract proposals. TxDOT receives bids from contractors and the commission awards the contract to the lowest bidder.⁶⁷

⁶⁵ 23 U.S.C. § 135; Section 201.601, Transportation Code.

⁶⁶ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

⁶⁷ Texas Sunset Advisory Commission. Texas Department of Transportation, Texas Turnpike Authority, Automobile Theft Prevention Authority, Sunset Staff Report. 1996.

The Unified Transportation Program (UTP) is a ten-year document that guides transportation project development. It has two elements: Priority 1 projects are the highest ranked projects that are scheduled for construction within the first four years of the plan. Priority 2 status gives TxDOT's district engineers authority to prepare plans and project specifications and estimate right-of-way acquisition. The UTP is updated each year by the transportation commission to help plan federal and state funded transportation projects. The 2000 UTP, approved in September of 1999, authorizes approximately \$11.3 billion in highway, aviation, and public transportation projects across Texas during the next four years (FY 2000-2003). Approximately 45 percent of the \$11.3 billion will be used to preserve the existing highway system.⁶⁸

TxDOT's Bank Balance Program

In its bank balance program, TxDOT has delegated decision-making authority to its district engineers to address more routine transportation needs that are common to all districts. In this program, TxDOT allocates funds to each district by specific formulas designed to reflect each district's needs for each type of transportation project.

The bank balance program allows districts to save or borrow against future allocations to manage their own spending over time for eligible roadway projects. Districts may save their allocations for several years to finance a project they could not afford with a single year's funding. Conversely, districts may borrow from future years' allocations to finance large, more cost-effective projects.⁶⁹

MPO Projects: Under ISTEA, certain funding decisions were delegated to MPOs. MPOs select metropolitan mobility and rehabilitation projects and Congestion

⁶⁸ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

⁶⁹ Texas Sunset Advisory Commission. Texas Department of Transportation, Texas Turnpike Authority, Automobile Theft Prevention Authority, Sunset Staff Report. 1996.

Mitigation and Air Quality (CMAQ) Improvement projects in conjunction with TxDOT. TxDOT allocates funds as a bank balance program. Urban districts with a population greater than 200,000 receive metropolitan mobility funds on the basis of population, while districts in air quality non-attainment areas receive CMAQ funds on the basis of both population and air quality factors outlined in ISTEPA.⁷⁰

Transportation Commission Discretionary Funds: As another tool for selecting projects, the commission has the flexibility to select statewide projects for construction that may not meet other program criteria, but promote economic development, provide system continuity with adjoining states and Mexico, or address other strategic needs of the state as determined by the commission.⁷¹

To make selections as objective as possible, proposed projects are ranked according to a formula. The formula used for projects on the National Highway System or the Texas Trunk System is a cost-benefit analysis, which is used to create a Cost Effectiveness Index (CEI) to compare and rank proposed projects around the state. The CEI includes factors such as construction, right-of-way, and environmental mitigation costs weighted against the proposed benefit of fewer delays for drivers. For projects that are not in state-defined “disadvantaged counties,” local participation in the project is also important in delivering CEI rankings for projects. For proposed projects within a “disadvantaged county,” local matching requirements may be waived by the commission. For project construction such as bridge replacements or safety improvements at railroad crossings, ranking formulas other than cost-benefit analyses are used.

Design Build

Under the current method of bidding surface transportation infrastructure projects, design-bid-build, TxDOT either designs a project in-house or contracts with an outside engineering firm to do so. The contract for an outside engineering firm must be competitively bid and is governed by the Professional Services Procurement Act.⁷² TxDOT selects an engineering firm and negotiates

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Chapter 2254, Government Code; Section 223.001, Transportation Code.

compensation for design services to be rendered. Once the design work has been completed, TxDOT advertises the project for bid on construction and selects a contractor using a competitive bidding process.⁷³

Design-build differs from the current practice of bidding projects in that an entire project is bid out to a single party or consortium who is responsible for delivery of all phases of the project, including finance, design, bid, construction, and operation, or any combination thereof.⁷⁴ In its most basic form, design-build authority would allow TxDOT to enter into a single agreement for both engineering services and construction. Under design-build, the contractor, once sufficient design work has been completed, is able to begin construction on a portion of a project while continuing to design remaining segments. Providing a turnkey approach and advancing different phases of a project simultaneously has been argued to save valuable time.⁷⁵

The committee received compelling arguments regarding both the benefits and liabilities involved with the design-build approach to completing highway projects. Proponents of using the design-build method of contracting for surface transportation infrastructure projects claim that the time savings involved will result in lower construction costs. Those who are opposed to the design-build method claim that smaller contractors are eliminated from the process because they are unable to house both engineering and construction divisions within their companies. Opponents further argue that design-build does not guarantee that the state will receive the best product for the least expensive cost. In addition, detractors are concerned that the agency responsible for distributing funds for and overseeing transportation projects relinquishes too much control during the life of a project that has been contracted under the design-build method.

The committee notes that Senate Committee on Intergovernmental Relations has been charged this interim with studying “the potential benefits offered through the design-build form of bidding . . . as it relates to buildings, roads and other publicly

⁷³ Section 223.001, Transportation Code.

⁷⁴ David Laney, Member, Texas Transportation Commission, “Design-Build,” testimony presented to the Senate State Affairs Committee, February 22, 2000.

⁷⁵ Ibid.

funded projects.” The State Affairs Committee looks forward to reviewing the recommendations regarding design-build contained in the Intergovernmental Relations interim report.

Comptroller’s TxDOT TPR

The 76th Legislature directed the Comptroller and TxDOT to enter into an interagency contract for a comprehensive review of TxDOT.⁷⁶ Rider 19 of the General Appropriations Act appropriates up to \$1 million from TxDOT’s budget for the study. The legislature specifically directed the Comptroller to review the contracting practices of the agency, geographical distribution of construction and maintenance projects, financing techniques including federal funds and other business practices. The Comptroller’s Office selected the Hagler Bailly Services consulting firm to assist in the comprehensive review of TxDOT. The deadline for the report is January 15, 2000.

Findings

The Senate State Affairs Committee recognizes that the development of a multi-year, statewide comprehensive plan in Texas requires the use of complex decision-making processes. But the complexity of the process used to satisfy the transportation needs of Texas must be balanced with the right of Texans to hold decision-making bodies accountable. The current system’s complexity often defies assessment regarding the merits of its selection criteria and determinations, creating confusion among citizens wondering why certain projects are built while others are not and speculation regarding the choices made by decision-making bodies.

Recommendations

(1) The Senate State Affairs Committee recommends that the legislature create an interim task force to review the process for project selection used by the Texas Transportation Commission. The task force should be authorized to review the selection process by establishing acceptable minimum levels of transportation

⁷⁶ Rider 19, page I-23, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act).

service and evaluating how well the commission's current selection process achieves those standards. The minimum levels of service should include such criteria as mobility, accessibility, safety, congestion mitigation, and air quality. The task force should also consider how well the various transportation planning organizations cooperate with each other and whether minimum levels of service are attainable given current funding sources.

Infrastructure Funding

At the heart of any governmental program lies the funding mechanism the state utilizes to support the program. The mechanism chosen affects the nature of the program as well as its longevity. The transportation market is unique among most of the economic markets in which the government acts. Governments are the sole purchasers⁷⁷ of infrastructure construction.⁷⁸ As a consequence, the government's funding streams directly impact the service providers' market scheme since the government funding streams solely determine the amount of labor and construction providers the market is able to support. Any fluctuation in funding amounts greatly affect not only the amount of construction providers the market supports, but also the price of construction. Texas has traditionally been a pay-as-you-go state, paying for construction, maintenance, and administration of projects as money becomes available from user fees and federal grants.⁷⁹ Therefore, changes in the funding stream require a careful analysis.

The funding streams for Texas infrastructure come from two sources: federal and state funding. Each funding source is subject to the vagaries of the respective governmental decision-making bodies, Congress or the Texas Legislature. Texas though has a somewhat unique funding mechanism for its transportation infrastructure. Texas has removed some of the political nature regarding infrastructure funding by establishing in 1946 a constitutionally dedicated highway fund.⁸⁰

Highway Fund (006) Revenue Restrictions

The Texas Constitution dedicates the highway fund to be used only for acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the legislature

⁷⁷ Occasionally other actors seek construction services for the building of infrastructure, but their impact remains marginal.

⁷⁸ "Highway building is the only industry in Texas that is 100 per cent dependent on government money." Smith, Griffen. "The Highway Establishment and How It Grew. And Grew and Grew." Texas Monthly April 1974.

⁷⁹ Sundeen, Matt and Reed, James B. "Is it the End of Pay-as-You-Go in Transportation Finance?" State Legislatures, April 2000, page 20.

⁸⁰ Section 7-a, Article VIII, Texas Constitution.

pertaining to the supervision of traffic and safety on such roads.⁸¹

A state statutory codification of the Good Roads Amendment requires that revenue deposited in the state highway fund be used only:

- to improve the state highway system;
- to mitigate adverse environmental effects that result directly from construction or maintenance of a state highway by the department; or
- by the Department of Public Safety to police the state highway system and to administer state laws relating to traffic and safety on public roads.⁸²

TxDOT is funded primarily from revenues appropriated by the legislature from the state highway fund (Fund 006).⁸³

Fund (006) Appropriations/Expenditures

Office of the Attorney General: funding provides legal services on behalf of the Department of Transportation and the Department of Public Safety for right-of-way acquisition proceedings and lawsuits. In Fiscal Year 1999, the Office of the Attorney General performed 115,000 hours of legal work for the Department of Transportation and the Department of Public Safety.

Department of Public Safety: funding is provided for policing the highways and supports 2,667 highway troopers and 3,302 support staff.

DPS also receives highway funds for certain departmental strategies that are marginally or completely unrelated to transportation, such as \$8.8 million per year

⁸¹ Section 7-a, Article VIII, Texas Constitution.

⁸² Section 222.001, Transportation Code.

⁸³ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

spent on Capitol security.⁸⁴ The state highway fund pays 98 percent of DPS' annual appropriation, however only 73 percent of DPS' duties relate to the state highway system.⁸⁵ Finding an alternate source for these activities would increase the available funding for transportation projects by almost \$70 million each year.

In addition, several programs are funded by the state highway fund and assigned to DPS to administer, yet the revenue generated by those programs is deposited in the state's general revenue fund. Such programs include:

- motor vehicle inspection fees, which generate approximately \$63 million dollars per year;
- driver license fees, which generate approximately \$97.5 million dollars per year; and
- driver records information fees, which generate approximately 43.7 million dollars per year.⁸⁶

Depositing these revenues to the state highway fund would increase the available transportation funding by over \$200 million dollars per year.

Employee Benefits: funding is provided for insurance, retirement, social security, and benefit replacement pay costs for employees and retirees from the Department of Transportation, the Department of Public Safety, and the Office of the Attorney General.⁸⁷

Public Integrity Unit: funding is provided to the Travis County District

⁸⁴ David Laney, Member, Texas Transportation Commission, Letter to the Honorable Eddie Lucio, Jr., April 26, 2000. p. 2.

⁸⁵ David Laney, Member, Texas Transportation Commission, "Responses to Questions Asked in El Paso," testimony presented to the Senate State Affairs Committee, January 11, 2000, p. 3.

⁸⁶ Ibid., at p.2.

⁸⁷ John Keel and Mark Wiles, Legislative Budget Board, "Department of Transportation and State Highway Fund Overview," testimony presented to the Senate State Affairs Committee, January 11, 2000.

Attorney's office to investigate and prosecute motor fuels tax fraud.⁸⁸

Department of Transportation: funding is provided for building and maintaining the state transportation system.⁸⁹

Total Expenditures from Fund 006

- Distribution of Total TxDOT Disbursements, FY Ended August 31, 1999:
 - Total Disbursements: \$4.334 billion
 - 63% for Highway Design, Research, Right-of-Way, Construction = \$2,720 million
 - 18% for Highway Maintenance = \$800 million
 - 11% Administration & Support, Traffic Safety, Aviation, Vehicle Registration, Public Transportation, State Infrastructure Bank Loans, Other = \$468 million
 - 8% Department of Public Safety = \$346 million

While the legislature maintains some influence on the money deposited to the highway fund,⁹⁰ the money cannot be diverted to non-highway related functions.⁹¹ The legislature may refuse to fund TxDOT, but the money remains in the fund.⁹² Due to the constitutional restrictions, the legislature must be very wary about authorizing the use of highway funds for activities only marginally related to the

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Section 7-a, Article VIII, Texas Constitution reads, "Subject to legislative appropriation, allocation and direction..."

⁹¹ Section 7-a, Article VIII, Texas Constitution reads, "...all taxes ... shall be used for the sole purpose of acquiring right-of-way, constructing, maintaining, and policing such public roads...."

⁹² Smith, Griffen. "The Highway Establishment and How It Grew. And Grew and Grew." Texas Monthly April 1974.

constitutional dedication.

Highway Fund (006) Revenues

The highway fund is composed of “... all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways ... provided, however, that one-fourth (1/4) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945.”⁹³ The fund also incorporates “[a]ll revenues received from the federal government as reimbursement for state expenditures of funds that are themselves dedicated.....”⁹⁴

Summary Composition of 006 Revenue Streams

- Distribution of Total TxDOT Receipts, FY Ended August 31, 1999:
 - Total Receipts: \$4.129 billion
 - 38% from Motor Fuel Tax = 1,556.1 million
 - 36% from Federal Reimbursements (fr. FHWA, FAA, FEMA, DOTS, NHTSA) = \$1,475.4 million
 - 17% from Vehicle Registrations = \$705.1 million
 - 4% from Sales Tax on Lubricants, Title Fees, Interest, Other = \$177.1 million

⁹³ Section 7-a, Article VIII, Texas Constitution.

⁹⁴ Ibid.

- 3% from Other Reimbursements = \$705.1 million
- 2% from Federal Receipts for the State Infrastructure Bank = \$86 million

State Motor Fuels Tax

TxDOT “revenues are generated through taxes assessed on the sale of motor fuels including gasoline, diesel fuel, and liquified gas. The diesel fuel and gasoline tax rate is 20 cents per gallon, while the liquified gas tax rate is 15 cents per gallon. The average amount received from these revenue sources for each year from 1995-1999 was \$1.7 billion.”⁹⁵

- Distribution of Texas Motor Fuel Taxes Fiscal Year Ended August 31, 1999:
 - Gross Tax Collected by the State Comptroller: \$2.605 billion
 - 60% to State Highway Fund = \$1,556 million
 - 24% to Public Schools = \$64 million
 - 13% Transferred to State Highway Fund Held By Comptroller (Transferred in Sept. 1999) = \$332 million
 - 3% Refunds, Collection Expenses and Other = \$83 million

Collection of the motor fuels tax has been the subject of vigorous debate the past few years and revolves around where in the distribution chain of motor fuels the government should collect the tax. Motor fuels start out as crude oil and are piped into the refineries. The fuel is then refined and agents are added. The refined fuel is then stored in mega-facilities owned by large oil companies. These are known

⁹⁵ John Keel and Mark Wiles, Legislative Budget Board, “Department of Transportation and State Highway Fund Overview,” testimony presented to the Senate State Affairs Committee, January 11, 2000.

as the terminal and serve as the site where fueling trucks are filled for delivery. The federal government collects taxes at this point, or ‘at the rack.’ Clear electronic records are kept at this point and the tax collecting agency deals with a relatively small number of companies. Taxes could also be collected at this point from the supplier (the owner of the truck being filled at the terminal), or at the ‘point of first sale.’ The electronic records are still very good at this point and the collection agency still deals with a relatively small number of companies. The current system that Texas operates under is the ‘point of first use,’ in other words, taxes are collected when the fuel is delivered to gas stations. Texas currently pays the motor fuels tax payer to comply with the tax collection.⁹⁶ Collection of taxes at this point involves a large number of entities and backtracking paper work to the terminal.

Theft of motor fuel tax through a variety of fraudulent means has been thoroughly documented as a major loss of tax revenues at both the federal and state levels. Enforcement and prevention are two fundamental strategies to counter motor fuels tax fraud. Texas is generally recognized by tax administrators as having the best fuel tax field investigation and prosecution among all the states. The 76th Legislature enacted legislation that tightened the reporting provisions, improved fuel tracking, and increased penalties regarding motor fuel tax collection.⁹⁷ The legislature did not change the point of collection. While improved enforcement is expected to yield additional dollars in motor fuel tax revenues, TxDOT estimates that an additional \$50-75 million could be obtained by changing the point of collection.⁹⁸

Motor Vehicle Registration Fees

Motor vehicle registration fees are collected annually for the registration of motor vehicles, trailers, and semi-trailers. The state collected an average of \$648.5

⁹⁶ Section 153.105(e), Tax Code.

⁹⁷ Chapter 1285, Acts of the 76th Legislature, Regular Session, 1999.

⁹⁸ David Laney, Member, Texas Transportation Commission, Letter to the Honorable Eddie Lucio, Jr., April 26, 2000. p. 2.

million each year from 1995-1999.⁹⁹

- Distribution of Texas Motor Vehicle Registration Fees Fiscal Year Ended 8/31/99:
 - Gross Collections: \$1.082 billion
 - 65% to State Highway Fund = \$705.1 million
 - 35% to counties = \$377.1 million

Prior to 1992, counties submitted 95 percent of vehicle sales taxes collected in the previous year to the general revenue fund and retained the remaining five percent for their own transportation construction projects. Since 1992, counties have instead submitted 100 percent of the vehicle sales taxes to general revenue and retained an amount equal to five percent of those taxes from motor vehicle registration fees collected. Motor vehicle registration fees are deposited in the state highway fund. The amount of fees deposited in the state highway fund is now diminished due to the change in law. The amount of vehicle registration fees has increased from \$53 million in 1992 to just over \$100 million in 1999. A switch back to the method used prior to 1992 would increase the available funding for transportation projects by over \$100 million each year.¹⁰⁰

Other Highway Fund (006) State Revenue Sources:

Several other sources supply the highway fund with revenue. Sales tax on lubricants are collected from taxes assessed on the sale, storage, or use of lubricating and motor oils for motor vehicles.¹⁰¹ The average taxes collected each

⁹⁹ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

¹⁰⁰ David Laney, Member, Texas Transportation Commission, "Responses to Questions Asked in El Paso," testimony presented to the Senate State Affairs Committee, January 11, 2000, p. 3.

¹⁰¹ Section 7-a, Article VIII, Texas Constitution.

year from 1995-1999 were \$24.4 million.¹⁰² Other revenue sources include vehicle certificates, special vehicle registrations, commercial transportation fees, the sale of publications, and turnpike policing.¹⁰³ These fees aggregated, averaged a total of \$204.7 million per year from 1995-1999.”¹⁰⁴

Federal Funds

Federal funds comprise the remaining portion of the funding streams Texas spends on its infrastructure needs. Federal funding is estimated to comprise 38.2 percent of the 2000-01 biennial revenues for the highway fund.¹⁰⁵

“98% of the federal funds received are reimbursements for highway planning and construction. The remaining 2% are received through other transportation programs, for example airport improvements, highway safety, and public transportation. Reimbursements for specific federal programs are limited during the annual federal appropriations process. The reimbursement rate averages 80%, but ranges from 50% to 100% depending on the program.”¹⁰⁶

Texas is subject to penalties regarding the federal reimbursements it receives for failure to comply with certain provisions, such as clean air compliance and safety.¹⁰⁷ Texas currently receives reimbursements for certain expenditures made under two federal highway authorization acts:

- The Intermodal Surface Transportation Efficiency Act (ISTEA)¹⁰⁸ authorizes highway funding for fiscal years 1992 through 1997.

¹⁰² John Keel and Mark Wiles, Legislative Budget Board, “Department of Transportation and State Highway Fund Overview,” testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid. at p. 3.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240 (1991).

Texas' rate of return was 77 cents per dollar in federal highway taxes.

- The Transportation Equity Act for the 21st Century (TEA-21)¹⁰⁹ authorizes highway funding for fiscal years 1998-2003. Texas' overall rate of return increased to 90.1 cents per dollar.¹¹⁰ However, the rate of return for discretionary programs is 49 cents per dollar; TxDOT's goal is 90.5 cents or better. The rate of return for border/corridor programs, cumulative is 1.79 dollars for every dollar sent to the federal government. This is 15 percent or less of the federal border/corridor outlays; TxDOT's goal is 3 dollars.¹¹¹

While the goal of TEA-21 was to guarantee at least a 90.5 cent rate of return on each state's federal gas tax receipts, there are several discretionary funding programs that, once factored in, lower Texas' rate of return. Two of the discretionary programs, the National Corridor Planning and Development program and the Coordinated Border Infrastructure program¹¹², comprise a significant source of the federal funding shortfall for Texas. As indicated previously, 79 percent of NAFTA related, U.S. - Mexico truck traffic travels through Texas, yet for FY '00 Texas will only receive 15 percent or less of the funds available from the discretionary trade corridor categories (Texas received \$18.2 million of the \$121.94 million awarded nationwide).¹¹³

Findings

The State of Texas dedicates certain funds for the sole purpose of constructing, maintaining, and policing public roadways. Over the years, a substantial portion of these funds have been diverted towards marginally related activities. While these activities are vitally important to the state of Texas, their funding represents a subsidy of activities that should be funded from general revenue and not at the

¹⁰⁹ Transportation Equity Act for the 21st Century, Pub. L. No. 105-178 (1998).

¹¹⁰ John Keel and Mark Wiles, Legislative Budget Board, "Department of Transportation and State Highway Fund Overview," testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹¹¹ Texas Department of Transportation. The Federal Flyer. Volume 6, Issue 7. June 9, 2000. p. 1.

¹¹² Transportation Equity Act for the 21st Century, Pub. L. No. 105-178 (1998).

¹¹³ Texas Department of Transportation. The Federal Flyer. Volume 6, Issue 7. June 9, 2000. p. 1.

expense of the highway fund. Removal of these funds from the intended purpose of the highway fund significantly impacts Texas' ability to fund its infrastructure needs.

Recommendations

(2) The State Affairs Committee recommends returning the taxes and fees generated from the following programs from the general revenue fund back to the highway fund: motor vehicle inspection fees, driver license fees, and driver record information fees. At a minimum, the State Affairs Committee recommends that the amount diverted from the highway fund to administer these programs be deducted from the revenues generated and returned to the highway fund and only the excess revenues be deposited in the general revenue fund.*

(3) The committee recommends returning highway fund monies used by DPS for non-highway related purposes, such as capitol security, etc., back to the highway fund. This legislation should carry a caveat that it becomes null and void unless alternative funding sources for DPS can be found resulting in no decrease to DPS funding.*

(4) The committee recommends returning to the highway fund vehicle registration fees in an amount equal to five percent of the vehicle sales tax collected that counties currently retain, and conforming current statute to allow counties to retain five percent of the vehicle sales tax collected, as they did prior to 1992. This recommendation does not affect the constitutional dedication of vehicle registration fees to counties.*

(5) The committee recommends reviewing benefits received by the state from the increased reporting requirements for motor fuels tax collection and evaluating whether moving the point of collection of motor fuels taxes would bring further benefit to the state.

(6) The committee recommends that the legislature memorialize Congress and the United State Department of Transportation to increase the percentage of discretionary funding granted to Texas in order to raise the state's rate of return of federal gas taxes to the TEA-21 intended 90.5 cents on the dollar.

* See recommendation nine regarding a Revolving Transportation Bond Fund for an alternative use of these funds.

Innovative Financing Methods

Federal Financing Mechanisms

Most federal funds for transportation come to Texas in the form of formula distributions or earmarks.¹¹⁴ The federal government has traditionally financed highways through 80 percent reimbursement grants and TxDOT has never allowed a federal apportionment to lapse or go unused.¹¹⁵ But, despite the efforts of TxDOT to capture federal funds and leverage state funds, traditional funding sources are not sufficient to meet growing transportation infrastructure needs.¹¹⁶ The last three major pieces of federal transportation legislation - ISTEA, the NHS Act of 1995, and TEA-21 - have produced alternative forms of “non-grant” assistance. Texas though, due either to state statutory restrictions or federal governmental regulations, is not currently able to take full advantage of these new programs.¹¹⁷

State Infrastructure Bank

The NHS Designation Act of 1995 (NHS Act) authorized the U.S. Department of Transportation to establish the State Infrastructure Bank (SIB) pilot program and allowed the U.S. Secretary of Transportation to designate a maximum of 10 states as pilot projects for the State Infrastructure Bank program; Texas was designated as a pilot state.¹¹⁸ The NHS Act provides that each designated state may transfer up to 10 percent of certain federal dollars, match those dollars with state funds, and deposit them into a state infrastructure bank. The greatest benefit of the SIB program may well be the creation of a self-sustaining, growing, revolving loan

¹¹⁴ See Texas Infrastructure Funding Streams portion of this report for a further explanation.

¹¹⁵ David Laney, Member, Texas Transportation Commission, “Responses to Questions Asked in El Paso,” testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹¹⁶ Tamar Henkin, Principal, Hagler Bailly Services, testimony presented to the Senate State Affairs Committee, April 12, 2000.

¹¹⁷ David Laney, Member, Texas Transportation Commission, “Federal Finance: SIB, TIFIA, GARVEE,” testimony presented to the Senate State Affairs Committee, January 11, 2000, p. 1.

¹¹⁸ Ibid. at p.2.

fund.¹¹⁹

A SIB is a state (or multi-state) revolving fund that can offer loans and non-grant forms of credit assistance to public and private sponsors of eligible surface transportation projects. The types of assistance which may be provided by SIBs include loans (which may be at or below market rates), guarantees, interest rate subsidies on other project debt, letters of credit, purchase and lease agreements and other forms of non-grant assistance. SIBs are intended to complement the traditional federal-aid highway and transit programs by supporting certain projects with revenue streams which can be financed in whole or in part with loans, or that can benefit from the provision of credit enhancement. As loans are repaid a SIB's initial capital is replenished and can be used to support a new cycle of projects.¹²⁰

In 1997, the 75th Legislature created the State Infrastructure Bank to be administered by the Texas Transportation Commission.¹²¹ In September 1997, the commission approved the administrative rules that govern the State Infrastructure Bank.¹²²

SIB loans are currently being requested by counties for various small projects, including off-system bridge projects, with a smaller required expenditure than might be necessary for projects typically funded with bond proceeds or other traditional statutory financing methods. The SIB may also be the only avenue for some counties to provide required cost participation.

The Transportation Equity Act of 1998¹²³ created a new SIB Pilot Program allowing the establishment of TEA-21 SIBs in four states, however, Texas was not included.¹²⁴ Pre-existing SIBs continue to exist, but federal funds authorized for

¹¹⁹ Ibid.

¹²⁰ Federal Highway Administration, U.S.DOT, Financing Federal Aid Highways, Publication No. FHWA-PL-99-015.

¹²¹ Section 222.071, et seq., Transportation Code.

¹²² David Laney, Member, Texas Transportation Commission, "Federal Finance: SIB, TIFIA, GARVEE," testimony presented to the Senate State Affairs Committee, January 11, 2000, p. 3.

¹²³ Transportation Equity Act for the 21st Century, Pub. L. No. 105-178 (1998).

¹²⁴ Ibid. at p. 4.

FY 1998 or later may not be used to capitalize them.¹²⁵ The exclusion of Texas from the most recent SIB pilot program decreases the amount of money the state is authorized to deposit in the SIB, and therefore the availability of loans the commission can grant to disadvantaged counties.

Transportation Infrastructure and Innovation Act

The Transportation Infrastructure and Innovation Act of 1998 (TIFIA)¹²⁶ is a relatively new federal credit program for large surface transportation projects, included as part of TEA-21. Under TIFIA, the U.S. DOT may provide direct federal loans, federal loan guarantees and standby lines of credit (for up to 33 percent of project costs¹²⁷) for large projects meeting certain eligibility criteria.¹²⁸ Projects eligible for TIFIA assistance include highways, transit vehicles and facilities, intercity bus vehicles and facilities, intercity passenger rail vehicles and facilities, and publicly owned intermodal freight facilities on the National Highway System.¹²⁹

The following threshold criteria for TIFIA assistance must be met before an application can be submitted:¹³⁰

- Project must cost at least \$100 million (\$30 million for ITS projects).
- Senior debt must be investment grade - preliminary rating option letter has been issued for project.
- Project complies with National Environmental Protection Agency: Draft Environmental Impact Statement has been published.
- Project is included in approved State Transportation Plan.
- Project debt repayment is supported by dedicated revenue streams.

¹²⁵ Ibid.

¹²⁶ Transportation Equity Act for the 21st Century, Pub. L. No. 105-178 (1998).

¹²⁷ Frederick J. Werner, Southern Resource Center Finance Team, Federal Highway Administration, U.S. DOT, testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹²⁸ Federal Highway Administration, U.S.DOT. Innovative Finance Quarterly, Vol. 5, Number 1, Spring 1999.

¹²⁹ Frederick J. Werner, Southern Resource Center Finance Team, Federal Highway Administration, U.S. DOT, testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹³⁰ Ibid.

- Project sponsor may be state government, local government, a transportation agency or firm.

The following represent the project selection criteria for TIFIA assistance:¹³¹

- national significance, including economic benefits and benefits to international competitiveness;
- creditworthiness;
- use of public-private partnerships and attraction of private capital;
- project acceleration;
- use of new technologies, including ITS;
- environmental benefits; and
- reduction of federal grant assistance.

As with any ‘innovative’ finance mechanism, there are advantages and disadvantages to using TIFIA loans. The advantages include the fact that the interest and principal may be deferred for up to 10 years, debt repayment life may last up to 35 years, federal guarantees may attract private sector participation, the project is accelerated, and the loan avoids future increases in right-of-way and construction costs.¹³² The disadvantages include the additional cost of interest payment, potential capacity constraints, and the potential for increased construction causing artificial inflation.¹³³

The Texas Turnpike Authority (TTA), has filed an application with the U.S. Department of Transportation for a TIFIA loan of \$800 million. The loan proceeds will be used to fund a portion of the costs of the proposed Central Texas Turnpike Project (the “Project”). The loan will be paid back from toll revenues. As proposed, the Project (a \$3.2 billion project when including 30 years of operation and maintenance costs), will be a contiguous 122 mile turnpike project consisting of the following elements: State Highway 130 (the Interstate 35 by-pass), State Highway 45 (an east-west route that would link Interstate 35 and

¹³¹ Ibid.

¹³² Frederick J. Werner, Southern Resource Center Finance Team, Federal Highway Administration, U.S. DOT testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹³³ Ibid.

U.S. 183), an extension of Loop 1 (Mopac) north to Interstate 35 (including a major section needed due to the Dell Computer facility), and U.S. 183-A (an alternate U.S. 183 route east of Cedar Park and Leander). The project is needed due to increased NAFTA related traffic and explosive growth in the central Texas area.

Construction is scheduled to start on project elements in 2001 and segments of each element are projected to open to traffic in 2005. Final construction on the last element is estimated to be completed in 2009. The Project construction cost is estimated to be \$1.8 billion.

Highway Bonds

During the course of this interim study, the committee received a vast amount of testimony concerning highway bonds. It is well documented that Texas' traditional means of 'pay as you go' highway financing is unable to keep up with the demand for new construction and the much needed rehabilitation of current highway infrastructure, therefore furthering the need to explore new funding options such as bonds.

As with most issues involved with transportation finance, there are staunch supporters and detractors of bonding for highway construction. A primary benefit that may derive from bonding is avoiding construction and right-of-way inflation costs.¹³⁴ Those who argue against bonding claim that increased construction causes inflation, and that the debt repayment actually increases the cost of a project.¹³⁵

Grant Anticipation Revenue Vehicles

Grant Anticipation Revenue Vehicles, or GARVEES, are debt financing instruments that are secured with a pledge of federal-aid highway funds.¹³⁶ There

¹³⁴ Tamar Henkin, Principal, Hagler Bailly Services, testimony presented to the Senate State Affairs Committee, April 12, 2000.

¹³⁵ Tom Johnson, Executive Vice President, Association of General Contractors, testimony presented to the Senate State Affairs Committee, April 12, 2000.

¹³⁶ Federal Highway Administration, U.S.DOT. Innovative Finance Quarterly, Vol. 5, Number 1, Spring 1999.

are many permutations of GARVEE bonding, varying by the underlying source of federal-aid highway reimbursements, the presence and nature of backstop sources of payment, and the state implementing actions on which those funds' availability is conditioned.¹³⁷

GARVEE bonds first became available to state departments of transportation with the passage of the National Highway System Designation Act of 1995(NHS Act)¹³⁸. Forgoing the fundamental bond arguments previously mentioned, supporters of GARVEE bond use in Texas claim that the state's borrowing capacity is increased while the state's credit rating is minimally affected.¹³⁹ At the same time, many argue that a GARVEE bond is secured with an insecure source: future federal highway dollars; there is no federal guarantee of future funding, therefore GARVEEs carry "reauthorization risk."¹⁴⁰

During the 76th Legislative Session, GARVEE bonds received extensive attention and debate. Notwithstanding the arguments mentioned above, much discussion was given to the proper way in which Texas could authorize GARVEE usage. During session, an opinion of the Office of the Attorney General was requested regarding "whether a constitutional amendment or a vote of the people is required in order to implement a Grant Anticipation Revenue Vehicle (GARVEE) program in Texas."¹⁴¹ The Attorney General's office responded by stating that "[t]he amendment of the Texas Constitution specifically to permit federal highway reimbursements to be used for paying debt service on Grant Anticipation Revenue Vehicle ("GARVEE") bonds would be more prudent than the issuance of such bonds with merely statutory authorization."¹⁴²

¹³⁷ David Laney, Member, Texas Transportation Commission, "Federal Finance: SIB, TIFIA, GARVEE," testimony presented to the Senate State Affairs Committee, January 11, 2000, p. 6.

¹³⁸ National Highway System Designation Act of 1995, Pub. L. No. 104-59 (1995).

¹³⁹ Frederick J. Werner, Southern Resource Center Finance Team, U.S.DOT Federal Highway Administration, testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹⁴⁰ *Ibid.*

¹⁴¹ Tex. Att'y Gen. RQ-0048-JC (1999).

¹⁴² Op. Tex. Att'y Gen. No. JC-0039 (May 4, 1999).

State Revolving Transportation Bond Fund

In order to alleviate some of the arguments against the use of GARVEE bonds for transportation construction in Texas, such as their reliance on unsecured future federal funding, a new bond proposal was brought before the committee. The proposal would allow new revenue sources to be leveraged into a meaningful and immediate investment in expanded transportation improvements.¹⁴³

The approach would work as follows: the legislature would place on the November 2001 ballot a constitutional amendment creating a new transportation revolving fund for Texas, and place all the new transportation dollars identified in the 77th Session in this fund rather than in the state highway fund. Either revenue or general obligation bonds could be issued periodically but only up to the amount able to be paid off by revenues statutorily dedicated to the fund. The proposal would allow future legislatures to place additional revenues in the fund to raise its debt limit, and would allow bond proceeds to be invested in any transportation project for which highway fund dollars can statutorily be invested. The distribution of the bond proceeds could be in accordance with an existing, recognized statewide transportation funding formula, such as the “calculated percentage” TxDOT uses in its annual allocations to the 25 districts in the Unified Transportation Program.¹⁴⁴

Findings

The ability of Texas to make the most of its transportation dollars will depend greatly on the state’s ability to explore and utilize new ways of using current funds. While new avenues of funding, such as Transportation Infrastructure Finance and Innovation Act (TIFIA) loans, have opened under federal law, changes in federal law have closed other avenues, such as the withdrawal of federal funding from the State Infrastructure Bank program. The lack of adequate funding for Texas’ infrastructure requires that the state investigate funding methods outside the traditional ‘pay-as-you-go’ model.

¹⁴³ Lee Jackson, Judge, Dallas County, “A New Transportation Bond Fund for Texas,” testimony presented to the Senate State Affairs Committee, August 21, 2000.

¹⁴⁴ Ibid.

Recommendations

(7) The Senate State Affairs Committee recommends that TxDOT continue exploring federal finance mechanisms, such as Transportation Infrastructure and Innovation Act (TIFIA) loans, within the scope of authority and power granted in the current state statutory framework.

(8) The committee recommends the legislature memorialize Congress to reinstate federal funding for Texas' State Infrastructure Bank.

(9) The committee recommends the legislature establish a Revolving Transportation Bond Fund out of revenue streams returned to the highway fund. The fund should be maintained outside of and in addition to the current highway fund and the amount of bonds purchased through this fund should be limited to the amount that the fund can support, as determined by the legislature.

Toll Authorities

The 75th Texas Legislature revamped the make up of turnpike authorities in Texas. The Texas Turnpike Authority was turned into a regional toll authority, the North Texas Tollway Authority, and received authority to operate in several counties in the north Texas area (taking over the projects of the abolished Texas Turnpike Authority¹⁴⁵).¹⁴⁶ With this change the Regional Tollway Authority Act was substantially revised to reflect improvements over the Turnpike Act.¹⁴⁷ At the same time, the Texas Turnpike Authority (TTA) division was created within TxDOT.¹⁴⁸ This division possesses statewide jurisdiction for the development of turnpikes.¹⁴⁹ The current TTA operates under the original Turnpike Act which does not reflect the improvements made under the Regional Tollway Authority Act. In addition, Texas has several regional turnpike/toll road authorities operating in north Texas, south Texas, and the Texas-Mexico border region.¹⁵⁰

The TTA Board of Directors works in conjunction with the Texas Transportation Commission.¹⁵¹ The TTA currently has no operating toll projects but does have several projects under study including State Highway 130, State Highway 45/Loop 1, and U.S. 183A.¹⁵² TTA has also investigated the potential for a border area project.¹⁵³ It is important to note that if the TTA “affects or severs” a county or

¹⁴⁵ Chapter 1171, page 4427, General Laws, Acts of the 75th Legislature, Regular Session, 1997 (Section 361.031 et seq., Transportation Code); David Laney, Member, Texas Transportation Commission, “Texas Department of Transportation Organization, Planning, Finance,” testimony presented to the Senate State Affairs Committee, November 19, 1999, p. 12.

¹⁴⁶ Pete Winstead, Chairman, Texas Turnpike Authority, “Toll Roads - Barriers to Increased Use,” testimony presented to the Senate State Affairs Committee, January 11, 2000, p 1.

¹⁴⁷ Chapter 1171, page 4427, General Laws, Acts of the 75th Legislature, Regular Session, 1997 (Section 366.001 et seq., Transportation Code); Pete Winstead, Chairman, Texas Turnpike Authority, “Toll Roads - Barriers to Increased Use,” testimony presented to the Senate State Affairs Committee, January 11, 2000, p 1.

¹⁴⁸ Ibid.

¹⁴⁹ Pete Winstead, Chairman, Texas Turnpike Authority, “Toll Roads - Barriers to Increased Use,” testimony presented to the Senate State Affairs Committee, January 11, 2000, p 1.

¹⁵⁰ David Laney, Member, Texas Transportation Commission, “Texas Department of Transportation Organization, Planning, Finance,” testimony presented to the Senate State Affairs Committee, November 19, 1999, p. 12.

¹⁵¹ Ibid. at p. 11.

¹⁵² Ibid. at p. 12.

¹⁵³ Pete Winstead, Chairman, Texas Turnpike Authority, “Toll Roads - Barriers to Increased Use,” testimony presented to the Senate State Affairs Committee, January 11, 2000, p 2.

public road, it is required to relocate and replace it with an equal or better facility.¹⁵⁴

TTA has indicated several impediments to the construction and operation of turnpikes in the state. The Texas Constitution requires TTA to repay TxDOT for any monies received out of the highway fund for the costs of a toll or turnpike project.¹⁵⁵ The repayment of this debt delays the generation of bond repayment revenues making private investment less attractive.¹⁵⁶ It also prevents TxDOT from providing assistance to toll authorities for construction of a needed roadway where a toll project could not fund the entire project. Rather than provide a portion of the funding for a needed roadway, TxDOT must weigh the costs of funding the entire project as non-toll versus funding other needed projects. Legislation considered by the 76th Legislature to achieve partial funding for toll projects was passed unanimously by the senate, however it never received a hearing in the house.¹⁵⁷

In order to maximize funds, TTA needs to maintain a separate fund outside the state general revenue fund. Freeing funds from political and/or legislative influences through their maintenance in a separate account from the state's general revenue eases the minds of investors and allows the TTA to maximize the interest earned, thus reducing the amount needed from toll revenues to repay the toll revenue bonds.¹⁵⁸ The 76th Legislature enacted a bill that clarified that toll funds may be held in either a banking institution or in a state account outside the general revenue fund.¹⁵⁹ By establishing a separate account from the general revenue fund, the interest income revenue earned would be credited to the toll funds and allow TTA to invest bond proceeds in a manner it believes will maximize returns. This ability eases the minds of investors who perceive funds maintained within the state

¹⁵⁴ Section 361.232, Transportation Code.

¹⁵⁵ Section 52-b, Article III, Texas Constitution.

¹⁵⁶ Pete Winstead, Chairman, Texas Turnpike Authority, "Toll Roads - Barriers to Increased Use," testimony presented to the Senate State Affairs Committee, January 11, 2000, p 3.

¹⁵⁷ See Tex. S.J.R. 3, 76th Leg., R.S. (1999) and S.B. 925, 76th Legislature, Regular Session (1999).

¹⁵⁸ Pete Winstead, Chairman, Texas Turnpike Authority, "Toll Roads - Barriers to Increased Use", testimony presented to the Senate State Affairs Committee, January 11, 2000, p 3.

¹⁵⁹ Chapter 1306, page 4455, General Laws, Acts of the 76th Legislature, Regular Session, 1999 (Section 361.184, Transportation Code).

treasury as riskier than separated funds. The riskier the bond is perceived to be, the higher the interest that the state (in this case the toll authority) pays on the bond. The 76th Legislature also passed the Comptroller's Funds Consolidation Bill.¹⁶⁰ This bill abolished any separated funds from the state treasury unless specified within the bill,¹⁶¹ and prevailed over any other legislation that created a separate fund.¹⁶² An exception for TTA funds was not contained within the Fund Consolidation Bill,¹⁶³ thus nullifying the legislation passed in S.B. 1751.

The Regional Tollway Authority Act was revised by the 75th Legislature and received many improvements over the Turnpike Act.¹⁶⁴ A brief description of the various improvements is contained in Appendix II. Legislation to provide parity between the two toll authority acts did not pass during the 76th Legislative Session.¹⁶⁵ The TTA could benefit from many of the improvements that were made in the Regional Toll Authority Act. Parity between the statutes that serve similar purposes could prevent legal problems for TTA in the future.¹⁶⁶

Findings

The Texas Constitution prohibits the Texas Department of Transportation (TxDOT) from contributing partial payment of toll projects, thereby preventing TxDOT from maximizing the building of needed roads in Texas. Further, state requirements prevent the Texas Turnpike Authority (TTA) from maintaining a separate fund outside the general revenue fund, making state toll projects riskier in private investors' minds. This unnecessary risk prevents TTA from maximizing the lowest possible interest rates on bonds purchased to finance toll projects. Finally, disparity in the statutes governing TTA and Regional Toll Authorities

¹⁶⁰ Comptrollers Consolidation Act, 76th Leg., R.S., ch. 1045, 1999 Tex. Gen. Laws 3854.

¹⁶¹ *Ibid.* at 3855.

¹⁶² *Ibid.* at 3855.

¹⁶³ *Ibid.*

¹⁶⁴ Pete Winstead, Chairman, Texas Turnpike Authority, "Toll Roads - Barriers to Increased Use", testimony presented to the Senate State Affairs Committee, January 11, 2000, p 3.

¹⁶⁵ See Tex. S.B. 1647, 76th Leg., R.S. (1999)

¹⁶⁶ Pete Winstead, Chairman, Texas Turnpike Authority, "Toll Roads - Barriers to Increased Use", testimony presented to the Senate State Affairs Committee, January 11, 2000, p 3.

creates an anomaly in Texas law.

Recommendations

(10) The State Affairs Committee recommends passing a constitutional amendment to remove the requirement that TTA repay all funds received from TxDOT for construction, operation, and maintenance of toll projects.

(11) The committee recommends enacting legislation to allow TTA to maintain bond proceeds outside the state general revenue fund.

(12) The committee recommends enacting legislation to provide parity between the Turnpike Act (Chapter 361, Transportation Code) and the Regional Tollway Authority Act (Chapter 366, Transportation Code) by incorporating in the Turnpike Act the improvements made during the 75th Legislature in the Regional Tollway Authority Act.

Freight and Passenger Rail

Every 80,000 pound truck inflicts the same amount of wear on Texas roads as 9,600 cars.¹⁶⁷ Thus, with the increase in truck traffic due to NAFTA trade and increased traffic due to population growth, alternative transportation modes will become increasingly important to defray congestion and decay of the state highway system. Historically, rail was an important transportation mode for the development of the nation and the state. Texas has almost 12,000 miles of mainline track and 18,184 rail/highway crossings, the most in both regards of any state in the U.S.¹⁶⁸ Use of rails can reduce the level of peak hour congestion in many urban areas, decrease the cost of maintaining roadways due to less wear, and reduce emissions by consolidating the cargo of several vehicles onto each train.¹⁶⁹

In 1997, 16 percent of the total U.S.-Mexico trade passed through Texas ports by rail,¹⁷⁰ leaving the lion's share of movement via commercial truck traffic. As an example of this movement, from 1992 to 1997, loaded truck crossings at Laredo have jumped from 20,000 per month to 75,000 per month and are expected to double within the next 10 years.¹⁷¹ A rail car can carry, on average, three to four times the same weight as the heaviest trucks normally allowed on the highway system.¹⁷² A typical train pulls about 100 rail cars,¹⁷³ thus each train has the potential of relieving the impact of four million cars worth of damage.¹⁷⁴ As the highway system becomes less and less able to accommodate both freight and

¹⁶⁷ Robert Nichols, Member, Texas Transportation Commission, "The Importance of Rail to the Texas Transportation System," testimony presented to the Senate State Affairs Committee, January 11, 2000, page 2.

¹⁶⁸ Charles R. Matthews, Commissioner, Railroad Commission of Texas, testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹⁶⁹ Robert Nichols, Member, Texas Transportation Commission, "The Importance of Rail to the Texas Transportation System," testimony presented to the Senate State Affairs Committee, January 11, 2000, page 2.

¹⁷⁰ Charles R. Matthews, Commissioner, Railroad Commission of Texas, testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹⁷¹ Ibid.

¹⁷² Robert Nichols, Member, Texas Transportation Commission, "The Importance of Rail to the Texas Transportation System," testimony presented to the Senate State Affairs Committee, January 11, 2000, page 2.

¹⁷³ Robert Nichols, Member, Texas Transportation Commission, "Rail Panel Remarks," testimony presented to the State Affairs Committee, February 22, 2000, p. 1.

¹⁷⁴ Ibid.

passenger movement expeditiously, rail may provide an alternative mode that can play an integral part in attaining speed and efficiency in the flow of goods and persons.

Rail provides a unique experience in transportation planning. Contrary to highways, primary rail infrastructure is built and owned by private entities. This makes incorporation of rail into a statewide transportation plan more involved than many other modes of transportation. To fully utilize rail infrastructure, incorporation of rail access to other infrastructure systems as well as fostering public/private partnerships are essential. Texas currently has several differing governmental entities involved in the rail industry.

The Texas Railroad Commission is primarily involved in rail safety. Division safety inspectors check equipment, railroad operations, hazardous materials handling, signal operation, and track in Texas.¹⁷⁵ The commission also has a section within this division devoted to rail crossing safety education.¹⁷⁶

TxDOT is charged with the intermodal planning efforts of Texas' infrastructure.¹⁷⁷ The department is specifically required to incorporate railroads in its statewide transportation plans.¹⁷⁸ The importance of planning for railroads lies not only in the existence of the rail line, but its access and ease of transfer to and from other modes of transportation and intermodal facilities. Access to fluid movement of goods across a seamless network of infrastructure modes remains paramount to the viability of rail over truck movement. Access to rail lines remains a recurring problem. Many rural communities are losing their rail lines as abandonment becomes more economical for rail service providers. As well, many shippers find themselves 'captive' as they only have access to a sole rail service provider.

TxDOT has commissioned several research and feasibility studies regarding rail. The *Austin-San Antonio Commuter Rail Feasibility Study* researched the viability

¹⁷⁵ Charles R. Matthews, Commissioner, Railroad Commission of Texas, testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹⁷⁶ Ibid.

¹⁷⁷ Section 201.601, Transportation Code.

¹⁷⁸ Ibid.

of a commuter/regional passenger rail in that corridor.¹⁷⁹ The *Grain Transportation Study* (required by H.B. 2809 of the 76th Legislature) recommends that TxDOT, in conjunction with the Department of Agriculture and the Railroad Commission, conduct a comprehensive study of grain transportation in Texas.¹⁸⁰ The study is to include data available from grain elevator operators, railroads, and truck operators and an analysis of the performance and costs associated with transporting grain by rail and truck.¹⁸¹ TxDOT also sponsored a multi-year in-depth study, *The Railroad System of Texas: A Component of the State and National Transportation Infrastructure*, which produced three reports regarding rail.¹⁸²

TxDOT has also initiated funding agreements with different rail service providers to ensure the viability of rail service. In 1996, the National Railroad Passenger Corporation (commonly known as AMTRAK) had announced that it would terminate its Texas Eagle line.¹⁸³ Subsequently, under direction from the 75th Legislature, TxDOT loaned \$5.6 million to AMTRAK to maintain the Texas Eagle.¹⁸⁴ The loan was repaid early, and the line has increased the number of trains that run per week.¹⁸⁵ TxDOT has also entered into two conditional grant funding agreements with rural rail districts. Funds were specifically appropriated by the legislature through appropriation act riders to TxDOT to fund these agreements.¹⁸⁶ In 1991, a \$3 million secured grant was issued to the South Orient Rural Rail Transportation District.¹⁸⁷ In 1995, a \$2 million secured grant was issued to the Northeast Texas Rural Rail District. In return for the grants, TxDOT received existing rights-of-way and security interests in rails, ties, and rail system

¹⁷⁹ David Laney, Member, Texas Transportation Commission, “Texas Department of Transportation Organization, Planning, Finance,” testimony presented to the Senate State Affairs Committee, November 19, 1999, p. 13.

¹⁸⁰ Section 1, Chapter 270, page 1133, Acts of the 76th Legislature, Regular Session, 1999.

¹⁸¹ Ibid.

¹⁸² David Laney, Member, Texas Transportation Commission, “Texas Department of Transportation Organization, Planning, Finance,” testimony presented to the Senate State Affairs Committee, November 19, 1999, p. 14.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid. at p. 15.

improvements.¹⁸⁸

Several difficulties exist in utilizing rail to relieve the congestion problems Texas currently faces due in large part to the influx of NAFTA related traffic. Rails are privately owned entities operating to maximize profits. The state no longer regulates the rail industry except regarding safety concerns. TxDOT can provide access to and enter into public/private partnerships to encourage rail use, but TxDOT does not build or operate rail lines. Therefore, rail service may or may not be coordinated with transportation planning. For example, when the Port of Houston upgraded its port facility, the port authority discovered that the available rail service was unable to handle the increased trade. The port and the rails were unable to coordinate an agreement, resulting in a backlog of goods waiting to be transported inland.

Coordination problems may also occur when TxDOT is planning for future growth. Recent years saw a deterioration in rail service in Texas due to the merger of Union Pacific (UP) and Southern Pacific (SP). From the spring of 1997 through 1998, UP began to integrate SP into its system, resulting in unprecedented congestion, highlighted by backlogs in the Houston/Gulf Coast area as well as the rail ports of Laredo.¹⁸⁹ The congestion impacted all rail shippers because of their heavy dependence on UP.¹⁹⁰ The nature of the rail industry also factors into its viability to relieve NAFTA related traffic. Rail carriers require the movement of large quantities of goods over long distances to make them competitive with truck delivery.

Rail faces another problem that impacts Texas infrastructure, the problem of abandonment. When a line is abandoned, not only is the rail service discontinued, but the rail itself is sold as scrap metal.¹⁹¹ The scrap is sold for pennies on the

¹⁸⁸ Ibid.

¹⁸⁹ Charles R. Matthews, Commissioner, Railroad Commission of Texas, testimony presented to the Senate State Affairs Committee, January 11, 2000.

¹⁹⁰ Ibid.

¹⁹¹ Robert Nichols, Member, Texas Transportation Commission, "Rail Panel Remarks," testimony presented to the State Affairs Committee, February 22, 2000, p. 2.

dollar while the land is sold or reverts to other ownership.¹⁹² It becomes physically impossible for rail service to be reestablished and Texas loses the rail forever.¹⁹³ Texas has lost almost 4,000 miles of track in the last 20 years.¹⁹⁴

Thus, many factors work against the interest of Texas in utilizing rail as an integral part of its infrastructure system. Some of the interests that remain in jeopardy are keeping rail service to communities on the margin regarding rail service, maintaining rail infrastructure in the ground, and keeping transportation corridors available.

Rural Rail Transportation Districts have provided one solution to the problem of decreasing rail service in Texas, and provide an example of public/private partnerships. The Texas Legislature passed legislation in 1981 authorizing rural rail transportation districts, in recognition of the interest the state has in maintaining the movement of essential agricultural products from rural areas to markets which had been threatened by railroad bankruptcies and abandonment proceedings.¹⁹⁵ The rural rail transportation districts were created as political subdivisions to provide for the continued operation of railroads.¹⁹⁶ County commissioners courts are authorized to form the districts¹⁹⁷ and issue bonds to generate revenues for the rail districts.¹⁹⁸ The districts are authorized to, among other things, own and maintain (as well as develop) rail facilities¹⁹⁹ and lease them for operation.²⁰⁰ The first rail district, established in 1991, is known as the CenTex Rural Rail District and consists of Johnson, Hood, Erath, Comanche, and Brown counties.²⁰¹ The rural rail transportation districts have provided an avenue for

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Robert Nichols, Member, Texas Transportation Commission, "Rail Panel Remarks," testimony presented to the State Affairs Committee, February 22, 2000, p. 2.

¹⁹⁵ Section 1, Article 6550(c), V.T.C.S.

¹⁹⁶ Ibid.

¹⁹⁷ Sections 3 and 3A, Article 6550(c), V.T.C.S.

¹⁹⁸ Section 6, Article 6550(c), V.T.C.S.

¹⁹⁹ Section 5(e), Article 6550(c), V.T.C.S.

²⁰⁰ Section 5(n), Article 6550(c), V.T.C.S.

²⁰¹ Rail District Advisors, Inc., Creating Competitive Shipping pamphlet.

counties to prevent the abandonment of marginal rail lines and rejuvenate rail service in their area. The same problems are faced by all areas that are rail dependent, not just rural counties.

Rails not only provide freight service but also offer potential in passenger service. The U.S. Department of Transportation supports intercity high-speed rail passenger service as a component of a balanced national transportation system.²⁰² In the early 1990s, the Texas TGV Consortium endeavored to build and finance a \$5 billion, 590-mile, high-speed rail system connecting Dallas/Fort Worth, Houston and San Antonio.²⁰³ The project died due to lack of funding after meeting resistance from various groups including regional airlines, landowners who owned the rights-of-way and highway supporters.²⁰⁴ The Gulf Coast High Speed Railway Corridor was designated by TEA-21 for railway/highway crossing hazard elimination in high speed rail corridors.²⁰⁵ The concept behind the approach is to incrementally improve over time the speed at which existing passenger trains could travel by investing in track improvements and grade crossing hazard elimination through increased signalization or closure.²⁰⁶ The corridor includes the Amtrak Sunset Limited route from Houston through Beaumont to the Louisiana border.²⁰⁷ TxDOT has assisted in feasibility studies and applied for federal funds regarding the corridor, while keeping abreast of developments in the national high speed rail program.²⁰⁸

Texas has three National Railroad Passenger Corporation (AMTRAK) passenger train routes.²⁰⁹ The Texas Eagle covers a route from Los Angeles to Chicago,

²⁰² Mark E. Yachmetz, Director, Office of Passenger Programs, Federal Railroad Administration, U.S.DOT, testimony presented to the Senate State Affairs Committee, February 22, 2000.

²⁰³ James L. Randall, Deputy Director, Transportation Planning and Programming, TxDOT, "Intercity Passenger Rail in Texas," testimony presented to the Senate State Affairs Committee, February 22, 2000, page 1.

²⁰⁴ Ibid. at page 2.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid. at page 3.

²⁰⁹ Ibid.

through Marshall, Dallas, Ft. Worth, Austin, San Antonio, Del Rio, and El Paso.²¹⁰ The Sunset Limited originates in Florida, running through Beaumont, Houston, and San Antonio where it connects with the Texas Eagle.²¹¹ The Heartland Flyer runs between Oklahoma City and Ft. Worth.²¹² Additionally, an Austin-San Antonio Commuter Rail feasibility study determined that a commuter rail system within this corridor is feasible using available railroad rights of way.²¹³

Findings

Rails provide a potential avenue to relieve the burdens facing the Texas highway system. Rails also provide an essential carrier service for many areas of Texas. As the rail industry transforms in the wake of deregulation, shippers are concerned with the possibility of needlessly being held captive due to a lack of available carriers. Rail also represents a resource valuable to the state of Texas which is cost prohibitive to rebuild. It is imperative that the state protect any viable track lines that are in danger of being abandoned.

Recommendations

(13) The State Affairs Committee recommends that the legislature memorialize Congress to relieve the plight of captive shippers (companies with access to only one rail carrier).

(14) The committee recommends the legislature create and fund a program for the state to acquire a rail in danger of abandonment.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ James L. Randall, Deputy Director, Transportation Planning and Programming, TxDOT, "Intercity Passenger Rail in Texas," testimony presented to the Senate State Affairs Committee, February 22, 2000, page 4-5.

Ports

Texas' inland and coastal ports are an integral component of the state's economy and the transportation system as a whole. While the state's role is limited in regard to ports, the Texas Department of Transportation must work with Metropolitan Planning Organizations and port authorities in order to coordinate planning efforts and facilitate a fluid movement of goods from port facilities to all other modes of transport.

Texas is one of the country's largest maritime states, with a dozen seaports and more than 1,000 miles of inland waterways that account for more than 17 percent of Texas' gross state product.²¹⁴ The Gulf Intracoastal Waterway (GIWW) provides Texas the commercial trade link to the inland waterway system of the U.S. In 1996, over 76 million short tons were moved on Texas waterways, valued at more than \$22 billion dollars.²¹⁵ The entire GIWW between the Mexican border and Florida is the nation's third busiest waterway; 64 percent of the GIWW is within Texas. Texas was second nationally only to Louisiana in the amount of goods shipped by water in 1996.²¹⁶

Commercial trade between Texas ports and other port centers of the United States, as well as foreign trade markets, is greatly facilitated by the GIWW. The Texas ports system is also an essential component of the state's transportation system. Texas' 12 deep-draft ports, 15 shallow-draft ports, and many private industrial facilities utilize the GIWW to move commerce and generate significant economic activity. In 1996, Texas had seven ports that ranked in the top 50 U.S. ports in terms of tonnage.²¹⁷

In Texas, ports fund expansion projects through the issuance of bonds and/or through the receipt of federal funds, for which each port competes with other

²¹⁴ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

Texas ports and ports in other states. The State of Texas acts as the local non-federal sponsor of the main channel of the Gulf Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel. State responsibility for the GIWW began with the passage of the Texas Coastal Waterway Act of 1975 by the 64th Texas Legislature.²¹⁸ The Act instructed the State Highway and Public Transportation Commission, now the Texas Transportation Commission, to act as a representative of the state in fulfilling the duties of the non-federal sponsor. Duties of a sponsor state include providing the necessary lands, easements, relocations, and realignments required during the construction and maintenance of the GIWW.²¹⁹

The Texas portion of the waterway is 423 miles long. Because it is less than 25 feet deep, it is defined as a shallow-draft channel. The U.S. Army Corps of Engineers maintains the waterway at an authorized width of 125 feet and a depth of 12 feet.²²⁰ The waterway is directly linked with Texas' 12 deep-draft port channels and 15 shallow-draft ports. The GIWW also connects to the interstate marine thoroughfare of the Mississippi and Ohio rivers, two of the busiest waterways in the country.²²¹

TxDOT's interagency GIWW Advisory Committee provides coordination among the various agencies whose duties intersect at the GIWW. The committee is comprised of representatives from the Texas Parks and Wildlife Department, the Texas General Land Office, the Texas Historical Commission, the Texas Natural Resources Conservation Commission, the Texas Economic Development Commission, and the Office of the Governor. The committee's primary responsibility is to identify and develop environmentally sound and economically feasible dredge disposal sites by providing coordination, comments, and acceptance of proposed sites.

²¹⁸ Section 51.00, et seq., Transportation Code.

²¹⁹ David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

²²⁰ Ibid.

²²¹ Ibid.

The 75th Legislature created the Port Authority Advisory Committee (PAAC), comprised of five members: one member from the Port of Houston Authority of Harris County; two members from ports north of the Matagorda / Calhoun County line, excluding the Port of Houston Authority; and two members from ports located south of the Matagorda / Calhoun County line.²²² The PAAC advises the transportation commission and TxDOT on:

- issues concerning port authorities;
- intermodal and multi-modal issues relating to Texas waterways and ports;
- identification, development, and implementation of potential funding mechanisms, including the state infrastructure bank; and
- port infrastructure needs.

Findings

Texas ports must compete for federal funding with one another as well as ports located in other states. Ports play a major role in intermodalism, yet are not represented by voting members on their local Metropolitan Planning Organizations (MPO).²²³

Recommendations

(15) The State Affairs Committee recommends the legislature encourage TxDOT's Port Authority Advisory Committee to continue working with the Texas Transportation Commission in order to coordinate infrastructure development; and prioritize projects outside of port gates to improve access to and from Texas'

²²² David Laney, Member, Texas Transportation Commission, and Charles Heald, P.E., Executive Director, TxDOT, "Texas Department of Transportation Organization, Planning, Finance," testimony presented to the Senate State Affairs Committee, November 19, 1999.

²²³ Rick Maldonado, Chair, Government Affairs, Port of Corpus Christi, Representing the Texas Port Association, testimony presented to Senate State Affairs Committee, January 11, 2000.

competitive inland and coastal ports.²²⁴

(16) The committee recommends the legislature encourage Metropolitan Planning Organizations that have a port within their jurisdiction to seek and accept input from the port authority when planning future transportation projects.

²²⁴ “While not required unless a MPO is redesignated, existing MPOs (in cooperation with States) are encouraged to provide agencies that operate major modes of transportation a voice in The decision making process.” “Since The flexibility provisions of ISTEA need to be fully considered in The development of Transportation Improvement Programs, it is extremely important that The official of agencies that administer or operate major modes of transportation including transit, air, rail, and water have a voice in The MPO, The forum for cooperative transportation decision making as appropriate.” Federal Highway Administration, U.S.DOT, “Memorandum on ISTEA Metropolitan Planning Requirements,” April 6, 1992.

Mass Transit

Created by the legislature in the 1970s, metropolitan transit authorities have broad powers to plan, design, construct, and operate a variety of transit services and support facilities. Voters in San Antonio were the first to approve the creation of a mass transit authority in 1977, with Houston following the next year. Six metropolitan transit authorities (MTAs) and two city transit departments (CTDs) currently receive funding from sales and use taxes to provide service to the cities they serve.²²⁵

Cognizant of mass transit's growing impact on intermodal transportation, the Lieutenant Governor's Office instructed the committee in a separate charge to study "the funding and expenditures of metropolitan transit authorities (MTAs) and budgetary relationships that MTAs have with the cities they serve. The Committee shall analyze the overall fiscal management of the MTAs and the effectiveness of their delivery of services on a cost-benefit basis."²²⁶

For an in-depth analysis of mass transportation in Texas, please see the committee's report on its Charge No. 5.

²²⁵ Texas Legislative Council, [Profiles of Texas Mass Transit Authorities](#), October 1998.

²²⁶ Letter from Lieutenant Governor Rick Perry to the Senate Committee on State Affairs, September 7, 1999.

Aviation

The legislature created the Aviation Division of TxDOT in 1992 by merging the former Texas Department of Aviation into the Texas Department of Transportation. The Aviation Division is the agent for each political subdivision in the state for the purpose of applying for, receiving, and disbursing federal and state funds for the benefit of general aviation airports under the federal Airport and Airway Improvement Act of 1982.²²⁷ Additionally, in 1993 Texas was one of seven states selected to participate in the Federal Aviation Administration (FAA) State Block Grant Program, thereby delegating duties and responsibilities of the FAA Airports Division for administration of the airport improvement program as it relates to general aviation.²²⁸

The Texas airport system is the largest state system in the nation with 307 airports (all are eligible for state funds²²⁹), 277 of which are general aviation airports for which the Aviation Division has oversight responsibility.²³⁰ In order for airports to be eligible to receive state funds they must be included in the Texas Airport System Plan.²³¹ To be eligible for federal funding, airports must be included on the National Plan of Integrated Airport Systems.²³²

In FY 1999, the Texas Transportation Commission approved 41 new airport construction projects for \$40,434,215 and 40 new engineering design and planning projects for \$5,469,330. The Airport Development Program totaled \$48,246,658 for FY 99, a 13 percent increase from FY 98. TxDOT received \$30,187,987 in FY 99 from the federal State Block Grant Program for general aviation and reliever airports. FY 99 federal funds increased by approximately

²²⁷ Airport and Airway Improvement Act of 1982, Pub. L. No. Law 97-276 (1982); David Fulton, Director, Aviation Division, TxDOT, testimony presented to the Senate State Affairs Committee, January 11, 2000.

²²⁸ Ibid.

²²⁹ "State Approves Funding For Local Airports" *Online posting*. Texas Department of Transportation website. August 30, 1999. <<http://www.dot.state.tx.us/tdotnews/newsrel/1999/990830a.htm>>.

²³⁰ David Fulton, Director, Aviation Division, TxDOT, testimony presented to the Senate State Affairs Committee, January 11, 2000.

²³¹ "State Approves Funding For Local Airports" *Online posting*. Texas Department of Transportation website. August 30, 1999. <<http://www.dot.state.tx.us/tdotnews/newsrel/1999/990830a.htm>>.

²³² Ibid.

10 percent from FY 98.²³³

Texas is poised to receive approximately \$110 million in federal funds for general aviation airport improvements over the next three years. The funding comes as a result of the Aviation Investment and Reform Act for the 21st Century (AIR 21).²³⁴ Funds from AIR 21 will support various airport grant programs administered by the Texas Department of Transportation that are aimed at maintaining and rehabilitating more than 275 community airports. Typical projects include land acquisition, runway extensions and preservation, airport lighting and signage, and airport master plans.²³⁵

²³³ David Fulton, Director, Aviation Division, TxDOT, testimony presented to the Senate State Affairs Committee, January 11, 2000.

²³⁴ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 108-181 (2000).

²³⁵ "Texas to receive increased funding for aviation" *Online posting*. Texas Department of Transportation website, March 17, 2000. <<http://www.dot.state.tx.us/tdotnews/newsrel/000317.htm>>.

Appendix I
Letter from Senator Shapleigh

Appendix II
Miscellaneous

Appendix III
Witness List

Appendix IV
Sample Legislation

Appendix V
State Auditor's Office Review