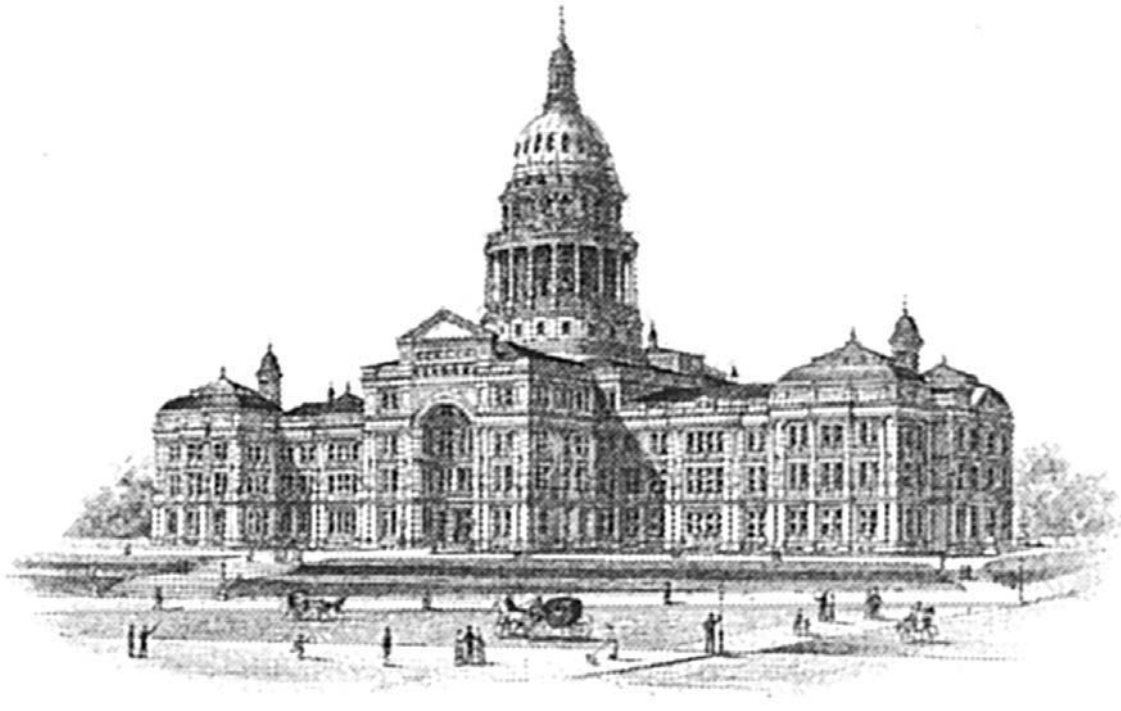


Senate Committee on Infrastructure
Development and Security
Report to the 79th Legislature



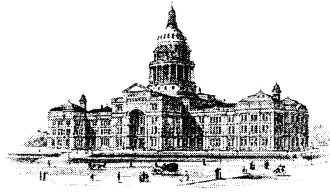
Transportation

December 2004



Senate Infrastructure Development & Security Committee

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December 1, 2004

The Honorable David Dewhurst
Lieutenant Governor
P.O. Box 12068
Austin, Texas 78711

Dear Governor Dewhurst:

The Senate Infrastructure Development and Security Committee is pleased to submit its final transportation report. This report considers the committee's five transportation charges to study and report on:

- the effectiveness of HB 3588;
- the proof of financial responsibility verification program;
- approaches to highway construction and maintenance;
- funding allocations for Trans-Texas Corridor projects; and
- federal re-authorization of TEA-21.

Due to the budget constraints the Legislature is likely to face in the 79th Session, this report is submitted with the understanding that recommendations requiring funding should be pursued only in the event that funding is or becomes available. In accordance with your request, copies of this report have been sent to the appropriate parties.

Respectfully submitted,

Handwritten signature of Todd Staples in black ink.

Senator Todd Staples
Chairman

Handwritten signature of Gonzalo Barrientos in black ink.

Senator Gonzalo Barrientos
Vice-Chairman

Handwritten signature of Kim Brimer in black ink.

Senator Kim Brimer

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Handwritten signature of Jeff Wentworth in black ink.

Senator Jeff Wentworth



Acknowledgments

The Senate Infrastructure Development and Security Committee would like to recognize all those who assisted with this interim report for their hard work and cooperation. A list of all who provided testimony on transportation issues to the committee is contained within this report. In particular, the committee would like to thank the following and their representatives: the Texas Department of Transportation, the Texas Department of Public Safety, the Texas Transportation Commission, and the Legislative Budget Board.

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CHARGES

1. Study the implementation and make recommendations to enhance the effectiveness of HB 3588 relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities including, but not limited to, multimodal transportation and the progress, improvement, policing, and safety of transportation in Texas. Monitor and report on the adequacy and use of the trauma care funds generated as a result of the legislation and make recommendations for improving the funding of trauma care services.
2. Study the proof of financial responsibility verification program administered by Texas Department of Insurance and the Department of Public Safety and make recommendations for improving compliance by drivers in Texas.
3. Study and make recommendations for innovative approaches to highway construction and maintenance. Focus on recommendations for streamlining Texas Department of Transportation operations, including methods of expediting permitting procedures while maintaining environmental safeguards. Examine and make recommendations for regional options for increasing financing, including, but not limited to, the creation of a local option motor fuels tax.
4. Evaluate and make recommendations relating to funding allocations for Trans Texas Corridor projects. Monitor and report on the status of the projects, including their impact on local, regional, and state transportation.
5. Study the federal re-authorization of TEA-21. Analyze and make recommendations relating to the impact of re-authorization on transportation in Texas, including an assessment of state plans and programs for implementing any required changes.

FINDINGS AND RECOMMENDATIONS

Interim Charge #1

Finding - General

- HB 3588 is one of the most extensive pieces of transportation legislation passed in Texas in many years, opening up financing options, expanding processes for building roads and changing the way the Texas Department of Transportation conducts business.

Recommendations

- The Legislature should continue to monitor the implementation and effects of HB 3588 and its impact on the future of Fund 006 and the Texas Mobility Fund.
- The committee recommends the Texas Transportation Commission study current structures for providing comprehensive, multimodal transportation systems in all regions of the State of Texas. The study should focus on the multiple authorities in a region and assess the ability of the authorities to provide a seamless system for mobility throughout the region in a financially efficient manner and without duplication of services.

Findings - RMAs

- The RMA model is an effective method for uniform toll project construction across the state.
- The intent of HB 3588 was to implement the RMA model in areas which have significant transportation needs but lack the needed revenue sources to begin construction today.
- HB 3588 did not allow for the use of state funds to pay for start up cost in the creation of a Regional Mobility Authority. This may place significant hurdles on smaller metropolitan areas wishing to use the RMA structure to manage transportation projects in their region.

Recommendations

- The committee recommends allowing counties to borrow state transportation funds for start up costs associated with the creation of an RMA. The commission should adopt rules regarding the amount that may be extended for this purpose and the requirements for repayment.
- The committee recommends that the Texas Department of Transportation, with the assistance of existing toll authorities develop an administrative business model for RMAs to ensure consistency across the state with regard to administrative functions.
- The committee recommends that a limit be placed on RMAs with regard to the amount or percentage of funding which may be used to perform administrative functions.

Findings - Issuance of Bonds

- Bonds issued for transportation projects can provide great benefits to the state by mitigating rising construction costs and inflation.
- Bonds secured by the full faith and credit of the state highway fund may limit the ability to take on new construction in the future.

Recommendations

- The current limits placed on the issuance of bonds backed by the State Highway Fund should be maintained.
- The committee recommends the Legislature continue monitoring the issuance of bonds and other public securities secured by the State Highway Fund.
- The committee recommends the Legislature scrutinize all non-highway diversions from the State Highway Fund to ensure future projects are adequately funded.

Findings - Texas Mobility Fund

- Congestion costs the state millions of dollars annually by slowing the movement of people and goods.
- The Texas Mobility Fund is an effective way for the Texas Department of Transportation to address mobility problems of the state.

Recommendation

- The committee recommends that the following fees be evaluated and that the legislature determine through the appropriations process whether those amounts currently remitted to the general revenue fund could instead be dedicated to the Texas Mobility Fund:
 - Motor Carrier Permit Fees,
 - Motor Carrier Registration Fees,
 - Single State Registration Fees,
 - Motor Carrier Proof of Insurance Fees,
 - Salvage Dealers License Fees, and
 - Personalized License Plate Fees.

Findings - Rail

- Rail plays an important part in the movement of people and goods.
- The department needs greater flexibility to use rail as a means of reducing congestion on the state's highway system.
- Rail relocation is a valuable tool to address safety and economic development concerns in urban areas.

Recommendations

- The committee recommends the Legislature increase the annual cap on the Texas Department of Transportation to acquire rail and for certain rail-related activities. The committee further recommends the Legislature grant the Texas Transportation Commission the authority to enter into business agreements with the public and private sector to provide funding for rail line relocation.
- The committee recommends the Legislature establish and capitalize a revolving fund for rail relocations.

Finding - Advanced Acquisition

- Advanced acquisition is a new concept only recently used by the Texas Department of Transportation. The full benefits of advanced acquisition have not been realized.

Recommendation

- The use of advanced acquisitions should be monitored to ensure the state is getting the most efficient use of its dollars. Before the start of each regular legislative session, the transportation commission should be required to issue a report regarding amounts spent and descriptions of projects in which advanced acquisition was used to the Governor, Lieutenant Governor, Speaker and Chairs of the Senate Infrastructure Development and Security Committee and the House Transportation Committee.

Interim Charge #2

Findings

- The State of Texas requires drivers to be insured, yet there are an estimated 20 percent of motorists in Texas driving without insurance.
- The Texas Department of Public Safety and the Texas Department of Insurance recently issued a report stating Texas should not implement a database software interface system at this time and additional consideration should be given to alternatives that will provide the maximum reduction in the uninsured motorist rate in Texas. The report further stated the most effective system would consolidate a database interface software system with a liability insurance cancellation reporting system.
- The report issued by DPS and TDI recommends issuing a Request for Information (RFI) that specifies the features needed for a consolidated system and requires potential vendors to tell how they will construct such a system for Texas and the costs of such a system.
- As of this date, 27 states have implemented a type of financial responsibility verification system.

Recommendations

- The committee recommends legislative oversight committees review the order issued by DPS and TDI regarding an insurance verification program and monitor subsequent proposed actions to ensure increased compliance with Texas' financial responsibility requirements is being achieved through the chosen program.
- The committee recommends the Legislature clarify the funding allocations in place enabling DPS and TDI to fulfill the obligations set forth by HB 3588 pertaining to a financial responsibility verification program.

Interim Charge #3

Findings - Tolling

- The RMA model allows all areas of the state the ability to toll new projects.
- Tolling can move a project's start date forward and decrease the cost of construction.
- Tolling provides a steady revenue source which can be used to maintain roads more efficiently than the traditional methods of financing.
- Tolling gives the Texas Department of Transportation the ability to address projects critical to statewide connectivity.

Recommendations

- If the use of toll roads is being considered for an area, the committee recommends local governments consider forming RMAs in an effort to increase transportation financing regionally. This allows local regions to direct expenditures of any surplus toll revenue and keep those funds in the region. The Texas Department of Transportation should work with regions to identify the best process for moving projects forward and increasing financing options for that specific area.
- The committee recommends the Legislature expand or remove the \$800 million cap on toll equity.
- The Legislature should identify the best policy to distinguish between projects critical to statewide connectivity and projects critical to regional mobility.

Findings - Pass Through Tolls

- The Texas Department of Transportation is limited each year in the number of projects it can deliver by the amount of funding they receive from the collection of gas taxes, federal funds and Texas Mobility Fund revenue.
- Pass through tolls allow the department to stretch out the payment of these funds over a number of years.
- The statutes only allow for the local communities to raise capital and be repaid by the Texas Department of Transportation.

Recommendation

- The committee recommends the Legislature expand pass through toll provisions in HB 3588, 78th Legislature, Regular Session, to allow the Texas Department of Transportation to fund projects and have the cost of those projects repaid by local and private entities.

Findings - Toll Collection

- The current system of toll violation fine collection is dependant on accurate data provided by the Texas Department of Transportation.
- The Texas Department of Transportation is the agency responsible for the vehicle title registration.
- The vehicle title system is becoming a more important tool in the identification of a vehicle owner and his or her corresponding address.
- The vehicle title system does not have a method to keep track of a vehicle owner's current address in a real time setting. Many people move on a regular basis and there is no requirement they update their mailing address.

Recommendations

- The Texas Department of Transportation should take necessary steps to ensure its vehicle title registration system accurately reflects vehicle owners and their addresses.
- The committee also recommends that the Texas Department of Public Safety and the Texas Department of Transportation, through an interagency agreement, link DPS's drivers license database with TxDOT's vehicle registration database to create a seamless record of an individual driver and vehicle.
- The committee recommends Team Texas, a consortium of all toll authorities in Texas promoting interoperability between all the toll facilities, study and report to the Legislature methods to distribute and increase use of electronic toll tags focusing on safety, congestion, cost and administration.

Findings - Toll Conversion

- The conversion of a state highway has the immediate benefit of being self-sufficient for continuing maintenance.
- There is no statutory provision defining the point at which tolling a road requires following the conversion process.
- The toll system has been described to the public as a user fee system where the driver has the choice as to whether they desire to travel on toll roads free from congestion or use tax-funded alternatives.

Recommendations

- The committee recommends the Legislature enact legislation regarding toll conversion as follows:
 - define the point in time at which a transportation project is considered a part of the state system;
 - clarify what constitutes a necessary "free alternative" when non-toll facilities are converted to toll facilities; and
 - require revenue derived from tolling a previously non-tolled facility to be reinvested to directly benefit users of the now-tolled facility, regardless of the operator of the now-tolled facility.

Findings - Local Option Tax

- Motor fuels taxes have not kept pace with the rising demands placed upon the infrastructure system.
- Local option tax collection would require the implementation of a two-tier motor fuels tax collection system.

Recommendations

- In the discussion of school finance, every effort should be made to find an alternative source of dollars allocated to the Permanent School Fund from gas tax revenues. If an alternative source is identified, gas tax revenues appropriated to the Permanent School Fund should be capped to current biennium level to allow future increases in gas tax revenue to be appropriated for transportation purposes.
- The committee recommends the formation of a task force, similar to the "Study Commission on Water for Environmental Flows," to study the use of motor fuels taxes to finance transportation infrastructure. The study should include the impact of diminishing motor vehicle tax receipts on the ability of the state to finance transportation projects, the relationship between motor fuel taxes paid and use of the system, and alternative options for financing transportation projects.
- The committee recommends legislation be passed to require revenues from the sale of TxDOT and DPS surplus property be deposited to the State Highway Fund.

Interim Charge #4

Findings - Trans-Texas Corridor

- The Trans-Texas Corridor is an innovative approach to safely move goods and people across the state.
- Public involvement in the planning process is vital to the success of the Trans-Texas Corridor.

Recommendations

- The committee recommends continued monitoring of the funding allocations for Trans-Texas Corridor projects.
- The committee recommends the continued monitoring of the Trans-Texas Corridor's impact on local, regional, and state transportation systems.
- The committee recommends the Texas Department of Transportation work with the Federal Highway Administration and the States of Louisiana, Mississippi, Alabama and Georgia to develop a new east-west route for the Trans-Texas Corridor Plan. The Texas Department of Transportation should consider a route running north of the Texas Hill Country and potentially meeting up with a proposed new east-west interstate highway running from the Atlantic Seaboard to the Natchez, Mississippi bridge.
- The Texas Department of Transportation should monitor the impact of the location and design of Trans-Texas Corridor routes on economic development as projects which provide relief routes around metropolitan areas are completed.

Interim Charge #5

Findings - Reauthorization

- Texas continues to be a donor state sending more federal motor fuels tax receipts to Washington D.C. than it receives.
- Congress continues to debate the reauthorization bill, passing a series of temporary extensions. The latest is set to expire on May 31, 2005.
- Until the final passage of the next six-year reauthorization bill, it is difficult to determine the extent of any new provisions which might be available to Texas.

Recommendations

- The committee recommends the 79th Legislature memorialize Congress to ensure Texas receives its fair share of federal transportation funding by increasing the rate of return on federal transportation dollars. At a minimum, the committee would like to see an overall 95 percent rate of return by 2009.
- The committee recommends the 79th Legislature memorialize Congress to include in reauthorization legislation provisions encompassing Texas' priorities for flexible transportation financing and project delivery. These provision should include but are not limited to:
 - allowing design build authority for contractors to include environmental review, design, and construction portion of a project,
 - concurrent environmental review for multimodal transportation projects,
 - options for tolling interstate highways in Texas (within any limitations of state law),
 - pro rata toll credit calculation,
 - private activity bonds for transportation projects,

- realignment of the Borders and Corridors Program,
- inclusion of Texas in the surface transportation system performance pilot program,
and
- options for federal reimbursement for right of way.

CHARGE #1: HOUSE BILL 3588

Background and History

In July 1976, the theme for transportation policy was "Responding to the Changing Environment." The three problems facing the generation were: "the rapidly growing gap between needed highway construction and available revenue; cost escalations caused by inflation, the desire for higher levels of design standards, and attendant project slippage; and increased public scrutiny of highway programs which brought the need to objectively demonstrate to the public the benefits of proposed highway projects."¹

Many of the same problems facing the generation of the 70's still apply today. In September 2004 the Texas Transportation Institute completed the "2004 Urban Mobility Report," a nationwide study of the congestion levels in 85 urbanized areas with populations of greater than 500,000. The report states "congestion has grown everywhere in areas of all sizes. Congestion occurs during longer portions of the day and delays more travelers and goods than ever before."²

The Governor's Business Council issued a report in April 2003 which examined the roadway demands and related costs. It concluded that, "If Texas continues to build and maintain the state's infrastructure for the next 25 years the way we have done so for the past 10 years then congestion in urban areas will increase by 350 percent."³ The report goes on to state, "Texas transportation is at a crisis state and the most serious transportation threat to the state is the continuing delay in passenger and freight travel activity brought about by congested road facilities. The problem is most critical in the major metropolitan areas. Two thirds of Texans live in urban areas where traffic volumes have increased significantly more than new roadway construction."⁴

The legislature, aware of the daunting task ahead, made sweeping changes to the state's transportation policy during the 78th Legislature. House Bill 3588, 78th Legislature, Regular Session, and HB 2, 78th Legislature, 3rd Called Session, have been referred to as the most comprehensive transportation bills in Texas history. They brought about significant changes in the philosophy of how to construct, finance, maintain, manage, operate and police Texas' critical transportation infrastructure. HB 3588 contained 20 articles creating innovative approaches to effect efficient project delivery, financing and maintenance of infrastructure and policing activities. The bill included sections relating to:

- The Trans-Texas Corridor,
- Regional Mobility Authorities,
- Advanced Acquisition of Property,
- Rail Facilities,

¹ Texas State Department of Highways and Public Transportation, *Responding to the Changing Environment*, McKinsey and Company, Inc., July, 1976, (Consultant's report).

² Texas Transportation Institute, *2004 Urban Mobility Report*, September 2004.

³ Governor's Business Council, Transportation Task Force, *Texas' Roadways - Texas' Future*, April 2003.

⁴ Ibid.

- Issuance of Bonds and Other Public Securities,
- Pass-Through Tolls,
- Conversion of Non-Toll State Highway,
- Commercial Driver's Licenses,
- Motor Vehicle Sales Tax,
- Drivers Responsibility,
- Disposition of Department of Public Safety Fees,
- Additional Court Costs (changed to "State Traffic Fees" in HB 2, 78th Legislature, 3rd Called Session),
- Statewide Coordination of Public Transportation,
- Conditional Grant Program,
- Texas Turnpike Authority,
- Commercial Motor Vehicle Safety Standards,
- Non-repairable and Salvaged Motor Vehicle; Salvage Vehicle Dealers,
- Funding Port Security, Project and Studies, and
- Miscellaneous Provisions.

Texas has long relied upon the "pay-as-you-go" approach to road construction and financing, where new road construction only takes place once the gas tax revenues have been collected. House Bill 3588 changed this mantra by recognizing the need for a more regionalized approach to road construction and innovative approach to financing. The bill relies heavily on a user fee system of tolling and the expanded powers of Regional Mobility Authorities to raise the revenue needed to construct roads to keep up with the increasing number of vehicle miles traveled. Without these changes, the same problems facing the state for the last 30 years could have perpetuated for another 30.

Finding

- HB 3588 is one of the most extensive pieces of transportation legislation passed in Texas in many years, opening up financing options, expanding processes for building roads and changing the way the Texas Department of Transportation conducts business.

Recommendations

- The Legislature should continue to monitor the implementation and effects of HB 3588 and its impact on the future of Fund 006 and the Texas Mobility Fund.
- The committee recommends the Texas Transportation Commission study current structures for providing comprehensive, multimodal transportation systems in all regions of the State of Texas. The study should focus on the multiple authorities in a region and assess the ability of the authorities to provide a seamless system for mobility throughout the region in a financially efficient manner and without duplication of services.

Toll Authorities

Since 1953, when the original Texas Turnpike Authority was formed in Dallas,⁵ the state has had various governmental structures for toll authorities. The various types of entities which have the authority to build toll roads are:

- County Toll Authority (Harris County Toll Road Authority)
- Regional Toll Authority (North Texas Tollway Authority)
- State Toll Authority (Texas Turnpike Authority, division of TxDOT)
- Private Toll Corporation
- International Bridge, and
- Regional Mobility Authority.

Regional Mobility Authorities (RMAs)

With the various authorities came differing structures to address toll issues around the state. In order to implement tolling as a locally controlled revenue stream for transportation projects, the RMA structure was adopted. This structure allows for local control of tolled projects and investment back into the area as well as uniformity across the state regarding local tolling authorities.

The Central Texas Regional Mobility Authority was the first Regional Mobility Authority formed in Texas as a result of Senate Bill 342, 77th Legislature. With the creation of the Central Texas Regional Mobility Authority, the idea of the RMA model spread across Texas.

The formal process of creating an RMA is as follows:

1. Submission of a petition to the Chairman of the Texas Transportation Commission.
2. The petition is reviewed by TxDOT and a public hearing is scheduled.
3. The Transportation Commission makes a decision to approve or deny.⁶

The petition requirements include:

- adopted resolution from Commissioners Courts of county or counties,
- description of impact on regional mobility,
- identification of proposed transportation project(s), including, environmental/social, impacts and known opposition,
- commitment to be fully responsible for obtaining all environmental permits and other required environmental approvals,
- brief description of other transportation projects under consideration, and
- criteria for determining geographical make-up of Board and process for appointment.⁷

⁵ Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953.

⁶ Section 370.031, Texas Transportation Code.

The Transportation Commission will approve or disapprove based on the following criteria:

- Sufficient public support.
- Benefit to the traveling public.
- Improvement in efficiency on state transportation system.⁸

In the past toll authorities were established for the main purpose of building and maintaining toll roads in their region. The newly created Regional Mobility Authority structure grants greater authority to an area to take control of all aspects of transportation planning and operation to an area, exclusive of the operation of a bus system.

The greatest flexibility of the RMA model over previous toll authority models is in the types of projects that can be constructed. For growing communities this is a valuable tool. The chart in Appendix B lists the various projects which are permissible for the various types of tolling entities.

The RMA model allows a local area to take control of their transportation project delivery. Most RMAs are created around a project of significant need that is toll viable. This allows for the infusion of new dollars in the transportation system of that area. With the future projections of toll collections, an area can leverage the state, federal, and local funds through the sale of bonds to speed up the project delivery time. If an area is in need of critical infrastructure the area may not receive the needed funding to pay for a project for up to 20 years under the old pay as you go system.

Findings

- The RMA model is an effective method for uniform toll project construction across the state.
- The intent of HB 3588 was to implement the RMA model in areas which have significant transportation needs but lack the needed revenue sources to begin construction today.
- HB 3588 did not allow for the use of state funds to pay for start up costs in the creation of a Regional Mobility Authority. This may place significant hurdles on smaller metropolitan areas wishing to use the RMA structure to manage transportation projects in their region.

Recommendations

- The committee recommends allowing counties to borrow state transportation funds for start-up costs associated with the creation of an RMA. The commission should adopt rules regarding the amount that may be extended for this purpose and the requirements for repayment.

⁷ Section 26.11, Title 43, Texas Administrative Code.

⁸ Section 26.13, Title 43, Texas Administrative Code.

- The committee recommends that the Texas Department of Transportation, with the assistance of existing toll authorities, develop an administrative business model for RMAs to ensure consistency across the state with regard to administrative functions.
- The committee recommends that a limit be placed on RMAs with regard to the amount or percentage of funding which may be used to perform administrative functions.

Revenue for Transportation and Trauma Care

In 1923, the state established the motor vehicle fuel tax and allocated those funds to the construction of highways.⁹ The tax rate at that time was \$0.01 per gallon and raised \$320,148.¹⁰ In 1946, the Texas Constitution was amended adding Article VIII Sec. 7-a requiring all motor fuels tax revenue and vehicle registration fees be used for the "sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways."

Today the state gas tax is levied at a rate of \$0.20 per gallon.¹¹ The motor fuels tax for the 2004-2005 biennium is an estimated \$4.3 billion or 46 percent of the revenue allocated to the State Highway Fund #006.¹² Vehicle registration fees vary by the type of vehicle registered.¹³ Vehicle registration fees for 2004-2005 are estimated at \$1.6 billion and account for 13.7 percent of the total amount deposited to the credit of the state highway fund. The largest portion of estimated revenue is from federal funds in the amount of \$5.5 billion.¹⁴

In 1976 a report published by McKinsey & Company, Inc., examined the "Crisis facing the Texas Highway program." The report concluded there were four signs which indicated an impending crisis:

- increasing traffic,
- rising costs,
- leveling of revenue growth, and
- growing frustration.

All of these indicators still hold true today; traffic across the state has reached all time highs, the costs of construction continue to rise, gas taxes have had anemic growth in recent years and the public continues to be frustrated by congestion problems. This is most obvious when comparing vehicle miles traveled, number of vehicles and number of drivers to new lane miles (Appendix A). The

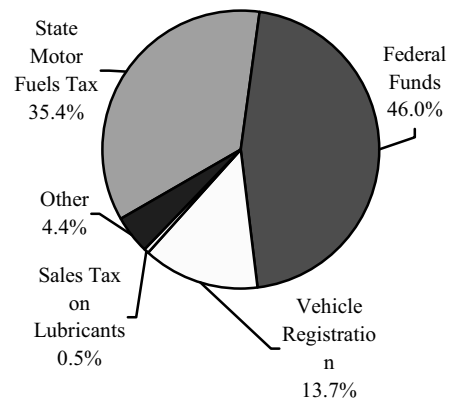
History of State Gas Tax Rates (per gallon)

38th Legislature (1923)	\$0.01/g
47th Legislature (1941)	\$0.04/g
54th Legislature (1955)	\$0.05/g
67th Legislature (1981)	\$0.01/g*
68th Legislature (1984)	\$0.10/g
69th Legislature (1986)	\$0.15/g
70th Legislature (1987)	\$0.15/g
72nd Legislature (1991)	\$0.20/g

* rate reduction for certified transit companies

Source: Comptroller report "Sources of Revenue Growth"

FY 2004-05 State Highway Fund Sources of Revenue



Source: Legislative Budget Board

⁹ Chapter 12, Acts of the 38th Legislature, Regular Session, 1923.

¹⁰ John Sharp, Texas Comptroller of Public Accounts, *Sources of Revenue Growth, A History of State Taxes and Fees in Texas 1972-1999*, July 1998.

¹¹ Section 162.102, Texas Tax Code.

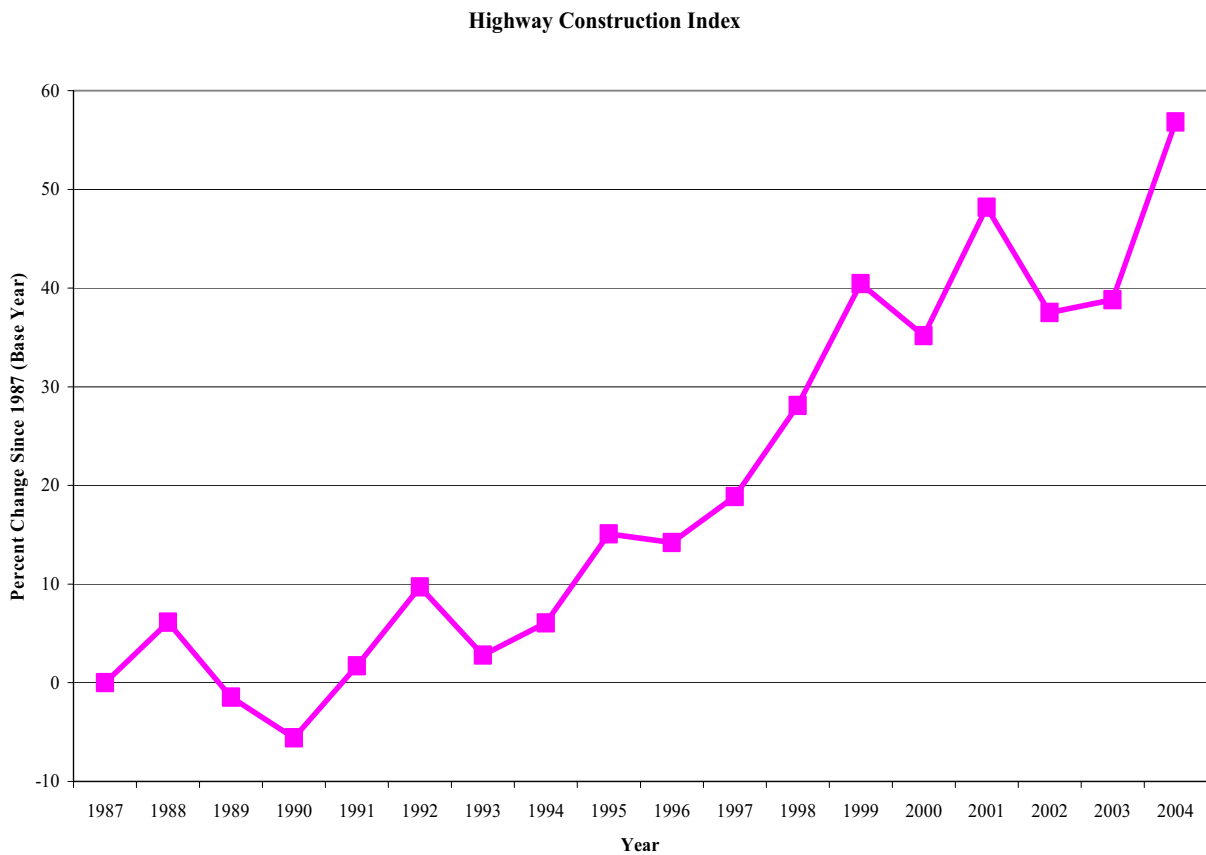
¹² Gere Dube', Analyst, Legislative Budget Board, testimony to the Senate Finance Committee, March 15, 2004.

¹³ Chapter 502, Texas Transportation Code.

¹⁴ Gere Dube', Analyst, Legislative Budget Board, testimony to the Senate Finance Committee, March 15, 2004.

highway construction index, shown below, illustrates that the construction cost index has increased by almost 60 percent since 1987.

The movement of people and goods across the state is critically important to the economic vitality of the state's economy. The Governor's Business Council report, "Texas Roadways - Texas Future" states, "Congestion already costs Texas residents, travelers, and business lost time, wasted fuel and dollars." HB 3588 allowed for the collection of new revenue which can be used to address transportation and trauma care funding shortages. The new sources include the issuance of bonds and other public securities, the Driver Responsibility Program, the State Traffic Fine, the disposition of DPS fees, and the shift to the motor vehicle sales tax.



Issuance of Bonds and Other Public Securities

Voter approval of Proposition 14 on September 13, 2003, authorized the Texas Transportation Commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the State Highway Fund.¹⁵ The aggregate principal amount of

¹⁵ Section 49-n, Article 3, Texas Constitution.

the bonds and other public securities may not exceed \$3 billion total nor exceed \$1 billion per year.¹⁶

Revenues must be used to fund highway improvement projects, with at least \$600 million of the proceeds being used to fund highway safety improvement projects that correct or improve hazardous locations on the state highway system. Under commission rules, the two categories for this funding are State Highway Improvement Projects and Safety Projects.

Improvement Projects

In order for projects to be eligible they must be contained in the Unified Transportation Program. Bond proceeds merely accelerate the project delivery time, they do not allow for additional project selection. One or more of the following criteria will be used to select projects:

- potential to improve mobility,
- potential to improve or maintain the existing system,
- time needed to complete the project,
- adherence to design standards,
- feasibility, and
- traffic volume.¹⁷

Safety Projects

One of the many concerns facing Texas is the safety of the traveling public on the highway system. With state issuance of bonds, the state is able to increase project delivery time and address safety needs and concerns in a more timely manner, therefore, reducing injuries and casualties on the roadways. Safety projects will be those projects which:

- are summated under the guidelines of the Hazardous Elimination Program,
- widen two lane highways,
- expand undivided Texas trunk system roads to four-lanes,
- construct grade separation at highway intersections,
- improve rail grade crossings,
- install median traffic barriers,
- treat or remove roadside fixed objects,
- install sidewalks and improve pedestrian intersections,
- improve intersections,
- install turn lanes at highway intersections,
- install traffic control devices and safety appurtenances, and
- convert two-way frontage roads to one-way.¹⁸

When identifying safety projects, the commission will consider accident data, traffic volume, pavement geometry, and other conditions as well as one or more of the following:

¹⁶ Section 222.003, Texas Transportation Code.

¹⁷ Section 15.173, Title 43, Texas Administrative Code.

¹⁸ Section 15.174, Title 43, Texas Administrative Code.

- the potential to correct identified problem,
- the time needed to complete project,
- adherence to design standards, and
- feasibility.¹⁹

The bonds and other public securities must mature no later than 20 years after their date of issuance, subject to any refunds or renewals. The annual expenditures may not exceed 10 percent of the amount deposited to the credit of the State Highway Fund in the immediately preceding year.²⁰

The most important aspect of the bond issuance is the recognition that the debt service on \$3 billion over a 20 year period would be substantial if the rates at issuance were high. The intent of the bond issuance is to mitigate the ever increasing cost of construction and rising inflation.

Findings

- Bonds issued for transportation projects can provide great benefits to the state by mitigating rising construction costs and inflation.
- Bonds secured by the full faith and credit of the state highway fund may limit the ability to take on new construction in the future.

Recommendations

- The current limits placed on the issuance of bonds backed by the state highway fund should be maintained.
- The committee recommends the Legislature continue monitoring the issuance of bonds and other public securities secured by the State Highway Fund.
- The committee recommends the Legislature scrutinize all non-highway diversions from the state highway fund to ensure future projects are adequately funded.

Driver Responsibility Program (DRP)

The stated purpose of the Driver Responsibility Program (DRP) is "to enhance the public safety of roads, streets, and highways and hold irresponsible drivers accountable for their actions."²¹ The program assesses fees based on a driver's irresponsible driving history and failure to pay the fees results in revocation of driving privileges.

The DRP has two major components: a point system and a conviction surcharge system. The point system is based primarily on the accumulation of class C traffic offenses, whereas the

¹⁹ Ibid.

²⁰ Section 222.03, Texas Transportation Code.

²¹ Frank Elder, Assistant Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

conviction surcharges are based on a one-time conviction of certain more serious traffic offenses.²²

The point system of the DRP is based on the accumulation of six points. Once the six points have been reached in a given year, the licensed driver must pay a surcharge every year until the point level falls below six. For every point above the six point minimum, there is an additional surcharge.

Points are assessed in the following manner:

- Moving traffic violation conviction = 2 points
- Moving traffic violation conviction resulting in an accident = 3 points

Surcharges based on the accumulation of points are:

- \$100 surcharge required every year in which the driver has accumulated 6 points, and
- an additional \$25 per point over 6 points.²³

There is a separate surcharge system for DWI, no liability insurance, and driving without a valid license violations. The surcharge will be required every year for three years following a conviction. The conviction surcharge system applies in the following manner:

- DWI violations
 - Driving while intoxicated = \$1,000
 - Second DWI within three years = \$1,500
 - DWI equal to or greater than .16 BAC = \$2,000
 - DWLI/Suspended = \$ 250
- No liability insurance = \$ 250
- Driving without a valid license = \$ 100²⁴

Any drivers who fail to meet their surcharge requirements will have their driving privileges revoked until compliance is achieved.²⁵

State Traffic Fines

Article 12 of HB 3588 established the additional court cost of \$30 for a person convicted of an offense under Section 542.403, Transportation Code. This was later changed in HB 2, 78th Legislature, 3rd Called Session, renaming the fine "state traffic fine." The fine is imposed on any person who enters a nolo contendere or guilty plea, regardless of the judgment.

²² Ibid.

²³ Chapter 708, Subchapter B, Texas Transportation Code.

²⁴ Chapter 708, Subchapter C, Texas Transportation Code.

²⁵ Frank Elder, Assistant Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

The court collecting the fine may retain 5 percent of the funds collected as well as the interest accrued on the funds retained by the court until remittance to the comptroller. All funds collected by the court are remitted to the comptroller quarterly.²⁶

Disposition of DPS Fees

HB 3588, 78th Legislature, Regular Session, and HB 2, 78th Legislature, 3rd Called Session, made changes to the allocation of several DPS fees. The following fees and penalties were allocated to the general revenue fund for the years 2004 and 2005 and to the Texas Mobility Fund thereafter:

- **Driver License fees** - all original, renewal and duplicate fees, except motorcycle and voluntary contribution programs.
- **Commercial Driver License fees** - all original, renewal and duplicate fees, except motorcycle.
- **Identification Card fees** - all original, renewal and duplicate fees, except voluntary contribution programs.
- **Sex Offender fees** - all original, renewal and duplicate fees, except motorcycle and voluntary contribution program.
- **Occupational License fees** - all issues for an occupational license.
- **Driver Record fees** - all requests for driver record information.
- **Reinstatement fees** - all fees collected as a result of a suspension/revocation resulting from an administrative hearing, ALR failure and/or refusal, and the fraudulent use of certain governmental records. Reinstatement fees collected from Safety Responsibility suspensions are not included.²⁷

Motor Vehicle Sales Tax

Fees are collected annually for the registration of motor vehicles, trailers and semi-trailers. These fees account for 13.7 percent of the revenues into the State Highway Fund.²⁸

Counties retain the first \$60,000 collected from the tax and \$350 for each mile of county road maintained by the county up to 500 miles. These funds are used by the counties to fund county road and bridge projects in their respective county. These funds may only be used for the following:

- county road construction, maintenance, and repair;
- bridge construction, maintenance and repair;
- the purchase of right-of-way for road or highway purposes; and
- the relocation of utilities for road or highway purposes.

²⁶ Section 542.4031 (e), Texas Transportation Code.

²⁷ Sections: 521.058, 521.313, 521.3466, 521.427, 522.029, 524.051, 548.508, 644.153, 724.046, 521.055(d), Texas Transportation Code.

²⁸ Gere Dube', Analyst, Legislative Budget Board, testimony to the Senate Finance Committee, March 15, 2004.

HB 3588 made changes to the funding mechanism which allocated these dollars to the counties. Through fiscal year 2005, counties will continue to receive an amount equal to 5 percent of the motor vehicle sales tax collected from the sale of vehicles in their jurisdiction during the previous year and other amounts required by law. In fiscal year 2006, counties will receive less revenue from the motor vehicle registration fees and will retain more revenue from motor vehicle sales tax collection proportionally each year through fiscal year 2015 to meet the equivalency amount of 5 percent of the motor vehicle sales tax collected during the previous year.

The shift from the motor vehicle registration fees to sales taxes will occur in 10 percent increments each year, taking 10 percent less of the vehicle registration fees and 10 percent more of the sales taxes each year. Upon completion of the shift, no motor vehicle registration fees will be allocated for the five percent equivalency amount in 2015 and following years, as motor vehicle sales tax revenue will cover the entire amount.²⁹ The shift in funding has a significant effect of reducing the allocation paid for by the State Highway Fund.

Texas Mobility Fund and New Funding Allocations

Texas Mobility Fund

Enactment of enabling legislation by the 77th Legislature in 2001 and voter approval in 2001 of Proposition 15, created the Texas Mobility Fund in the state treasury.³⁰ The mobility fund was created to address the mobility problems of the state caused by congestion. Large metropolitan areas of the state such as Houston, Dallas, and San Antonio have reached a critical point in their growth where the mitigation of congestion is one of the most important transportation issues facing these areas. The mobility fund was created to be a revolving fund to secure the issuance of bonds to pay for transportation projects to address this critical need of the state.

House Bill 3588 created the funding mechanism to capitalize the fund. Revenues flowing into the Texas Mobility Fund include money from:

- the Driver Responsibility Program (2004-2007),
- the State Traffic Fine (2004-2007),
- vehicle inspection fees,
- driver license vehicle fees,
- driver record information fee,
- motor carrier penalties, and
- proceeds from the issuance and sale of bond obligations.

New Funding Allocations

The funds collected from the DRP, the State Traffic Fine, and DPS Fees are allocated for four purposes: general revenue, DPS administration, Texas mobility plan, and trauma care facilities.

²⁹ Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003.

³⁰ Michael Behrens, Executive Director, Texas Department of Transportation, testimony to the Senate Finance Committee, March 15, 2004.

The funds allocated to general revenue have no limitation on their appropriation to various state programs. DPS is allocated funding for administration of the DRP. Allocations made to the Texas Mobility Fund are used to secure bond proceeds which will be allocated according to rules promulgated by the Transportation Commission. Funds for trauma care facilities are allocated by the Bureau of Emergency Management within the Department of State Health Services (DSHS).

Trauma care facilities receive an allocation of 49.5 percent of the funds collected from the driver responsibility program and 33 percent of the funds collected in state traffic fines. One percent of the funds collected under the DRP are allocated to the general revenue (GR) account and dedicated to DPS for administration of the program. The remaining 49.5 percent of DRP funds and 67 percent of state traffic fines are allocated to the undedicated portion of the general revenue fund.

Driver Responsibility Program Allocations	
Trauma Care Facilities	49.5% of the total
General Revenue	49.5% until total amount of allocations reach \$250 million
Department of Public Safety	1% of the total
Texas Mobility Fund	49.5% of amount total amount over \$250 million

State Traffic Fine Allocations	
Trauma Care Facilities	33% of the total
General Revenue	67% until total amount of allocation reaches \$250 mil
County or Municipality	5% of the total before remitting to state
Texas Mobility Fund	67% of the total amount over \$250 mil

The portion allocated to GR, however, is allocated only until the amount of total allocation, to DPS, GR, and trauma care facilities, within one year reaches \$250 million. At that point 49.5 percent of any additional funding from the DRP and 67 percent of any additional funds from state traffic fines are allocated to the Texas Mobility Fund.³¹ In any one year the maximum allocation to the GR account will be less than or equal to \$123.75 million. Note: Before state traffic fine revenues are remitted to the state, a municipality or county may retain 5 percent of the funds collected; this does not count towards the \$250 million amount.³²

The Metropolitan Mobility Plan

Section 201.943 of the Transportation Code provides that the Texas Transportation Commission develop a strategic plan prior to the issuance of obligations secured by the Texas Mobility Fund. The Commission adopted this plan on September 30, 2004. The strategic plan has the stated objective "To accelerate needed transportation improvements statewide to reduce congestion, improve safety and expand economic development."³³

³¹ Section 780.002, Texas Health and Safety Code.

³² Section 542.4031(f), Texas Transportation Code.

³³ Texas Department of Transportation, *Texas Mobility Fund Strategic Plan*, September 2004.

According to the strategic plan, the bond proceeds can be used to pay for:

- construction, reconstruction, expanding and acquiring state highways, including necessary design and right of way acquisition;
- state participation in toll projects and other public transportation projects; and
- refunding, issuance costs, establishing reserve accounts and paying interest.

The strategic plan divides the funding allocation between two subcategories of funding. Two-thirds of the funds will be allocated to the eight largest metropolitan areas of the state and the remaining one-third of the total allocation will be used for mobility projects in small urban areas and to address statewide connectivity.

The eight metropolitan areas were required by the commission to submit their plans for use of the Texas Mobility Fund proceeds to reduce congestion in their areas. The metropolitan areas were consistent with the regions of the existing Metropolitan Planning Organizations in:

- Austin,
- Corpus Cristi,
- El Paso,
- McAllen,
- Houton-Galveston,
- Lubbock,
- Dallas-Fort Worth, and
- San Antonio.

All eight metropolitan areas have submitted proposals to the commission with identified projects.³⁴ The proposals were adopted by the Texas Transportation Commission on October 28, 2004.³⁵

The plan also states that "in the event that project needs identified on the metropolitan areas exceeds the initial allocation, the commission may determine some of the allocation to the small urban areas and for statewide connectivity may be used for the metropolitan areas."³⁶

³⁴ Michael Behrens, Executive Director, Texas Department of Transportation, testimony to the Senate Finance Committee, October 5, 2004.

³⁵ Amadeo Saenz, Jr., P.E., Assistant Executive Director for Engineering Operations, TxDOT, testimony to the Senate Infrastructure Development and Security Committee, October 28, 2004.

³⁶ Texas Department of Transportation, *Texas Mobility Fund Strategic Plan*, September 2004.

EMS and Trauma Care

SB 102, 75th Legislature, was an extensive bill that directed establishment of a statewide EMS and Trauma Care System; however, no resources were provided. The Trauma Technical Advisory Council (TTAC), which was created by the legislation to advise the Texas Board of Health on system regulations, had the significant task of designing a voluntary state system.

In order to bring all the stakeholders together, Regional Advisory Councils (RAC) were created. Each RAC has bylaws that define the structure of their organization. The bylaws must ensure that all entities that care for trauma patients have an opportunity to participate. Due to the lack of state funding, RACs were formed as volunteer tax-exempt organizations 501(c)(3) in order to be eligible for grant opportunities.

Regional Advisory Council

A voluntary organization established by trauma care entities, including EMS providers and hospitals, within a **Trauma Service Area** (TSA) for the purpose of improving care of critical injury patients within the TSA boundaries. Other entities such as local and county government officials, injury prevention organizations, consumer groups, etc., may also participate.

Source: Texas Department of Health testimony to the Senate Intergovernmental Relations Committee, February 26, 2002.

The enabling legislation created the trauma care system for the state but failed to fund it. HB 3588 of the 78th legislative session created the mechanism to capitalize the system.

The Bureau of Emergency Management within the Texas Department of State Health Services (DSHS) is responsible for administering the program. The commissioner distributes the funds based on relative geographic size, population of the county, and the number of relative EMS and trauma care runs performed by the eligible recipient.

In order to ensure funding is available to eligible participants in case of extraordinary emergencies, the commissioner is required to maintain a reserve balance in the fund of \$500,000. EMS providers are allocated two percent of the funds available, RACs are allocated one percent, and one percent is allocated for administrative costs.

Hospital and trauma facilities are allocated the remaining 96 percent. The Board of Health promulgated rules in July 2004, for the calculation of funding among the hospitals and trauma facilities as follows:

- 15 percent will be shared equally among all eligible applicants up to a maximum of \$50,000 per facility, and
- 85 percent will be distributed based on a pro rata share of the total uncompensated trauma care reported by eligible hospitals.³⁷

The funds may be used by the trauma facilities to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of:

³⁷ Section 157.131, Texas Administrative Code.

- supplies,
- operational expenses,
- education and training,
- equipment,
- vehicles, and
- communication systems for local emergency medical services.³⁸

The DSHS is required to submit to the Lieutenant Governor and Speaker of the House a report on the use of funds and recommended changes to ensure appropriate funding and coordination of services by December 1, 2004.³⁹

Findings - Texas Mobility Fund

- Congestion costs the state millions of dollars annually by slowing the movement of people and goods.
- The Texas Mobility Fund is an effective way for the Texas Department of Transportation to address mobility problems of the state.

Recommendation

- The committee recommends that the following fees be evaluated and that the legislature determine through the appropriations process whether those amounts currently remitted to the general revenue fund could instead be dedicated to the Texas Mobility Fund:
 - Motor Carrier Permit Fees,
 - Motor Carrier Registration Fees,
 - Single State Registration Fees,
 - Motor Carrier Proof of Insurance Fees,
 - Salvage Dealers License Fees, and
 - Personalized License Plate Fees.

Other Innovations

New Rail Authority of TxDOT

Traditionally rail lines have been privately owned and operated in the State of Texas. Railroad construction and maintenance, however, is a capital intensive endeavor and difficult to fund in the private sector. The new legislation allows TxDOT to work with private rail companies to build rail that is publicly owned and maintained, with the ability to lease to private carriers for use.⁴⁰ This is a significant shift in the way rail lines have been built and maintained.

³⁸ Section 780.004, Texas Health and Safety Code.

³⁹ Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003.

⁴⁰ Section 91.072, Texas Transportation Code.

TxDOT is limited in its ability to fund railroads because of the constitutional provision relating to use of motor vehicle registration and motor fuels taxes,⁴¹ and the statutory cap of \$12.5 million.⁴² HB 3588 authorized the use of four revenue sources for the acquisition, construction, maintenance, and operating cost of a rail facility. The sources include non-dedicated appropriations from the State Highway Fund,⁴³ proceeds of bonds secured by the Texas Mobility Fund, donations, and loans from the State Infrastructure Bank.⁴⁴ HB 2, 78th Legislature, 3rd Called Session, further expanded the available revenue to include any available funds.

The statutory cap does not apply to acquisition of abandoned rail, funds derived from the sale of bonds, federal funds for a specific project, grants from the governor, or funds spent on grading and bed preparation.⁴⁵ The number of abandoned rail tracks are increasing in the state and has the potential to significantly impact the shipment of freight. The new authority for TxDOT to purchase abandoned rail is important in maintaining freight services by rail rather than shifting service to trucks which could have significant future impacts on highway mobility.

The Greater Austin-San Antonio Corridor Council: State Highway 130 Project

The Greater Austin-San Antonio Corridor Council is a private, non-profit corporation composed of contributing members from the region's business and public sectors. Charter membership included 15 local governments and more than 60 private firms and individuals.

The council has been involved in the attempt to create a commuter rail between Austin and San Antonio. With the new authority granted to TxDOT in HB 3588 to acquire, construct, and maintain rail, a concerted effort has been made to move the Union Pacific rail track out of Austin and put it in line with the new SH 130 Austin relief route. This would serve three main purposes: reducing the at-grade rail crossings, straightening out the rail line for faster and safer rail service, and opening the existing rail track for use as a commuter rail. Section 91.0361, Transportation Code, states TxDOT "may and is strongly encouraged to enter into negotiations with any Class I railroad concerning building a railroad line in or adjacent to State Highway 130."

Findings

- Rail plays an important part in the movement of people and goods.
- The department needs greater flexibility to use rail as a means of reducing congestion on the states highway system.
- Rail relocation is a valuable tool to address safety and economic development concerns in urban areas.

⁴¹ Sections 7a and 7b, Article VIII, Texas Constitution.

⁴² Section 91.071, Texas Transportation Code.

⁴³ Non-dedicated funds are funds not dedicated for other purposes by Sec.7-a Article VIII, Texas Constitution.

⁴⁴ Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003.

⁴⁵ Section 91.071, Texas Transportation Code.

Recommendations

- The committee recommends the Legislature increase the annual cap on the Texas Department of Transportation to acquire rail and for certain rail-related activities. The committee further recommends the Legislature grant the Texas Transportation Commission the authority to enter into business agreements with the public and private sector to provide funding for rail line relocation.
- The committee recommends the Legislature establish and capitalize a revolving fund for rail relocations.

Coordination of Public Transportation

Prior to HB 3588 there was not a consolidated effort to ensure the state was providing grant funding to public transportation providers in a manner that would eliminate duplicate services.

A public transportation provider is a governmental entity or an entity which receives state, local, or federal financial assistance, except for:

- private carriers not receiving governmental assistance,
- intercity rail or bus services providers,
- commercial air transportation,
- water transportation, or
- nonstop service providers offering service to points to and from outside the state.⁴⁶

The stated intent of statewide coordination of public transportation is to:

- eliminate waste in the provision of public transportation services,
- generate efficiencies that will permit increased levels of service, and
- further the state's efforts to reduce air pollution.⁴⁷

Prior to statewide coordination, public transportation was not coordinated by the various operators in an area. Medical transportation provider service, rail, and bus operations were disconnected from each other. HB 3588 assigned the task of advising on the implementation of the Statewide Coordination of Public Transportation, Chapter 461, Transportation Code, to the Public Transportation Advisory Committee, a nine member committee which reports and serves at the pleasure of the Texas Transportation Commission. The committee has the task of identifying overlaps and gaps in the public transportation system, as well as identifying efficiencies.

⁴⁶ Section 461.002, Texas Transportation Code.

⁴⁷ Section 461.001, Texas Transportation Code.

Advanced Acquisition of Property

HB 3588 provides TxDOT the ability to purchase an option to acquire property for possible use in or in connection with a transportation facility. This action may be taken prior to the environmental clearance for a project being completed, however, the option may only be purchased by TxDOT if the party is a willing seller. The option may not be acquired by condemnation.

Advanced acquisition works like a first right of refusal; however, in this case it has the effect of purchasing a landowner's right to build. In evaluating a corridor for construction, TxDOT would identify land needed to complete a project. Once they have determined the land needed they would have the ability to contract with a land owner and pay him or her an option price based on a number of factors, including time of the option, current value of the land, lost opportunity for the land, etc. This action could take place before TxDOT has completed environmental clearance.

The option contract would not have the effect of actually purchasing the land, but only preventing the land owner from improving his or her land in the area needed by TxDOT; therefore, preventing TxDOT from having to tear down improvements and pay for them to be moved later.

Currently, purchases or condemnation of right of way may not take place until the environmental clearance has been completed and therefore the "need" for the property exists. The commission has no authority to purchase or condemn property until there has been significant planning, environmental clearance, and schematics preparations to the point where the right of way may be identified.⁴⁸

Finding

- Advanced acquisition is a new concept only recently used by TxDOT. The full benefits of advanced acquisition have not been realized.

Recommendation

- The use of advanced acquisitions should be monitored to insure the state is getting the most efficient use of its dollars. Before the start of each regular legislative session, a report of the amount spent and a description of the project using advanced acquisition should be provided to the Governor, Lieutenant Governor, Speaker and Chairs of the

Texas Constitution
Article 1 Sec 17
Taking Damaging or Destroying Property For
Public Use; Special Privileges and Immunities;
Control of Privileges and Franchises.

No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

⁴⁸ Sections 203.052 and 201.604, Texas Transportation Code; Chapter 2, Title 43, Texas Administrative Code.

Senate Infrastructure Development and Security Committee and the House Transportation Committee.

CHARGE #2: PROOF OF FINANCIAL RESPONSIBILITY

Motor Vehicle Insurance Today

Since 1981, drivers in Texas have been required to maintain vehicle liability insurance.⁴⁹ State law requires drivers show proof of insurance when they first apply for and renew their registration and have their vehicle inspected. Individuals also must show proof during crash investigations and when being pulled over by a law enforcement officer for traffic violations. This event driven approach for enforcing the law is seen as minimally intrusive, although it has not proven to be effective.⁵⁰

Throughout Texas, proof of insurance information is required to show compliance, but not all proofs of insurance presented are independently verified. When proof of insurance is presented during a traffic stop, there is no way for the officer to independently verify that the card presented is valid. Some cards may be fraudulently obtained or replicated, while others may be kept long after the insurance has been canceled. For example, an insurance company may issue an insurance card valid for six months, but the driver may discontinue the policy after a month and keep the card. This allows the driver to have what looks like a valid insurance card, while actually having no insurance coverage. There have also been cases of drivers obtaining proof of insurance in order to get their vehicle registered or inspected, and then canceling coverage. In addition, insurance cards are not state issued and customarily contain no security features making fraudulent insurance cards easily obtainable.

According to DPS, approximately 20 percent of Texas drivers do not have auto insurance. In the past year alone, the agency has issued over 195,000 tickets to drivers in Texas for lack of insurance. This is a problem DPS says is growing.⁵¹

In the United States today, 47 states have enacted mandatory liability insurance statutes and of those 27 have implemented insurance verification programs. The states with insurance verification programs implemented use either the random sampling or database reporting methods.⁵²

Legislative Background

The 78th Legislature, Regular Session, passed HB 3588 containing provisions that required the Department of Public Safety (DPS), Texas Department of Insurance (TDI), and Texas Department of Transportation (TxDOT) to jointly conduct a study on the feasibility, affordability, and practicability of using a database interface software system for verification of

⁴⁹ Sections 601.051 and 601.191, Texas Transportation Code.

⁵⁰ Frank Elder, Assistant Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

⁵¹ KCEN-TV/DT, NBC 6, September 7, 2004.

⁵² Frank Elder, Division Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

whether owners of motor vehicles have established the statutorily required financial responsibility.

The study is required to include findings relating to a system's ability to:

- a. reduce the number of uninsured motorists,
- b. operate reliably,
- c. be cost-effective,
- d. protect the privacy of the motor vehicle owners, and
- e. ensure the security and integrity of each database that is applied.

DPS, TDI, and TxDOT were required to complete the study and issue an order regarding their finding before July 1, 2004.

If the study shows that such a system can achieve the goals listed above, DPS is authorized to implement a system before January 1, 2005. HB 3588 further gave DPS rule-making authority to administer a database and authorized DPS to select an agent to create and run the database. DPS and TDI will jointly enter into a contract with the selected agent. The bill requires insurance companies selling car insurance in the State of Texas to allow DPS's agent sufficient access to their databases in order to administer the verification program.

Funding for the Program

HB 5,78th Legislature, Regular Session, provided funding for the study and implementation of an insurance verification program. The funding is derived from a new one dollar vehicle registration fee required by state law. Until August 31, 2005, DPS is authorized to use the receipts from this vehicle registration fee to fund the driver's license reengineering program. On or after August 31, 2005, the vehicle registration fees collected are to be deposited to the State Highway Fund, and subject to appropriation, the money could be used to implement the insurance verification program.⁵³

Insurance Applications and Verification Ideas

According to DPS there are three primary insurance verification programs the state can use to locate and penalize uninsured motorists: Random Sampling, Database Reporting, and Interface Approach. These programs all fit into two different applications when in use, Event Based Systems and Preemptive Systems. DPS is reviewing the two applications and all three programs to find the best method for the state to verify insurance coverage.⁵⁴

⁵³ Section 502.1715, Texas Transportation Code.

⁵⁴ Frank Elder, Assistant Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

Applications

Event Based System

Under the event based system, the requirement that proof of insurance be provided is triggered by events such as when a driver is pulled over or getting a vehicle registered or inspected. This system is already in use today. Implementation of a verification program under this system would allow officials to cross-check the proof of insurance presented during an event with a database holding current information regarding insurance coverage. A verification program combined with an event based system makes the use of fraudulent or expired insurance cards more difficult.

Preemptive System

The preemptive system entails mailing notices to randomly selected individuals asking them to provide proof of insurance. This type of system intends to force drivers to comply with the liability insurance coverage law at all times because it is random and not event-based. Drivers could be selected at any time to offer proof of insurance; drivers are not triggering the requirement themselves. Under the preemptive system, drivers are less able to abuse the system because their coverage could be checked at anytime, without a triggering event.

Verification

Random Sampling

Random Sampling is a program that randomly selects a number of motor vehicles registered with the state. Letters are mailed to the owners of the vehicles requesting proof of insurance coverage. If the vehicle owners do not mail back proof of insurance coverage within a certain amount of time, their vehicle registration is terminated. An issue raised regarding the effectiveness of the program is once the owner's proof of insurance is received, there may or may not be authentication of the policy validity with the insurance carrier. If there is no authentication of the policy validity with the insurance carrier, then the issues of drivers presenting fraudulent cards or insurance cards for expired policies are not fully solved with this program. Furthermore, DPS stated the process can be very labor intensive requiring data entry and data submissions, although an automated process would make the process more feasible.⁵⁵

Database Reporting

Database reporting requires each company authorized to write motor vehicle liability coverage in Texas to provide their entire book of business to the state or a state selected vendor. The system is event driven: when a driver is required to provide proof of insurance coverage, a match is made using various identifiers of coverage and the state's database of registered vehicles. The various identifiers of coverage include vehicle identification numbers, policy numbers, or drivers' license numbers. The end result is when a vehicle in the database comes up as registered and does not have a matching identifier to go with it, the vehicle registration can be canceled. In most instances where this system is used, when a registered vehicle contains no matching

⁵⁵ Frank Elder, Assistant Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

identifier, a letter is mailed to the owner asking for proof of coverage. If no proof of coverage is sent back within 30 to 60 days by the registered vehicle owner, the registration is canceled.

An issue raised regarding the database reporting approach is the amount of drivers properly insured who appear as uninsured. A high error rate can make the system seem overly intrusive where many insured drivers are having to provide proof of insurance to keep their vehicle registered. Another issue mentioned is the need for real time reporting of policy holders by insurance companies. A lag in the amount of time before insurance companies report their policy holders to the database could cause inaccuracies in the information reported by the database at the time a policy is verified.

Interface Approach

The Interface Approach uses a direct connection to all insurance carriers' policy databases and the state or the state's agent. Verification is made interactively utilizing various identifiers, primarily a policy number. This system would most likely be event based: when proof of insurance is required, the individual checking for proof of insurance can link directly into the insurance carrier's policy database and determine if there is coverage. The approach is thought to provide a timely and accurate response when queried. This method would work to significantly reduce the use of fraudulent or canceled insurance cards, but would not force compliance because it is an event driven system. The technology used for the interface approach is untested since there is no system in use today which can be assessed.

Penalty for Failure to Maintain Liability Insurance

The State of Texas has penalties associated with individuals caught driving without proof of insurance. The penalties can be found in the section of this report on the Driver Responsibility Program.

It has been argued that the penalty for failure to maintain liability insurance could, in itself, be increased as a means to lower the amount of uninsured drivers.⁵⁶ If penalties are too low to be effective, even if a verification program was implemented today, increased compliance with auto insurance laws would likely not be achieved.

In order to combat this issue, DPS provided the committee with some potential changes to strengthen the law. The Driver Responsibility Program created by HB 3588, passed during the 78th Regular Session, holds irresponsible drivers responsible for their actions by assessing fees based on their driving history. The program mandates drivers receive points on their driving records for certain traffic offenses. Every time a driver receives a ticket for failure to maintain liability insurance (FMLI), two points are assessed on the driver's record. A driver who accumulates six points on their driving record must pay \$100 dollars every year the driver has accumulated six points. An additional \$250 annual fine for three years is assessed if the driver is ticketed for FMLI in order to maintain a valid license. The penalty could be increased to mandate the driver responsibility program when a driver accumulates only one FMLI traffic

⁵⁶ Cyndi Taylor Krier, Vice President Texas Governmental Relations, United Services Automobile Association, testimony to the Senate Infrastructure Development and Security Committee, May 5, 2004.

citation. Other options presented include lengthening the two-year SR-22 program requirement (i.e. 5 years) or increasing the fees to reinstate a driver license.⁵⁷

Use of Insurance Verification Programs

A report issued by the Office of the Comptroller found the use of a verification system creating a database to identify uninsured vehicles would increase state revenue and protect Texas drivers against accidents with uninsured motorists. The report stated that Medicaid recipients are involved in about 2,000 auto accidents a month in Texas, about 85 percent of which are not covered by insurance, either because the Medicaid recipient was driving without insurance or because the recipient was involved in an accident caused by an uninsured motorist. In 2000, the amount of additional medical spending resulting from the medical costs of uninsured victims is estimated to be \$124 million, with Medicaid paying for about half and medical providers absorbing the rest.⁵⁸

Other Options

Insurance companies generally support enforcing mandatory driver liability insurance laws through preemptive state reporting programs. There is a feeling among the companies that the state reporting programs have become increasingly intensive and cause a great deal of customer service problems for both state jurisdictions and insurance carriers, while becoming more invasive from a technical point of view.⁵⁹

The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) provided information to the committee detailing data issues, such as accuracy, timeliness, and consistency, seen in other states' financial responsibility reporting systems. These issues can be responsible for adversely affecting the process.⁶⁰ IICMVA has been researching the interface database approach and has recommended the approach for states' financial responsibility verification programs over the other programs on the market at this time.

The IICMVA also stated that insurance companies would be the best entities to control the method of verification because some methods of verification are considered intrusive to the insurance companies. The companies are concerned about their business practices being made public or a lapse in security occurring allowing individuals to get into their systems to commit fraud.⁶¹

⁵⁷ Frank Elder, Division Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

⁵⁸ Carole Keeton Strayhon, Texas Comptroller, *E-Texas Limited Government, Unlimited Opportunity, GG24 Use a Database to Reduce the State's Number of Uninsured Motorists*, January 2003.

⁵⁹ Donald Michael Coy, Corporate Business Analyst, State Farm Corporate Systems, testimony provided to the Senate Infrastructure Development and Security Committee, May 5, 2004.

⁶⁰ Insurance Industry Committee on Motor Vehicle Administration, *Online Insurance Verification, Using web services to verify auto insurance coverage*, p. 4, March 15, 2004.

⁶¹ Ibid.

Another option offered in lieu of implementing an insurance verification program was tougher enforcement of the law and increased penalties for noncompliance to further deter people from driving without insurance. Tougher enforcement and increased penalties coupled with a public awareness campaign was also mentioned as a better solution for Texas' uninsured motorist issue.⁶²

Effectiveness of an Insurance Verification System

There is an ongoing debate about the overall effectiveness of an insurance verification system due to the lack of an objective way to measure the uninsured motorist rate.⁶³ The driving force behind the debate is the many different figures that can be used to measure the amount of uninsured motorists at any given time. DPS provided the graph below showing results from a survey conducted regarding the uninsured motorist rate (UMR) in several states before and after implementation of an insurance verification system.

STATE	UMR PRE-EMPLEMENTATION	UMR POST IMPLEMENTATION	SYSTEM	ERROR RATE	ANNUAL COST	FUNDING SOURCE
California	Not reported	Not reported	Mandatory reporting	NA	Not complying *1	
Colorado	32.40%	12.40%	Database	2%	\$1.2 M annually	\$0.50 registration surcharge
Florida	NA	6.18%	Database	6-8%	\$3M annually *2	Appropriation
Georgia *3	15.00%	7.00%	Database	10%	\$240,000 +	Unfunded mandate
Louisiana	Not reported	11.00%	Mandatory reporting	Not calculated	Not provided	Reinstatement fees
Missouri	*4	*4	Sampling	*4	\$425,000 annually	Appropriation
New Mexico	33.00%	18.90%	Database	3-9%	\$1.2 M annually	\$2 per registration
New York		3.00%	Database		\$472,500 annually *5	Paid by insurance carriers
Ohio *6	Not reported	8.00%	Sampling	Not calculated	\$469,281.00	Not reported
Oregon	Not reported	9.50%	Database/Sampling *7	20%	Not reported	Not reported
Utah	23.00%	7.00%	Database	3%	\$1.2 M annually *8	\$1 registration fee & \$100 refee

DPS found the average uninsured motorist rate for the states before implementation of a verification program was 25.8 percent, while the average post implementation uninsured motorist rate was 9.39 percent, with an average rate reduction of 16.63 percent.⁶⁴

Agency Actions

The Texas Department of Public Safety provided a preliminary recommended approach for reducing the uninsured motorist rate in Texas. The approach would combine the database reporting and the interface systems. DPS stated they anticipate the final report on this issue would be complete and a formal recommendation would be made in May 2004.⁶⁵

In mid-July 2004, DPS reported the study had been completed. DPS stated they anticipated the report being ready for publication in August 2004.⁶⁶

⁶² Cyndi Taylor Krier, Vice President/Texas Governmental Relations, United Services Automobile Association, testimony to the Senate Infrastructure Development and Security Committee, May 5, 2004.

⁶³ Donald Michael Coy, Corporate Business Analyst, State Farm Corporate Systems, written testimony provided to the Senate Infrastructure Development and Security Committee, May 5, 2004.

⁶⁴ Frank Elder, Assistant Chief, Texas Department of Public Safety, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

⁶⁵ *Ibid.*

⁶⁶ Correspondence between the Senate Infrastructure Development and Security Committee and Department of Public Safety, copy sent to all committee members, August 6, 2004.

On October 18, 2004, DPS and TDI issued a recommendation "that Texas not implement the database software interface system at this time and that additional consideration be given to alternatives that will provide the maximum reduction in the UMR in Texas. The Departments [of Public Safety and Insurance] believe that the most effective verification system is one that consolidates a database interface software system with a liability insurance cancellation reporting system. To that end the task force recommends issuing a Request for Information (RFI) that specifies the features needed for a consolidated system and requires potential vendors to tell how they will construct such a system for Texas and the costs of such a system."⁶⁷

Findings

- The State of Texas requires drivers to be insured, although there are an estimated 20 percent of motorists in Texas driving without insurance.
- The Texas Department of Public Safety and the Texas Department of Insurance recently issued a report stating Texas should not implement a database software interface system at this time and additional consideration should be given to alternatives that will provide the maximum reduction in the UMR in Texas. The report further stated the most effective system would consolidate a database interface software system with a liability insurance cancellation reporting system.
- The report issued by DPS and TDI recommends issuing a Request for Information (RFI) that specifies the features needed for a consolidated system and requires potential vendors to tell how they will construct such a system for Texas and the costs of such a system.
- As of this date, 27 states have implemented a type of financial responsibility verification system.

Recommendations

- The committee recommends legislative oversight committees review the order issued by DPS and TDI regarding an insurance verification program and monitor subsequent proposed actions to ensure increased compliance with Texas' financial responsibility requirements is being achieved through the chosen program.
- The committee recommends the Legislature clarify the funding allocations in place enabling DPS and TDI to fulfill the obligations set forth by HB 3588 pertaining to a financial responsibility verification program.

⁶⁷ "HB 3588 Feasibility Study of an Interface Motor Vehicle Financial Responsibility Verification System," issued by the Texas Departments of Public Safety and Insurance, October 18, 2004.

CHARGE # 3: INNOVATIVE APPROACHES TO HIGHWAY CONSTRUCTION AND MAINTENANCE

Texas Department of Transportation Operations

This report has identified many new tools available for the construction and maintenance of transportation facilities in Texas. Many of the new strategies made available in HB 3588 are still in their infancy stage and have not had enough time to be as effective in increasing efficiencies.

As the agency responsible for the state transportation system, the Texas Department of Transportation is responsible for providing efficient and effective transportation facilities.

TxDOT Mission Statement

"provide safe, effective and efficient movement of people and goods."

All transportation construction projects are similar in the stages involved, beginning with imagining the project and continuing until it is effectively moving people and/or goods. The basic steps involved in projects are:

- environmental clearance,
- financing,
- project identification,
- feasibility,
- planning,
- development, and
- constructing.⁶⁸

Completion of a project, however, does not mean the responsibility for it has ended. Maintenance must be performed to extend the project's useful life.

Projects vary in size and scope and therefore vary in the time needed for completion. A project may be simple, needing as few as three years for completion or may have major hurdles, requiring as many as twenty years. Within each of the project's phases, there are efficiencies which may be realized which could decrease costs, increase quality, decrease time, or provide a combination of the three.

The public's perception of a project which is most easily identified, is the time involved to complete that project. The traveling public drives in traffic or sits in construction zones on a daily basis. The additional time wasted in traffic can be painfully obvious to a citizen.

⁶⁸ Amadeo Saenz, Jr., P.E., Assistant Executive Director for Engineering Operations, TxDOT, testimony to the Senate Infrastructure Development and Security Committee, "Innovative Practices," May 4, 2004.

The department has implemented innovative approaches to ensure they are meeting their stated mission. Some of these practices include national research entity involvement, employee involvement, and the research and technology transfer program.⁶⁹

TxDOT participates in information exchange groups and programs on a national level. Through participation in these exchanges the department is able to benefit from nationally conducted research, rather than rely only on the research conducted in house.⁷⁰

The department also contracts out for research from research institutions within the state. These institutions provide valuable information regarding new and improved materials, products, or equipment which provide added benefits to the state's transportation system. They primarily contract with the following institutions:

- the Texas Transportation Institute at Texas A&M University,
- the Center for Transportation Research at the University of Texas at Austin,
- the Center for Transportation Studies at the University of Texas at Arlington,
- the Center for Highway Materials Research at the University of Texas El Paso,
- Texas Tech's Multidisciplinary Research in Transportation program, and
- the Southwest Region University Transportation Center including Texas Southern University.⁷¹

The department utilizes the experience of the many transportation experts it employs. Through the use of incentive programs, the department is able to draw from these employees cost saving ideas which result in a net benefit to the state. The use of performance measures ensures that the department is meeting the expectations set by the legislature. There are currently 29 measures established in the appropriations act.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

The following are the current performance measures in the General Appropriations Act, 78th Legislature:

1. Project to Funding Ratio
2. Percent of Projects Awarded on Schedule
3. Number of Construction Project Preliminary Engineering Plans Completed
4. Dollar Volume of Construction Contracts Awarded in Fiscal Year (Millions)
5. Number of Projects Awarded
6. Percent of Construction Projects Completed on Budget
7. Percent of Two-lane Highways with Improved Shoulders
8. Percent of Railroad Crossings with Signalization
9. Percent of Construction Projects Completed on Time
10. Urban Congestion Index
11. Statewide Congestion Index
12. Number of Airports Selected for Financial Assistance
13. Administrative and Support Costs as a % of Facility Grant Funds Expended
14. Percent of Bridges Rated in Good Condition or Higher
15. Statewide Maintenance Assessment Program Condition Score
16. Statewide Traffic Assessment Program Condition Score
17. Number of Lane Miles Contracted for Resurfacing
18. Number of Oversize/Overweight Permits Issued
19. Number of Highway Lane Miles Resurfaced by State Forces
20. Percent Change in the Number of Public Transportation Trips
21. Administrative and Support Costs as a % of Grants Expended (public transit)
22. Number of Motor Vehicle Consumer Complaints Resolved
23. Percent of Motor Vehicle Consumer Complaints Resolved
24. Average Number of Weeks to Resolve a Motor Vehicle Complaint Resolution
25. Number of Fatalities Per 100,000,000 Miles Traveled
26. Number of Vehicle Titles Issued
27. Number of Vehicles Registered
28. Number of Cars Stolen Per 100,000
29. Administrative and Support Costs as Percentage of Total Expenditures (ATPA)

Comprehensive Development Agreements

The use of Comprehensive Development Agreements (CDA) is one of the tools which the department may utilize in the construction of the turnpike projects including the Trans-Texas Corridor. CDAs are a new method of contracting which provide, at a minimum, for the design and construction of a turnpike project of facility. CDAs have the ability to cut down on project delivery time by providing an all inclusive contract with one contractor. The steps involved in the CDA process are as follows:

- identify project need,
- department issues request for qualification (RFQ),
- department evaluates submissions received,
- department issues request for detailed proposals (RFDP)
- detailed proposals are evaluated by the department,
- based on evaluation, the department ranks and selects proposal with best value, and
- department finalizes CDA with the chosen entity.⁷²

⁷² Michael Behrens, P.E., Executive Director, Texas Department of Transportation, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

Environmental Process

Transportation projects that utilize federal funding require the state to follow federal guidelines regarding environmental clearance. Because nearly every transportation project uses federal funds, Texas regularly adheres to federal guidelines to construct roads. The National Environmental Policy Act of 1969 (NEPA) is the federal frame work for environmental clearance for transportation projects. The essential elements of NEPA include:

- alternatives,
- impacts,
- mitigation,
- public involvement,
- interagency coordination, and
- documentation.⁷³

The NEPA process is federally mandated, therefore there is little the state can or would want to do to avoid complying. NEPA is an important tool for protecting the environment by limiting the impact of projects upon it.

Under TEA-21, statutory provisions were enacted to coordinate the environmental review process, cooperatively determine time frames, and improve dispute resolution. The department, through cooperative agreements with other state and federal agencies, has identified the use of early coordination to improve the environmental clearance process on the I-69 project.⁷⁴

By partnering in the beginning of the process, agreements about dispute resolutions can be made to thwart complications later in a project life cycle. This agreement is the first step in creating a "Process Manual" for an environmental review. The manual sets forth the goals for the partners as a "new way of doing business."⁷⁵

Purposes of NEPA

"To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality."

Source: 42 USC § 4321

⁷³ U.S. Department of Transportation, Federal Highway Administration website, <http://environment.fhwa.dot.gov/tutorials/index.htm>, October 13, 2004.

⁷⁴ Amadeo Saenz Jr., Assistant Executive Director for Engineering Operations, Texas Department of Transportation, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

⁷⁵ *Ibid.*

Innovative Financing Options

Tolling

In 1953 the Legislature created the *original* Texas Turnpike Authority (OTTA) as an independent entity, headquartered in Dallas, with statewide authority to build toll roads and bridges.⁷⁶

Texas' pay-as-you-go system of highway funding used motor fuels tax collection, vehicle license registration fees, general revenue and federal funds. This system of financing has existed for many years; however, with more fuel efficient cars and an ever increasing population, the system is unable to keep up with demands.

"Toll roads or toll lanes may be very effective improvements and funding strategies in some corridors. This type of improvement focuses cost on those who use the specific facilities when they choose to use it rather than sharing costs among all residents. Toll roads also can be built rapidly by leveraging innovative finance mechanisms."

Source: The Governor's Business Council report "Texas' Roadways - Texas' Future," April 2003.

Previously, Texas statutes allowed for limited use of tolling as an option for funding highway projects. RMAs now may be created across the state by regions willing and able to take control of the transportation problems they face.

There are various toll options available to mitigate traffic:

- pass through tolls,
- conversion of non-tolled state highway,
- congestion pricing, and
- high occupancy tolling.

The Texas Department of Transportation has adopted policies with regard to tolling in general:

- the motorist will have a choice,
- local officials are involved in decisions,
- tolling will not work everywhere and is not for every project,
- the money stays local, and
- public input is important.⁷⁷

When evaluating a new project a feasibility study must first be performed. The predicted cost of a project is calculated. The study then predicts the average daily traffic on the toll route. From there, a price per mile is applied to the traffic projection to generate a predicted cash flow over a set time period.

⁷⁶ Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953.

⁷⁷ Governor's Business Council, The Governor's Business Council Transportation Task Force, "Texas' Roadways - Texas' Future," April 2003.

Once this information is gathered, a project's toll viability can be determined. A project's toll viability is the percentage of the overall project cost the predicted cash flow can support in principle and interest payments for the bond. For example, if a project cost is \$600 million and the toll collections could support a \$300 million bond issue, then the toll project is 50 percent toll viable. The remaining funds to pay for a project that is 50 percent toll viable could come from any of the traditional funding methods.

Tolling provides the state with more flexibility in addressing transportation needs. The benefits of tolling include:

- accelerating construction projects,
- increasing mobility and safety,
- reducing maintenance and operational costs, and
- mitigating the cost of inflation.⁷⁸

One of the greatest concerns of transportation planners is building enough roads to keep up with the ever rising population. As we fall behind in this task, it becomes harder to keep up and the price of construction rises. The cost of inflation is an inevitable cost of doing business in the world. By accelerating the construction of projects, an area can increase the free flow of goods and people in the community, leading to an increase in the area's economic viability.⁷⁹ With the acceleration of project delivery comes significant economic savings to businesses in that community and a savings in what a project costs.

Findings

- The RMA model allows all areas of the state the ability to toll new projects.
- Tolling can move a project's starting date forward and decrease the cost of construction.
- Tolling provides a steady revenue source which can be used to maintain roads more efficiently than the traditional methods of financing.
- Tolling gives the Texas Department of Transportation the ability to address projects critical to statewide connectivity.

Recommendations

- If the use of toll roads is being considered for an area, the committee recommends local governments consider forming RMAs in an effort to increase transportation financing regionally. This allows local regions to direct expenditures of any surplus toll revenue and keep those funds in the region. The Texas Department of Transportation should work with regions to identify the best process for moving projects forward and increasing financing options for that specific area.

⁷⁸ Michael Behrens, P.E., Executive Director, Texas Department of Transportation, testimony to the House Committee on Transportation, January 26, 2004.

⁷⁹ Governor's Business Council, The Governor's Business Council Transportation Task Force, *Texas' Roadways - Texas' Future*, April 2003.

- The committee recommends the Legislature expand or remove the \$800 million cap on toll equity.
- The Legislature should identify the best policy to distinguish between projects critical to statewide connectivity and projects critical to regional mobility.

Pass Through Tolling

TxDOT, with authority granted in HB 3588, may enter into an agreement with a public or private entity that provides for the reimbursement of funding based on the vehicle miles traveled as measured by pass-through tolls for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system. The statute allows only for a payment of pass-through tolls from TxDOT to a local area.

An entity, whether it be a city, county, RMA or private, may raise the needed capital to complete the project and then be paid back over time by TxDOT based on vehicle miles traveled. Pass-through toll payments will be calculated based on the number of vehicles using the highway. The repayment stream will be negotiated between the department and the public or private entity.

Findings

- The Texas Department of Transportation is limited each year in the number of projects it can deliver by the amount of funding they receive from the collection of gas taxes, federal funds, and Texas Mobility Fund revenue.
- Pass through tolls allow the department to stretch out the payment of these funds over a number of years.
- The statues only allow for the local communities to raise capital and be repaid by the Texas Department of Transportation.

Recommendation

- The committee recommends the Legislature expand pass through toll provisions established in HB 3588, 78th Legislature, Regular Session, to allow the Texas Department of Transportation to fund projects and have the cost of those projects repaid by local and private entities.

Toll Collection

Traditionally, toll collections have occurred in two methods: cash collections and electronic toll cards. Both of these methods have been proven to be effective in toll collections, however, they are not always the most efficient.

Cash Method

The cash method of toll collection is by far the least efficient method of toll collection. This method requires large outlays of capital expense to build and maintain collection stations, as well as a number of personnel to operate the system. A toll booth station also requires the addition of

extra lanes to separate individuals for a speedier toll collection process. Regardless of the drawbacks from the cash method, some individuals prefer or demand the option of a cash system and therefore would not use the system without the additional option for cash.

Electronic Toll Tag

The electronic toll tag offers the ability to reduce some of the disadvantages the cash system presents. Toll tags are an electronic device affixed to the windshield of an automobile, carrying some form of identification of the person traveling through a tolled system. An overhead reader identifies the person entering the toll system and charges the individual's account. The toll system then bills the appropriate customer on a monthly basis or deducts the amount of the toll from a prepaid account. Under this model the toll authority is responsible for creating an account for the customer and updating the contact information.

This toll collection method has the benefits of reducing congestion at a toll facility, because customers may drive through the plaza without interruption, and being interoperable with other toll systems in the state.⁸⁰ The system also has a few disadvantages. The large quantity of toll tags needed can be costly. The cost of the electronic toll tag is either paid for by the toll user or absorbed by the toll system in order to offer them free of charge.

Another drawback is the ease with which a non-tag holder may travel through the system. Toll systems have addressed this problem by installing video cameras to capture a vehicle's license plate number and mailing a fine to the customer. This system has its limitations. The system is only as good as the data which is available to track down an offender. TxDOT maintains vehicle registration records, however, the vehicle owner is not necessarily the only driver of that vehicle.⁸¹ Rental cars particularly pose this type of problem. Billing for this offense can prove costly as well. If the registration information is not up-to-date, the toll operator may have difficulty in locating an individual to collect the fine. The North Texas Tollway Authority (NTTA) also has toll tag waiver programs where a violator is issued a toll tag, signs an agreement to keep the account in good standing, and pays outstanding toll fees in order to avoid paying for the toll violation.⁸²

With the technology available, this system could be administered on a statewide basis through the vehicle registration process.

Video Capture Tolling

The video capture method is the least costly of the three methods of toll collection in regard to capital outlay; however, it relies heavily on the accuracy of a databank of names and addresses of vehicle owners. The video capture method incorporates the same technology used to catch offenders previously discussed. The video camera captures an image of the vehicle traveling through a toll plaza and matches the license plate number to a name and address. The system would automatically set up an account for the vehicle and begin the billing process. This method

⁸⁰ Texas Department of Transportation, TexasTollways.com website, <http://www.texas tollways.com/tta/tolls.asp>.

⁸¹ North Texas Tollway Authority, *Violation processing FAQ*, Website <http://vps.ntta.org/main.html>.

⁸² *Ibid.*

bills a vehicle owner for his or her vehicle passing through the toll system, rather than charge a fine or penalty.⁸³

This system may be used in conjunction with other systems, particularly the electronic toll method. Nevertheless, in order to achieve the maximum amount of capital expenditure savings and operational costs, this system should be used exclusively. This technology currently is employed only for toll enforcement, not toll collection.

Findings

- The current system of toll violation fine collection is dependent on accurate data provided by the Texas Department of Transportation.
- The Texas Department of Transportation is the agency responsible for the vehicle title registration.
- The vehicle title system is becoming a more important tool in the identification of a vehicle owner and his or her corresponding address.
- The vehicle title system does not have a method to keep track of a vehicle owner's current address in a real time setting. Many people move on a regular basis and there is no requirement they update their mailing address.

Recommendations

- The Texas Department of Transportation should take necessary steps to ensure its vehicle title registration system accurately reflect vehicle owners and their addresses.
- The committee also recommends that the Texas Department of Public Safety and Texas Department of Transportation, through an interagency agreement, link DPS's drivers license database with TxDOT's vehicle registration database to create a seamless record of an individual driver and vehicle.
- The committee recommends Team Texas, a consortium of all toll authorities in Texas promoting interoperability between all the toll facilities, study and report to the Legislature methods to distribute and increase use of electronic toll tags focusing on safety, congestion, cost and administration.

Conversion of Non-Toll State Highway

A conversion is the removal of a highway from the state highway system and the transfer of all responsibilities relating to the construction and maintenance of the highway to the entity taking responsibility for the project. This definition, however, is not specifically defined in statute.

A state highway may be converted to a toll facility to be operated by one of four entities: a regional mobility authority (RMA), county toll authority (CTA), regional tollway authority (RTA), or the Texas Turnpike Authority (TTA). HB 3588 allowed for the conversion of a state

⁸³ Accenture Consulting, *National Toll Transformation - NTT "From Awareness to Understanding,"* additional information provided to committee, June 30, 2004.

highway to a toll facility operated by an RMA, the Texas Turnpike Authority, or a county. Regional tollway authorities were granted the ability to operate a converted state highway during the 75th Legislature.⁸⁴

Each entity has different provisions regarding the process for conveyance of a state highway to a toll facility. All conversions require the consideration of public input by the Texas Transportation Commission as well as an order by the Commission before a conversion may take place. The chart in Appendix C gives a side by side analysis of the conversion process for the four authorities.

When transferring a highway to a RMA, county, or regional tollway authority, the receiving entity is required to reimburse the commission for the cost of the transfer, unless the transfer will result in substantial net benefits to the state, the department, and the traveling public in an amount which exceeds the cost of conversion.⁸⁵ Once the conversion has been completed, TxDOT is required to "remove the turnpike project from the state highway system."⁸⁶ At this point, the commission has no liability or responsibility for maintenance or operation of the project.

	RMA	TTA	County	RTA**
County Resolution	No	Yes	Yes	No
Public Hearing	Yes	Yes	Yes	Yes
Governor Approval	Yes	No	No	Yes
Limitation on Revenue	No	Yes*	Yes*	No

*Limitation: Toll revenue from a converted segment may only be used to finance the improvement, extension, expansion or operation of the converted segment or highway.

**HB 3588 did not revise the procedures for transferring a converted segment of a highway to Regional Tollway Authorities.

Findings

- The conversion of a state highway can have the immediate benefit of being self-sufficient for continuing maintenance.
- There is no statutory provision defining the point at which tolling a road requires following the conversion process.
- The toll system has been described to the public as a user fee system where the driver has the choice as to whether they desire to travel on toll roads free from congestion or use tax-funded alternatives.

⁸⁴ Chapter 1171, Acts of 75th Legislature, 1997.

⁸⁵ Sections 370.035, 366.035, 284.009, Texas Transportation Code.

⁸⁶ Ibid.

Recommendations

- The committee recommends the Legislature enact legislation regarding toll conversion as follows:
 - define the point in time at which a transportation project is considered a part of the state system;
 - clarify what constitutes a necessary "free alternative" when non-toll facilities are converted to toll facilities; and
 - require revenue derived from tolling a previously non-tolled facility to be reinvested to directly benefit users of the now-tolled facility, regardless of the operator of the now-tolled facility.

Local Option Motor Fuels Tax

Currently, motor fuels taxes in Texas are levied at the state and federal level. The state's tax rates are \$0.20 per gallon for diesel and gasoline and \$0.15 per gallon for liquefied gas.⁸⁷

Section 7-a, Article VIII, Texas Constitution, allows for the entity collecting the tax to retain out of gas tax funds collected all expenses relating to the collections and refunds. The remaining funds are then divided in the following manner: one-fourth to education and the remaining three-fourths to the State Highway Fund. If a local option motor fuels tax were implemented these allocations would not change without a constitutional amendment approved by three-fourths of the Legislature and a majority of voters statewide in an election. Under the current constitutional limitations, local entities would have to send one-fourth of all collections to the state for education purposes.

"Rack"

"A mechanism for delivering motor fuel from a refinery, terminal, Marine vessel or bulk plant into a transport vehicle, rail tank car, or other means of transfer that is outside the bulk transfer/terminal system."

Source: Section 162.001, Texas Tax Code.

Prior to the 78th Legislative Session, motor fuels tax collection and remittance to the comptroller was the responsibility of the distributors of motor fuels. To align Texas with the federal tax collection system and decrease fraud, Texas moved the collection point to the "rack" in HB 2458, 78th Legislative Session. Under the current system of motor fuels taxes, there is not a mechanism to remit the tax from the retailer.

In order to collect a local option motor fuels tax, an additional point of collection would have to be created. Currently, there is not a system in place to track and collect the taxes from a motor fuels tax retailer. Additionally, the retailer would have to address the issue of tax exemptions and refunds.

Every time a new highway is built additional future costs for maintenance become inevitable. The percentage of state highway funds which are spent on maintenance as a percentage of total

⁸⁷ Sections 162.102, 162.202 , 162.301, Texas Tax Code.

highway spending is greater than the percentage spent on new highway construction. The cost of maintaining our roads is outpacing our ability to provide new congestion relief.

A user based system of revenue more accurately reflects the true usage of a roadway. HB 3588 provides many of the tools to move towards a user based system of funding for our highways. The gas tax plays an important role in providing for a base level of funding, but falls short of fully funding the Texas transportation system. The use of a tolling system for collecting fees has been discussed as an option for more accurately paying our transportation needs.

Findings

- Motor fuels taxes have not kept pace with the rising demands placed upon the transportation system.
- Local option motor fuels tax collection would require the implementation of a two-tier motor fuels tax collection system.

Recommendations

- In the discussion of school finance, every effort should be made to find an alternative source of dollars allocated to the Permanent School Fund from gas tax revenues. If an alternative source is identified, gas tax revenues appropriated to the Permanent School Fund should be capped to current biennium level to allow future increases in gas tax revenue to be appropriated for transportation purposes.
- The committee recommends the formation of a task force - similar to the "Study Commission on Water for Environmental Flows" - to study the use of motor fuels taxes to finance transportation infrastructure. The study should include the impact of diminishing motor vehicle tax receipts on the ability of the state to finance transportation projects, the relationship between motor fuels taxes paid and use of the system, and alternative options for financing transportation projects
- The committee recommends legislation be passed to require revenues from the sale of TxDOT and DPS surplus property be deposited to the State Highway Fund.

CHARGE #4: TRANS-TEXAS CORRIDOR

Background and History

The Trans-Texas Corridor (TTC) is the most innovative approach to transportation connectivity since the interstate system was envisioned in 1939. The TTC is a long term vision of connective corridors, consisting of separate passenger and truck lanes, freight and passenger rail, and a dedicated utility zone.⁸⁸

The concept is a truly multimodal approach to building new transportation infrastructure. The corridors will have enough right-of-way to include passenger highway lanes, separate truck highway lanes, high speed passenger rail, high speed freight rail, commuter rail and a dedicated utility zone which requires a corridor width of 1,200 feet.⁸⁹ Although the concept is to maintain all elements in one right-of-way, cases may exist in which this is not possible and the elements may be divided.

The sheer width of the proposed corridors has influenced the method used in the environmental process for the corridor. The department identified possible routes of the large corridor which are approximately 50 miles in width. This allowed the department to narrow the corridor during the environmental process and identify the best possible route.

The initial study will look at the entire 50 mile width and narrow it down to a corridor +/- 10 miles wide or a no-build option. If a corridor is selected then an additional and more in depth environmental study will be conducted on the preferred route.

The route selection will also consider current and projected traffic patterns, safety, potential risk of spills or accidents, environmental effects, current and projected economic development, need for additional transportation options, and system connectivity.⁹⁰

As is the case with all right of way acquisition, the purchase or condemnation of property will not take place until the environmental study and final route selection have been completed.⁹¹ The right of way acquisition provisions for the TTC are the same as the provisions for purchasing property for a turnpike project. One additional purchase option available to the department is the purchase of property by means of a participation payment with the owner's consent. A participation payment for real property entitles an owner to receive a percentage of one or more identified fees related to a segment of the TTC instead of a single one time payment.⁹²

⁸⁸ Randall Dillard, Public Information Office Director, Texas Department of Transportation, "Crossroads of the Americas: Trans Texas Corridor Plan," June 2002, (report Summary).

⁸⁹ Ibid.

⁹⁰ Section 227.012, Texas Transportation Code.

⁹¹ Sections 227.041 and 361.232, Texas Transportation Code; Subchapter D, Chapter 361, Texas Transportation Code.

⁹² Section 227.042, Texas Transportation Code.

Funding

It is estimated that the TTC would have a total cost of \$145 billion over a period of 50 to 70 years. The estimate, however, does not include the collection of bonds, loans, grants, right-of-way acquisition agreements, private sector involvement or any other additional sources of funding for the project.⁹³

House Bill 3588 allows the department to use any available sources of funds to acquire property. The possible sources include:

- appropriations from the state highway fund,
- fees,
- bonds secured by fees,
- proceeds from obligations secured by the Texas Mobility Fund,
- donations,
- in kind and in cash,
- transfers from the State Infrastructure Bank,
- contributions from or contractual obligations of governmental entities,
- a loan,
- grant, and
- reimbursement from the federal government.⁹⁴

The department and commission have many funding options available, however, the amount of state highway funds which can be used for acquisition of right-of-way, initial construction of toll and non-toll highways and grading, and bed preparation for non-highway facilities are limited. Allocations are made for these preliminary expenses in the amounts of \$10 million during the first year and an incremental increase of \$10 million for the following five years.⁹⁵

Priority Corridors

The department has identified four routes which are considered priority corridors. They are generally parallel to the existing highways listed here:

- I-35 from Denison to the Rio Grande Valley
- I-69 (proposed route) from Texarkana to Houston to Laredo/ Lower Rio Grande Valley
- I-45 from Dallas-Fort Worth to Houston, and
- I-10 from El Paso to Orange

⁹³ 78th Legislative Session, HB 3588 Fiscal Note, May 2, 2003.

⁹⁴ Section 227.061, Texas Transportation Code.

⁹⁵ 78th Legislative Session, HB 3588 Fiscal Note, May 2, 2003.

I-35 Corridor

The I-35 corridor is the only priority corridor for which the bid process has begun. Fluor Enterprises, Inc. initiated the bid process in late 2002 with an unsolicited bid. In July, 2003, the department issued a request for competing proposals and has received submissions by two additional contractors to build this section. The department could negotiate a contract as early as the first of 2005.

In accordance with the route selection criteria in HB 3588, the department held its first round of public meetings. More than 550 people attended the 26 public meetings held across the state and provided comments about the proposed route. Comments and recommendations are taken into consideration in the drafting of a preferred corridor.

Alliances and Coalitions

Since the concept of the TTC was envisioned, transportation alliances have taken a keen interest in the development of some of the priority corridors. The groups include the Alliance for I-69 Texas and the Gulf Coast Strategic Highway Coalition. These alliances have supported the TTC concept in addressing the needs of their membership.

Alliance for I-69

The Alliance for I-69 Texas has been promoting the creation of an additional interstate highway which would start on the Mexico border, travel up the Texas coast-line, through the eastern portion of the state, and continue on to the Canadian border in the Northeastern portion of the United States. The I-69 priority corridor of the Trans-Texas Corridor would follow the route designated by Congress for the project, but be built to TTC standards to include all modes of transportation.

The I-69 corridor is vitally important to the economic growth of the state. It will provide an alternative north-south route connecting Mexico and the Port of Houston with the Northern half of the country. With increased strains on various ports around the country, the Port of Houston has the potential to increase traffic drastically in the next 20 years. The I-69 priority corridor is key to its success.

The new route also has the added benefit of helping reduce the environmental impact on the Houston air-shed. The route will divert through traffic around the city with a possible reduction in NOx emissions of 1.7 tons per day.⁹⁶

Gulf Coast Strategic Highway Coalition

"The Gulf Coast Strategic Highway Coalition was conceived to meet the transportation needs of the region's military facilities in deploying combat equipment through Texas' Strategic Military

⁹⁶ Hon. Robert Eckels, Harris County Judge, written presentation to the Texas Transportation Summit, Irving, Texas, August 13, 2004.

Ports."⁹⁷ The coalition has identified two priority corridors: the I-35 north-south corridor and the I-10 east-west corridor.

The I-35 corridor would link Fort Hood with the port of Corpus Christi for deployments and the I-10 corridor could link five military bases in Texas, Louisiana, and Mississippi: Fort Bliss, Fort Hood, Fort Polk, Camp Beauregard, and Camp Shelby. The I-10 route, however, would have to be shifted to the north of its current alignment. The coalition believes there is an added benefit to slightly altering the route for I-10 around Texas' hill country.

The current alignment for the east-west route from El Paso to Orange runs parallel to the existing I-10. The group's proposal is to shift the route in Sonora to travel around the hill country running parallel to US 190 and tying into Louisiana 28, a four lane divided highway. If the new alignment were chosen, the route could travel through all of the identified military bases and have significant impact on reducing the cost of construction. Finally, the new alignment would not run through a non-attainment or near non-attainment area in Texas, therefore, reducing emissions in those areas.

Findings

- The Trans-Texas Corridor is an innovative approach to safely move goods and people across the state.
- Public involvement in the planning process is vital to the success of the Trans-Texas Corridor.

Recommendations

- The committee recommends continued monitoring of the funding allocations for Trans-Texas Corridor projects.
- The committee recommends the continued monitoring of the Trans Texas Corridor's impact on local, regional, and state transportation systems.
- The committee recommends the Texas Department of Transportation work with the Federal Highway Administration and the States of Louisiana, Mississippi, Alabama and Georgia to develop a new east-west route for the Trans-Texas Corridor Plan. The Texas Department of Transportation should consider a route running north of the Texas Hill Country and potentially meeting up with a proposed new east-west interstate highway running from the Atlantic Seaboard to the Natchez, Mississippi bridge.
- The Texas Department of Transportation should monitor the impact of the location and design of Trans-Texas Corridor routes on economic development as projects which provide relief routes around metropolitan areas are completed.

⁹⁷ Hon. John Thompson, Polk County Judge, Gulf Coast Strategic Highway Coalition, testimony to the Senate Infrastructure Development and Security Committee, May 4, 2004.

CHARGE #5: FEDERAL REAUTHORIZATION

Current Federal Funding System for Transportation

Every six years Congress passes a surface transportation bill which allocates funding for the next cycle. The Transportation Equity Act for the 21st Century (TEA 21) was enacted June 9, 1998, expired September 30, 2003, and contained funding for highway, highway safety and transit programs.

TEA-21 contains a "minimum guarantee" funding level which is set at \$198 billion for the years 1998-2003 for surface transportation.⁹⁸ When including transit programs the total grows to approximately \$218 billion. This number is considered to be a minimum amount which will be spent on transportation programs and is based on estimates of federal gas tax collections for the future cycle.

The original purpose of TEA-21:

- Rebuild America
- Improve Safety
- Protect the Environment
- Create Opportunity

Source: "TEA-21 the transportation Act for the 21st Century," (summary document), May 29, 1998.

This amount can be adjusted in two ways: higher than expected gas tax collections would automatically increase allocations; and/or Congress could choose to increase the funding level by allocating funds from the general budget.

Under the TEA-21, Texas receives a rate of return on federal gas taxes collected of 90.5 percent.⁹⁹ This percentage is calculated after dedicated amounts have been reduced from the Highway Trust Fund. The total allocation to Texas, including discretionary funds, has averaged 85-86 percent for the past few years.¹⁰⁰

Reauthorization

With the expiration of TEA-21 on September 30, 2003, there has been a series of six short term extensions to ensure a steady stream of funding to the states.¹⁰¹ There has been considerable disagreement as to the amount of funding for the bill between the administration, U.S. House, and U.S. Senate. Essentially, there have been three funding levels which have been discussed.

The White House has renamed the bill the Safe, Accountable, Flexible, and Efficient Transportation Equity Act (SAFETEA) and contends that the funding level should not exceed \$256 billion for the FY 2004-2009.¹⁰² A letter from the Secretary of Transportation, Norman Mineta, and the Secretary of the Treasury, John Snow, explains the president's three principles

⁹⁸ Federal Highway Administration website, <http://www.fhwa.dot.gov/tea21/sumtoc.htm>, October 15, 2004.

⁹⁹ 23 USC 105 (f)(1).

¹⁰⁰ Coby Chase, Legislative Affairs Director, TxDOT, testimony to the Texas Transportation Commission, August 26, 2004.

¹⁰¹ Steve Simmons, Deputy Executive Director, Texas Department of Transportation, testimony to the Senate Infrastructure Development and Security Committee, May 5, 2004.

¹⁰² Letter from Norman Mineta, U.S. Secretary of Transportation, and John Snow, U.S. Secretary of the Treasury, to Senate Majority Leader Bill Frist, February 2, 2004.

considered when developing the funding level: transportation infrastructure spending should not rely on an increase in the gas tax or other Federal taxes, transportation infrastructure spending should not be funded through bonding or other mechanisms that conceal the true cost to federal taxpayers, and highway spending should be financed from the highway trust fund, not the general fund.¹⁰³

The Senate and House bills have higher funding levels despite pressure from the President to veto the bills because of excessive funding limits.¹⁰⁴ The Senate version, S 1072, named SAFETEA, is approximately \$318 billion and the House version, HR 3550, named TEA LU, is approximately \$275 billion.¹⁰⁵

The three bills also differ regarding flexibility provisions for the states on how they may deliver needed transportation projects faster and more efficiently.¹⁰⁶ Specifically, the states have sought flexibility on policies regarding tolling, innovative financing, project review, and project delivery.

As Congress entered the conference process, there were nine priorities which could provide drastic improvements to the transportation system in Texas.

The priorities include:

1. Improve Texas Highway Funding Rate of Return,
2. Federal Design Build Procurement Authority,
3. Interstate Improvements Tolling Authority,
4. Concurrent Environmental Review for Multimodal Transportation Projects,
5. Pro Rata Toll Credit Calculation and Uses,
6. Private Activity Bonds for Highway and Freight Facilities,
7. Borders and Corridors Program Improvements,
8. Surface Transportation System Performance Pilot Program, and
9. Federal Reimbursement for ROW Options.¹⁰⁷

The president has urged every federal agency to be more results-oriented, guided not by process but performance. In the context of transportation, that means:

- Using Federal surface transportation programs to increase the efficiency with which goods move throughout the transportation system;
- Expanding innovative financing options;
- Encouraging private sector participation;
- Enhancing operational capacity;
- Rewarding grantees that meet important goals;
- Promoting a seamless transportation system in which transportation modes are efficiently connected; and
- Increasing oversight to ensure large Federal investments are being protected.

Source: <http://www.fhwa.dot.gov/reauthorization/safetkelyinfo.htm#sfs>.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Steven Simmons, Deputy Executive Director, Texas Department of Transportation, testimony to the Senate Infrastructure Development and Security Committee, May 5, 2004.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

The first extension, titled the Surface Transportation Extension Act of 2003 (STEA03), began on September 30, 2003, and expired on February 29, 2004. There has been a series of short term extensions since that time. Unable to come to a consensus in conference, Congress passed an eight-month extension, titled STEA04 part V, of the current funding formula in September 2004. It is set to expire May 31, 2005. STEA04 part V allocated \$307.4 million to Texas for the eight-month period.

The following is a listing of the extensions and the time in which they were in effect:

Title	Start Date	Expiration date
STEA03	9/31/04	2/29/04
STEA04	2/29/04	4/30/04
STEA04 part II	4/30/04	6/30/04
STEA04 part III	6/30/04	7/30/04
STEA04 part IV	7/30/04	9/30/04
STEA04 part V	9/30/04	5/31/05

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Findings

- Texas continues to be a donor state sending more federal motor fuels tax receipts to Washington D.C. than it receives.
- Congress continues to debate the reauthorization bill, passing a series of temporary extensions. The latest is set to expire on May 31, 2005.
- Until the final passage of the next six year reauthorization bill it is difficult to determine the extent of any new provisions which might be available to Texas.

Recommendations

- The committee recommends the 79th Legislature memorialize Congress to ensure Texas receives its fair share of federal transportation funding by increasing the rate of return on federal transportation dollars. At a minimum, the committee would like to see an overall 95 percent rate of return by 2009.
- The committee recommends the 79th Legislature memorialize Congress to include in reauthorization legislation provisions encompassing Texas' priorities for flexible transportation financing and project delivery. These provision should include but are not limited to:

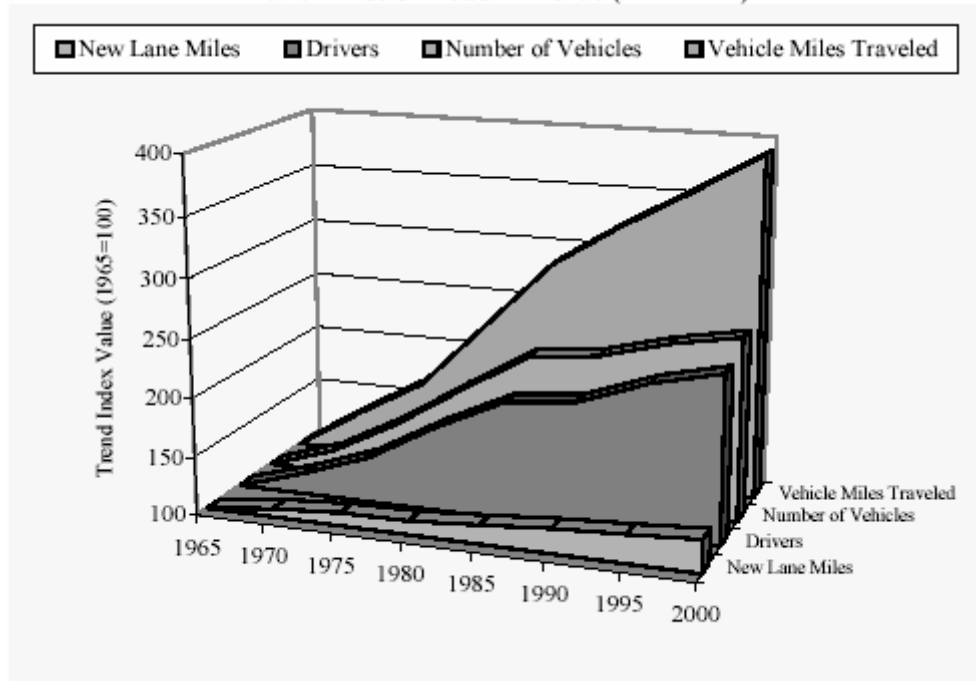
¹⁰⁸ U.S. Department of Transportation website, <http://www.fhwa.dot.gov/reauthorization/clocks.htm>, October 12, 2004.

- allowing design build authority for contractors to include environmental review, design, and construction portion of a project,
- concurrent environmental review for multimodal transportation projects,
- options for tolling interstate highways in Texas (within any limitations of state law),
- pro rata toll credit calculation,
- private activity bond for transportation projects,
- realignment of the Borders and Corridors Program,
- inclusion of Texas in the surface transportation system performance pilot program, and
- options for federal reimbursement for right of way.

APPENDIX

APPENDIX A

Index of Vehicle Miles Traveled, Number of Vehicles, Driver and Lane-Miles of Road in Texas (1965=100)



APPENDIX B

Projects	Toll Authorities						
	RMA	County Toll Authority*	Regional Toll Authority*	International Bridges	Private Toll Corporations*	TxDOT-Texas Turnpike Authority	TxDOT-Transtexas Corridor
Tolled Roadway	x	x	x		x	x	x
Non-tolled Roadway	x						x
Passenger Rail***	x						x
Freight Rail***	x						x
Ferry	x						
Airport	x						
Pedestrian or Bicycle Facility	x					x	x**
Intermodal Hub	x						x
Border Crossing Inspection Station	x						x
Automated Conveyor Belt for the movement of Freight	x						x
Air Quality Improvement Initiative	x						
Public Utility Facility	x		x				x
Project Listed in State Implementation Plan	x						
Weigh Stations	x					x	x
Inspection Station	x					x	x
Rest Area	x		x	x		x	x
Service Station	x		x			x	x
Restaurant	x		x			x	x
Train Station	x						x
Bus Station							x
Warehouse	x	x	x			x	x
Freight Interchange	x						x
Switching Yard	x						x
Maintenance Yard	x	x	x			x	x
Pipeline Pumping Station	x						x
International Bridge	x			x			x
Operate a Passenger Rail	x						x
Operate a Freight Rail	x						x
Operate Light Rail	x						x
Operate High-speed Rail	x						x
Operate a Bus System	x						

* May have implied powers to do more

** If appurtenant to a rail or highway facility

*** TxDOT operates rail only by contract

APPENDIX C

Conversion Statute Side by Side

<p>Regional Mobility Authority Projects</p> <p>Approval</p> <ul style="list-style-type: none"> • A Regional Mobility Authority (RMA) may request the commission to convert a non-toll segment of the state highway system to a turnpike project and transfer that segment to the RMA; transfer an existing turnpike project that is part of the state highway system to the RMA; or transfer a department owned and operated ferry to the RMA. • If the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region, the department will hold one or more public hearings in the region. • The department will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. <p>The commission may approve a proposed transfer under this subchapter if:</p> <ol style="list-style-type: none"> (8) the RMA agrees to assume all liability and responsibility for the safe and effective maintenance and operation of the highway or ferry upon its transfer; (9) the RMA agrees to assume all liability and responsibility for compliance with all federal laws, regulations, and policies applicable to the highway or ferry; (10) the commission determines that the transfer is in the public interest; (11) the RMA agrees to assume all liability and responsibility for EPIC; (12) the commission determines that the public has a reasonable alternative route on nontoll roads; (13) the RMA has adopted rules providing criteria and guidelines for approval of the transfer of a ferry or highway; and (14) the governor approves the transfer.
--

<p>Texas Turnpike Authority</p> <p>Approval</p> <ul style="list-style-type: none"> • Both county and the transportation commission must agree to the conversion. • The department will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. <p>The commission may convert a non-toll highway to a department turnpike project provided that:</p> <ol style="list-style-type: none"> (1) the commissioners court of each county involved has approved the proposed conversion, (2) the commission concludes the project is projected to be capable of generating revenue from tolls at rates to be set by the commission to satisfy project-related debt and maintenance and operating expenses allocable to the project (3) the conversion will improve regional mobility, and (4) construction of the necessary expansion, improvements or extension can be accomplished efficiently and expeditiously.

<p>County Toll Projects</p> <p>Approval</p> <ul style="list-style-type: none"> • The commissioners court of each county in which the highway is located approves the proposed conveyance; and • the commission determines that the proposed conveyance will improve overall mobility in the region, or is the most feasible and economic means of accomplishing necessary improvements to the highway. • The department will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. <p>The commission may transfer a highway to the county if:</p> <ol style="list-style-type: none"> (9) the county assumes all responsibility for maintenance and operation; (10) the county assumes all responsibility for compliance with all federal laws;; (11) the county agrees to assume all liability and responsibility for EPIC;; (12) the transfer will not adversely affect regional mobility; (13) construction can be accomplished efficiently, expeditiously, and with minimum public investment; (14) the commissioners court of each county has approved the transfer; (15) the county agrees to comply with the design and construction standards; and (16) the county agrees that tolls collected from the conveyed segment of highway will not be used for any purpose other than to finance the expansion, extension, operation, and maintenance of that highway segment.
--

<p>Regional Toll Authority</p> <p>Approval</p> <ul style="list-style-type: none"> • A conversion may be made by order of the commission if: • the commission determines it is the most feasible and economic means of accomplishing necessary improvements to the highway. • The governor approves the transfer, • the affected authority approves the transfer, • The department will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. <p>There are no additional provisions regarding the conversion of a state highway to an regional tollway authority.</p>

APPENDIX D



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

February 2, 2004

The Honorable Bill Frist
Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

As you continue work on the surface transportation reauthorization bill, we would like to discuss key elements of the Administration's proposal and key principles that we urge you to consider.

The Administration proposal, "Safe, Accountable, Flexible and Efficient Transportation Equity Act" (SAFETEA), as modified by the President's FY 2005 Budget, contains historically high levels of guaranteed investment for highways and transit, providing \$256 billion over six years -- a \$45 billion, or 21% increase over TEA-21. This \$9 billion increase above the original SAFETEA proposal reflects both revised Treasury estimates of Highway Trust Fund receipts, and the Administration's recognition of the higher levels enacted in the FY 2004 Omnibus Appropriations Act. At this funding level, all revenues paid by highway users would be spent on transportation infrastructure and safety programs, and the balances of the Highway Account of the Highway Trust Fund would be spent down for additional transportation infrastructure investment to the maximum extent possible.

SAFETEA strikes the appropriate balance between investment in our infrastructure and the need for spending discipline, consistent with current law. In developing our funding level of \$256 billion, the Administration adhered to three important principles:

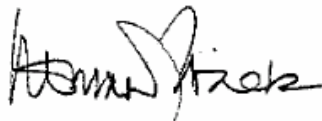
1. Transportation infrastructure spending should not rely on an increase in the gas tax or other Federal taxes.
2. Transportation infrastructure spending should not be funded through bonding or other mechanisms that conceal the true cost to federal taxpayers. Private activity bonds, like those allowed for in the Administration's bill, are appropriate because there is no Federal involvement or liability. SAFETEA would allow States and municipalities to issue up to \$15 billion in tax exempt bonds for transportation facilities that are privately developed and operated. The only Federal cost involved is the exclusion from Federal income tax of the interest on these bonds. Tax credit bonds, bonds issued by special purpose entities, and earmarked Treasury bonds all burden the Federal taxpayer and are, therefore, unacceptable.

3. Highway spending should be financed from the Highway Trust Fund, not the General Fund of the Treasury. All spending for highways should be authorized and appropriated from the Trust Fund and derived from taxes imposed on highway use, thereby maintaining the link between Trust Fund revenues and highway spending.

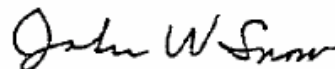
If a surface transportation reauthorization bill that breached any of these three principles were presented to the President, his senior advisors would recommend that he veto the bill.

We look forward to working with you to ensure timely enactment of a fiscally responsible six-year authorization bill. Our States, counties, and cities are depending on the certainty of a multi-year authorization bill to plan properly for improvements to their surface transportation infrastructure. Thank you for your consideration.

Sincerely,



Norman Y. Mineta
Secretary of Transportation



John Snow
Secretary of the Treasury

APPENDIX E

Transportation Witness List

Infrastructure Development and Security May 4, 2004 - 8:30 AM

Charge 1

ON:

Michael W. Behrens, Executive Director (Texas Department of Transportation), Austin, TX

Robert B. Daigh, District Engineer, Austin District (Texas Department of Transportation), Austin, TX

Frank Elder, Assistant Chief (Texas Department of Public Safety- Driver License Division), Austin, TX

Tom Griebel, Executive Director (San Antonio Mobility Coalition, Inc.), San Antonio, TX

Mike Heiligenstein, Executive Director (Central Texas Regional Mobility Authority), Austin, TX

Bob Jackson, Deputy General Counsel (Texas Department of Transportation), Austin, TX

Dennis Kearns, (Burlington Northern Santa Fe Railway), Austin, TX

Joriee Klein, RN (Parkland Hospital, Texas Hospital Association), Dallas, TX

Ross Milloy, President (Greater Austin-San Antonio Corridor Council), San Marcos, TX

Michael Morris, Director of Transportation (North Central Texas Council of Governments), Arlington, TX

Robert Nichols, Commissioner (Texas Department of Transportation) Austin, TX

Kathryn Perkins, Chief, Bureau of Emergency Management (Texas Department of Health), Austin, TX

Mark Rogers, Major (Texas Department of Public Safety- Commercial Motor Vehicle Enforcement), Austin, TX

Honorable Alan Sadler, County Judge (Montgomery County), Conroe, TX

Amadeo Saenz, Jr., P.E., Assistant Executive Director for Engineering Operations (Texas Department of Transportation), Austin, TX

Steve Stagner, (Texas Council of Engineering Companies), Austin, TX

Michael Stevens, (Governor's Business Council/Texas Urban Transportation Alliance), Houston, TX

Honorable Joe Wardy, Mayor of El Paso (City of El Paso), El Paso, TX

Michael Stevens, (Governor's Business Council/Texas Urban Transportation Alliance), Houston, TX

Charge 3:

ON:

Robert Nichols, Commissioner (Texas Department of Transportation) Austin, TX

Amadeo Saenz, Jr., P.E., Assistant Executive Director for Engineering Operations (Texas Department of Transportation), Austin, TX

Michael Stevens, (Governor's Business Council/Texas Urban Transportation Alliance), Houston, TX

Providing written testimony:

ON:

Tom Johnson, Executive Vice President (Associated General Contractors of Texas), Austin, TX

Charge 4

ON:

Michael W. Behrens, Executive Director (Texas Department of Transportation), Austin, TX

Honorable Robert Eckels, Harris County Judge (Alliance for I-69), Houston, TX

Honorable John Thompson, Polk County Judge (Gulf Coast Strategic Highway Coalition), Livingston, TX

Infrastructure Development and Security May 5, 2004 - 8:30 AM

Charge 2

ON:

Donald Coy, Business Analyst (State Farm and Insurance Industry Committee on Motor Vehicle Association), Bloomington, IL

David Durden, Director of Government Relations (Texas Department of Insurance), Austin, TX

David Eberwine, Database Consultant (Database Interface Approach), Lucas, TX

Frank Elder, Assistant Chief (Texas Department of Public Safety- Driver License Division), Austin, TX

Jonathan Miller, President (InsureNet), Atlanta, GA

Cyndi Taylor Krier, Vice President of Texas Government Relations (United Services Automobile Association), San Antonio, TX

Providing written testimony:

ON:

Johnnie B. Rogers, (Insure-Rite), Austin, TX

Douglas Traeger, IT Lead System Analyst (United Services Automobile Association), San Antonio, TX

Charge 3

ON:

Mike Craig, Deputy Director (Texas Department of Transportation- Vehicle Titles and Registration Division), Austin, TX

Charge 5

ON:

Robert Nichols, Transportation Commissioner (Texas Department of Transportation), Austin, TX

Steven E. Simmons, P.E., Deputy Executive Director (Texas Department of Transportation), Austin, TX

Infrastructure Development and Security October 28, 2004 - 1:00 PM

Transportation

ON:

Steve Ahlenius, President/CEO (McAllen Chamber of Commerce), McAllen, TX
Carlos Garza, Mayor Pro-Tem/ Chairman Bridge Board (City of McAllen and Anzalduas Bridge Board), McAllen, TX
Gilberto Hinojosa, County Judge (Cameron County), Brownsville, TX
George Ramon, Bridge Director (City of McAllen- Bridge Director), Hidalgo, TX
Amadeo Saenz, Jr., Assistant Director- Engineering Operations (TxDOT), Austin, TX
Wendy Smith Sturgis, City Manager (Mayor of Edinburg Richard H. Garcia), Edinburg, TX