

**SENATE COMMITTEE ON
TRANSPORTATION AND
HOMELAND SECURITY**

**REPORT TO THE
80TH LEGISLATURE**



DECEMBER 2006



SENATE COMMITTEE ON
TRANSPORTATION AND HOMELAND SECURITY

January 2, 2007


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

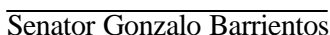
Dear Governor Dewhurst:

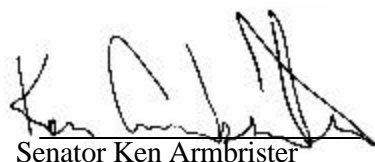
The Senate Committee on Transportation and Homeland Security is pleased to submit its final report, which considers the Committee's seven interim charges and three joint charges to study and report on:

- the state's overweight truck fees;
- federal actions regarding the Patriot Act on homeland security activities in Texas;
- the implementation of SB 9, 79th Legislature, Regular Session;
- TxDOT's ability to build, maintain, and relocate rail facilities;
- naming of state highways;
- TxDOT's programs to increase safety on all state transportation facilities;
- monitor federal, state and local efforts along the Texas Mexico border;
- relocation of utilities from state owned right-of-way;
- process of allocation by the TxDOT Commission through the Allocation Program;
- process by which federal funding sources should be implemented by the TxDOT Commission to comply with funding reductions mandated by Congress.

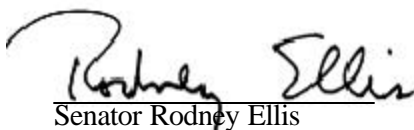
Respectfully submitted,


Senator John Carona
Chairman


Senator Gonzalo Barrientos
Vice-Chairman


Senator Ken Armbrister


Senator Kim Brimer


Senator Rodney Ellis


Senator Florence Shapiro


Senator Eliot Shapleigh


Senator Jeff Wentworth

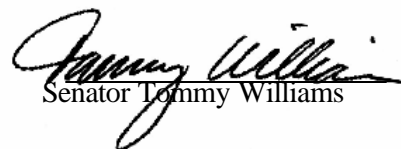

Senator Tommy Williams

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Interim Charges

1. Study and make recommendations for updating the state's overweight truck fees. Include an analysis and recommendations relating to the distribution of fees collected.
2. Monitor the impact of federal actions regarding the Patriot Act on homeland security activities in Texas. Make recommendations for statutory changes required to implement federal legislation and improve the efficiency of the process.
3. Study the implementation of Senate Bill 9, 79th Legislature, Regular Session, relating to homeland security, and make recommendations to enhance its effectiveness. Focus on implementation of provisions relating to mutual aid, including the need for a statewide compact, agricultural inspection stations, the health alert network, radio and computer interoperability and the protection of drinking water and of vital infrastructure. Assess the feasibility of establishing and operating a statewide public building mapping information system for state-owned buildings.
4. Study and make recommendations relating to the Texas Department of Transportation's ability to build, maintain, and relocate rail facilities. Monitor and report on the Department's ability to efficiently contract and provide funding for rail facility construction.
5. Evaluate and make recommendations relating to the naming of state highways and the criteria which should be followed in order to name a highway after a natural person. Include an analysis of criteria used in other states.
6. Study and make recommendations relating to the Texas Department of Transportation's programs designed to increase safety on all state transportation facilities.
7. Monitor ongoing federal, state and local efforts along the Texas Mexico border to combat criminal activity and prevent illegal border crossings. Study other border state activities in regard to the safety, efficiency and security of border crossings. Include an assessment of the impact of security measures on trade and vehicular and pedestrian commerce.

Joint Charges with Senate Finance Committee

1. Review the process by which the Texas Department of Transportation Commission allocates funds to the districts through the Allocation Program. Include a description of all scoring mechanisms used in making allocations of resources and make recommendations for maximizing the use of these funds to meet Legislative objectives.
2. Review the process by which the Texas Department of Transportation Commission determines which federal funding sources should be implemented to comply with funding reductions mandated by Congress. Assess the Commission's options for determining how projects that were to be funded out of these reduced revenue sources will be funded this biennium.

Joint Charge with Senate Business and Commerce Committee

1. Study and make recommendations relating to the relocation of utilities from state owned right-of-way, including an assessment of the costs of relocations, possible funding sources and methods to decrease delays associated with relocation.

Charge 1 -- Overweight Truck Fee Structure

Study and make recommendations for updating the state's overweight truck fees. Include an analysis and recommendations relating to the distribution of fees collected.

Background

Trucks and the trucking industry are very important to Texas. Three-fourths (by value) or two-thirds (by tonnage) of manufactured goods and raw materials moved through Texas are transported by truck. Texas leads the nation in interstate highway miles traveled and also has the highest truck volume in the nation in proportion to total vehicle miles traveled.¹

Overweight trucks have long been an issue for local, state, and federal governments. Historically each political subdivision and the state regulated the passage of overweight trucks on state highways.² In 1989, the Texas Legislature passed H.B. 2060, which created a state permit that allowed for the operation of oversize/overweight vehicles. During the 1990's, demand for oversized/overweight permits climbed steadily, with a peak in demand in 1998. The widespread use of overweight/oversize permits has caused concern over the damage to the roadways caused by these vehicles and the ability of the state to properly maintain them without causing extra burden on the taxpayer. Also, it has led to a revaluation of the current fee structure and allocation for permits. See Appendix A for the number of oversize/overweight permits issued from FY 1994 through FY 2005.

Defining Oversize/Overweight

Texas identifies oversize/overweight trucks in two general categories: divisible, where the load can be reasonably dismantled, and non-divisible, meaning the load cannot be reasonably dismantled. While the treatment of nondivisible loads has remained fairly constant, there were significant changes to the treatment of divisible loads enacted in 1989 by the 71st Legislature. Prior to 1989, trucks with divisible loads were restricted to the posted weight limits on roads and bridges. However, the 71st Legislature created a process by which vehicles hauling divisible loads could also obtain permits to run at a percentage over the legal gross weight.

The width of a vehicle is measured using the outside wide extremities. Regardless of the type of load, the legal width is 8 1/2 feet. The legal height limit is 14 feet and is measured from the roadbed to the highest point of the load. There are no length restrictions on a truck tractor power unit by itself; but the tractor and trailer combined cannot exceed an overall length of 65 feet. The maximum legal gross weight for a vehicle cannot exceed 80,000 pounds total. The maximum legal axle weights cannot exceed 20,000 pounds for a single axle, 34,000 pounds for a tandem axle, and 42,000 pounds for a triple axle.³

Types of Permits

There are 25 different types of permits that can be issued. Approximately 500,000 permits are issued annually for the transport of loads that exceed the legal size and weight. Appendix B outlines the number of permits issued by type for fiscal year 2005.

¹ Behrens, Michael. Texas Department of Transportation testimony before the Senate Committee on Transportation and Homeland Security, April 18, 2006.

² Allison, Jim. Testimony of Jim Allison, General Counsel for the County Judges and Commissioners Association of Texas to the Senate Committee on Transportation and Homeland Security on April 18, 2006.

³ Ibid.

Permit Fees for Non-Divisible Loads

Permit fees were established to offset the disproportionate amount of damage caused by oversize/overweight loads. While they were never intended to fully pay for damage done to roads by oversize/overweight trucks, they did originally have a quantifiable relationship to the damage done. Below is an analysis of the fees for some of the most common types of permits.

General Oversize/Overweight Permits

General oversize (single trip) permits are issued for non-divisible loads that exceed 8'6" wide, 14' high, or 65 feet long. The fee for these permits, last changed in 1991, is \$30 for a single trip. This fee is deposited in the State General Revenue Fund, Fund 0001 (GR). Prior to September 1, 1990, the fee was deposited into the State Highway Fund, Fund 0006. In 1990, it was redirected to GR to help pay for public education programs. In 1991, a Highway Maintenance Fee was created for overweight loads. In addition to the \$30 base fee, the Highway Maintenance Fee, based on the weight of the load, was also required.⁴

Table 1: Highway Maintenance Fees

Weight Range (lbs)	Current Fee
80,001-120,000	\$50
120,001-160,000	\$75
160,001-200,000	\$100
200,001 and above	\$125

The Highway Maintenance Fee was established so that trucks with overweight loads would be subject to an additional fee based on their weight. This Highway Maintenance Fee is dedicated to the State Highway Fund.

Time Permit Fees (30/60/90 Permits)

A permit for more than a single day can also be purchased. Permits can be acquired for 30, 60, or 90 days. The revenue for these funds goes into GR; the fees were last updated in 1983.⁵

Table 2: Time Permit Fees

30 Day Permit	\$60
60 Day Permit	\$90
90 Day Permit	\$120
Annual Permit (Water Well Drilling and Implements of Husbandry)	\$135

The fees assessed provide benefits to the trucking industry as the means of reducing overall cost and increasing the profit potential of the operator. However, the low cost of an annual permit may provide an incentive for a truck to make more trips, which can further damage the highways. On the other hand, setting a fee that is too high may encourage non-compliance to the permit regulation, eliminating the value of regulation. A careful balance must be found.

⁴ Ibid.

⁵ Comptroller Manual of Accounts--Volume II. Transportation-Cash--Detail Descriptions. Accessed on the web at www.window.state.tx.us.

There is also some concern in the trucking industry over accessibility of annual and single trip permits. Annual permits are vehicle/company specific, which imposes limitations on how many carriers are utilizing it because the permit must be on the truck. Furthermore, they sometimes see limitations in the single trip permit because the turnaround time to receive the permit can take hours.⁶

Manufactured Housing Permits

Manufactured housing permits can be issued for single or annual trips. However, 83,000 single trip permits were issued in FY 2005, while only six annual permits were issued. An annual permit costs \$1,500. From this \$1,500, 2% goes to the State Highway Fund, while the balance goes to GR. The single trip permit is valid for up to 5 days and costs \$20. Nineteen dollars and seventy cents of the \$20 goes to GR, while .30 cents goes to the State Highway Fund. This policy was last updated in 1997.

Permit Fees for Divisible Loads

Weight Tolerance Permits ("2060 permits")

In 1989, the 71st Legislature created what are now known as "2060" permits with the enactment of HB 2060.⁷ This legislation authorized TxDOT to issue permits allowing a 10% axle tolerance and a 5% gross weight tolerance for vehicles transporting divisible loads.⁸ Permit fees were set at \$75 annually, with \$25 deposited to the State Highway Fund and \$50 divided among all 254 Texas counties based on the ratio of county road miles for each county. Although unpopular with counties, Attorney General opinions and case law supported the notion that counties may not impose additional regulations with regard to weight on trucks granted an overweight certificate by TxDOT.

In 1995, HB 1547 restructured the fees associated with the 2060 permit. In addition to the base fee of \$75, a fee must be paid for the number of counties designated for vehicle operation based on the table below.⁹

Table 3: Weight Tolerance Permit Fees

Number of Counties	Fee
1-20	\$125
21-40	\$345
41-60	\$565
61-80	\$785
81-100	\$1,005
101-254	\$2,000

⁶ Phone conversation with Les Findeisen, Director of Policy, Texas Motor Transportation Association. August 23, 2006.

⁷ §623.011, Subchapter B, Transportation Code

⁸ Ibid.

⁹ Comptroller Manual of Accounts.

From the \$75 base fee, \$25 goes to the State Highway Fund, while \$50 goes to the counties. TxDOT collects an administrative fee of \$5 that was set in place by the Texas Transportation Commission in the Texas Administrative Code, Title 43, Part 1, Chapter 28, Subchapter C, Rule §28.30, (e) 3 (A). The counties receive the fees that are assessed based on number of counties traveled. This fee is divided among all the counties listed on the permit application; each county's share is proportional to its county road miles.¹⁰ This distribution method is outlined in statute; however, the 2001 and 2003 General Appropriations Act altered the distribution and TxDOT's ability to pay counties from GR. This means that the fees are collected into GR, but paid directly out of Fund 6.

State agencies are appropriated funds on a biennial basis through legislation known as the General Appropriations Act. This act may contain a series of instructions regarding certain funds or programs; these instructions are known collectively as riders. In 2003, Rider 18 to TxDOT's appropriation in the General Appropriations Act (H.B. 1, 78th Legislature) directed that instead of the counties receiving monetary compensation for this permit type, they would receive road materials that were worth twice the cash amount that they would have been paid under the fee structure:

18. Road Materials. From amounts appropriated above to the Texas Department of Transportation from State Highway Fund No. 006, the department shall provide eligible counties with road materials during each fiscal year of the biennium. The amount of road materials provided by the department to each eligible county shall be in an amount equal to twice the amount each eligible county would be eligible to receive, pursuant to Transportation Code § 621.353. This section does not make an appropriation to the Comptroller for the purposes of Transportation Code, § 621.353.¹¹

The scaled fees went to GR and TxDOT's authority to pay counties from GR was removed.¹² In 2005, Rider 11 to TxDOT's appropriation in the General Appropriations Act (79th Legislative session) allowed for monetary compensation to the counties:

11. Gross Weight and Axle Fees. Amounts from State Highway Fund No. 006 equivalent to amounts collected from gross weight and axle weight fees are appropriated for distribution to counties as provided in VTCA, Transportation Code, § 621.353 (estimated to be \$4,700,000 each year). All unexpended balances as of August 31, 2005 (estimated to be \$0), and amounts from State Highway Fund No. 006 equivalent to all revenue received from gross weight and axle weight fees during the 2006-07 biennium are appropriated for the same purpose.¹³

However, TxDOT did not get authority to pay the counties out of GR, so counties are currently being paid out of the State Highway Fund even though the money collected for these permits goes to GR.

¹⁰ House Committee on Transportation Texas House of Representatives Interim Report 2000.

¹¹ H.B. 1 (General Appropriations Act), 78th Legislature, 2003, p. VII-29.

¹² Michael Behrens Testimony before the Senate Committee on Transportation and Homeland Security on April 18, 2006.

¹³ S.B. 1 (General Appropriations Act), 79th Legislature, 2005, p. VII-21.

In some instances, local governments receive monetary help for roads through public-private partnerships. Due to explosive growth in residential development, the exploration of natural gas reserves (each natural gas drilling site requires approximately 364 truck trips to haul water to the site), and other factors, Denton County experienced a great increase in heavy truck traffic. To address the increased truck traffic and road deterioration, the private sector joined with Denton County to create public-private partnerships where local governments get help for road repairs from drilling companies directly related to the increase in truck traffic. The mechanism for these partnerships are road use agreements that define each party's role.¹⁴ The Oil and Gas Task Force formed in Denton County suggested that this cooperation would continue if more funding could be generated by increasing the "over the weight limit" fee.¹⁵ These funds are in addition to local revenues generated by the gas wells themselves.

Distribution of Permit Revenue

Revenue collected from state overweight permits goes into two funds: General Revenue Fund (GR) and State Highway Fund (Fund 0006). As seen in Appendix C, the total actual revenue collected from Fiscal Years 2001 through 2005 remained steady. The average amount collected was \$31,097,740. Money deposited into GR generally loses its source identity. TxDOT is not appropriated GR for road construction or maintenance. Funds distributed to the counties by TxDOT are being paid out of the State Highway Fund, while the tolerance permit fees (2060 permits) collected are still going into GR. Similarly, fees deposited to the State Highway Fund are administered by TxDOT, the Department of Public Safety, and other entities. It is difficult to track how much of the money going into the State Highway Fund is being used for road repair/damage done by oversize/overweight trucks.¹⁶

The Relationship Between Damaged Roads and Permit Fees

A crucial factor in determining whether the current fee structure needs updating is the relationship of the oversize/overweight load to the cost of the damage done to the road. Research has shown that one 80,000 pound truck has the same pavement impact as 9,200 cars.¹⁷ The equation used to calculate damage done to roads by oversize/overweight vehicles must also be scrutinized because it must take into account other damage that is not caused by the oversize/overweight vehicle. The Comptroller's Office reports that¹⁸ overweight vehicles pay less for the deterioration they cause to the highways than motorcycles, automobiles and light trucks. Studies done by the US Department of Transportation's Federal Highway Administration (FHWA) compared the cost of the wear and tear to the highway caused by motorcycles, automobiles, light trucks, vans, and heavy trucks with the revenue these vehicles generated from fuel taxes and registration fees. The results indicated that the heavy trucks caused more damage, but paid for a smaller share of the damage.¹⁹

¹⁴ Phone conversation with Les Findeisen on September 14, 2006.

¹⁵ Denton County Oil and Gas Task Force Summary Report.

¹⁶ Phone conversation with Brad Gatlin, TxDOT, July 12, 2006.

¹⁷ David Luskin, Robert Harrison, et al. "Alternatives to Weight Tolerance Permits, Center For Transportation Research", UT (2000).

¹⁸ TR06: Assess a Highway Maintenance Fee for Overweight Vehicles, "Breaking the Mold: New Ways to Govern Texas," Texas Performance Review, July 1991.

¹⁹ U.S. Department of Transportation, Heavy Vehicle Cost Responsibility Study, (Washington, D.C., November 1988), p. I-1.

Emmanuel Fernando, an engineer with the Texas Transportation Institute, conducted a study on the effects of permitted overweight loads. While the study is limited to a specific location, it lends insight into the damage that overweight loads can do to a road. The study examined the effects of overweight truck traffic on a particular truck route in Brownsville, Texas. Tests were performed on the southbound lanes of the truck route. Engineers used radar to estimate the pavement thickness and divide the route into sections of similar pavement. These sections were tested to estimate the stiffness of the layers in the pavement with samples taken from the pavement to verify the results in radar measures and describe the characteristics. Damage to the route caused by permitted and non-permitted trucks that traveled on the route were estimated in two places using sensors. Results of the study found that the lane typically used by trucks was less stiff than the lane typically not used by trucks. Damaged pavement tends to be less stiff than undamaged pavement. More observable pavement stress, such as cracking and roughness, in the lane typically used by trucks was also found. Overall, permitted trucks using the road produced more damage than trucks that did not require overweight permits and used a different lane.

There are some things to consider when looking at the results of the study. First, the increased pavement damage and less pavement stiffness that was found in the lane used by the permitted trucks could be caused by something other than the trucks, such as a higher volume of non-permitted trucks or other traffic in that lane. The study did not rule that out as a possibility.

Second, the sample of truck traffic studied may not represent the actual truck traffic on the road. Without the total numbers and weights of trucks using this road, it is difficult to determine how well the results represent total truck traffic. Finally, the route tested was not designed to sustain routine overweight truck traffic. Only the interstate highway system was built with the concept of wear and tear by heavy military vehicles and even the occasional aircraft landing -- most of the roads in Texas are not built to accommodate overweight trucks.²⁰

What Other States Are Doing

A survey conducted by the Texas Legislative Council for the Committee shows what ten states are doing about overweight truck permits. The ten states who responded to the survey were Arizona, California, Illinois, Michigan, New Mexico, New York, Ohio, Oregon, Pennsylvania, and Wisconsin. Like Texas, these states require owners or operators of commercial vehicles that exceed the state's standard weight limit to purchase an overweight permit. The FHWA has set weight standards for commercial vehicle operation on the Interstate Highway System. These standards are 20,000 pounds per single axle, 34,000 pounds per tandem axle, and 80,000 pounds gross vehicle weight for commercial vehicles. States are subject to loss of federal funds if they set their own commercial vehicle standards at variance from the federal weight standards, although they may set their own standard. Unlike the ten states surveyed, Texas distributes revenue from the permit fees into GR and the State Highway Fund. The states surveyed, on the other hand, deposit their fees into a transportation account that funds transportation road-related programs such as road construction, maintenance, and repair. Only California authorizes truck permit revenue to be used by public agencies outside the department of transportation.²¹ Details about the state fee structures of New York, Illinois, Oregon, and Wisconsin are in Appendix D. An overview is listed below.

²⁰ Phone conversation with Major Mark Rogers, Texas Department of Public Safety, on August 18, 2006.

²¹ Research conducted by the Texas Legislative Council for the Senate Committee on Transportation and Homeland Security, "Overweight Truck Permit Fees and Revenue Distribution in 10 States," July 27, 2006.

Arizona

Arizona calculates its overweight truck permits based on weight range, permit duration, and route. A permit for a load weighing more than 80,000 but less than 250,000 pounds costs \$75 for single or multiple trips. A permit for a load that exceeds all dimension limitations costs \$90 if height or width does not exceed 18 feet, and \$100 if the height or width exceeds 18 feet. Permits on certain restricted routes for a single trip or 30-day permit costs \$75, while an annual permit costs \$360. The permit to travel on Interstate 15 costs \$600 per year. Permit revenue is deposited into the Highway User Revenue Fund for highway and street purposes.

California

California offers four types of permits: single trip (\$16), repetitive permit (\$90 for six-months as long as route and load are identical), annual permit (\$90 for unlimited trips that do not have to be identical), and a variance permit for transporting 250,000 pounds gross vehicle weight (single or repetitive cost with a \$50 per hour charge for services needed to safely transport load). Revenue goes to the State Highway Account in the State Transportation Fund that can be used for things such as highway maintenance and construction, but also to fund work undertaken by other public agencies for similar purposes.

Illinois

Overweight permit fees are calculated according to gross vehicle weight per number of axles and the distance of the trip in 45-mile increments. A new flat rate was added in 2006 for multiple trip permits that cost \$250 quarterly or \$1,000 annually regardless of miles traveled. The money goes into the Road Fund which provides revenue for highway construction, repair, and maintenance and administrative costs for transportation programs.

Michigan

Michigan is unique in the US because it uses axle weight rather than gross vehicle weight to regulate overweight vehicles using a flat rate fee structure. Single trip permits cost \$50 and annual permits cost \$100. Revenue is put into the Trunk Line Fund for improvement and construction of state roads.

New Mexico

A single trip in New Mexico costs \$25 plus two and a half cents for each 2,000 pounds in excess of 86,400 pounds, or major fraction thereof, multiplied by the number of miles traveled in the state. The annual permit is \$250 and is only authorized for use within a 5 mile radius of the trip's origin. Special permits costing \$35 for a single trip or \$120 for annual are issued for liquid hauling tank vehicles when the vehicle would be required to haul less than a full tank to remain within the maximum weight limits. The fees are deposited into the State Road Fund. The permit fee revenue for overweight liquid-hauling tank trucks is statutorily required to be used to maintain, build, repair, or reconstruct highways and bridges.

New York

New York offers six types of overweight truck permits for divisible loads depending on what parts of the state the vehicle travels. Three types of divisible load permits are divided into two categories based on the number of axles. There are statewide permits, specific permits for several counties, and separate special hauling permits for nondivisible loads. The 26 special hauling permits are calculated per trip or for a specific duration depending on the load type. Permit revenue is deposited into the Dedicated Highway and Bridge Trust Fund for the maintenance of New York's bridges and highways.

Ohio

Ohio does not have a specific overweight permit. It offers special hauling permits organized by permit duration that include a separate overweight fee. Permit fee revenue is deposited into the highway operating fund and is limited to expenses directly related to Ohio's highways including construction, reconstruction, maintenance, and repair.

Oregon

Oregon, depending on the weight of the vehicle, combines a nominal overweight permit fee with either the Oregon Weight Mileage Tax or a Road User Assessment Fee. Nondivisible loads from 80,000 to 97,999 pounds gross vehicle weight are required to pay an annual \$8 heavy haul permit plus the Oregon Weight Mileage Tax based on weight and axles. Commercial vehicles weighing from 98,000 to 500,000 are required to pay the \$8 single trip permit fee plus the Oregon Road Use Fee Assessment, which is based on a per mile rate determined by gross vehicle weight per number of axles. Hauling of divisible loads in excess of 105,500 pounds gross vehicle weight is prohibited. Revenue is deposited into the Motor Carrier Account for the department of transportation's operating needs. Excess revenue is transferred to the State Highway Fund for development and maintenance of highways, streets, roads, and bridges.

Pennsylvania

Pennsylvania has a single overweight permit (\$25) plus three cents per ton-mile, which is defined as one ton of freight shipped one mile. Revenue is deposited into the Motor License Fund which provides moneys for construction, reconstruction, maintenance, and repair of roads and bridges.

Wisconsin

Wisconsin categorizes their permits by gross vehicle weight, duration of the permit, and proximity to Michigan. Single trip permit fee is calculated by gross vehicle weight, while multiple trip permits and Michigan border permits are calculated by weight and duration. The revenue from the fees goes to the Transportation Fund supporting road and highway related programs.

Findings and Recommendations

Oversize and overweight permit fees do not provide sufficient funds due to an outdated fee structure and the use or potential use of revenues for non-transportation purposes. There may be better, more equitable ways to distribute permit fees to counties.

A highway maintenance fee should be assessed for divisible-load overweight vehicles based on a weight/axle formula that takes into account the distance traveled or number of counties traveled through. This technological enhancement could be expedited through an interactive system that automates routing and fee calculation, if it can be done in a timely and accurate fashion. If weight ranges are used, they should be set so as not to provide an incentive for increasing load weights.

The Legislature should direct the state oversize/overweight permit fees that are currently going into GR, and any increase in these fees or additional fees, to the State Highway Fund or the Texas Mobility Fund. The redirection of fees into these funds would dedicate their usage to transportation, allow for maintenance and improvements to be done at a faster pace, and clarify the accounting stream. Any new tax or user fee should also be put into the State Highway Fund or the Texas Mobility Fund so as to ensure that the use of the revenue serves the intended purpose of the additional tax/fee. A dedication would need to ensure that county revenue streams are protected and used for transportation.

The Legislature should raise the fines for oversize/overweight trucks that do not have the appropriate permit. Texas is at the lower end of the scale, with \$1,000 being the maximum fine that can be assessed. South Dakota has the highest maximum fee at \$17,550 and Oklahoma the lowest at \$628.90.²² An increased penalty for compliance can help ensure that there is little incentive to travel without a permit. Fines should be appropriated for operation of and improvements to motor carrier permitting and regulation.

The Legislature should consider a more county-specific permit that would send the fees to counties with the highest volume of traffic. The current county permit splits the fee to the 20 different counties listed even if the majority of the traffic and damage occurred in only a few counties. A permit that would target the county or counties experiencing the majority of the traffic might prove more equitable. Statute should direct the revenue to the State Highway Fund and the payments to counties via TxDOT and the State Highway Fund.

The Legislature should consider limiting the term of a permit or increasing fees for extended permit periods, limiting a permit to specific roads, adjusting fees to reflect the capacity of a road, and increasing fees to adjust for construction and maintenance costs.

The Legislature should consider Oregon's model of a mileage tax for loads between 80,000 and 97,999 pounds and also consider adopting a highway user fee such as Oregon's for loads in excess of 98,000 pounds. This type of highway fee could replace the Texas general permit fee that is currently in place based on weight range.

²² Texas Department of Transportation.

Charge 2 -- Monitor Federal Actions

Monitor the impact of federal actions regarding the Patriot Act on homeland security activities in Texas. Make recommendations for statutory changes required to implement federal legislation and improve the efficiency of the process.

Background

Several federal actions affect Texas or could require action by the state legislature. The Patriot Act was specifically mentioned in the interim charge; however, when it became apparent that the federal Real ID Act could have a significant financial and operational impact on Texas, the Committee also directed its attention to that law.

Committee staff also has monitored the status of proposed amendments to federal laws regulating commercial airline service, commonly called "The Wright Amendment." As of this writing, legislation has passed at the federal level which does not on its face require any state legislative action.

The Patriot Act

The Patriot Act was passed on October 24, 2001, "to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes."²³ While certain sections of the Act make reference to states, primarily by allowing for grants to be given out to state and local governments, the Act as a whole has a limited effect on the state level.

Table 4: Provisions of Patriot Act with Reference to States

Section 1005 --First Responders Assistance Act	Directs the Attorney General to make grants to state and local governments to improve the ability of state and local law enforcement, fire department, and first responders to respond to and prevent acts of terrorism. Authorizes appropriations.
Section 1012 --Operating a vehicle transporting hazardous material	Amends the Federal Transportation Code to prohibit states from licensing any individual to operate a motor vehicle transporting hazardous material unless the Secretary of Transportation determines that such individual does not pose a security risk warranting denial of the license. Requires background checks of such license applicants by the Attorney General upon state request.
Section 1014	Directs the Office of State and local Domestic Preparedness Support of the Office of Justice Programs to make grants to enhance state and local capability to prepare for and respond to terrorist acts. Authorizes appropriations for FY 2002 through 2007.
Section 1015	Amends the Crime Identification Technology Act of 1998 to extend it through FY 2007 and provide for antiterrorism grants to states and localities. Authorizes appropriations.

²³ H.R. 3162, USA Patriot Act, title. The Library of Congress. THOMAS. <http://thomas.loc.gov/cgi-bin/>.

The main effect of the Act is that it allows the federal government to share information on the state and local level. Jim Harrison, Local Government Liaison of the Office of Homeland Security in the Governor's Office, gave an example as to how this information could prove beneficial. Prior to the legislation, a threat to something such as the National Basketball Association Finals in Dallas, Texas could not be shared with state officials. It was federal information. Now, information on the location of the threat can be shared. Even though specifics may not always be shared, the state could assess the threat and figure out what steps to take next. In the process, the state could include stakeholders in a joint-fashion decision done in situations such as hurricanes.²⁴

Another impact of the Patriot Act on the state level is Section 1012, relating to the operation of vehicles transporting hazardous material. In accordance with the Patriot Act, the federal Transportation Security Administration (TSA) and Department of Transportation (DOT) have promulgated rules to secure the transport of hazardous materials, including explosives. States were required to implement background checks and fingerprinting for new hazardous material endorsement applications by January 31, 2005. The effective date for procedures related to processing renewal and transfer applicants was delayed until May 31, 2005. Since that date, no commercial driver license (CDL) with a hazardous material endorsement can be issued unless the applicant has undergone a security threat assessment and obtained clearance from TSA. Current license holders can be granted a 90-day temporary endorsement at the time of renewal. Applicants are not permitted to transfer an endorsement from another state. They must get a new security threat assessment.²⁵ The transition to this new approach has been relatively easy for the DPS.

The Real ID Act

Real ID Act Requirements

The Real ID Act of 2005, included in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (H.R. 1268) essentially changes the requirements for driver's licenses.²⁶ As of May 11, 2008, a federal agency may not accept, for any official purpose, a driver's license or identification card issued by a state to any person unless the state meets the requirements of Section 202 of the Real ID Act. Each state will have to certify to the Secretary of Homeland Security whether the state meets the minimum requirements through an annual certification system similar to the certification process for the Commercial Driver License Program.²⁷

²⁴ Phone conversation with Jim Harrison, Office of the Governor, on June 16, 2006.

²⁵ Texas Department of Public Safety, Driver License Division, http://www.txdps.state.tx.us/administration/driver_licensing_control/hme.htm accessed June 2006.

²⁶ "Real ID Act of 2005", attached to "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief Act 2005", (H.R. 1268, P.L. 109-13)

²⁷ Texas Department of Public Safety's Impact Analysis of the Real ID Act, Section 202 (a)(1-2), July 24, 2006.

Under the Real ID Act, at a minimum, a state must include the following on a driver's license or identification card issued to the person by the state:

- the person's full legal name;
- the person's date of birth;
- the person's gender;
- the person's driver's license or identification card number;
- a digital photograph of the person;
- the person's address of principle residence;
- the person's signature;
- physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes; and
- a common machine-readable technology, with defined minimum data elements.

The full legal name requirement presents a concern for Texas because of the impact on rules and practice. The current Texas Administrative Code (TAC), Chapter 15, Section 15.23, would have to be revised to adopt new definitions for "full legal name." Texas' current name field consists of 125 characters, but this would have to be changed to 175 to accommodate the new law. National, state, and local databases would need to be converted to fit these fields as well. Furthermore, the US Department of Homeland Security is expected to require 39 characters on the face of the DL/ID card; therefore, limited space will be available for printing the full legal name.²⁸ In Texas, statute and rule would also have to be changed to read "principal address" from the current "residence address" to comply with requirements.

The state is also required to verify that the person can present and verify the following information before receiving their driver's license or ID card:

- a photo identity document (unless they have a non-photo identity document that includes both the person's full legal name and date of birth);
- documentation showing the person's date of birth;
- proof of the person's social security account number or verification that the person is not eligible for a social security number; and
- documentation showing the person's full legal name and address of principal residence.²⁹

Furthermore, the Real ID Act requires the state to ensure that there is documentary evidence to ensure that all driver's license or identification card applicants are either US citizens or are lawfully present in the United States. The current understanding is that no foreign documents will be acceptable as evidence of lawful presence. Verification will need to occur prior to issuing the DL/ID through the Systematic Alien Verification Entitlements (SAVE) program. Temporary DL/ID cards will only be issued to those proving legal presence as well. The card will have to indicate that it is temporary and have an expiration date that coincides with the expiration of legal presence of the person seeking the DL/ID. If there is not a definite date, the temporary card may not exceed one year.³⁰ Texas does not currently have a legal presence requirement.

²⁸ Texas Department of Public Safety's Impact Analysis of the Real ID Act, Section 202(b)(1-9), July 24, 2006.

²⁹ H.R. 1268. Real ID Act. Title III. Improved Security for Driver's Licenses and Personal Identification Cards.

³⁰ Testimony by the Texas Department of Public Safety before the Senate Committee on Transportation and Homeland Security on April 25, 2006.

There will have to be a new statutory provision to require ID and verification of non-eligibility for Social Security. Principal address verification residency requirements would have to be defined because DHS has indicated that two documents containing the customer's address that are no more than three months old will meet the residency requirement.

A linking of databases is required by the Act in order for a state to be eligible to receive federal grants or other financial assistance. The state must participate in the "Driver License Agreement," an interstate compact regarding sharing of driver license data, which provides electronic access by a state to information contained in databases of all other states. This database must have a minimum of all the data fields printed on the DL/ID issued by the state, and motor vehicle drivers' histories (including violations, suspensions, and points on licenses).

Key Impacts to the Texas Department of Public Safety

The Real ID Act will require all 20 million existing DL/ID holders in the state of Texas to present their identification credentials to driver license personnel. The Texas Department of Public Safety testified that the Act creates implementation challenges with legislative, operational, technological, and fiscal limitations. They also identified the following key impacts to the Department to implement the provisions of this Act.

Re-Enrollment Process

A re-enrollment process will be required of every current DL/ID holder, which will require all renewals or duplicate DL/ID applicants to appear in person at the driver license office. The DHS suggests that this process must be completed by May 2013. Because Texas currently has a six-year renewal cycle, the five year re-enrollment period creates a conflict and is estimated to increase traffic in the driver license office by 48% the first year, increasing each year thereafter, according to the Texas Department of Public Safety.³¹ This creates a staffing problem and has the potential for a dramatic impact on wait-times at driver license offices. Furthermore, the transaction fee collected by Texas On-line for alternate renewal/duplicate DL/ID will be eliminated because the service will no longer exist, causing a decrease in revenue for the DPS. There is still a chance that the re-enrollment process will be pushed from a 5-year period to an 8-year period in the federal regulation that has yet to be published.³²

Verification

Verification will have to be done through national databases. While some query systems similar to the Systemic Alien Verification Entitlements (SAVE) system are under development, it is uncertain if the other national databases will be operational by May 2008 and what the fiscal impact of using the systems is for the state.³³ Section 202 (c) (3) (C) of the Real ID Act requires that states enter into an MOU to sign onto the SAVE system by September 11, 2005. Texas signed an MOU to use SAVE, but has not signed an agreement because the state does not have a legal presence requirement. One would have to be enacted by the Legislature..³⁴

³¹ Texas Department of Public Safety's Impact Analysis of the Real ID Act, Section 202 (d) (4), July 24, 2006.

³² Meeting with Judy Brown from DPS, July 10, 2006.

³³ Texas Department of Public Safety's Impact Analysis of the Real ID Act, Section 202 (c) (3) (A-C), July 24, 2006.

³⁴ Phone conversation with Bob Burroughs, Assistant Chief, DPS Driver License Division, 512-424-2768, September 14, 2006.

Other states, such as Alabama, have signed agreements with SAVE to meet the statutory requirement, but are still in the process of utilizing it. Roscoe Howell with the Alabama Public Safety Department said that the biggest challenge in fully implementing the query system is that United States Customs' database system does not have the power to take on all of the queries; thus, their system must be modified in order for the SAVE system to fully be implemented.³⁵ The increased need to review documents and fraudulent document incidents will result in the need for additional troopers to deter fraud and conduct investigations. There will also have to be continuous re-verification of all DL/IDs at time of renewals, even alternative renewals. An estimated 15% overtime salary is expected.³⁶

Restricted Security Features

Anticipated proposed rules will limit all states to using a specific material for the ID and to further increase security features. The expectation is that rules will require the use of a polycarbon, multi-layered hard plastic to replace the soft Teflon currently used. The polycarbon card would be black and white and the ink would come from underneath the card surface to create the images. Texas is currently spending \$1 a card; switching to polycarbon would raise the price to \$10 a card.³⁷ There is concern by the Department of Public Safety that this will reduce the jurisdiction ability to address security concerns that are region specific with technologies most suited to reduce individual threats, and that the states' autonomy will be challenged. A state that does not comply with the Real ID provisions must make their DL/ID a unique design or color to show that it is "non-conforming."

Another aspect of implementing the law is the potential use of Radio Frequency Identification chips (RFID) in driver's licenses. The Department of Homeland Security could choose to require RFIDs in the DL/ID. Care would need to be taken regarding the information placed in the RFID and the methods by which it is read to ensure that personal information is appropriate and safeguarded.

Operational Challenges

The Real ID Act poses operational challenges in the form of staffing, system enhancements, and deadline compliance. Visits to the driver license offices are expected to dramatically increase. This will require additional staff, facilities, training, and equipment to implement. The DPS Driver License Reengineering (DLR) project will also require enhancements, associated with costs, to add programs to the system. The DLR addresses all activities of the driver license division, including personnel, technology/engineering, and front end work. Current digital computer servers were bought 15 years ago and are no longer produced. The last matching server had to be bought on EBAY.³⁸ The DHS indicates that states will not be granted extensions to the implementation deadline, unless there is a "technological need to delay."³⁹

Other Concerns

Appendix A has a section by section analysis regarding the Real ID Act.

³⁵ Phone conversation with Roscoe Howell, Alabama Public Safety on September 14, 2006.

³⁶ Texas Department of Public Safety's Impact Analysis of the Real ID Act, Section 202 (c) (3) (A-C), July 24, 2006.

³⁷ Phone conversation with Bob Burroughs, Assistant Chief, DPS Driver License Division, 512-424-2768, September 14, 2006.

³⁸ Phone conversation with Bob Burroughs, Assistant Chief, DPS Driver License Division, 512-424-2768, September 14, 2006.

³⁹ Testimony, The Department of Public Safety at a hearing of the Senate Committee on Transportation and Homeland Security on April 25, 2006.

Fiscal Impacts of the Real ID Act

The aspect of the Real ID Act that has garnered the most attention is that the state will have to bear the cost of implementation. An impact analysis performed by the Texas Department of Public Safety was structured to represent both the requirements of the Act and the anticipated rule language currently under development by the DHS, and was produced as a section-by-section analysis. Some of the costs are outlined below; a detailed list can be found in Appendix B.

- Section 202 (b) (1-9) Minimum Document Requirements: Expanding the name field to allow for 175 characters instead of 125 will cost about \$36,600 to implement. Cost increase for security features and card material are based on approximately 7,033,453 DL/ID issues the first year at an estimated \$7.25 per card increase. This brings the implementation cost to \$50,992,534 and the annual cost to \$54,710,919.
- Section 202 (c) (2) (C) (i-iv) Temporary ID Requirements: Implementation to create a DL/ID format to display temporary status will cost about \$21,782.
- Section 202 (c) (3) (A-C) Verification of Documents:
 - *Social Security Online Verification (SSOLV)*: Expanding the system would cost \$94,500 for a DLR contract vendor, while the operating expenses of SSOLV transactions would have an implementation cost of \$70,285 and annual cost of \$85,671. This is based on an estimate of 7,033,452 SSOLV queries in the first year.
 - *Systemic Alien Verification Entitlements (SAVE)*: The second DLR contract to expand the system to interface with the SAVE program to query and verify immigrant status and to recognize temporary DL/ID cards will have an implementation cost of \$885,000 and an operating cost of \$272,925 for implementation and \$272,925 annually. This would be based on an estimate of approximately 1,049,711 transactions in the first year (half of DHS statistics indicating the number of INS documents issued in Texas) at \$.26 per query.
 - *National Association for Public Health Statistics and Information Systems (NAPHSIS)*: Birth certificates are currently recorded but not automated. To comply, the system must be expanded to interface with NAPHSIS to query on and verify birth certificates presented. Implementation cost for this is estimated at \$350,800. Operating cost based on an estimate of 5,983,742 transactions during the first year at \$.90 per query is an implementation cost of \$5,385,367 and an annual cost of \$4,469,704.
 - *Department of State (DOS)*: Expanding the system to interface with DOS to query on and verify passports presented will cost \$377,800 to implement. Operating fees for DOS transactions are estimated at \$.50 per query with an estimate of 10,929 transactions per year. Implementation would be \$5,464 and annual cost would be \$5,509.⁴⁰

⁴⁰ Texas Department of Public Safety's Impact Analysis of the Real ID Act (all numbers are estimated based on the assumption that the pending DHS rule is the final rule), Section 202 (c) (A-C), July 24, 2006.

Total cost of implementation would be approximately \$167,457,677 with an annual repeating cost of \$101,353,892. In addition, there will be a revenue loss for the state due to discontinuation of online renewal and duplicate programs over a five year renewal period of \$4,586,381. Currently, the amount reported to be potentially available to the states from the Department of Homeland Security for implementation is a total of \$34 million.⁴¹ This means that the state will undoubtedly fall short of implementation and operating cost.

What is Being Said about the Real ID

In April 2006, the National Governors Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators, in a letter to the Homeland Security Department said, "States believe that this time frame (for implementation) is unreasonable, costly, and potentially impossible to meet".⁴² The groups are also concerned with state's rights issues, privacy, and funding. Since states are not required to comply (but need to meet compliance for its citizens to be able to fly or have identification for any federal matter) at least one state reportedly may not comply. According to several state legislators, "New Hampshire shall not participate in a national identification card system" because it is "contrary and repugnant" to the United States and New Hampshire constitutions.⁴³

Findings and Recommendations

The Patriot Act requires no statutory changes at the state level.

Federal actions regarding the "Wright Amendment" and implementation of federal law should continue to be monitored for potential impacts to Texas.

If implemented, the Real ID Act will increase security and ensure safety and convenience. Failure to comply with the Act would create problems for Texans because their DL/ID would not be accepted as formal identification at airports or other federal facilities. However, the Act is essentially an unfunded mandate, and the potential cost is a significant burden.

The complexity of this issue is further compounded by the fact that the regulations have yet to be promulgated. A proposed rule was expected in the Federal Register by this summer, but that proposed date has been moved to late in the year. Once the proposed rule is published in the Federal Register, it will take a minimum of 90 days for a final rule to be adopted. Because of these deadlines, the Texas Legislature would need to address any statutory changes that may be needed during the 80th Legislative Session if Texas is to comply with the Real ID Act.

The Committee recommends that the 80th Legislature of the State of Texas memorialize Congress to fully fund implementation of the Real ID Act.

The Committee recommends full compliance with the Act, including any statutory changes necessary to issue the "Real ID" card in place of current DL/ID and to enact a legal presence requirement in statute to fully comply with the Real ID Act. Furthermore, if the re-enrollment process is kept at five years, the Committee recommends providing sufficient statutory authority to accommodate or change the state's driver license renewal period.

⁴¹ Texas Department of Public Safety's Impact Analysis of the Real ID Act, Section 204, July 24, 2006.

⁴² Pulley, John. "A real hard act to follow". Federal Computer Week, June 26, 2006.

⁴³ Fahrenthold, David A. "ID Law Stirs Passionate Protest in N.H." Washington Post. May 1, 2006.

Charge 3 -- Homeland Security

Study the implementation of Senate Bill 9, 79th Legislature, Regular Session, relating to homeland security, and make recommendations to enhance its effectiveness. Focus on implementation of provisions relating to mutual aid, including the need for a statewide compact, agricultural inspection stations, the health alert network, radio and computer interoperability and the protection of drinking water and of vital infrastructure. Assess the feasibility of establishing and operating a statewide public building mapping information system for state-owned buildings.

Background

Lieutenant Governor David Dewhurst has observed "Homeland Security is a journey and not a destination, which means we must continue to evaluate and improve all aspects of homeland security. We can never rest."⁴⁴ The 79th Legislature stepped up efforts to protect public health, agricultural crops and livestock, drinking water and critical infrastructure through the passage of Senate Bill 9⁴⁵ SB 9 contained a number of changes updating the state's homeland security statutes. Among these are provisions that:

- authorize the Texas Department of Agriculture and the Texas Animal Health Commission to operate road station inspections to protect the state from shipments of potentially dangerous plant and animal pests and diseases,
- require the Office of the Governor to develop and administer a strategic plan to design and implement a statewide-integrated public safety radio and computer communications system and develop and administer a plan to purchase infrastructure equipment for state and local agencies and first responders and advise representatives of entities involved in homeland security activities, and
- specify that all funds appropriated for the purpose of providing administrative support to the Public Safety Radio Communications Council transfer from the Department of Public Safety to the Office of the Governor.⁴⁶

The bill also addressed mutual aid, critical infrastructure protection and advisory committees, interoperability of radio and computer communications, disease reporting, and public drinking water security.

⁴⁴ "Lt. Gov. Dewhurst Supports Homeland Security Bill," Press Release, April 19, 2005, Lt. Governor David Dewhurst, accessed online at <http://www.ltgov.state.tx.us/Press/?page=pr&id=00080&year=2005>.

⁴⁵ "Homeland Security Bill Passes the Senate," Press Release, April 19, 2005, Senator Todd Staples, accessed online at <http://www.senate.state.tx.us/75r/senate/members/dist3/pr05/p041905a.htm>.

⁴⁶ Legislative Budget Board Fiscal Note, SB9 by Staples (Relating to homeland security; providing a penalty.), As Passed 2nd House, May 26, 2005.

Mutual Aid

Mutual aid agreements are contracts signed between two or more entities that specify the terms under which one entity may render aid to another in the event of an emergency. In 2003, Jay Kimbrough, then-Director of the Governor's Office of Homeland Security, recommended that the state's 24 councils of government (COGs) cooperate to help forge an agreement on the issue of a statewide mutual aid compact.⁴⁷ Since that time, COGs have played an ever-increasing role in this regard. With the passage of SB 9, 79th Texas Legislature, COGs were further empowered in this area by gaining the legal authority to become party to mutual aid agreements.⁴⁸

There are currently a multitude of mutual aid agreements in place among political subdivisions within Texas and outside our state's borders. While some of these agreements have some common provisions, there is currently no statewide model or template on which such agreements are based. Inconsistencies between these agreements have served and continue to serve to complicate the already difficult but vitally important process of rendering mutual aid. In the absence of a statewide compact, misunderstandings can result between parties involved. At a minimum, this has the potential to cause unneeded tension between organizations and at worst could result in the inability or refusal of one entity to come to the aid of another in the event of a disaster.

Hurricanes Katrina and Rita of 2005 and the wildfires which burned vast areas of the Texas Panhandle in 2006 clearly demonstrated that the agreements that are already in place, while certainly beneficial, may not be sufficient or timely in the case of catastrophic disasters. During the above-mentioned events, Texas developed experience with many responders traveling to the aid of those in regions hundreds of miles away from their own localities. As Steve McCraw, Director of the Governor's Office of Homeland Security stated on April 25, 2006,

"Times have changed...when you have got El Paso responding down to Beaumont, and you have got Lubbock...resources...going into Dallas to help out, or Dallas fire trucks going out to put out wildfires in the Panhandle...we don't want them to have to do...Mutual Aid Agreements on the fly."⁴⁹

On April 25, 2006, representatives from the Capitol Area Council of Government (CAPCOG), the Emergency Management Association of Texas (EMAT), and the Texas Fire Chiefs Association (TFCA) testified before the Senate Committee on Transportation and Homeland Security in favor of the concept of a statewide mutual aid compact. Since that time, these entities have been working jointly and cooperatively in coordination with a number of other stakeholders to compose a discussion draft of legislation that would establish a compact. These stakeholders include the Governor's Office of Homeland Security, Texas Municipal League, Texas Association of Counties, Sheriff's Association of Texas, Texas Fire Chief's Association, Texas Police Chief's Association, Emergency Managers Association of Texas, the CAPCOG Homeland Security Task Force, emergency planners in the 24 councils of government and the Governor's First Responder Advisory Committee.⁵⁰

⁴⁷ Betty Voights, Executive Director, Capitol Area Council of Governments (CAPCOG), testimony to the Senate Transportation and Homeland Security Committee, April 25, 2006.

⁴⁸ Senate Bill 9 (Enrolled), Sections 6-8, 79th Regular Session, Texas Legislature.

⁴⁹ Steve McCraw, Director, Governor's Office of Homeland Security, April 25, 2006, testimony to the Senate Transportation and Homeland Security Committee.

⁵⁰ Juliette Brown, Director, Homeland Security, Capitol Area Council of Governments (CAPCOG), July 26, 2006, email to Senate Transportation and Homeland Security Committee.

A discussion draft of this legislation is found in Appendix A. According to CAPCOG, the system established by the legislation "would be activated only in the event of an incident that resulted in a local disaster declaration by the jurisdiction requesting assistance" and "would not supersede existing mutual aid agreements or prevent the formation of future mutual aid agreements between political subdivisions." In addition, such an agreement "would apply in the absence of a mutual aid agreement between the requesting and assisting parties." Furthermore, "[a]ssistance provided under this act would be provided in a manner that is consistent with the National Incident Management System" (NIMS) and "in accordance with a consistent set of guidelines regarding reimbursement."⁵¹

Agricultural Inspection Stations

SB 9 includes a provision requiring Texas' agricultural policy to "recognize that it is of paramount importance to protect this state and the agricultural industry in this state against the intentional or unintentional introduction or dissemination of damaging plant and animal pests and diseases."⁵² In pursuit of this goal, the legislation requires the Texas Department of Agriculture (TDA) and the Texas Animal Health Commission (TAHC) to act jointly in conducting "road station and interstate shipment inspections as feasible at strategic points throughout this state and as determined to be appropriate by the department and the Texas Animal Health Commission."⁵³ Arizona and California currently operate permanent, 24-hour agricultural inspection stations.

It is important to note that the passage of SB 9 is not itself responsible for the introduction of agricultural inspection stations in Texas. TDA has been conducting such inspections since the mid-1980s. However, the passage of SB 9 was significant in that it signaled to TDA that the Legislature supported these activities. In addition, the bill promoted the policy that TDA and TAHC work in cooperation on the project.⁵⁴

According to TDA, "[t]he implementation of road stations in FY 06 was delayed due to hurricane relief efforts underway at the beginning of the fiscal year. On April 20, 2006, TDA contacted...TAHC concerning collaboration of road station efforts" and "[o]n May 11, TDA staff met with staff from TAHC to discuss road station efforts and finalized a cooperative inspection pilot project."⁵⁵ This pilot project took the form of three 72-hour road inspection station operations. Existing Texas Department of Public Safety (DPS) weigh stations were utilized to facilitate the inspections, which took place from June 13-15 and June 27-29 in Anahuac and from June 27-29 in Mt. Pleasant. DPS officers performed a supporting role during the inspections, while inspectors from TDA and TAHC conducted the actual inspections. Inspection responsibilities were delineated by agency. TDA was in charge of plant cargo while TAHC was responsible for shipments containing live animals.

⁵¹ Capitol Area Council of Governments (CAPCOG), *The Need for a Statewide Mutual Aid System in Texas*, July 26, 2006, submitted as email attachment to the Senate Transportation and Homeland Security Committee.

⁵² Senate Bill 9 (Enrolled), Section 1, 79th Regular Session, Texas Legislature.

⁵³ Senate Bill 9 (Enrolled), Section 3, 79th Regular Session, Texas Legislature.

⁵⁴ Kelly Book, Deputy Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture (TDA), July 11, 2006, email to Senate Transportation and Homeland Security Committee.

⁵⁵ Texas Department of Agriculture, *Update on SB 9 Related Activities*, June 12, 2006, email to Senate Transportation and Homeland Security Committee.

A staff member of the Senate Committee on Transportation and Homeland Security observed the inspection process in Mt. Pleasant from 8am-12pm on June 22, 2006. The traffic conditions present while the road stations were in operation determined to a large degree how many trucks were inspected. When traffic was heavy few trucks were inspected and conversely, when traffic was light, more inspections took place. It appeared that vehicles chosen for inspections which took place during this four-hour time period were chosen randomly, but these random samples did not evidence any statistically meaningful selection method. Furthermore, use of the term "inspection" here should not imply that the cargo area of a truck was actually visually examined. Rather, the documents produced by the driver (such as bills of lading) were most often relied upon to determine what he/she was hauling. If a trailer was equipped with refrigeration equipment, a thermometer reading was taken to determine whether any living organism inside could survive at that temperature. In the four hours that a staff member of the Senate Transportation and Homeland Security Committee observed the Mt. Pleasant inspection site, only one trailer was actually opened. This trailer contained livestock - specifically, a rare breed of European mule.

Based on the above observations (which may not be indicative of other road station operations), the inspections appear to be limited in effectiveness by (1) the accuracy of the documents produced by the drivers, (2) the frequency with which trucks are inspected and (3), (in the case of refrigerated trailers) the reliability of the thermometers. Furthermore, due to the nature of the fixed station sites, which are designed for weighing rather than inspecting cargo, these facilities do not have the capacity to conduct large scale inspections.

A certified etymologist, Dr. Raju Kota, was contracted by TDA to work at the Anahuac and Mt. Pleasant inspection sites on the above dates. Dr. Kota has been involved with the agricultural road station inspection program through TDA since 2002. Dr. Kota submitted a well-documented report regarding inspection station findings from August 2002-March 2003⁵⁶ to the Committee. In addition, TDA submitted a summary of the results of the June/July 2006 inspections. TDA's submission can be found in Appendix B. This data suggests TDA, TACH, DPS, and Dr. Kota are performing an exceptional service to the state through these inspections.

According to the *Texas Homeland Security Strategic Plan: 2005-2010*, "[a]gricultural terrorism is a high-priority threat to Texas, given the magnitude and diversity of the Texas agricultural industry and our long border with Mexico and four other US states. Agriculture is the second largest industry in Texas, with annual cash receipts of more than \$12.6 billion dollars. Agricultural hazards of primary concern are animal and plant pests and diseases, pesticides hazards, and contamination of the food supply. Agricultural terrorism could be considered another face of bioterrorism, given the potential for a devastating health epidemic due to contaminated food products. The well-being of consumers, animals and plants are of primary concern, along with the impact that an agricultural hazard could have on the Texas economy."⁵⁷

TDA and TAHC are currently conducting the inspection program without any appropriation for this purpose (as SB 9 was accompanied by a fiscal note indicating no fiscal impact).⁵⁸

If agricultural terrorism truly poses such a threat, the Legislature should consider appropriating funds for the operation of the 72-hour road station program. Furthermore, the Legislature should consider appropriating funds for a full-time inspection program.

⁵⁶ Raju Kota, Director, Pest Management Consultants and Agricultural Diagnostics, *Road Station Inspection Report: August 2002-March 2003*.

⁵⁷ Governor Rick Perry, *The Texas Homeland Security Strategic Plan: 2005-2010*, November 1, 2005, p. 10-11.

⁵⁸ Fiscal Note, SB 9 (Enrolled), Legislative Budget Board (LBB), May 26, 2005.

The Health Alert Network (HAN)

The Health Alert Network (HAN) - now the Public Health Information Network (PHIN) - is a nationwide initiative led by the Centers for Disease Control and Prevention (CDC). The goal is to ensure that all local and state health departments have access to the technology needed for rapid communications, disease reporting, and the dissemination of preparedness education and training. The Texas HAN includes a number of data and communication tools, including a database of key health contacts and a system for rapidly disseminating health alerts. The HAN infrastructure enables distance education and training to be provided through a variety of technologies, such as satellite broadcasts, webcasts, interactive videoconferences, and on-line courses. Ultimately, the HAN infrastructure will also be used for active and passive disease reporting and surveillance at the local, state, and national levels. It is funded through federal and state funds.⁵⁹

SB 9 required the Texas Department of State Health Services (DSHS) to "include the Texas Association of Local Health Officials, the Texas Association of Community Health Centers, and the Texas Organization of Rural and Community Hospitals in the department's Texas Health Alert Network to the extent federal funds for bioterrorism are available for that purpose."⁶⁰

On June 28, 2006, DSHS submitted a progress report to the Senate Committee on Transportation and Homeland Security indicating that all provisions of SB 9 related to the Health Alert Network (HAN) had been completed. For a detailed report, please see Appendix C.

Interoperability - Computer

SB 9 requires that the Office of the Governor "develop a plan for appropriate entities to use information systems that: (1) employ underlying computer equipment and software required to establish interoperable communication between computer systems used by local, state, and federal agencies and first responders and (2) provide a single point of entry to disseminate information, applications, processes, and communications."⁶¹

The *Texas Homeland Security Strategic Plan: 2005-2010* includes the general framework for the implementation of an "Intelligence Information Technology Plan" consisting of the following parts:

- 1) Leverage existing federally funded information systems to communicate and collaborate at all levels.
- 2) Adopt the Justice Global XML data sharing standards for all new criminal justice information systems.
- 3) Implement TDEx, a pointer index capability for all law enforcement agencies in Texas, so that the law enforcement community can quickly locate the law enforcement data they need.
- 4) Deploy a web-based vulnerability assessment tool for all critical infrastructure and key resource (CI/KR) sectors in order to identify and prioritize vulnerabilities.
- 5) Consolidate all threat and suspicious activity reports across all jurisdictions and disciplines with CI/KR, special events, and response capability data on a geospatial platform to facilitate information sharing and analysis.

⁵⁹ "The Health Alert Network," Texas Department of State Health Services, accessed online at <https://www.dshs.state.tx.us/comp/han.shtm/>.

⁶⁰ Senate Bill 9 (Enrolled), Section 17, 79th Regular Session, Texas Legislature.

⁶¹ Senate Bill 9 (Enrolled), Section 15, 79th Regular Session, Texas Legislature.

- 6) Adopt a geospatial visual monitoring system that allows emergency personnel to monitor real-time traffic flow for evacuations, equipment, and supplies transfer, and critical infrastructure security during emergencies.
- 7) Establish an information technology capability within the TxFC to enable sophisticated link and pattern analysis on structured and unstructured data in support of statewide homeland security activities.
- 8) Integrate and expand stateside human and animal health surveillance capabilities in order to collect and consolidate public health, veterinary and agriculture syndrome-related data.⁶²

In the opinion of the Senate Committee on Transportation and Homeland Security, the above plan satisfies the requirements set forth in SB 9. According to the Governor's Office of Homeland Security, state and local agencies that receive federal funds to purchase homeland security related computer programs are currently required to purchase systems that are interoperable. This includes the TDEx and WebEOC programs.

Interoperability - Radio

SB 9 requires that the Office of the Governor "(1) develop and administer a strategic plan to design and implement a statewide integrated public safety radio communications system that promotes interoperability between local, state, and federal agencies and first responders." The Office of the Governor is also required to assume an advisory role in respect to counseling agencies that have a role in homeland security on the issue of radio interoperability.⁶³

In 2005, the Governor's Office of Homeland Security published the *Texas Radio Communications Interoperability Plan*. The plan opens with the following statement, "One of Governor Perry's top 2005 Homeland Security objectives is to achieve Level Four⁶⁴ radio interoperability within the first responder community throughout Texas."⁶⁵

(Radio interoperability is measured using a Department of Homeland Security scale of one to six, summarized as:

Level One: Responders physically exchange or share radios.

Level Two: Responders use a common frequency in the lowest common denominator mode. Responders using different technologies, such as analog or digital, are limited in their ability to communicate.

Level Three: Responders use mutual aid channels. Interoperability is limited to users on the same frequency band.

Level Four: Gateway devices are used to allow interoperability, which is still limited to the lowest common capability of the systems.

Level Five: Mutual aid systems provide interoperable capabilities using talk groups. This approach provides more capabilities and capacity than mutual aid channels alone.

⁶² Governor Rick Perry, State of Texas, *The Texas Homeland Security Strategic Plan: 2005-2010*, November 1, 2005, p. 19-20.

⁶³ Senate Bill 9 (Enrolled), Section 14, 79th Regular Session, Texas Legislature.

⁶⁴ Note: Texas has adopted the US Department of Homeland Security's definitions for the six levels of interoperability.

⁶⁵ The Texas Radio Communications Interoperability Plan, Downloaded on August 15, 2006 from: <http://www.txdps.state.tx.us/dem/documents/texasradiocomminteroperabilityplan.doc> .

Level Six: Standards-based systems ensure interoperability regardless of equipment vendor. Level Six is recognized as the most complete, long-term solution to interoperability.)

Achieving statewide radio interoperability is also listed as one of the primary strategic objectives of the *Texas Homeland Security Strategy Plan*. This portion of the plan is available in Appendix D.

The Governor's Office of Homeland Security, in conjunction with the Division of Emergency Management, has done an outstanding job of consolidating and focusing the various prior efforts to advance radio interoperability and, along with the many public and private stakeholders, should be commended for the great strides made to date.

Steve McCraw, Director of the Governor's Office of Homeland Security, reported to the Senate Committee on Transportation and Homeland Security on April 25, 2006, that 22 of the state's 24 councils of government (COGs) will achieve radio interoperability by January 7, 2007, and that he had "great confidence" that the additional two COGs would also reach this goal.⁶⁶

Penny Redington, Executive Director of the Texas Association of Regional Councils (TARC), believes that legislation is needed to address the issue of permanent sustainability of emergency radio infrastructures.

"Regions have dedicated a significant portion of their homeland security funding toward improving radio communications," writes Redington. "However, no arrangements exist for the long-term maintenance of these investments. Some type of continuous funding mechanism should be established to maintain the gains made as a state toward achieving multi-jurisdictional interoperability."⁶⁷

In addition to achieving radio interoperability among the COGs, the Committee also believes it is of vital importance that state, federal, regional, and local agencies and volunteer organizations active in disasters have interoperable communications systems. Steve McCraw testified that the approach has been to integrate first responders, including state agencies, so that in a disaster agencies can communicate using mutual aid channels as well as software or hardware solutions. As of this writing the State of Texas has not achieved Level Four interoperability among state agencies with roles to play in disasters.

Protection of Drinking Water

SB 9 required persons in charge of public water supplies to maintain procedures for notifying the Texas Commission on Environmental Quality (TCEQ) regarding an event that "may negatively impact the production or delivery of safe and adequate drinking water."⁶⁸ This legislation provided for protection of the public water supply from both natural and manmade threats. Although SB 9 did not require TCEQ to take any particular action (the notification requirement was placed on the state's approximate 4,600 community public water systems), TCEQ has taken action to ensure compliance with the provisions of the legislation. Most notably, TCEQ established a toll-free number (1-888-777-3186) that connects water supply operators to TCEQ in the event of an emergency 24 hours a day. The following statement regarding this action was submitted by TCEQ to the Senate Committee on Transportation and Homeland Security on June 19, 2006:

⁶⁶ Steve McCraw, Director, Governor's Office of Homeland Security, April 25, 2006, testimony to the Senate Transportation and Homeland Security Committee.

⁶⁷ Penny Redington, Executive Director, Texas Association of Regional Councils (TARC), June 26, 2006, submitted as email attachment to the Senate Committee on Transportation and Homeland Security.

⁶⁸ Senate Bill 9 (Enrolled), Section 18, 79th Regular Session, Texas Legislature.

"Since the passage of Senate Bill 9, the TCEQ implemented in a non-rulemaking fashion, guidance for public drinking water security and provided a toll-free 24 hour number to report incidents. The public drinking water security guidance (also included wastewater systems) and toll-free number were put in place and mailed-out in a letter format...to public water and wastewater systems on February 15, 2006."⁶⁹ This letter can be found in Appendix E. TCEQ continues, "[t]he public drinking water security guidance was mailed-out to approximately 4,600 community public water systems at a cost of \$1,417.

"The toll-free 24 hour number was provided for owners or operators of a public water supply system to immediately notify the TCEQ of any unusual or unexplained unauthorized entry, any acts of terrorism against the system, unauthorized attempts to gain proprietary information, any theft of property, or natural disaster or accident that results in damage to the system. The toll-free 24 hour number that was used is an existing TCEQ Emergency Response number. The process used for the public drinking water security notifications is essentially the same as that used for TCEQ Emergency Response issues. When called after hours a phone service contractor will page the Primary Region Emergency Response pager. The individual receiving the page will then notify the region person designated to receive drinking water related homeland security type notifications...When the toll-free number is called during normal business hours the caller is transferred to the Public Drinking Water Section. Since this guidance was implemented the TCEQ Public Drinking Water Section has received notification of 19 incidents involving public drinking water system security."⁷⁰ None of these 19 incidents were judged ultimately as a threat to homeland security.

TCEQ's statement concludes, "[t]he public drinking water security guidance mail-out required the participation of approximately six TCEQ staff. The toll-free 24 hour number was setup using an existing system and required no additional expenditure."⁷¹

Protection of Vital Infrastructure

SB 9 increased the punishment for trespassing on facilities designated to be a part of the state's critical infrastructure to a Class A misdemeanor. Such facilities include chemical manufacturing plants, refineries, power generation/distribution stations, water supplies, gas processing plants, telecom switching offices, freight transportation facilities, radio and TV stations, and others.⁷²

In addition, SB 9 requires the Texas Railroad Commission (RRC) to "adopt and enforce safety standards and best practices, including those described by 49 USC. Section 6105 et seq., relating to the prevention or damage by a person to a facility under the jurisdiction of the commission."⁷³

⁶⁹Kelly W. Cook, Homeland Security Coordinator, Office of Compliance and Enforcement, Texas Commission on Environmental Quality (TCEQ), June 13, 2006, email to Leonard Olson, Director, Intergovernmental Relations, (submitted as email attachment to Senate Committee on Transportation and Homeland Security), June 19, 2006.

⁷⁰ Kelly W. Cook, Homeland Security Coordinator, Office of Compliance and Enforcement, Texas Commission on Environmental Quality (TCEQ), June 13, 2006, email to Leonard Olson, Director, Intergovernmental Relations, (submitted as email attachment to Senate Committee on Transportation and Homeland Security), June 19, 2006.

⁷¹ Ibid.

⁷² Senate Bill 9 (Enrolled), Sections 20-21, 79th Regular Session, Texas Legislature.

⁷³ Senate Bill 9 (Enrolled), Section 19, 79th Regular Session, Texas Legislature.

Title 49, Section 6105 of the United States Code directs the US Secretary of Transportation to "encourage States...to adopt and implement practices identified in the best practices report 'Common Ground', as periodically updated."⁷⁴ *Common Ground* is a study of safety policies and procedures proposed by the US Office of Pipeline Safety (OPS) after extensive collaborative talks with over 160 representatives of entities that have a vested interest in the nation's underground infrastructure.⁷⁵

The RRC submitted the following status report regarding actions taken by the agency to implement the above program:

"SB 9 gave the Railroad Commission jurisdiction to implement and enforce rules relating to prevention of damage to underground pipelines by the movement of earth. The Railroad Commission has begun to promulgate those rules. The rules will cover several issues relating to the protection of pipeline facilities and the enforcement of those standards. Adoption of the best practices will permit an increase towards matching funds of certain pipeline programs by meeting the federal minimum standard. The Commission hopes to complete the rulemaking process by the end of 2006."⁷⁶

Homeland Security Council

SB 9 revised the makeup of the Critical Infrastructure Protection Council by adding 16 state agencies and renaming it the Homeland Security Council. The Texas Homeland Security Council (THSC) is responsible for statewide planning, coordination and communication for homeland security preparedness.⁷⁷ Texas agencies with a role in homeland security are represented on the Homeland Security Council, as well as the Texas Association of Regional Councils (TARC), which is the umbrella organization for the State's regional councils of government. TARC also coordinates the Texas Citizen Corps. The Homeland Security Council is the discussion forum and decision making body for the Texas Homeland Security Strategic Plan.⁷⁸

The Homeland Security Council meets at least quarterly and is an advisory entity administered by the Office of the Governor.⁷⁹ Council members may be reimbursed for reasonable expenses, including travel.⁸⁰

The Homeland Security Council does not have any additional authority, such as subpoena power, and does not have an appropriation beyond that of the Governor's Office. The Council has not issued any documents or reports. Agency attendance and participation in Council meetings is inconsistent.

⁷⁴ Title 49, § 6105, United States Code, *Implementation of best practices guidelines*, Downloaded on July 27, 2006, from: <http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAIISdocID=960801461579+0+0+0&WAIISaction=retrieve> .

⁷⁵ *Common Ground: A Study of One-Call Systems and Damage Prevention Best Practices*, Sponsored by the US Department of Transportation, Downloaded on July 27, 2006 from: <http://ops.dot.gov/init/prevent/CmnGrdFinal.pdf>,

⁷⁶ Stacie Fowler, Director, Intergovernmental and Public Relations, Texas Railroad Commission (RRC), July 26, 2006, submitted as email attachment to the Senate Committee on Transportation and Homeland Security,

⁷⁷ The Texas Homeland Security Strategic Plan 2005-2010, Office of the Governor, November 1, 2005, p. 3,

⁷⁸ *Ibid*, p. 5,

⁷⁹ Texas Government Code, § 421.023,

⁸⁰ Texas Government Code, § 421.022,

State Building Mapping

During the 79th Regular Session, Senator Mario Gallegos authored Senate Bill 1762 (SB 1762), relating to the establishment and operation of a public building mapping information system by the Texas Building and Procurement Commission (TBPC). The bill would have required TBPC to "establish and operate a statewide public building mapping information system for the purpose of storing information related to public buildings in an electronic format that will be readily accessible to first responders in the event of an emergency."⁸¹

The Senate Committee on Transportation and Homeland Security last heard testimony regarding the issue of public building mapping when it considered SB 1762 in a hearing on May 4, 2005. The bill passed in committee, passed in the Senate, and passed in the House State Affairs Committee in a formal meeting on May 18, 2005. However, the bill was never considered by the House Calendars Committee.

Proponents of the bill claim it would allow for quicker response on the part of first responders. Critics have voiced concerns that such a mapping program could prove dangerous if sensitive materials related to building structures were to get into the hands of those who wish to do Texans harm. Proponents of the bill counter that the details for critical infrastructure facilities would be exempted from the system (as determined by the Public Building Mapping Information System Committee, an "advisory entity administered by the commission."⁸²

Potential difficulties of establishing such a system include compliance among local authorities in the state's 254 counties. The state of Washington (population 5,894,121)⁸³ has adopted such a system. However, the scope of such a project for a state the size of Texas (population 20,851,820)⁸⁴ could be daunting.

Nonetheless, the Legislative Budget Board (LBB) found that SB 1762 (as introduced) could be implemented with no fiscal impact to state and local governments. The bill would require the Texas Building Procurement Commission to apply for federal funds to pay for the system (\$76,841 for the first fiscal year and \$69,476 for every year thereafter).⁸⁵

Senator Gallegos submitted a statement to the Committee regarding the public building mapping system.⁸⁶ In his statement (found in Appendix F), Senator Gallegos strongly supports the establishment and operation of a statewide public building and mapping information system, saying "The time has come for such a critical public safety system."

New Issues

In the course of conducting hearings and investigations regarding this charge, several new issues arose.

⁸¹ Senate Bill 1762 (House Committee Report), Section 1, 79th Texas Legislature, Regular Session.

⁸² Ibid.

⁸³ Nationmaster.com, Washington, Downloaded on July 27, 2006 from:
<http://www.nationmaster.com/encyclopedia/Washington>.

⁸⁴ Nationmaster.com, Texas, Downloaded on July 27, 2006 from:
<http://www.nationmaster.com/encyclopedia/Texas>.

⁸⁵ Fiscal Note, SB 1762 (Introduced), Legislative Budget Board (LBB), May 2, 2005.

⁸⁶ Statement to Senate Committee on Transportation and Homeland Security, Interim Charge #3, Senator Mario Gallegos, June 30, 2006.

Castle Doctrine

Mr. Noe Perez, a citizen representing himself, testified at the Committee's hearing in McAllen that home invasions are increasing, especially along the border, while Texas law regarding the use of firearms in self defense is more restrictive than that of many other states.⁸⁷ In particular, he cited objections to two provisions of Texas law: the ability municipalities have to limit or prohibit the otherwise legal use of firearms for self defense during an emergency,⁸⁸ and the requirement that a person otherwise justified in using deadly force against another first has a "duty to retreat."⁸⁹

Fifteen states have in the last year enacted laws that expand the right of self-defense, allowing crime victims to use deadly force that might formerly have subjected them to prosecution for murder.⁹⁰ Mr. Perez cites several states that have adopted laws on these issues, known as Castle Doctrine laws:

- Alabama (SB 283)
- Arizona (SB 1145)
- Florida (SB 436)
- Georgia (SB 396)
- Idaho (SB 1441)
- Indiana (HB 1028)
- Kentucky (SB 38)
- Michigan (SB 1185, HB 5548, HB 5153, HB 5143, HB 5142, SB 1046)
- Mississippi (SB 2426)
- Oklahoma (HB 2615)
- South Dakota (HB 1134)

Mr. Perez further observes that criminals have the ability to harass citizens by suing them after a citizen has exercised self defense. He cites provisions of the Civil Practice and Remedies Code, although Article 16, Section 26 of the Texas Constitution may also bear on the subject ("Every person, corporation, or company, that may commit a homicide, through willful act, or omission, or gross neglect, shall be responsible, in exemplary damages, to the surviving husband, widow, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.")

Foreign Health Care Workers

Colleen Mills, RN, and CEO of Staffing Accreditation Standards, LLC, testified that shortages of healthcare workers (nurses, respiratory therapists, radiology technicians, and others) make the temporary and staffing industry critical to healthcare providers, but that tracking of foreign national medical personnel working in this country is inadequate to prevent terrorist activity.

⁸⁷ Mr. Noe Perez, Testimony presented to the Senate Transportation and Homeland Security Committee, McAllen, Texas, July 26, 2006.

⁸⁸ Texas Local Government Code, § 229.

⁸⁹ Texas Penal Code, § 9.

⁹⁰ "15 States Expand Right to Shoot in Self-Defense," New York Times, August 7, 2006.

Disaster Volunteers

Two individuals contacted the Committee with concerns about disaster volunteers. Lt. Gary Sawyer (Ret) notes that a number of emergency response entities and organizations have evolved since September 11, 2001, but if activated for a disaster there are no emergency vehicle lighting systems to expedite the transportation of these volunteers (American Red Cross, Salvation Army, Texas Baptist Men, amateur radio emergency communications) to a disaster site. Mr. Sawyer recommends revising Transportation Code §547.305, Restrictions on Use of Lights.

This issue is related to that of credentialing - establishing a system to verify that a person who presents himself as a volunteer is appropriately trained and authorized to act at a certain level. A National Emergency Responder Credentialing System is currently under development by the Federal Emergency Management Agency's NIMS Integration Center.⁹¹ Issues surrounding mobilization, credentialing, transportation, and site access are current topics of discussion among disaster response leaders in Texas.

Coy Day, West Gulf Division Director for the American Radio Relay League, observes that the 1997 Texas Disaster Leave Law⁹² created the Ready Texan program and provides that any state employee who is a certified disaster service volunteer of the American Red Cross or who is in training to become such a volunteer may be granted a leave not to exceed ten days each year to participate in specialized disaster relief services for the American Red Cross. Leave can only be taken upon the request of the Red Cross, with the authorization of the employee's supervisor, and with the approval of the governor. This program is a valuable tool in ensuring that citizens who are trained and willing to provide a community service during disasters are able to do so without adversely impacting their leave or sick time. Mr. Day submits that the Ready Texan program should be expanded to include amateur radio operators, many of whom participate in emergency response organizations outside of or alongside the American Red Cross, such as RACES or ARES.⁹³

⁹¹ "Credentialing FAQs," The NIMS Integration Center, April 2006.

⁹² Texas Government Code, § 661.907. Red Cross Disaster Service Volunteer.

⁹³ Letter from Coy Day to Chairman John Carona, August 29, 2006

Findings and Recommendations

Mutual Aid Compact. SB 9 has been effective in fostering a healthy dialogue among stakeholders interested in forging a statewide mutual aid compact. The Senate Committee on Transportation and Homeland Security commends the stakeholders on their cooperative efforts and the resulting productive outcome, and recommends the adoption of legislation establishing a baseline statewide mutual aid compact based on the work of the Governor's Office and stakeholders.

Agricultural Inspection Stations. The inspection process could be improved through development and implementation of a documented method for selecting vehicles to be inspected. The state's ability to conduct more inspections is restricted, primarily by funding. At best, TAHC and TDA are able to conduct a few 72-hour inspections a year. The Legislature should consider adopting and funding a full-time agricultural and livestock inspection program similar to programs currently in effect in the states of California and Arizona.

Radio Interoperability. The Committee believes permanent funding for maintenance of radio interoperability among the COGs is a matter worthy of the Legislature's consideration.

The Committee recommends that state agencies with a role in the state emergency response plan should be mandated to achieve Level Four interoperability in the next biennium, with the goal being for critical first responder agencies (Texas Forest Service, Department of Public Safety, Parks and Wildlife Department, Department of Transportation, Department of Criminal Justice, Youth Commission, Alcoholic Beverage Commission) to achieve Level Six interoperability (the highest level possible) as soon as is practicable. Furthermore, these efforts should continue to be carried out in conjunction with federal, state, regional, and local authorities and volunteer organizations active in disasters to ensure maximum communication capability among all responders in the event of a disaster.

Homeland Security Council. The Committee finds that the Governor's Office has sufficient authority to consult agencies and stakeholders on homeland security issues without an additional advisory committee. The Committee recommends that the Legislature abolish the Homeland Security Council.

State Building Mapping. The needs of first responders to have timely and accurate information about structures during emergencies merit being addressed, although there is no consensus on the exact approach. Legislation similar to SB 1762 of the 79th Texas Legislature is one possible way to address those needs. There may be other methods that accomplish the goal without the potential risks inherent in a statewide database. Any legislation on this topic should provide adequate safeguards that the information is secured and its release limited to what is necessary for the preservation of public safety.

Other Provisions of SB 9. The Committee recommends continued monitoring of the implementation of other provisions of SB 9, including the protection of drinking water and the protection of vital infrastructure.

Castle Doctrine. The Committee recommends the adoption of legislation enhancing the ability for self defense, specifically including the elimination of the duty to retreat.

Foreign Health Care Workers. The Committee recommends the Governor's Office of Homeland Security assess the potential threat posed by foreign health care workers and the capability of existing systems to mitigate the threat.

Disaster Volunteers. The Committee recommends that efforts in place to develop standards for credentialing, transportation, and site access for disaster volunteers continue to be monitored for statutory changes that may become necessary, including the possible establishment and publicizing of a unique vehicle lighting scheme.

The Committee recommends that the Ready Texan program be expanded to include amateur radio volunteers.

Charge 4 -- Rail Facilities

Study and make recommendations relating to the Texas Department of Transportation's ability to build, maintain, and relocate rail facilities. Monitor and report on the Department's ability to efficiently contract and provide funding for rail facility construction.

Background

The rail industry in Texas has traditionally been treated as an independent component of the state's transportation infrastructure. Although long subject to some form of state regulation (often related to cost, private property rights, and safety), the railroads have largely remained outside the public sphere when compared to other modes of transportation. Rail in Texas, however, is entering a new age. Steadily increasing volumes of traffic are putting a severe strain on roadways statewide. An approach aimed at reducing roadway congestion that is gaining popularity is diverting freight capacity from heavy trucks to railcar. This approach requires renewed development and innovation on the part of the state's railroads. As entities which are privately owned and operated, traditionally the railroads have been expected to self-finance improvements to their networks. However, in recent years, the state of Texas has taken an interest in helping to improve railroad infrastructure by recognizing that the public interest is increasingly at stake.

Legislative Action on Rail Funding

As an on-going part of this trend, in 2004, the Senate Committee on Transportation and Homeland Security (then known as the Senate Committee on Infrastructure Development and Security) recommended that "the Legislature increase the annual cap on the Texas Department of Transportation to acquire rail and for certain rail-related activities." The Committee further recommended that "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." Finally, the Committee recommended that the Legislature "establish and capitalize a revolving fund for rail relocations."⁹⁴

The 79th Legislature, Regular Session, responded by fulfilling some of the Committee's above-mentioned recommendations through the passage of House Bill 2702 (HB 2702), House Bill 1546 (HB 1546) and House Joint Resolution 54 (HJR 54), a constitutional amendment "creating the Texas rail relocation and improvement fund."⁹⁵ On November 8, 2005, HJR 54 appeared as Proposition One on the statewide ballot and was approved by 53.77 percent of the 2,069,068 Texans who voted on the measure.⁹⁶ It should be noted, however, that this fund remains to be capitalized. This issue will be discussed later in greater detail.

In addition to fulfilling the Committee's recommendations as mentioned above, the 79th Legislature also transferred the remaining rail-related duties that resided previously with the Texas Railroad Commission (RRC) to the Texas Department of Transportation (TxDOT).⁹⁷ These duties largely revolved around the issue of public safety.

⁹⁴ Report to the 79th Legislature, Senate Committee on Infrastructure Development and Security, December 1, 2004, p. 27.

⁹⁵ House Joint Resolution 54 (Enrolled), Bill Caption, 79th Regular Session, Texas Legislature.

⁹⁶ Office of the Secretary of State, <http://elections.sos.state.tx.us/elchist.exe>, Downloaded: July 5, 2006.

⁹⁷ House Bill 2702 (Enrolled), Sections 1.08 to 1.10, 79th Regular Session, Texas Legislature.

Current Status

As a result of the above actions, TxDOT now has greater ability (in terms of authority) than ever before in regards to rail construction, relocation, and maintenance.

TxDOT commissioned studies regarding how to proceed with this new authority. One result is a statewide rail study, whose purpose is to "identify a program of projects that would be needed to implement rail improvements in Texas and the costs associated with it."⁹⁸ This study was published as the *Rail Relocation, Mobility and Port Access Revenue Options Report*⁹⁹ on August 15, 2006.

It is the opinion of the Senate Committee on Transportation and Homeland Security that commissioning the above-mentioned report was the correct approach as no agency of the state of Texas has ever embarked on an endeavor of this scale to create public-private partnerships with railroads. The report identified 46 possible revenue sources and focused on "five final revenue sources"¹⁰⁰ to capitalize the Texas Rail Relocation and Improvement Fund, the Texas Mobility Fund, or the Texas Port Access and Improvement Fund. The list of five potential revenue sources includes:

1. Diesel Fuel Tax on Rail Freight
2. Container Tax on Intermodal Transportation
3. Ton-Mile Tax on Freight Transportation
4. Origin/Destination Fee on Rail Freight
5. Sales Tax on Freight Transportation¹⁰¹

In investigating the viability of utilizing these funding mechanisms or other mechanisms subsequently put forward by the Transportation Commission, the Committee believes the goal of diverting freight that is currently carried by truck to railcar should be paramount. Any new taxes should provide incentives for businesses to ship via rail whenever possible (keeping in mind the freight capacity of the state's rail system). Taxes significant enough to cause the opposite should be avoided. This should not, however, exempt the railroads from paying their fair share to capitalize the Rail Relocation and Improvement Fund.

Testimony In Committee

The Committee also received testimony on rail infrastructure as a result of hearings conducted on April 18, 2006, in Austin and on June 13, 2006, in Fort Worth.

Sid Covington, Chairman of the Austin-San Antonio Intermunicipal Commuter Rail District, offered testimony to the Committee relaying his opinion that "TxDOT is the most qualified and best positioned agency" to "build, maintain, and relocate rail facilities and to contract for and provide funding for rail facility construction."¹⁰² Covington testified to TxDOT's competence in this area based on past experience as demonstrated by the following:

⁹⁸ Rakesh Tripathi, Assistant Director of Planning, TxDOT Houston Region, Freight Rail Study (Power Point Presentation), February 24, 2006 (included in written testimony submitted to the Senate Committee on Transportation and Homeland Security by Jim Edmonds, Chairman the Port of Houston Authority, April 18, 2006).

⁹⁹ Rail Relocation, Mobility and Port Access Revenue Options Report, August 15, 2006, Prepared for the Texas Department of Transportation (TxDOT) by HNTB Corporation, Moffat & Nichol, and UBS Securities, LLC.

¹⁰⁰ Ibid, p. 4.

¹⁰¹ Ibid, p. 1.

¹⁰² Sid Covington, Chairman of the Austin-San Antonio Intermunicipal Commuter Rail District, April 18, 2006, testimony to the Senate Transportation and Homeland Security Committee.

"In the very bizarre world of Federal Funding and contracting, TxDOT's Multimodal Section volunteered to serve as our Fiscal Agent," Covington said. "This permitted us to avoid becoming a Federal Grantee -- something that I am reluctant to do without adding substantial dedicated staff to manage the process and associate paperwork.

"As our Fiscal Agent, TxDOT has performed an incredible service to us in checking and verifying the invoices presented for payment. More importantly, they have spent a great deal of time with us guiding us through the Byzantine labyrinth of Federal services contracting, funding, tracking, and payments," said Covington.

"The result of this has shown me that the TxDOT staff of the Multimodal Section are not only extremely competent in dealing with how to contract for services and properly spend funds for them but, more importantly, are more than willing to partner with entities such as ours in a cooperative manner," concluded Covington.¹⁰³

Representatives from three of Texas' major ports (Houston, Beaumont, and Corpus Christi) also testified at the April 18, 2006, hearing. A common theme among their testimony was the vital importance of adequate rail infrastructure to their operations.¹⁰⁴

The state's newfound involvement with rail has been largely welcomed by the state's freight railroads as they seek new methods to fund rail projects and to incorporate rail into the state's multimodal structure. This discussion often coincides with those concerning the proposed Trans-Texas Corridor.

Dennis Kearns, representing the Burlington Northern Santa Fe Railway (BNSF), offered the following statement at the June 13, 2006 hearing:

"Addressing rail needs is a central part of the vision of the Trans-Texas Corridor...BNSF Railway appears today to reaffirm its support for the railroad infrastructure enhancement provisions" of HB 3588, 78th Regular Session, HB 2702, 79th Regular Session and House Bill 1546, 79th Regular Session.¹⁰⁵

Kearns focused primarily on the issue of Tower 55, which marks the intersection of the UP and BNSF railroads. An aerial photograph of the Tower 55 interchange can be found in Appendix A. Tower 55 is regarded by both railroads and the North Texas region as the area's single most important rail issue. This intersection poses severe problems for the railroads, the state of Texas, and the nation at large (as the "largest bottleneck for freight rail in the country.")¹⁰⁶

Kearns also stated, "[h]ighest on the list of needed rail infrastructure capacity projects can be found...in Fort Worth below the intersecting ramps of I-35W and I-30 where the two major Western freight railroads mainlines intersect at grade. We must find a solution to Tower 55," said Kearns, "not just to move freight more efficiently, but to improve safety, security, and air quality issues..."¹⁰⁷

¹⁰³ Ibid.

¹⁰⁴ Fred Babin, Manager of Transportation, Port of Corpus Christi; Jim Edmonds, Chairman, Port of Houston Authority; John Roby, Director of Logistics, Port of Beaumont, April 18, 2006, testimony to the Senate Committee on Transportation and Homeland Security.

¹⁰⁵ Dennis Kearns, Legislative Counsel for State Government Affairs, June 13, 2006, testimony to the Senate Transportation and Homeland Security Committee.

¹⁰⁶ Michael Morris, P.E., Director of Transportation, North Central Texas Council of Governments, June 13, 2006, testimony to the Senate Transportation and Homeland Security Committee.

¹⁰⁷ Dennis Kearns, Legislative Counsel for State Government Affairs, June 13, 2006, testimony to the Senate Transportation and Homeland Security Committee.

According to Kearns, an average of 120 trains pass through the Tower 55 intersection on a daily basis. The root of the problem lies in the design of the intersection as an "at-grade" crossing. That is, any train intending to pass through this intersection must wait while other trains pass, leading to huge delays.

Joe Adams, representing Union Pacific Railroad (UP) also offered testimony at the June 13, 2006, hearing. Adams believes that Tower 55 is only bound to become more of a problem in the future.

"While Tower 55 has always been a bottleneck; it is becoming more of a problem now as the demand for rail transportation is seeing vigorous growth - something that has not occurred since the extraordinary demand placed on the system during World War II," said Adams.¹⁰⁸

"Four factors play a role in this when looking at the increase of train movement through Tower 55 - the shift of long haul freight from truck to rail given fuel prices and the truck driver shortage; the growth of import container traffic from the Pacific Rim into the interior of the United States; increasing traffic to and from Mexico; and the use of lower cost, low sulfur, Wyoming coal to generate electricity," Adams continued.¹⁰⁹

Both UP and BNSF had considered addressing the problem by "tunneling under or building over one set of tracks - but, given other capital priorities, could not agree on going forward."¹¹⁰ At this point the railroads seek to resolve the problem with assistance from the state and regional authorities.

Michael Morris of the North Central Texas Council of Governments concurs with the idea that resolving the Tower 55 problem should be the result of a public-private partnership. There is a federal, state, regional, and private sector benefit to solving the Tower 55 problem, says Morris. Morris concludes that the federal government, the state, the region, and the railroads should all help pay to resolve the issue.¹¹¹ Morris' written submission to the Committee regarding the Tower 55 Rail Reliever Study, which is currently in progress, can be found in Appendix B. The North Central Texas Council of Governments plans to publish the completed Tower 55 Rail Reliever Study in December 2006. On August 18, 2006, the North Central Texas Council of Governments issued a Tower 55 Freight Rail Crossing Progress Report.¹¹² This report promoted the "private concession model" to fund efforts to improve the Tower 55 situation. According to this model, a "third party provides the major part of the equity necessary to build the facility and then collects a toll on each rail car utilizing the facility."¹¹³ The Tower 55 Freight Rail Crossing Progress Report included a three-part "Solution Development Plan" which can be found in Appendix C.

¹⁰⁸ Joe Adams, Chairman's Special Representative, Union Pacific Railroad, June 13, 2006, testimony to the Senate Transportation and Homeland Security Committee.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Michael Morris, P.E., Director of Transportation, North Central Texas Council of Governments, June 13, 2006, testimony to the Senate Transportation and Homeland Security Committee.

¹¹² Michael Morris, P.E., Director of Transportation, North Central Texas Council of Governments, August 18, 2006, Memo to North Central Texas Congressional Delegation and North Central Texas Legislative Delegation, Subject: Tower 55 Freight Rail Crossing Progress Report.

¹¹³ Ibid.

Findings and Recommendations

The Committee finds that improvements to rail facilities will address existing highway and rail congestion and future passenger and freight rail needs, and that expenditure of public funds is appropriate to accomplish these goals.

Short and long term solutions to Tower 55 will require continued discussions among the state, local leaders, and the railroads. Recent activity regarding the Trans-Texas Corridor in the vicinity of Dallas and Tarrant Counties could provide a mechanism for a solution. The Committee recommends accelerating the dialogue to take advantage of the Legislature's being in session should statutory change be required.

The Committee recommends that the Legislature place a high priority on capitalizing the Rail Relocation and Improvement Fund, possibly through sources identified in the document *Rail Relocation, Mobility and Port Access Revenue Options Report* or other mechanisms.

Charge 5 -- Naming State Highways

Evaluate and make recommendations relating to the naming of state highways and the criteria which should be followed in order to name a highway after a natural person. Include an analysis of criteria used in other states.

Background

In the last five regular sessions, the Texas Legislature has passed 42 bills naming highways. This is a significant amount because there are only 53 named segments of the state highway system under state law, encompassing over 5,000 miles of highway. Put another way, almost 80% of the state-named highway segments have been named just within the last decade.

The 79th Texas Legislature showed a heightened interest in the process of naming state highways, reflected in part by the large number of bills and amendments naming highways that were proposed, the nature of the debate surrounding this legislation, and the attention received by these debates. Thus, the imperative for a standard criteria.

Texas' Criteria for Naming State Highways

In Texas, highway designation authority is shared by local governments and the Legislature. The Texas Transportation Commission is prohibited from naming a highway component other than by numerical designation under Section 225.001, Transportation Code, derived from a 1971 session law. Sections 225.002 through 225.004, Transportation Code, allow a local government to assign a memorial or other identifying designation to a highway system component by submitting an application to the TxDOT executive director describing the nature and objectives of the designation. The Texas Legislature can also name a portion of the highway system. This is usually done through a bill. Only one highway has ever been named by resolution.

The expenses associated with required highway signs, under current law, are a responsibility of TxDOT when that portion of the state highway is named by state law unless otherwise specified. Alternate funding is sometimes required by specific law.¹¹⁴ During the 79th regular legislative session, Representative Mike Krusee, Chair of the House Transportation Committee, initiated the addition of language to all highway naming bills during the committee process to require private donations to cover all signing costs incurred. This proved to be a popular addition. Thirteen named highway bills were enacted during that session, all of which included the language for the sign costs to be funded through private donations.

When a highway is named by a local government, the local government is responsible for the costs of the sign. TxDOT pays for the installation per the Texas Administrative Code, Title 43, Rule §25.9 (d). The local government pays for the costs of maintaining the sign, and TxDOT pays for the costs of maintaining the area around the sign. Transportation Code, Section 225.004 requires placement of signs at each end of the designated limits with additional markers every seven miles if the named segment of highway is of sufficient length.

¹¹⁴ Steve Simmons, TxDOT Deputy Executive Director, Criteria Used for the Naming of State Highways, testimony before the Senate Committee on Transportation and Homeland Security on April 18, 2006.

There are currently no laws or rules in place that prevent a highway in one part of the state from being named the same thing in another part of the state, or that prevent a highway from having multiple name designations in addition to its numerical designation. As an illustration, all of I-35 was designated the Purple Heart Trail during the 79th legislative session, overlaying a portion of I-35E in Dallas which was already designated the John M. Stemmons Freeway by the city of Dallas. TxDOT testified that these issues could cause confusion for motorists and also be a possible source of aggravation for the interest groups requesting the original designation.

Listings of named highways are found in Appendix A.

What Other States Are Doing

Legislature's Role in Highway Naming

In thirty-nine states, including Texas, the Legislature plays a role in the naming of state highways. As is common practice in Texas, highway naming in other states is mainly done through a bill and not a resolution. Some state Legislatures, such as the Tennessee General Assembly and the Oklahoma Legislature use both bills and resolutions. The remaining 11 states name highways through either the executive branch or local governments.

Level of Support Needed for Designation

In states like Texas, where the Legislature names highways, the informal level of support required to name a highway varies, as does the opportunity for legislators to opt out of the naming of a component within that legislator's district. A standing committee staffer from the state of New York reported that the committee informally tends to defer to the legislator from the district where the highway or component is located.¹¹⁵ One of the California Legislature's standing committees has a policy requiring that the legislative author or coauthor of a concurrent resolution must represent the district where the highway component to be named is located. There was no instance where the naming had to be unanimous or where a state allows a legislator to opt-out of naming on the portion of the highway that passes through his or her district without a formal vote. Georgia requires the portion of the highway to be named to be wholly within the district of the legislator carrying the resolution. Furthermore, the legislator must run a legal advertisement in each relevant county that provides the legislator's contact information, the proposed name and location, the intended honoree with the reasons for the honor, and the cost of the designation.

Highway Eligibility

Just as Georgia requires the portion of highway to be named to be within the sponsoring legislator's district, other states have different restrictions for what highway components are eligible. North Carolina policy mandates the length of a highway named must be five miles or less. Oregon's policy includes a compliance guideline to verify on a case by case basis that the component must be long enough to merit a title. Ohio requires the name assigned to a highway to apply to its entire length within a county. In Kentucky, for special cases of a highway named after deceased state troopers, the law specifies that the named highway must be the state road nearest the trooper's home or the site where the trooper died. Nebraska is the most restrictive, prohibiting the naming of rest areas, individual interchanges, and interstate highways and bridges with special honorary names. Eligible border bridges (those crossing the Missouri river) must have the adjacent state also approve the designation.

¹¹⁵ Telephone conversation with Bob Coe, office of Assemblyman David F. Gantt (chair, Assembly Transportation Committee), New York Legislature, March 29, 2006.

Multiple Naming of Highways

States generally try to avoid having more than one name for a highway component. Oklahoma has had highways with as many as five different names and found it necessary to prepare an online inventory publication to make it easier to avoid multiple naming.¹¹⁶ Several states prohibit multiple naming of new designations. California does not allow a new name to supersede an old one unless a resolution is adopted by the Legislature that documents a good faith effort and finding that there is no opposition to the name change.

Criteria for Naming a Highway After an Individual

The Nebraska Department of Roads follows some of the most detailed criteria for who may be honored by a highway or highway component designation. These specifications include: that the person has no more than one highway segment or bridge designated for him or her; that the honoree be of substantial importance or significance and must have contributed to the betterment of the state; that the person was born in Nebraska or lived there for a significant part of his or her life, or has made a societal contribution that was affected by his or her residence in Nebraska; that the person be deceased for at least five years; and that no more than one designation per year be given (a list of finalists is narrowed and then one is recommended to the Governor, who does not have to approve it). Nebraska further has a tier system of who is given primary or secondary consideration based on their field and contribution.

Georgia's requirements are also detailed and include attainment of national prominence as a route to designation, as long as that attainment is generally recognized throughout the country. For this purpose, national prominence is defined as having been elected to national office, serving honorably without impeachment; having been awarded a national medal such as the Congressional Medal of Honor or the Presidential Medal of Freedom; having sacrificed one's life for the protection of the nation; having won an award such as the Nobel Prize; or having contributed to the arts or sciences. An alternative route to designation in Georgia is that the person's achievements, accomplishments, or contributions must be worthy of recognition throughout the state. Furthermore, the person must have a logical or natural connection to the geographic area in which the highway component to be named is located, be it through birth, residence, or otherwise.

Most states, even those with very informal criteria have requirements that the person is well-known (New Mexico), well respected (Illinois), or have made a significant contribution to the state and/or to the nation (Vermont, Oregon, Kentucky, South Dakota, Oklahoma, North Carolina). California seeks evidence of public service or exemplary contribution with a connection between the person and the community where their highway is to be located. Oklahoma also qualifies a person for highway naming if the person has been actively involved in the highway project that results in the new highway component.

¹¹⁶ Telephone conversation with Gary Wallace, Oklahoma Department of Transportation, 405-521-3385, April 27, 2006.

Several states also follow Nebraska's practice of requiring the honoree to be deceased. Oklahoma requires a five-year postmortem threshold for designations done by the transportation agency; however, those honored by the Oklahoma Legislature do not have to be deceased. Missouri requires a person to be deceased for one year, California for 18 months, Oregon for one year, Vermont for one year (although this is an informal policy),¹¹⁷ Connecticut and Virginia do not have a set threshold, requiring only that the honoree is deceased. South Carolina has a pending constitutional amendment to limit naming to deceased individuals.¹¹⁸ Advantages to naming highway for living persons include the ability to recognize outstanding achievement while a person is still alive to receive the recognition. Disadvantages include potential negative outcomes such as an honoree subsequently being associated with a crime or dishonorable activities. Should such an instance occur, Ohio provides a procedure to reverse a designation which is the same as the procedure for designation. As of this writing, the Missouri Legislature has forwarded a bill to the Governor that would have a sunset provision for designations at 20 years after the designation.

Appendix B contains the current Texas statute on highway naming and the statutes and policies of other states for review.

Markers and Signage

Almost all states have adopted the 2003 Manual on Uniform Traffic Control Devices (MUTCD) of the Federal Highway Administration, or have adopted it with a state supplement or state manual that conforms to that document.¹¹⁹ The MUTCD provides a level of standardization so motorists traveling in multiple states can expect to see similar signage, thereby reducing sources of confusion for the motorist. The MUTCD restricts directional signs to route numbers, logos, or official names. Colorado, Iowa, Michigan, Wisconsin, and Wyoming encourage placement of markers in rest areas among other places such as other appropriate off-route locations.

The cost of signage, in many states, is covered by local sponsors or local governments. Some states prohibit or restrict the use of state funds. Table Three in Appendix A outlines state policies, practices, and laws in other states.

Naming of State Buildings and Eligibility for Burial in State Cemeteries in Texas

One possible parallel for comparison are the statutes setting Texas' criteria for naming state buildings and the eligibility guidelines for burial in a state cemetery. Section 2165.005, Government Code, details Texas law on naming state buildings. A building that is state or regional headquarters may only have the name of a deceased individual who was significant in Texas history. The Texas Building and Procurement Commission submits proposed names for the building to the presiding officers of the Senate and House of Representatives (both new names and those proposed for renaming), who then can grant approval through a concurrent resolution adopted by the Legislature and signed by the governor.

¹¹⁷ Telephone conversation with Deborah Matheson, Vermont Board of Libraries, 802-828-3265, April 17, 2006.

¹¹⁸ S.679, 2nd Regular Session, 116th South Carolina General Assembly. The joint resolution has not progressed legislatively since subcommittee referral in Senate committee in April 2005. However, it remains viable because the South Carolina General Assembly carries measures over from one regular session to another. August 2006 telephone conversation with DeDe Smith, South Carolina Legislative Council, 803-734-2145, and Brenda Erikson, National Conference of State Legislatures, 303-364-7700.

¹¹⁹ Federal Highway Administration, "Adoption Status of National MUTCD by States and Federal Agencies" (March 30, 2006), http://mutcd.fhwa.dot.gov/knowledge/natl_adopt_2000_2003.htm.

If the building is used as a local headquarters, the criteria do not apply. In this case, the commission submits names to the presiding officers and to each senator and representative in whose legislative district the building is located. The name is approved when consent is given by the members, presiding officers, and the governor.

Section 2156.256, Government Code, sets the guidelines for burying a person in the state cemetery. Those eligible include a former legislator or elective state official, someone who dies while in legislative or elective state office, and former appointive state officeholders or someone who dies in such appointive office (after 12 years of service). Any other person must be honored through an order of the State Cemetery Committee (SCC) or through a gubernatorial proclamation or legislative concurrent resolution that is reviewed and approved by the SCC. The SCC bases their decision on whether or not the person has significantly affected Texas history.

Findings and Recommendations

The Committee greatly appreciates the valuable research conducted by the Texas Legislative Council and the Texas Department of Transportation for this report.

The Committee recommends that the Legislature establish more detailed criteria for the designation of state highways in order to limit proliferation of this type of legislation that can distract from other legislative matters.

The Committee recommends that the Legislature require a person to be deceased before naming a state highway for him or her. When naming a state highway after a natural person, the Committee recommends a finding first that the person to be honored has significantly impacted the lives of Texans and/or Texas history.

The Committee recommends that statute be amended to nullify legislation naming a highway that is not authored or sponsored by the legislator or legislators in both houses representing all highway segments being named in the bill. As an alternative approach, the provision could be placed in biennial legislation similar to legislation considered at the end of recent Legislatures that nullifies certain dedications of funds.

The Committee recommends that designations should be accomplished in the form of a House or Senate Bill, which is already the commonly used form, rather than a resolution. If the Legislature decides not to enact a requirement that the honoree be deceased for designation, the Committee recommends enacting a bill with a sunset provision (such as the bill forwarded to the Missouri governor) for designations at 20 years after the designation. Furthermore, the Committee recommends that the Legislature add language to all highway naming bills to require private donations to cover all signing costs incurred. The Legislature should also consider limiting the number of highways designated per session to a certain number such as five or less.

Charge 6 -- State Transportation Facility Safety

Study and make recommendations relating to the Texas Department of Transportation's programs designed to increase safety on all state transportation facilities.

Background

On April 18, 2006, Michael Behrens, the Executive Director of the Texas Department of Transportation (TxDOT), testified before the Senate Committee on Transportation and Homeland Security regarding the safety programs currently being administered by the department. These programs are "designed to increase safety and provide a secure environment for all users of transportation services," said Behrens.¹²⁰

As the Legislature has granted TxDOT new authority over the last several years, the duties of the department have become increasingly complex. However, according to Behrens, the department's paramount goal remains "enhancing safety for all citizens of Texas."¹²¹ TxDOT's safety strategy focuses on these key areas: funding, engineering and technology, and public awareness and education.

Funding

TxDOT is utilizing several initiatives to fund safety improvements across the state. These include the Texas Safety Bond Program, the Safe Routes to School Program, the Hazard Elimination Program, the Texas Traffic Safety Program, and a federally-funded project designed to decrease auto-train collisions.

Safety Bond Program

The Safety Bond Program includes a total of 644 projects which will eliminate driving hazards by creating left turn lanes, widening roadways, constructing highway overpasses, and installing cable and concrete barriers along highway medians. Behrens stated that, "[o]ver the next 20 years, the Texas Transportation Institute's Center for Transportation Safety estimates that the safety improvements for the entire Safety Bond Program could save 1,800 lives and prevent 21,000 injuries."¹²²

Safe Routes to School

The Safe Routes to School Program was initiated by House Bill 2204 (HB 2204), 77th Regular Session. Thus far, this program has designated a combination of state and federal funds in the amount of \$5.1 million for 27 projects. Such projects include "sidewalk improvements, pedestrian/bicycle crossing improvements, on-street bicycle facilities, traffic diversion improvements, and traffic calming measures for off-system roads." The above-program will be used in conjunction with a component of the federal surface transportation reauthorization of 2005 (known as SAFETEA-LU) to include "public information and awareness, selective enforcement and student education" to promote transportation-related safety at Texas schools.¹²³

¹²⁰ Michael Behrens, Executive Director, Texas Department of Transportation (TxDOT), April 18, 2006, testimony to Senate Committee on Transportation and Homeland Security.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

Rail Safety

During FY 2005, TxDOT utilized approximately \$35.7 million in federal funds to decrease the "number and severity" of collisions at highway and rail at-grade crossings. These funds were used in a variety of ways to increase drivers' awareness when approaching railroad crossings. Projects included installing "protective devices, including lights and gates" and upgrading standard railroad "crossbuck" signage. Behrens stated that, "[s]ince 1981, Texas has seen a decrease of fatalities occurring at public highway and rail-crossings by approximately 80% and a reduction of collisions by approximately 77%."¹²⁴

Hazard Elimination Program

TxDOT combines state and federal funds to reduce the number and severity of traffic crashes by identifying and eliminating roadway hazards. Between 2006 and 2009, federal and state funds will be used to fund approximately 900 projects at a cost of over \$430 million.¹²⁵

Texas Traffic Safety Program

The Texas Traffic Safety Program utilizes a combination of "enforcement, training, and education efforts" to increase safety on state roadways. From 2003 to 2004, the program is believed to have significantly contributed to the 7.3% decrease in DWI-related fatalities. In 2005, the program is credited with helping to achieve a 90% compliance rate in safety belt usage, largely through the TxDOT's "Click It or Ticket" campaign.¹²⁶ (In 2001, the compliance rate was 76%.¹²⁷) An example of TxDOT's 2006 "Click It or Ticket" publicity campaign is available in Appendix A.

The Texas Traffic Safety Program's budget for 2006 includes approximately \$37.5 million for 188 projects aimed at "modifying driver and passenger behavior" to improve safety.¹²⁸

Engineering and Technology Programs

Crash Records Information System (CRIS)

TxDOT and the Texas Department of Public Safety (DPS) have engaged in a joint initiative to create a database of accident data which will comprise the Crash Records Information System (CRIS). The stated purpose of the project is to: "[i]mplement a new Crash Records Information System that will provide enhanced efficiencies to capture, manage and deliver timely and accurate data to improve the safety of Texas roadways."¹²⁹ This system will be utilized for the "identification of safety-related construction improvements, the development of the Texas Traffic Safety Program, and for the effective design and planning of general construction and maintenance projects."¹³⁰

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Denise Pittard, State Legislative Affairs Section, Government Business and Enterprises Division, Texas Department of Transportation (TxDOT), May 3, 2006, Submitted as email to the Senate Committee on Transportation and Homeland Security.

¹²⁸ Michael Behrens, Executive Director, Texas Department of Transportation (TxDOT), April 18, 2006, testimony to Senate Committee on Transportation and Homeland Security.

¹²⁹ Texas Department of Public Safety (DPS), Downloaded on July 28, 2006 from:
<http://www.txdps.state.tx.us/crisproject/>.

¹³⁰ Michael Behrens, Executive Director, Texas Department of Transportation (TxDOT), April 18, 2006, testimony to Senate Committee on Transportation and Homeland Security.

DPS recently offered the following status update on the program: "All components of the CRIS application successfully completed user acceptance testing and were formally accepted on June 30, 2006. The development of the CRIS application is now complete. The DPS Crash Records Bureau in cooperation with TxDOT are in the process of planning for rollout of the various components and completion of the data entry of the 2003-2006 crash report backlog data. The major components of CRIS are now in place."¹³¹

Intelligent Transportation System (ITS)

TxDOT currently utilizes intelligent transportation systems for general mobility, productivity, and transportation safety. A major component of this system is the Transportation Management Centers in Houston, Dallas, San Antonio, Fort Worth, El Paso, Austin, Laredo, Amarillo, and Wichita Falls. Behrens reported to the Committee that, "[t]hese systems allow us to monitor the status of the transportation network and respond to congestion and incidents as they occur."¹³²

Permeable Friction Course

Permeable Friction Course refers to a special mix of pavement which is highly effective in increasing safety when roadways are wet. Benefits include quicker drainage, a reduction of spray from vehicles, a reduction in roadway glare, and improved visibility of highway markings. The use of this material in the Austin area has reportedly led to a reduction of wet weather accidents. "On just the two miles of RM 1431 in Travis County, there was a 90% reduction of wet weather crashes," said Behrens. Similar results have been reported on a portion of I-35 in San Antonio where the pavement has been utilized. TxDOT views the use of this material in areas prone to wet weather accidents as ideal (in conjunction with reduced speed limits and increased warning signage.)¹³³

Public Awareness and Education

Driving While Intoxicated (DWI)

Drunk driving continues to be the single greatest issue negatively impacting traffic safety in Texas. Behrens reported to the Committee that "[h]alf of all traffic fatalities on Texas roadways are alcohol related." Furthermore, according to TxDOT, "Texas leads the nation in alcohol related traffic deaths."¹³⁴ The department is currently seeking to reduce incidents of drunk driving through a number of public relations initiatives, including its "Drink. Drive. Go to Jail" ad campaign (an example of which can be found in Appendix B).

The issue of sobriety checkpoints continues to be a topic of discussion. Studies conducted by the National Highway Traffic Safety Administration (NHTSA) suggest that implementing a sobriety checkpoint program in Texas could result in "over 400 lives saved and a reduction of as many as 15,000 injuries annually," said Behrens.¹³⁵

¹³¹ Texas Department of Public Safety (DPS), Downloaded on July 28, 2006 from: <http://www.txdps.state.tx.us/crisproject/>.

¹³² Michael Behrens, Executive Director, Texas Department of Transportation (TxDOT), April 18, 2006, testimony to Senate Committee on Transportation and Homeland Security.

¹³³ Ibid.

¹³⁴ Texas Department of Transportation (TxDOT), http://www.dot.state.tx.us/services/traffic_operations/intoxication.htm, Downloaded: July 15, 2006.

¹³⁵ Michael Behrens, Executive Director, Texas Department of Transportation (TxDOT), April 18, 2006, testimony to Senate Committee on Transportation and Homeland Security.

In 1990, the US Supreme Court ruled that checkpoints, "when conducted properly... do not constitute illegal search and seizure in most states."¹³⁶ However, the Texas Supreme Court has ruled that action by the Legislature is first required if sobriety checkpoints are to be legal in Texas.¹³⁷ Sobriety checkpoints, therefore, are not currently included among the state's safety programs.

Child Safety Seats

Children are required under state law to ride in child passenger safety seats until they are five years of age and 36 inches in height.¹³⁸ However, a gap has been identified in Texas law regarding requirements for children who exceed this age or height. A report by the Texas Department of Public Safety mandated by the 79th Legislature¹³⁹ found that a child who is less than four feet nine inches but uses only an adult safety belt risks major internal organ injuries, and that Texas could reduce the cost of health care by more than \$17 million if these children were required to use the appropriate child safety seat or booster seat.¹⁴⁰ According to Behrens, "[m]any children over five years of age are killed and injured each year when using seat and lap belts designed for adults." 34 states have passed some form of law requiring the use of booster seats for children who are too large for traditional child safety seats. This approach is consistent with a US Department of Transportation recommendation that children use booster seats until they are at least eight years old or 4 feet 9-inches tall. "With motor vehicle crashes as the leading cause of death for children between the ages of 2 and 14," Behrens said, "we believe it is worth looking into this option" (requiring booster seat use).¹⁴¹

The DPS report also identified considerable confusion regarding existing laws, with more than half of the respondents to a survey stating that they did not know the laws applying to child passenger safety. Further, while 413 of the 918 respondents claimed to know the laws, when quizzed only two had correct answers.¹⁴²

Driver Behavior

According to Behrens, "[d]river error accounts for most traffic crashes, with causes attributed to speed and inattention." To address these issues, TxDOT believes that significant improvements could be made through efforts to increase public awareness. One example of this is TxDOT's recent release of "Work Zone Safety" public service announcements. "Approximately 1,100 people were killed in work zones last year in the United States," Behrens reported, "with 80% of these being motorists."¹⁴³

¹³⁶ National Highway Traffic Safety Administration,

<http://www.nhtsa.dot.gov/people/injury/alcohol/SobrietyCheck/caselaw.html>, Downloaded: July 16, 2006.

¹³⁷ Michael Behrens, Executive Director, Texas Department of Transportation (TxDOT), April 18, 2006, testimony to Senate Committee on Transportation and Homeland Security.

¹³⁸ Texas Transportation Code § 545.412.

¹³⁹ House Bill 183, 79th Texas Legislature.

¹⁴⁰ "House Bill 183 Committee Report," Texas Department of Public Safety, September 1, 2006, p. 2.

¹⁴¹ Behrens testimony.

¹⁴² House Bill 183 Committee Report, p. 3.

¹⁴³ Behrens testimony.

Travel Rest Areas

Highway rest areas were established to encourage tired motorists to take a break and regain their energy before continuing on their journeys. However, rest areas have also been the scenes of crime and other mischievous activity. If left unaddressed, this trend could threaten the safety of motorists by leading them to avoid rest areas entirely. To address this problem, TxDOT has entered into contracts to increase overall safety at rest stops. The main components of these contracts include the presence of attendants 24 hours a day and the installation of security cameras.¹⁴⁴ Through these efforts, it is hoped that Texas' 92 rest areas will continue to offer a secure place for motorists to rest, and thus increase the overall safety on Texas' roadways.

Findings and Recommendations

In the opinion of the Senate Committee on Transportation and Homeland Security, TxDOT is efficiently and effectively utilizing available state and federal funds to promote safety on all state transportation facilities. In addition, the Committee commends TxDOT's cooperative efforts with DPS to bring the Crash Records Information System database into production.

Since drunk driving continues to be the single greatest issue negatively impacting traffic safety in Texas (according to testimony, half of all traffic fatalities on Texas roadways are alcohol related), the Committee recommends the adoption of legislation authorizing sobriety checkpoints, with sufficient safeguards to ensure the protection of civil liberties when such checkpoints are used.

The Committee finds that a safety issue exists for children who are too large for child safety seats but too small for standard safety belts. The Legislature should adopt legislation clarifying the statutory requirements as long as concerns about seat cost and availability and the law's increasing complexity can be resolved.

¹⁴⁴ Ibid.

Charge 7 -- Border Crossings/Security

Monitor ongoing federal, state and local efforts along the Texas Mexico border to combat criminal activity and prevent illegal border crossings. Study other border state activities in regard to the safety, efficiency and security of border crossings. Include an assessment of the impact of security measures on trade and vehicular and pedestrian commerce.

Background

The Committee has been charged with monitoring ongoing federal, state, and local efforts along the Texas - Mexico border to combat criminal activity and prevent illegal border crossings, as well as with assessing the impact of these security measures on trade and commerce. This issue has over the course of the interim risen to prominence at the state and national levels. (See Appendix A for maps of border information.)

State Initiatives

Over a year ago, Governor Rick Perry directed his Office of Homeland Security to conduct an assessment of threats, risks, and vulnerabilities. An unprotected border with Mexico emerged as one of the biggest threats for the State.¹⁴⁵ In his testimony before the Committee, Steve McCraw, director of the Governor's Office of Homeland Security provided some details: the viable intelligence that suggests international terrorist organizations such as Al Qaeda intend to exploit the border with Mexico because of the gaps in security; the criminal organizations that control and command drug smuggling, engage in executions, and are based in Mexico; and the increasing number of "Other than Mexicans" (OTM) from countries including Iraq, Syria, Pakistan, Iran, and Jordan that have been entering Texas illegally. Hidalgo County Sheriff Lupe Trevino's testimony references proof that criminal illegal immigrants are crossing our borders illegally with the sole purpose of committing crimes in the US¹⁴⁶

According to Border Patrol statistics, there were 30,147 OTMs apprehended in America in FY 03, 44,614 in FY 04, and 165,178 in FY 05. Most of these were apprehended on the United States' southern border.¹⁴⁷ Border sheriffs in particular have expressed concern over OTMs entering the border area because of the threat they pose to security and health, the lack of knowledge regarding any criminal history, and the likelihood that they will enter the general population without the proper authorization.

Mexican criminal organizations employ former military commandos and trans-national gangs to support their operations on both sides of the border. In response, Texas' strategy on border security has been to provide an aggressive defense through Governor Perry's Operation Linebacker. The objective of Linebacker is to decrease crime in the area of operation, which includes all jurisdictions within 100 miles of the 1,240 mile Texas/Mexico border.¹⁴⁸

¹⁴⁵ Testimony of Steve McCraw, Director, Governor's Office of Homeland Security, Before the Senate Committee on Transportation and Homeland Security, July 26, 2006.

¹⁴⁶ Testimony of Guadalupe "Lupe" Trevino, Sheriff, Hidalgo County, submitted to the Senate Committee on Transportation and Homeland Security, July 26, 2006.

¹⁴⁷ Statement of Sigifredo Gonzalez, Jr., Sheriff, Zapata County, as submitted to the Senate Committee on Transportation and Homeland Security. July 26, 2006, Mission, Texas.

¹⁴⁸ Testimony of Steve McCraw, Director, Governor's Office of Homeland Security, Before the Senate Committee on Transportation and Homeland Security, July 26, 2006.

Operation Linebacker

In October 2005, Governor Rick Perry authorized funding for Operation Linebacker, a border initiative led by the Border Sheriff's Coalition.¹⁴⁹ The Border Sheriff's Coalition was formed in May 2005 by sixteen sheriffs whose counties border Mexico. According to Zapata County Sheriff Sigifredo Gonzalez, past chair of the Texas Border Sheriff's Coalition, "This coalition was formed out of frustration in what we felt was the inadequacy of our federal government to protect our border in preventing a potential terrorist and their weapons of mass destruction from entering our country."¹⁵⁰ In March 2006, sheriffs from New Mexico, Arizona, and California joined Texas to form the Southwestern Border Sheriff's Coalition.

The Role of the Border Sheriff in Linebacker

Under the US system of government, the US Border Patrol serves as the first line of defense in controlling illegal immigration. Border sheriffs, although granted some authority by the Texas Penal Code and the Texas Code of Criminal Procedure, are not charged with preventing illegal border crossings. However, they do contribute by identifying persons of interest entering the country and by working closely with federal partners including the US Customs and Border Protection, Immigration and Customs Enforcement, and other federal and state agencies to identify possible terrorists, immigrants coming into the country from countries of special interest to the United States, and known criminals. The Governor has provided \$6 million to the border sheriffs to hire extra personnel and pay for overtime so that they can work together with the right jurisdiction to "plug the gap." Linebacker additionally authorized four deployment teams with 50 state troopers, each team prepared to respond quickly in direct support of local law enforcement. State law does not authorize law enforcement officials to arrest people for immigration violations, and Operation Linebacker does not give officers any new arrest powers. (See Appendix B for border sheriffs statistics).

Funding

Although the total amount available is limited, there are a variety of federal grant programs for homeland security efforts. The largest source of state and local emergency preparedness and response funding programs is the US Department of Homeland Security.¹⁵¹ The following table lists these grant programs and their FY 2006 national funding levels (excluding FEMA preparedness and response grant programs).¹⁵²

Table 5: US Department of Homeland Security Grant Programs, FY 2006

Homeland Security Grant Program	\$1.7 billion
Emergency Management Performance Grants	\$179.5 million
Infrastructure Protection Program	441.7 million
Homeland Security Training Program	\$173 million
Citizen Corps Support Program	\$1.3 million
Competitive Training Grants	\$28.8 million

¹⁴⁹ Ibid.

¹⁵⁰ Statement of Sheriff Sigifredo Gonzalez, Jr. as submitted to the Senate Committee on Transportation and Homeland Security. July 26, 2006, Mission, Texas.

¹⁵¹ "A Q&A on Homeland Security Funding for States and Localities," Homeland Protection Professional magazine, August 2006, page S-1.

¹⁵² Ibid.

The Department of Health and Human Services is the second-largest provider of federal emergency preparedness funds for states and localities.¹⁵³ However, the Committee's attention was directed through testimony to a program administered by the Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice: the Byrne grants.

Byrne Grants

The Byrne Memorial State and Local Law Enforcement Assistance Grant Program, commonly referred to as Byrne grants, is a partnership among federal, state, and local governments to create safer communities, authorized by the Anti-Drug Abuse Act of 1988.¹⁵⁴ These grants may be used to provide personnel, equipment, training, technical assistance, and information systems for widespread apprehension, prosecution, adjudication, detention, and rehabilitation of offenders who violate state and local laws. Local jurisdictions are not eligible for direct Byrne grant funding, but may seek funding for innovative projects through sub-grants (grants awarded to the state and passed through to local jurisdictions). In some states funds are sub granted in block form.

Byrne grants awarded to the State and administered by the Governor's Office have been a source of relief, according to sheriffs. The Governor's Office provided \$9.8 million of the federal Byrne grant funds to the Texas Border Sheriff's Coalition to increase patrol activity between the ports of entry in order to reduce the escalating crime and national security threat. Sheriffs were instructed that the funds are to be used only to support Operation Linebacker, which would include hiring new personnel, paying overtime for existing personnel, purchasing surveillance equipment, vehicles, vehicle operating expenses, and other related costs. Furthermore, special conditions were added to their grants stating they must comply with relevant provisions of the Texas Administrative Code (Title 1, Part 1, Chapter 3, Subchapters A-F), and to support the enforcement of Texas state law. Immigration enforcement and/or reform are a federal issue and therefore are not eligible activity under this grant. Information supplied by the Governor's office regarding the budget and expenses of Linebacker per county is provided in Appendix C.¹⁵⁵

The Texas Criminal Justice Coalition testified that sheriffs have too much latitude in how these funds are used, and that one sheriff (El Paso County) is using grant money to set up roadblocks specifically to identify illegal immigrants and to conduct raids in places known to be frequented by undocumented workers.¹⁵⁶ The El Paso County Sheriff's use of checkpoints has been the subject of a lawsuit in El Paso County. As of this writing a settlement has been reached in the lawsuit and the Sheriff has resumed operating traffic checkpoints. The lawsuit and the fact that the policy has been reviewed by the El Paso County Commissioners Court and other local officials suggest that the current system contains sufficient safeguards to reflect local policies and ensure compliance with relevant laws.

¹⁵³ Ibid.

¹⁵⁴ Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program, accessed August 2006, <http://www.ojp.usdoj.gov/BJA/grant/byrne.html>.

¹⁵⁵ Email from Sophie Yanez, Governor's Office of Homeland Security with information provided by Steve McCraw on August 21, 2006.

¹⁵⁶ Testimony of Ana Yañez-Correa, Executive Director, Texas Criminal Justice Coalition before the Senate Committee on Transportation and Homeland Security on July 26, 2006 in Mission, Texas.

The Effects of Linebacker

The Office of the Governor has been documenting the success of the Linebacker program. Reduction in crime in an area is calculated by looking at a certain month and basing the calculations on the same time frame for the previous year.¹⁵⁷ In Operation Del Rio, the Texas Army National Guard, DPS and Border Patrol SWAT teams, four separate aviation components, four separate water patrol units, Texas Parks and Wildlife, and seven local law enforcement agencies helped reduce the Mexican organized criminal activity in a three-county area along the border. The crime rate was reduced by 76% in Val Verde County and 27% in Maverick County after this program.¹⁵⁸ Operation Laredo yielded similar results, resulting in a 65% reduction in crime over a five-county area. This means that the number of reported crimes and calls made decreased by 65-75% from the previous year in the same month.¹⁵⁹

Operation Rio Grande

Governor Perry launched Operation Rio Grande in February 2006 to build upon Operation Linebacker. Operation Rio Grande has four components: increased patrol presence, centralized command and control, centralized intelligence, and leveraging technology.¹⁶⁰ This initiative involves coordinating intelligence and law enforcement within an 80,000 square mile region. To centralize coordination of border enforcement activities and operations, the Border Security Operations Center (BSOC) was established as the coordination point for state, local, and federal authorities. This initiative includes the Border Patrol, which has assigned an Assistant Border Sector Chief to the center. The Border Patrol's involvement makes Texas the only state in America to secure this level of federal participation for a state-led border security initiative.¹⁶¹

The BSOC provides real-time intelligence to officers on the ground. It operates on a 24 hours a day, 365 days a year basis. All incidents are reported to the BSOC. Corresponding with the initiative's desire for greater intelligence in the border area, the Governor has directed law enforcement in all 45 border counties to be put on the fast track for the deployment of electronic fingerprint capabilities, so that the identity of criminals can be determined with faster and greater accuracy.¹⁶² Along with the placement of live scan fingerprint booking stations in every county in Texas, the Governor's plan for technology focuses on three other areas: establishment of a virtual neighborhood watch; establishment of an integrated web-based information sharing tool for all law enforcement personnel in Texas, and radio interoperability capable of supporting border enforcement operations.¹⁶³

One of these technology goals, the "virtual neighborhood watch", has begun operation. Five million dollars will be used to put cameras on private landowners' property with their consent. These cameras will have night-vision capabilities and have video feed that will be available in real time 24 hours a day to law enforcement agencies (local, state, and federal).¹⁶⁴

¹⁵⁷ Email from Amanda Arriaga, Office of the Governor, July 28, 2006.

¹⁵⁸ Statement of Sheriff Sigifredo Gonzalez, Jr. as submitted to the Senate Committee on Transportation and Homeland Security. July 26, 2006, Mission, Texas.

¹⁵⁹ Email from Amanda Arriaga, Office of the Governor, July 28, 2006.

¹⁶⁰ Testimony of Steve McCraw, Director, Governor's Office of Homeland Security, Before the Senate Committee on Transportation and Homeland Security, July 26, 2006.

¹⁶¹ Fact Sheet on Border Security, Office of Governor Rick Perry. Undated, received June 23, 2006.

¹⁶² Ibid.

¹⁶³ Testimony of Steve McCraw, Director, Governor's Office of Homeland Security, Before the Senate Committee on Transportation and Homeland Security, July 26, 2006.

¹⁶⁴ Castillo, Juan. "Perry Plans Surveillance Cameras Along Border." Austin American Statesman. June 2, 2006.

The program is currently in testing phase, and the state has received dozens of inquiries from private technology companies interested in helping with the program.¹⁶⁵

Operation Rio Grande was recently expanded by Governor Perry. In addition to the \$5 million for the web cameras, \$20 million was further allocated to cover body armor and to shift DPS officers to troubled border areas. Governor Perry has also announced that he will seek \$100 million in state funding from the Legislature to support border security activities including increasing the number of locally commissioned officers throughout the border region to include salary and benefits and the necessary equipment for these officers to include vehicles and weapons.

Interoperability

Communication among law enforcement officers and state and federal agencies is necessary for a secure border. Localities such as Cameron County are integrating statewide channels that accommodate the equipment used by state agencies.¹⁶⁶ They have also begun to move towards Project 25, a set of industry standards for digital mobile radio designed primarily for public safety agencies and adopted by the Association of Public-Safety Communications Officials International, Inc. This approach will enhance the partnership among local, state, and federal officials. Cameron County Judge Ruben Hinojosa testified "We had a recent threat to our Queen Isabella Causeway, which because the causeway crosses the Gulf Intracoastal Waterway, was also a threat to shipping. Since every local agency was on the same system, and radios had been furnished to DPS and the US Coast Guard, we were able to coordinate a rapid and effective response between local, state, and federal agencies."¹⁶⁷ In addition to having the voice system in place, Cameron County is also launching the BIEN-COM initiative that would provide local, state and federal officers with access to electronic databases and other services from the field, with a principal goal of increasing the apprehension of fugitives and those entering the US illegally.

Federal Initiatives

US Customs and Border Patrol

The clear and strategic goal of the Border Patrol (BP) is to establish and maintain operational control of the nation's border. Within their mission, BP also interdicts illegal aliens, drugs, and those who attempt to smuggle them across the border. President Bush is planning to increase the number of agents to over 18,000, doubling the number of agents since he took office in 2001.¹⁶⁸ BP efforts are augmented by technology such as the Remote Video Surveillance System (RVSS) used to monitor large areas of the border day or night. Sensors are also placed throughout the sector to allow for a more rapid response. These systems are complemented by the deployment of response teams such as the Border Patrol Tactical Team (BORTAC), Border Patrol Search, Trauma, and Rescue Team (BORSTAR), and the Special Response Team (SRT). The Border Intelligence Center (BIC) is also staffed every day.

¹⁶⁵ Grissom, Brandi. "Progress Slow on Border Web Cameras Plan". El Paso Times. July 7, 2006.

¹⁶⁶ Testimony of Cameron County Judge Ruben Hinojosa before the Senate Committee on Transportation and Homeland Security on July 26, 2006 in Mission, Texas.

¹⁶⁷ Ibid.

¹⁶⁸ Testimony of Lynne M. Underdown, Chief Patrol Agent, Rio Grande Valley Border Patrol Sector, of the US Customs and Border Protection Department of Homeland Security submitted to the Senate Committee on Transportation and Homeland Security, July 26, 2006 in Mission, Texas.

Operation Jump Start

Operation Jump Start was initiated by President George W. Bush to combat illegal immigration and provide support to the Border Patrol. Five hundred out of the 6,000 National Guard troops that the President called upon were assigned to Texas. The troops provide administrative services, freeing border patrol agents for field duty. They will also conduct engineering projects on the border including road barricades and fences, as well as participating in aerial and ground surveillance missions. The troops will be phased out once new border patrol agents are hired and trained. The enhancement of the National Guard has allowed the Border Patrol to expand the number of agents in the field.

Other Federal Activity

Appendix D (US Government Accountability Office report) and Appendix E (Congressional Budget Office) contain information regarding other federal activity.

Crime on the US/Mexico Border

Drug cartels and crime syndicates are a reality on the border. Intelligence information has shown that several murders in Laredo, Webb County, Texas, were orchestrated by drug cartels that are operating on both sides of the Rio Grande River.¹⁶⁹ The drug cartel enforcers are believed to cross the Rio Grande River illegally and well armed, commit murders in the United States, and then return to Mexico by crossing the river again. The cartels possess automatic weapons, grenades, and grenade launchers. They are also said to be experts in explosives, wiretapping, counter-surveillance, lock-picking, GPS technology, and have the ability to monitor offices, homes, and cellular phone conversations.¹⁷⁰

Crime along the border is also a cause of concern. According to testimony from LUPE, the children of *colonias*, low income subdivisions developed outside of the city limits, grow up "knowing criminal activity as a normal part of their lives."¹⁷¹ Robbery, domestic violence, and sexual harassment often go unreported by this group of people because they fear that their claim will be ignored and because people are afraid to report these crimes. Providing law enforcement with honest information regarding investigations becomes a significant factor in declining crime rates.¹⁷² In his testimony, Luis Figueroa of the Mexican American Legal Defense Fund (MALDEF) quotes Hans Marticiuc, President of the Houston Police Officers Union when saying, "It's very difficult in the immigration communities to get information from folks, and if there's a fear of being reported to the INS because of the illegal status, then it just makes our job that much more difficult and it makes the city have that much more criminal activity." It is not only fear of deportation that prevents people in border communities from reporting incidents to law enforcement. Residents along the border are afraid to report any criminal activity for fear of retaliation from the crime syndicates and gangs that reportedly live in their communities.¹⁷³

¹⁶⁹ Ibid.

¹⁷⁰ Statement of Sheriff Sigifredo Gonzalez, Jr. as submitted to the Senate Committee on Transportation and Homeland Security. July 26, 2006, Mission, Texas.

¹⁷¹ Testimony of Olga Cardoso, LUPE, before the Senate Committee on Transportation and Homeland Security on July 26, 2006 in Mission, Texas.

¹⁷² Testimony of Luis Figueroa, MALDEF, before the Senate Committee on Transportation and Homeland Security on July 26, 2006 in Mission, Texas.

¹⁷³ Meeting with Sigifredo Gonzalez in Zapata County on July 31, 2006.

Furthermore, people on the Mexican side of the border are appearing as members of the Mexican military, and even crossing illegally into Texas with that appearance and carrying out paramilitary activity. The appearance of military and "pseudo-cops" up and down the border creates a new threat for Texas law enforcement and residents. Thus far, it seems that the Mexican government has not taken steps to address this problem.¹⁷⁴

Human smuggling is also a problem faced by border communities. In some counties, illegal immigrants are held against their will until an "extra fee" is paid. These persons are promised minimum wage by "coyotes" (the term used for those smuggling illegal aliens across the border for money), but are then charged rent and forced to live in close quarters with fees for food also deducted from their wages. Sheriffs usually refer these cases to federal authorities. However, "coyotes" can also be armed and make demands on people along the riverbank. Landowners complain about cut fences and trash left by human and drug smugglers.¹⁷⁵ (See Appendix F for information on undocumented immigration and crime rates.)

Commerce

Testimony was received expressing concerns about the economic impact of border security measures. In testimony before the Committee, MALDEF lawyer Luis Figueroa cited a 2001 study by UCLA's North American Integration and Development Center that said excluding the undocumented Mexican population from the country would result in a \$155 billion drop in US economic output.¹⁷⁶ Cameron County Judge Ruben Hinojosa expressed concerns on the impact that security measures would have on the flow of people and goods across the border. His main concern is that cumbersome entry requirements for Mexican citizens who routinely cross the border in the US for brief periods will harm local retail and tourism sectors.¹⁷⁷ However, Steve McCraw observed "A secure border does not diminish economic growth and commerce; rather it will improve it while increasing the quality of life for citizens on both sides of the border."¹⁷⁸

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Testimony of Luis Figueroa, MALDEF, before the Senate Committee on Transportation and Homeland Security on July 26, 2006 in Mission, Texas.

¹⁷⁷ Testimony of Cameron County Judge Ruben Hinojosa before the Senate Committee on Transportation and Homeland Security on July 26, 2006 in Mission, Texas.

¹⁷⁸ Testimony of Steve McCraw, Director, Governor's Office of Homeland Security, Before the Senate Committee on Transportation and Homeland Security, July 26, 2006.

Findings and Recommendations

State and local governments face a very difficult task providing security for citizens without impeding commerce, tourism, or civil liberties. The Committee heard a widely diverging range of opinions on the state's success with this task so far. The Committee finds that the threat to our citizens is very real and increasing, that sufficient state safeguards and processes currently exist regarding local expenditure of state funds, that local governments should exercise prudent judgment where state guidelines are silent, and that state efforts to secure the border are appropriate, given that funding is inadequate and federal efforts to date are insufficient.

A secure border is necessary for the safety of the citizens of the State of Texas. One step in further securing the border is to increase the number of US Border Patrol officers. This will allow for a reinforcement of the "first line of defense" and can only make Operation Linebacker more effective. The Committee recommends the adoption of a resolution memorializing the federal government to provide more border patrol officers for the Texas-Mexico border.

The Committee finds that efforts initiated by Governor Rick Perry's office in cooperation with local law enforcement have been effective in increasing security along the border. The Committee recommends the continuation and full funding of these efforts.

The Committee heard testimony that commerce is impeded at the border due to limited hours of operation of border crossings. The Committee recommends the adoption of a resolution memorializing the federal government to operate border crossings 24 hours a day.

Joint Charges with Senate Finance Committee

1. Review the process by which the Texas Department of Transportation Commission allocates funds to the districts through the Allocation Program. Include a description of all scoring mechanisms used in making allocations of resources and make recommendations for maximizing the use of these funds to meet Legislative objectives.
2. Review the process by which the Texas Department of Transportation Commission determines which federal funding sources should be implemented to comply with funding reductions mandated by Congress. Assess the Commission's options for determining how projects that were to be funded out of these reduced revenue sources will be funded this biennium.

Introduction

On Wednesday, March 1, 2006, the Senate Committee on Finance and the Senate Committee on Transportation and Homeland Security met in a joint public hearing in Room E1.036 of the Capitol Extension, Austin, Texas, to take testimony on the Committees' joint interim charges.

The following witnesses testified on the two charges:

- Ric Williamson, Chairman, Texas Transportation Commission
- Ted Houghton, Member, Texas Transportation Commission
- Michael W. Behrens, Executive Director, Texas Department of Transportation
- Amadeo Saenz, Assistant Executive Director for Engineering Operations, Texas Department of Transportation
- James Bass, Chief Financial Officer, Texas Department of Transportation

Joint Charge 1 -- Allocation

Review the process by which the Texas Department of Transportation Commission allocates funds to the districts through the Allocation Program. Include a description of all scoring mechanisms used in making allocations of resources and make recommendations for maximizing the use of these funds to meet Legislative objectives.

Background

According to the Legislative Budget Board (LBB), the planning and development of transportation construction projects is a complex process. First, the need for a transportation project is identified through the input and involvement of cities, counties, Metropolitan Planning Organizations (MPOs), and citizen groups. To obtain federal funding for a project, current federal law requires the MPOs to develop a local transportation improvement program, which is a four-year, prioritized program of transportation projects covering a metropolitan planning area in a manner consistent with the metropolitan transportation plan.

After the MPO decisions are made, the Texas Transportation Commission (Commission) selects projects for inclusion in the Unified Transportation Program (UTP), a 10-year planning document that guides and controls project development for the Texas Department of Transportation (TxDOT) in a feasible and economical manner. The Commission also adopts transportation projects for its Statewide Transportation Improvement Program (STIP), a multiyear, statewide, intermodal program of transportation projects that includes a financial implementation plan and that must be implemented within each three-year period after the adoption of the program.¹⁷⁹

In the past 25 years, Texas' road capacity increased only eight percent,¹⁸⁰ while over the past ten years, highway construction letting in Texas has increased by over 151 percent, growing from \$2.07 billion in Fiscal Year 1997 to a projected \$5.20 billion in Fiscal Year 2006.¹⁸¹ Texans have expressed concerns to legislators regarding whether TxDOT's allocation processes are fair. These concerns are exacerbated by the increase in the dollar value of lettings, the rapid expansion of the use of tolls, and the potential for highway lettings "falling off" in later years as revenue sources, such as debt and the federal Highway Trust Fund become depleted.

In the context of the preceding history, TxDOT was asked to provide details regarding its methods of allocating projects and funding.

Guiding Principles

In developing its Strategic Plan, TxDOT defined its agency mission as being to work cooperatively to provide safe, effective, and efficient movement of people and goods.¹⁸²

Additionally, the Commission established "five goals that everyone at TxDOT should work to meet."¹⁸³ We want to reduce congestion, improve air quality, enhance safety, encourage economic opportunity and preserve the value of our transportation system." TxDOT reiterated in testimony at the joint committee hearing that, "As projects are developed, TxDOT works with its local partners to examine what a project will do to reduce congestion, improve safety, provide economic opportunities, improve air quality or increase the asset value of our system."

Allocation of State Transportation Resources

In 2004, TxDOT revised its project and funding allocation methods by consolidating funding categories, revising formulas, and moving certain project selection authority to the local or MPO level. MPOs now produce Metropolitan Mobility Plans (MMP), which are combined into the state plan known as the Texas Metropolitan Mobility Plan (TMMP). These decisions are reflected in TxDOT's Unified Transportation Program (UTP), which now has 12 funding categories (down from 34) that comprise its "Operational Plan."

¹⁷⁹ "Fiscal Size-Up 2006-2007," Legislative Budget Board.

¹⁸⁰ "Transportation Finance Needs and Options for the Future," Ric Williamson, Chairman, Texas Transportation Commission, Testimony to the Study Commission on Transportation Financing, April 19, 2006.

¹⁸¹ Letter from Michael W. Behrens, P.E., TxDOT Executive Director, to Lt. Governor David Dewhurst, July 18, 2006.

¹⁸² "TxDOT Has a Plan," TxDOT Strategic Plan 2007-2011, p. 2.

¹⁸³ "The Federal Surface Transportation System: Options for the Future," Ric Williamson, Chairman, Texas Transportation Commission, Testimony before the National Surface Transportation Policy and Revenue Commission, September 20, 2006.

The 12 categories are as follows:

- Category 1: Preventative Maintenance and Rehabilitation
- Category 2: Metropolitan Area Corridor Projects
- Category 3: Urban Area Corridor Projects
- Category 4: Statewide Connectivity Corridor Projects
- Category 5: Congestion Mitigation and Air Quality Improvement
- Category 6: Structures Replacement and Rehabilitation
- Category 7: Metropolitan Mobility/Rehabilitation
- Category 8: Safety
- Category 9: Transportation Enhancements
- Category 10: Supplemental Transportation Projects
- Category 11: District Discretionary
- Category 12: Strategic Priority

Active and proposed programming levels for each category for Fiscal Years 2006-2010 are as follows:

Unified Transportation Program						
	Category	Programming for FY 2006	Proposed Programming for FY 2007	Proposed Programming for FY 2008	Proposed Programming for FY 2009	Proposed Programming for FY 2010
1	Preventive Maintenance and Rehabilitation	\$1,100,000,000	\$1,100,000,000	\$1,125,000,000	\$1,325,000,000	\$1,325,000,000
2	Metro Corridor Projects	\$994,073,734	\$1,265,245,848	\$1,272,272,783	\$448,602,737	\$208,956,253
3	Urban Corridor Projects	\$114,470,852	\$164,474,390	\$190,402,853	\$69,015,806	\$32,147,116
4	Statewide Connectivity	\$390,028,765	\$492,668,782	\$490,401,970	\$172,539,514	\$80,367,789
5	CMAQ	\$131,421,656	\$141,603,849	\$147,435,908	\$148,598,114	\$152,786,703
6	Structure Rehabilitation	\$222,431,535	\$242,158,971	\$250,077,433	\$251,658,816	\$257,343,048
7	Metropolitan Mobility	\$224,455,571	\$246,148,084	\$258,692,885	\$261,267,745	\$270,356,504
8	Safety	\$370,671,189	\$367,269,091	\$334,416,199	\$138,894,580	\$142,719,880
9	Enhancements	\$82,461,224	\$82,461,224	\$82,461,224	\$82,461,224	\$82,461,224
10	Supplemental Transportation	\$206,637,520	\$213,236,081	\$219,253,563	\$224,067,550	\$228,894,238
11	District Discretionary	\$250,000,000	\$250,000,000	\$250,000,000	\$250,000,000	\$250,000,000
12	Strategic Priority	\$225,000,000	\$225,000,000	\$225,000,000	\$225,000,000	\$225,000,000
	Planned Letting	\$4,311,652,046	\$4,790,266,320	\$4,845,414,818	\$3,597,106,086	\$3,256,032,755

Project and Funding Decisions

The Commission programs money based on estimated gas tax revenues and federal appropriations, deciding how much of the funding they receive goes into each category. As illustrated by the following table, the project decisions for many of these categories are made with local input from elected officials, MPOs, or Councils of Government (COGS). Only category 12 Strategic Priority Money is spent at the sole discretion of the Commission, and the money is usually committed one to four years in advance.

Executive Director Behrens testified that money is distributed to categories first, then projects are selected based on each category's formula and local decisions. Many of the category formulas are dictated by federal law.

Funding Allocation Methodologies

CATEGORY	PROJECT INITIATION	FUNDING ALLOCATION METHODOLOGY	PROJECT SELECTION AUTHORITY
1 - Preventive Maintenance and Rehabilitation	TxDOT District, with MPO input	Funds are allocated to TxDOT districts based on a formula created by the Category 1 Working Group, (MPO, Regional Planning Council, COG and TxDOT district representatives).	TxDOT districts select projects with MPO concurrence based on highway maintenance needs.
2 - Metropolitan Area Corridor Projects	MPO	Funds are allocated to Transportation Management Areas. The formula was created by the Category 2 Working Group (representatives from the 8 MPOs and 9 districts)	MPOs approve corridors and selects projects. The commission approves projects based on MPO's plan.
3 - Urban Area Corridor Projects	MPO	Funds are allocated to MPO based on a formula created by the Category 3 Working Group (representatives from the Urban Area MPOs and districts).	MPOs approve corridors and selects projects. The commission approves projects based on MPO's plan.
4 - Statewide Connectivity Corridor Projects	TxDOT District, with local input	Funds are allocated to this statewide connectivity effort by the commission for the improvement of highways connecting major metropolitan centers.	Corridors are prioritized using criteria developed by the Category 4 Working Group (MPO, regional planning councils, COG and district representatives). Commission approves.
5 - Congestion Mitigation and Air Quality Improvement	MPO	Funds are allocated to non-attainment areas based on the federal allocation formula used to distribute CMAQ funds to the states.	Projects are selected by MPOs in consultation with TxDOT and the Texas Commission on Environmental Quality.
6 - Structures Replacement and Rehabilitation	TxDOT District	Funds are allocated to bridge rehabilitation projects based on the condition of the each specific bridge.	Projects are selected using the Texas Eligible Bridge Selection System. Commission approves projects.
7 - Metropolitan Mobility/Rehabilitation*	MPO	Funds are allocated directly to Transportation Management Areas by FHWA.	Projects are selected by MPOs in consultation with TxDOT.
8 - Safety Highway Safety Improvement Program, Safe Routes to School, Railway-Highway Crossing, Safety Bond Program	TxDOT District	The commission allocates funds to districts based on specific project safety score using recognized safety evaluation formulas.	Projects are selected according to federally approved safety indices and prioritized listing. Commission approves projects
9 - Transportation Enhancements	Local Entities	Commission allocates funds to districts based on specific project recommendation by statewide selection committee.	Local entities nominate projects and FHWA determines eligibility. Projects are selected and approved by the commission on a per-project basis.
10 - Supplemental Transportation Projects State Park Roads, Railroad Grade Crossings Replanking, Railroad Signal Maintenance, Construction Landscaping, Coordinated Border Infrastructure Program and Congressional High Priority Projects	TxDOT District, Texas Parks and Wildlife Department, Other (federal allocation)	Commission allocates funds to districts with allocation formulas, using Texas Parks and Wildlife project selections or approves participation in federal programs selected by members of Congress and FHWA.	Projects are selected statewide by Traffic Operations Division or Texas Parks and Wildlife Department, local projects selected by districts. Federal projects are selected by Congress.
11 - District Discretionary	TxDOT District, with local input	Funds are allocated based on a formula created by the Category 11 Working Group, made up of members of MPOs, Regional Planning Organizations, and COGs.	TxDOT districts selects projects with MPO concurrence based on the needs of the area.
12 - Strategic Priority	Commission	Commission allocates funds.	Commission selects projects that meet strategic goals.

Source: Texas Department of Transportation

Relationship to the Appropriations Process

Starting with the UTP, TxDOT begins its decision making process by reviewing when projects are scheduled to be awarded and the necessary developmental costs to get projects through various stages of completion. Based upon these projected contract award dates, TxDOT estimates the associated expenditures by fiscal year. It is this information which is then fed into the Legislative Appropriations Request and is the beginning for discussions with the Legislature on TxDOT's appropriations.¹⁸⁴

Chairman Williamson testified that project planning and development take a number of years (environmental and right-of-way processes alone can take several years on a single project), with overall levels set based on TxDOT's estimate of revenue. He also explained that the 12 categories are used for programming (selecting and sequencing) projects, while the appropriations bill provides two years of funding to pay the bills.

At this time, nothing in TxDOT's appropriation bill delegates money directly into the 12 categories of TxDOT's UTP. TxDOT advised that it is not possible for the amounts listed in the 12 categories to be added together to match the level of funds appropriated in the various General Appropriations Act (GAA) strategies for several reasons. First, the amounts listed in the UTP categories are programming amounts (anticipated contract award amounts), while the amounts in the GAA are for expenditures over time. It is important to note that TxDOT does not charge expenditures back to the year of contract award, but instead charges the expenditures to the fiscal year in which the work is performed. A project that is programmed to be let in one year is likely to have expenditure impact in three or more years of appropriations. Secondly, amounts in the UTP are for the contract award amount and do not include other project-related costs such as planning, design, and right-of-way acquisition and other development services.

Debt Issuance

TxDOT has a number of mechanisms available for the issuance of debt.

Texas Mobility Fund. In 2001, Senator Florence Shapiro authored legislation to create the Texas Mobility Fund to back bonds¹⁸⁵. In 2003, the Legislature dedicated portions of the Driver's Responsibility Act and Statewide Traffic Fines to the fund; the Texas Mobility Fund revenue source was changed in 2005 to vehicle inspection fees (FY 2006), driver record and information fees (FY 2007), driver license fees (FY 2008), and certificate of title fees (FY 2009). The Texas Bond Review Board has approved issuance of up to \$4 billion based on revenue to the fund, which must have 110% coverage. These bonds have a 30-year maximum maturity. By December 2006, about \$3 billion will have been issued. James Bass testified in March of 2006 that the full \$4 billion available from Mobility Fund bonds will be committed in 12-18 months, and that under the \$4 billion cap, the bonds must be paid off before more can be issued.

¹⁸⁴ Letter from Michael Behrens, P.E., TxDOT Executive Director to Senator John Carona, May 25, 2006.

¹⁸⁵ SJR 16, ballot Proposition 15: "The constitutional amendment creating the Texas Mobility Fund and authorizing grants and loans of money and issuance of obligations for financing the construction, reconstruction, acquisition, operation, and expansion of state highways, turnpikes, toll roads, toll bridges, and other mobility projects." The enabling legislation was SB 4.

State Highway Fund Bonds. Because of a constitutional amendment adopted September 13, 2003¹⁸⁶, TxDOT can now issue debt backed by the State Highway Fund. Statute limits this authority to the issuance of \$1 billion in bonds per year, up to a total amount of \$3 billion of debt, backed by the State Highway Fund. Statute also provides that at least \$600 million of the \$3 billion total debt allowed must be used for safety projects. These bonds must have a 20 year maximum maturity. By December 2006, about \$1.6 billion of these bonds will have been issued.

Highway Tax and Revenue Anticipation Notes (HTRANS). Proposition 14 also authorized TxDOT to issue short-term Highway Tax and Revenue Anticipation Notes to fund highway improvement projects (Transportation Code 201.961 et seq.). These are intended as a cash management tool. TxDOT can borrow up to two months' average revenue, for up to 24 months.

Border Colonias Access Program. This program authorizes the issuance of up to \$175 million in General Obligation (GO) bonds, administered by the Texas Public Finance Authority, for roads in and to colonias.

Private Activity Bonds (PAB). A PAB is generally a government bond used for private purposes and given tax-exempt status (whether it is taxable or tax exempt depends on the use of the funds, not the source). Federal law provides an annual state limit on the amount of private activities financed by tax-exempt bonds; Texas' 2005 limit is \$80 per capita or \$1.8 billion. Section 11143 of Title XI of SAFETEA-LU amended Section 142 of the Internal Revenue Code to authorize the addition of highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued. The US Department of Transportation recently allocated up to \$1.8666 billion for State Highway 121 (a six lane toll road in Collin and Denton Counties, including two major interchanges at US 75 and the Dallas North Toll Road, and related projects). These PABs are exempt from the state cap as a function of federal law.

Advantages of Debt Issuance

Due to inflation, the costs of building transportation infrastructure today are cheaper than purchasing the same facilities in future years. In addition, the economic development resulting from constructing a facility creates a tax base that can pay for the debt service on the bonds. Texas has a low state debt burden compared with other states, ranking fifteenth among the 15 most populous states in state debt per capita in 2003.¹⁸⁷

¹⁸⁶ HJR 28, ballot Proposition 14: "The constitutional amendment providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund." Also referred to as Ogden Bonds. The primary enabling legislation was HB 471.

¹⁸⁷ Legislative Budget Board, Texas Fact Book 2006.

Uses of Transportation-Related Revenue

Article 8 (Taxation and Revenue), Section 7-a of the Texas Constitution lays out the dedicated uses of motor fuels taxes and vehicle registration fees:

Section 7-a - REVENUES FROM MOTOR VEHICLE REGISTRATION FEES AND TAXES ON MOTOR FUELS AND LUBRICANTS; PURPOSES FOR WHICH USED

Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth (1/4) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose.

During the March 2006 joint interim charge hearing, Chairman Williamson testified that the largest single non-highway construction related appropriation is the amount appropriated to the Department of Public Safety, \$443.9 million in FY 2005. Although the Legislature's appropriations to the Department of Public Safety are considered constitutionally permissible, as funds used to "police the highways," Chairman Williamson testified that the Commission would prefer to be able to use more of the fund for highway construction and other transportation needs. It is TxDOT's opinion that appropriations for the Department of Public Safety from the State Highway Fund should at least be limited to the Highway Patrol and Driver License functions. The Commission would also like to have fee and permit revenues related to motor carrier operations and enforcement, as well as vehicle sales taxes, directed to the State Highway Fund, and to discontinue other diversions that include the Comptroller's fund management function (1% of the motor fuels tax), and funding to the Higher Education Coordinating Board.

Toll Roads

In response to a question regarding the Camino Colombia toll road, Chairman Williamson said that the lesson is that Texas should be careful in any commitments to toll roads. He noted that Camino Colombia was a wholly private project that had no state funds in it until TxDOT purchased it using strategic priority funds, and that TxDOT is taking a systems approach to toll roads to ensure that roads do not fail due to lack of connecting infrastructure.

Gas Taxes and Toll Roads

In response to a question about whether changing motor fuels tax rates or appropriations could have an impact on the need for toll roads, Chairman Williamson responded that the gap could be bridged if the gas tax was raised to \$1.25 per gallon, but there is no reason to think that will happen. He also testified that raising the gas tax a nickel a year would only build three interchanges a year, compared to the 150 that are needed right now, and a tax of 55 cents per gallon would be needed just to maintain transportation funding with population growth and inflation.

Williamson also explained that if all transportation-related revenue was appropriated to TxDOT and all transportation federal funds were returned to Texas, it would lessen the need for some toll roads, but currently toll roads are necessary to address projects on the books today and the crush of population expected by 2030. In his conclusion, Williamson emphasized that in the meantime, people are paying a tax every day in terms of jobs lost, failing air quality, and worsening congestion.

Findings and Recommendations

Allocation. TxDOT is commended for its efforts to increase local involvement in decision making. Given the remaining complexity of formulas and distribution methods, TxDOT should review and update its methods of providing information on the geographic distribution of projects and funding (historic and future) in order to provide accurate, informative, and timely responses to legislative and constituent requests. Further, TxDOT should anticipate and prepare for increased inquiries due to the expansion of tolling and related issues (return of toll revenue to local areas, setting of toll rates, decisions involved in constructing roads through tolls instead of other methods) and make explanatory material readily available to the public.

Programming levels in the UTP should be subject to legislative approval.

Cost Containment. TxDOT should create and clearly articulate a plan for cost containment.

Debt. Limitations on debt issuance are statutory or practical, not driven by the Texas Constitution. The Legislature should increase the statutory and practical caps on the amount of debt that can be issued for transportation facilities.

Information Accessibility. The Legislature should adopt legislation requiring TxDOT to publish annually and make available on its website in a format that allows the information to be read into a database electronically, on both a statewide and by-county basis, at a minimum, details by fiscal year of Square Miles and Vehicles Registered, Population and Daily Vehicle Miles, Centerline Miles and Lane Miles, Construction, Maintenance and Contracted Routine and Preventive Maintenance Expenditures, Construction, Maintenance and Contracted Routine and Preventive Maintenance Expenditures (Combined), District, Division/Office Construction and Maintenance Employees, Statistical Comparison of TxDOT Districts, Grant Programs (Auto Theft Prevention Authority, Aviation Grant Awards, Aviation Capital Improvement Grants, Routine Airport Maintenance Program, Public Transportation Grant Program, Medical Transportation Program), State Infrastructure Bank Loans Approved, and Texas Traffic Safety Program Grants/Expenditures.

Private Activity Bonds. The Legislature should adopt legislation requiring TxDOT to submit any request for private activity bonds to the Bond Review Board prior to submission to federal agencies. The Bond Review Board will review and comment on the request and advise the Legislature of potential consequences to the State of Texas if the request is granted.

Appropriation of Transportation-Related Revenue. Article VIII, Section 7-a of the Texas Constitution defines the permissible expenditures from the State Highway Fund. While the Legislature has the constitutional authority to use dedicated state highway funds for non-highway construction purposes such as appropriations to the Department of Public Safety, the Legislature should, in times of budget surpluses, consider funding the Texas Department of Public Safety operations with General Revenue. The Legislature should periodically review whether transportation revenue streams currently directed to the General Revenue Fund should be redirected to the State Highway Fund in order to increase TxDOT appropriations for highway construction and other transportation needs.

Trans-Texas Corridor. TxDOT should integrate the Trans-Texas Corridor with the Texas Trunk System and improve the agency's efforts to explain the project to the public.

Tolls. Tolls should be set to cover costs and debt service on a given road. When the debt is retired, the toll should be eliminated or at least lowered to the amount needed to cover the road's maintenance costs. Toll equity levels should also be subject to legislative approval.

Up-Front Payments. Legislative appropriation of up-front payments received by TxDOT as a provision of a comprehensive development agreement should be required before the payments can be spent or applied to projects or operations.

Comprehensive Development Agreements (CDAs) and Non-Compete Clauses. The Legislature finds that TxDOT's aggressive implementation of Comprehensive Development Agreements has resulted in expansive use of this tool in advance of adequate public debate regarding its appropriate use. The Legislature should adopt legislation limiting the use of CDAs to instances where standard or alternative funding mechanisms are not available and local MPOs and transportation infrastructure agencies are in concurrence with their use.

The Legislature finds that it has provided insufficient guidance to TxDOT regarding the inclusion and use of noncompete clauses. The Legislature should adopt legislation prohibiting the inclusion of noncompete clauses or covenants not to build competing systems in Comprehensive Development Agreements, bond contracts, or other agreements. This prohibition should extend to all transportation infrastructure constructed by any public entity.

Joint Charge 2 -- Project Funding Reductions

Review the process by which the Texas Department of Transportation Commission determines which federal funding sources should be implemented to comply with funding reductions mandated by Congress. Assess the Commission's options for determining how projects that were to be funded out of these reduced revenue sources will be funded this biennium.

Background

Unreliability and Instability of Federal Funding Sources for Transportation

During the March 1, 2006 hearing, TxDOT provided examples of the circumstances leading to unprecedented uncertainty in federal transportation funding affecting the funds reaching Texas:

- Continuation of "donor state" status in highway and transit programs
- Potential insolvency of the federal Highway Trust Fund
- Movement of funds from formula distribution to discretionary and demonstration programs
- Frequency of structural changes in programs
- Increase in earmarking funds
- Across-the-board and programmatic rescissions of previous federal funding commitments

TxDOT testified that there have been three recent federal transportation rescissions - one prior to the joint March 1, 2006 hearing and two subsequent rescissions. On December 28, 2005, \$159 million in transportation funding was rescinded by the federal government.¹⁸⁸ In April of 2006, due to the Department of Defense Appropriations Act, 2006, Public Law 109-148, the Federal Highway Administration (FHWA) notified TxDOT of another nationwide rescission of \$1,143,000,000 of unobligated federal-aid highway funds apportioned to the states. The Texas portion of this rescission was approximately \$90 million.

In July of 2006, pursuant to the Hurricane/War Supplemental Appropriations spending bill passed as a part of the Emergency Supplemental Appropriations Act, 2006, Public Law 109-234, the Federal Highway Administration notified TxDOT of a \$702,000,000 reduction in federal-aid highway funds apportioned to the 50 states. The Texas portion of this amount is approximately another \$56 million. Federal-aid reductions in the Texas apportionment this year now total \$305,000,000 and TxDOT believes that more rescissions are possible.

¹⁸⁸ Letter from Ric Williamson, Chairman, Texas Transportation Commission to Chairman John Carona, April 25, 2006.

Rescissions

TxDOT also provided a chart of rescissions in recent years:

Date	Federal Notice	Texas' Rescission Amount
December 28, 2005	N 4510.578	\$158,707,654
January 25, 2005	N 4510.540	\$102,562,220
February 20, 2004	N 4510.515	\$16,392,410
June 10, 2003	N 4510.508	\$19,668,487
September 24, 2002	N 4510.481	\$24,666,390

Discussion

Process of Identifying Funds to be Rescinded

TxDOT explained that upon receiving the rescission notice, states were encouraged to review projects funded from the older apportionment categories to determine if any of those funds could be applied to the rescission. TxDOT says it took great care to remove dollars from programs that would cause the least damage to their primary goals of congestion reduction, increased safety, economic opportunity, air quality improvements, and preserving the value of the state's transportation assets. TxDOT testified that it returned \$116,018,633.67 of unobligated Surface Transportation Enhancement Program (STEP) funds, making up the majority of the \$158,707,654 December rescission.¹⁸⁹ (Unobligated balances are dollars that have been awarded to local projects, but the projects have not gone to contract.)

In the Transportation Commission's judgment, the reason why the majority of the rescinded funds were chosen from STEP funds is that TxDOT believes that STEP funds have the weakest connection to the agency's stated goals of congestion reduction, enhanced safety, increased economic opportunity, improved air quality, and preserved value for the state's transportation assets. Chairman Williamson testified that over the life of a six-year reauthorization bill, \$2.47 billion cannot be spent on projects that would address system capacity needs, and that the need to spend transportation funds on courthouses does not compare to the need to address congested roads. As a result, the majority of the funding cuts chosen by TxDOT to satisfy all three rescissions consist of unobligated balances from the Surface Transportation Enhancement Program.

Surface Transportation Enhancement Program (STEP) Funding

Project Selection. The Surface Transportation Enhancement Program (STEP), created in 1992, is a federal reimbursement program that is primarily used by local communities to enhance their current transportation system. The allocation is based on a federal apportionment. To be eligible for consideration, projects must demonstrate a relationship to the surface transportation system by either physically tying into the system, or by positively impacting the system in some way. The project must go above and beyond standard transportation activities. Projects are selected by the Texas Transportation Commission after applications are reviewed by the Federal Highway Administration for eligibility and by a state selection committee for merit.

¹⁸⁹ "Identification of Funding Sources To Comply with Congressionally Mandated Funding Reductions," TxDOT, March 1, 2006.

79th Legislature. During the 79th Regular Legislative Session, the Legislature designated a total of \$119.3 million in STEP funding, to the extent allowable under federal law, to be used for courthouse preservation and six additional projects:

GAA 2006-07 Biennium-TxDOT Transportation Enhancement Program Riders			
Article VII Rider #	Project	Amount	FHWA Determination as of 9/8/2006
43	Tejano Monument	\$ 602,645	Ineligible
44	Courthouse Preservation	\$ 80,000,000	Pending
45	Battleship Texas	\$ 16,090,050	Ineligible
46	Juneteenth Monument	\$ 602,645	Ineligible
47	Woodall Rodgers Park	\$ 10,000,000	Eligible
48	Music History Museum	\$ 10,000,000	Ineligible
52	Houston Fire Museum	\$ 2,000,000	Ineligible
	TOTAL	\$ 119,295,340	

Chart Provided by the Legislative Budget Board

Courthouse Preservation. Courthouse Preservation was one of the approved uses for STEP Funds under previous federal transportation bills. Recognizing the value and significance of courthouse preservation, the Legislature adopted an appropriation rider last session to require the program's continuation:¹⁹⁰

44. Courthouse Preservation Program Grants. Out of the amounts appropriated above, the Texas Department of Transportation shall make available during the biennium \$80 million in federal Transportation Enhancement Program funds administered by the department for courthouse preservation projects whenever such projects are approved by the Texas Historical Commission's Courthouse Preservation Program and meet federal funding requirements of the Transportation Enhancement Program as defined by federal Department of Transportation, Federal Highway Administration federal regulations in Title 23 of the United States Code. The Texas Historical Commission in conjunction with the Texas Department of Transportation will review courthouse preservation projects to determine if courthouse projects meet the federal Transportation Enhancement Program guidelines in Title 23 of the United States Code. It is the intent of the Legislature that funds appropriated above would cover the costs of administering courthouse projects approved for federal Transportation Enhancement Program funds. In addition, the Texas Department of Transportation may redirect obligated funds previously obligated for courthouse preservation under the Transportation Enhancement Program to other available projects should such courthouse projects fail to receive federal approval or federal Transportation Enhancement Program funds are not available due to changes in federal laws, rules, regulations, or appropriations.

¹⁹⁰ Senate Bill 1 (General Appropriations Act), Regular Session, 2005.

TxDOT Testimony. The Texas Historical Commission has recently submitted several test courthouse cases to the Federal Government for approval to test the new qualification standards and are still pending approval, but TxDOT testified that the language authorizing STEP program funding in the recent transportation authorization bill was recently rewritten, and that TxDOT does not believe that a majority of the currently proposed courthouse preservation projects will now be eligible for STEP funding. TxDOT further testified that STEP funds reduce revenues that would be available for transportation projects and that it has asked the federal government to grant the State of Texas the flexibility to utilize enhancement funds for hurricane preparedness and to assist in combating wildfires in the future. Regardless, Chairman Williamson testified during the March hearing that TxDOT will follow the law and honor the will of the Legislature to fund the enhancement projects listed in their appropriations bill pattern if the projects are approved by the Federal Government.

In addition to the Courthouse Preservation rider project in the chart above, five other rider projects have been submitted to TxDOT and the Federal Highway Administration for review. The FHWA has determined that most of the projects with direction by GAA riders to be funded with STEP funding are not eligible for STEP dollars. The Woodall Rodgers Park project has been the only project approved by the FHWA so far, while the test cases for Courthouse Preservation are still pending.

Presently, in spite of now \$305,000,000 in federal aid reductions, TxDOT is still assuring the Legislature that they will still be able to provide sufficient funding for all enhancement projects in progress and they anticipate having sufficient funding to address most of the "big ticket, high impact" enhancement projects which may be approved during the current call for projects.

Other Funding Issues

Earmarks. Also discussed at the hearing was the fact that federal earmarks in the recent transportation reauthorization act - SAFETEA-LU - reduce the amount of Texas' apportionment, and do not bring extra money to the state. Of SAFETEA-LU's 208 congressional earmarks for Texas, totaling \$678 million, 83 (\$212 million) were projects not prioritized or even considered by the local metropolitan planning organizations. Because earmarks rarely cover the entire cost of the project, state funding of these 83 unplanned projects would require the transfer of \$1.2 billion away from more urgent projects already approved by local leaders.¹⁹¹

Findings and Recommendations

Rescissions. The Legislature should require TxDOT to create a formal mechanism for considering responses to federal rescissions that includes Legislative Budget Board and gubernatorial input.

Enhancements. While TxDOT has provided assurances that eligible transportation enhancement projects will be funded and carried out, its actions have created an appearance of the potential for subverting the Legislature's will. The Legislature should monitor TxDOT's implementation of the STEP program to ensure the Legislature's will is carried out, particularly in regard to courthouse preservation.

Earmarks. The Legislature should petition Congress to reduce or eliminate the practice of earmarking.

¹⁹¹ Letter from Michael Behrens, TxDOT Executive Director, to Chairman John Carona, May 25, 2006.

Joint Charge with Senate Business & Commerce Committee

Joint Charge 1 – Utility Relocation

Study and make recommendations relating to the relocation of utilities from the state owned right-of-way, including an assessment of the costs of relocations, possible funding sources, and methods to decrease delays associated with relocation.

Background

Utilities provide essential services to the citizens of Texas. Because these services enable the seamless functioning of society, utilities are permitted to locate their facilities in state-owned highway rights-of-way. As municipalities expand and population numbers increase, construction of new transportation facilities and expansion of existing transportation corridors are necessary to accommodate the increased traffic. At times, the relocation of existing utility facilities in the public rights-of-way is required in order to allow for the transportation construction. The costs associated with that relocation can be significant, and the methods used to determine the entity responsible for paying the costs accompanying that relocation are varied. Depending on the circumstance, sometimes the utility is responsible while at other times the state is responsible. This interim charge seeks to address the issue of which entity should pay for the relocation of utilities from the right-of-way when the state performs maintenance on existing roads or constructs new infrastructure.

Multiple provisions of Texas law govern utility presence in the public right-of-way. The Texas Transportation Code § 203.091 defines a utility for relocation purposes as a publicly, privately, or cooperatively owned utility that provides telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer, or pipeline service.¹⁹²

The Texas Local Government Code § 283.002 defines a public "right-of-way" as the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest.¹⁹³ The term does not include the airwaves above a right-of-way with regard to wireless communications. Therefore, this charge addresses only those utilities which utilize the public land on or below state owned rights-of-way. The State of Texas, not municipalities, holds legal title to rights-of-way. The municipalities and other legal subdivisions have control over rights-of-way as trustees for the public.

The Texas Utilities Code §§ 181.022, 181.042, and 181.082 allow for gas, electric, and telecommunications companies to construct and maintain their facilities in the public right-of-way.¹⁹⁴ If relocation is due to non-highway city or county project development, such as a building or shopping center, the developer or municipality traditionally pays the costs of relocating the utility facilities.¹⁹⁵

¹⁹² TEX. TRANSP. CODE ANN. § 203.91 (Vernon 1998).

¹⁹³ TEX. TRANSP. CODE ANN. § 283.002 (Vernon 1998).

¹⁹⁴ TEX. UTIL. CODE ANN. §§ 181.022, 181.042, 181.082 (Vernon 1998).

¹⁹⁵ Bryan Gonterman, Vice President of Legislative Affairs, AT&T Texas, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

When utilities are required to relocate facilities due to interstate or federal highway projects, the Texas Department of Transportation (TxDOT) typically uses federal funds to reimburse the utility the cost of relocation.¹⁹⁶ In the testimony of Amadeo Saenz, Assistant Executive Director for Engineering Operations at TxDOT, the agency observed that a portion of federal money necessary for reimbursing utilities for the cost of relocation can be redirected for state highway construction rather than utility relocation. As such, the agency proposed that utilities should pay those costs because "any money that you spend on adjusting utilities on the interstate system is less money that you have for constructing highways."¹⁹⁷

Section 203.092 of the Transportation Code requires the state to pay utilities the cost of facilities relocation if the relocation is required as part of an improvement to a state highway and the project is eligible for federal reimbursement.¹⁹⁸ Until September 1, 2007, the state and the utility will equally share the costs associated with the relocation due to toll lanes or turnpike construction.¹⁹⁹ After September 1, 2007, the utility will absorb the costs of relocation for new tolled projects. If a utility is required to relocate due to widening or straightening of an existing road, the utility typically will pay the cost to relocate unless the utility currently owns the easement where their facilities are located.²⁰⁰

Legislative History

During the 78th Legislative Session, House Bill 3588 was enrolled with a provision stating that TxDOT may direct the time and manner of construction of a public utility facility on the Trans-Texas Corridor, and may specify the location of any facility on the corridor.²⁰¹

Prior to the 79th Legislative Session, utilities were reimbursed by the state for relocation expenses incurred for state toll road projects. However, in the 79th Legislative Session, House Bill 2702 was enrolled amending Section 203.092(a) of the Texas Transportation Code. As a result of this bill, the state must pay the utility relocation expenses for required improvements to a segment of the state highway system that was designated as a turnpike or toll project before September 1, 2005. This legislation changed the historic policy of utility reimbursement for toll projects.²⁰² This bill also included a provision shifting the cost burden to the utilities for turnpikes or tolled projects by September 1, 2007.²⁰³ Currently, the state and utility split the cost.

House Bill 2702 also included a provision requiring TxDOT to study the best way to maximize the use of highway rights-of-way by public utilities. This report will be presented to the Legislature by December 31, 2006.²⁰⁴

¹⁹⁶ Amadeo Saenz, Assistant Executive Director of Engineering Operations, TxDOT, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

¹⁹⁷ Ibid.

¹⁹⁸ TEX. TRANSP. CODE ANN. § 203.092 (Vernon 1998).

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Tex. H.B. 3588, 78th Leg., R.S. (2003).

²⁰² Tex. H.B. 2702, 79th Leg. R.S. (2005).

²⁰³ Section 2.14 (a-1) through (a-3).

²⁰⁴ Amadeo Saenz, Assistant Executive Director for Engineering Operations, TxDOT, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

Cost Assessment Of Relocation

The TxDOT utility permitting process involves 220 full time equivalents (FTEs) at an estimated cost of \$8 - \$25 million per year. The utility relocation process requires approximately 210 FTEs at an estimated cost of \$8 - \$23 million per year.²⁰⁵ Overall, TxDOT uses about 430 FTEs and spends approximately \$16 - \$48 million per year in administering utility permits and utility relocation tasks.²⁰⁶ This is equal to approximately 3-10 percent of the total labor and administration costs at TxDOT.²⁰⁷ These costs do not include the impact of potential delays or the potential negative impact on the maintenance or use of rights-of-way.²⁰⁸

Over the past few years, TxDOT has paid utilities the following to relocate utility lines along Interstate highways:²⁰⁹

Year	Relocation Costs
2000	\$6,675,132
2001	\$9,726,549
2002	\$18,096,060
2003	\$30,016,401
2004	\$48,149,930
2005	\$62,452,751
2006 (as of July 25, 2006)	\$74,403,324

When the relocation of utilities is necessary for the improvement of a part of the National System of Interstate and Defense Highways, Texas Transportation Code § 203.092(a) requires the state to reimburse utilities for their relocation expenses, regardless of the nature of their property interests.²¹⁰ A utility must have a superior property interest, such as an easement, to be eligible for reimbursement of relocation expenses for improvements to all other state highways.²¹¹

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Amadeo Saenz, Assistant Executive Director for Engineering Operations, TxDOT, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

From the utilities' standpoint, relocation can be quite costly if they are required to absorb the cost. A current example of a large scale utility relocation is the expansion of I-10 between Katy and Houston. For construction to take place, AT&T was required to relocate 20 miles of its facilities. It is estimated that with 200 full time employees, it will take approximately 2 million hours of labor to relocate the facilities, resulting in costs near \$200 million.²¹² Since this is a federally funded project, AT&T can be reimbursed from the federal funds allocated to the state.²¹³ AT&T and other utilities absorb the costs of relocating facilities for most road projects, except when an external source of money is available, such as federal highway funding. AT&T has paid the following to relocate facilities over the last 2 years (costs in millions of dollars):²¹⁴

Project	Current Rule	Non-Reimbursable (absorbed by AT&T)			Reimbursable (entities reimburse AT&T)		
		2004	2005	2006 Est.	2004	2005	2006 Est.
City	AT&T absorbs for all widening and straightening	\$8.3	\$8.0	\$10.1	\$1.8	\$2.1	\$1.5
County	ATT voluntarily absorbs for all widening and straightening	\$4.3	\$5.8	\$5.7	\$0.5	\$0.1	\$0.3
State	ATT absorbs	\$15.5	\$14.9	\$18.3	\$2.8	\$8.1	\$2.0
State Toll Roads	50/50 split until 9/1/07						\$1.6
Federal	100% reimbursement for federally funded projects	\$0.2	\$0.1		\$50.0	\$61.0	\$39.2
Total		\$28.3	\$28.8	\$34.1	\$55.1	\$71.3	\$44.6

Utilities that own and operate natural gas pipelines are also impacted by facilities relocation due to transportation improvements. Texas is the nation's largest consumer of natural gas with an annual consumption rate of 3.5 - 4.5 trillion cubic feet per year. Only ten percent of this natural gas consumption goes to light gas stoves, water heaters, and for other residential and small business purposes, while eighty percent of the gas goes to the industrial or electric market.²¹⁵ The remaining ten percent is used to run the natural gas facility compressors.²¹⁶ According to the Texas Pipeline Association, to relocate a pipeline that is twenty four to thirty-six inches in diameter costs anywhere from \$600,000 to \$1,000,000 per mile of pipeline to be relocated.²¹⁷ The variance in cost is due to the unstable nature of steel costs.²¹⁸

²¹² Bryan Gonterman, Vice President of Legislative Affairs, AT&T Texas, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Phone conversation between Christine Gonzalez, Transportation Policy Analyst, Senate Committee on Transportation and Homeland Security, and Pat Nugent, President, Texas Pipeline Association. September 25, 2006.

Possible Funding Sources

At its most simplistic level, the question facing the Legislature is who should be responsible for the cost of utility relocations: the ratepayers/subscribers of utility services, those who use the roads and infrastructure, or all Texas taxpayers? Generally speaking, utilities will pass additional costs along to consumers rather than absorb the additional costs.²¹⁹ Utilities have stated that they would either have to substantially raise rates or cut back on services or technology deployment in order to compensate for losses associated with relocation costs.²²⁰ During the hearing on this charge, Bryan Gonterman of AT&T Texas stated that basic local service could rise by as much as 50-60 percent if utilities are required to offset the cost of relocation.²²¹ Ultimately, the people of Texas will pay for both utility relocation and be the beneficiary of the relocation, either through continued or improved access to utilities services, or by improvements to the roads and therefore mobility.

Methods To Decrease Delays Associated With Relocation

TxDOT schedules utility relocation in a specific order to reduce the amount of delay caused by relocating a utility from the right-of-way. When one utility falls behind schedule, the entire project is delayed.²²²

According to the Associated General Contractors of Texas (AGC), delays associated with the relocation of utility facilities are the primary reason for highway construction delays.²²³ In order to decrease delays, AGC testified that the utilities should control their relocation efforts, including payment of associated costs. Relocation projects will flow more smoothly and delays would be reduced if the utility did not have to rely on TxDOT to reimburse them.²²⁴ This result is due to the utility being able to appropriately budget for their relocation without surprises.²²⁵

TxDOT is currently working with telecommunications utilities in order to reduce the current relocation delays.²²⁶ When delays are reduced and projects are able to stay on their respective timetables, all interested parties end up gaining financially, and the public is subjected to fewer days of disruption in their travels.

²¹⁹ Bryan Gonterman, Vice President of Legislative Affairs, AT&T Texas, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

²²⁰ Ibid.

²²¹ Ibid.

²²² Amadeo Saenz, Assistant Executive Director for Engineering Operations, TxDOT, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

²²³ James D. Pitcock, Highway Contractor, representing Williams Brothers Construction Co., Inc. and Associated General Contractors of Texas, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Bryan Gonterman, Vice President of Legislative Affairs, AT&T Texas, testimony to the Senate Business and Commerce Committee and Senate Transportation and Homeland Security Committee, November 9, 2006.

Findings and Recommendations

When TxDOT requires a utility to relocate a facility, a financial burden is created. The Legislature is being asked to consider whether that burden should be passed along to utility service subscribers, to the people who specifically use that road, or to the taxpayers of the State.

Currently, in regards to city or county roads, the utility pays for relocation of facilities when the roads are widened or straightened. However, if the utility is being relocated due to economic expansion, such as a shopping center, or general beautification, then the city or the developer is responsible for paying the costs of relocation. The utilities also currently pay for relocation on most state projects except for toll roads and interstate highways. As a result of House Bill 2702, TxDOT and the utility companies currently share the cost of facility relocation relating to toll roads or turnpikes. The federal government pays for relocation in relation to interstates and other federal highways.

The committee recommends the continuation of current law generally regarding TxDOT's payment for relocation costs and believes that utilities should not be required to pay relocation costs that they are not currently financially responsible for.

The committee also recommends that TxDOT make every effort to cooperate with utilities in order to expedite the relocation process.

When relocating utilities, the Texas Transportation Code requires utilities to share the cost of relocation with the state and, in the future, will place the burden of relocation costs entirely on utilities when the relocation is in relation to new toll or turnpike projects. The committee recommends eliminating the phrase "before September 1, 2005" from the Texas Transportation Code §203.092 (a)(3), which placed the cost burden of relocation on the utilities after this date regarding toll and turnpike projects. The committee recommends allowing parts (a-1) through (a-3) of Texas Transportation Code § 203.092 regarding utility relocation reimbursement for toll and turnpike projects to expire on their own terms on September 1, 2007. The committee recommends a standard utility relocation policy, regardless of the type of road in development. This standard policy should correspond with the current relocation policy for non-tolled highways.