



WRITTEN TESTIMONY

Quarterly Update Transportation in Texas

**Testimony Before the Joint Hearing of the
Senate Committee on Transportation and Homeland Security
and the
House Committee on Transportation**

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Monday, February 1, 2010
Austin – House Appropriations Hearing Room, E1.030
8:00 a.m.**

A Joint Hearing of the
Senate Transportation and Homeland Security and
House Transportation Committees

At previous hearings of the Senate Transportation and Homeland Security Committee, the Texas Department of Transportation (TxDOT) has provided a quarterly update on matters of significance to the department and we would like to take this opportunity to provide both committees with such information. With the broad range of responsibilities under the purview of the department, we are continually working in several areas to identify opportunities to enhance agency operations in an efficient and effective manner.

Implementation of Sunset Recommendations

TxDOT continues to implement those recommendations from the Sunset Advisory Commission to the 81st Legislature relating to department operations that do not require changes in current law. We continue to move forward on several initiatives in our efforts to become a more transparent and accountable agency.

The Sunset Advisory Commission, and the state legislature, encouraged the department to take a multi-modal approach to transportation through the creation of a new Rail Division, which is now in full operation with William “Bill” Glavin, P.E. joining the department as of December 1, 2009 as Division Director. Mr. Glavin has more than 30 years experience in the rail industry, including stints with Burlington Northern Railroad, North American RailNet and, most recently, as a consultant with RVBA and Associates. Creation of the Rail Division consolidated the department’s major rail responsibilities – planning, inspection, at-grade rail crossings, management of the South Orient Railroad and the oversight of the safety of rail public transit – under a single division. Texas leads all other states in total rail miles with 10,804 total miles of rail track, and there are 10,573 public highway and rail crossings in the state. In 2007, Texas saw over 2 million rail carloads travel through the state, the second-largest volume in the nation. Mr. Glavin’s vision for a more efficient, reliable freight and passenger rail system will assist Texas in achieving reduced congestion, improved air quality and enhanced economic opportunity.

With regular updates to our website, we are encouraged by comments received from users and thankful to know we are continuing to provide the best information we can through this valuable resource. We regularly update our Project Tracker information, including data available on projects by specific funding source such as American Recovery and Reinvestment Act (ARRA), Proposition 14, and Proposition 12 funds. We also place information on our website related to specific programs, such as Pass-Through Financing, and the projects associated with those programs. In addition, the Transportation Commission Workshop and Meeting agendas continue to be posted on our website prior to their meetings, with informative details included on agenda items to help the public and stakeholders become more involved participants in the transportation decision-making process. We also provide live streaming and archive videos of their proceedings for public reference.

In addition, since our last hearings before both committees the Transportation Planning and Programming Rules Advisory Committee has held two public meetings and continues to tackle the complex project development process currently in place. There are many great thinkers and stakeholders on this committee, and we are all working collaboratively to provide the public with a better understanding of how important decisions are made. With vital involvement from local transportation officials from around the state, we are well on our way to developing a process that can be followed in a more precise and concise manner. This will also help with public involvement in the process, with clearly defined opportunities throughout project planning.

Some of our efforts underway include development of a new Strategic Plan based on measurable goals that define specific agency action steps and performance targets. After the Transportation Commission drafted the new "measurable and attainable" goal statements last September, the department engaged transportation stakeholders and the public statewide to obtain comments on the statements. We anticipate approval of the new plan sometime this spring, and the plan will encompass specific agency level objectives, strategies and performance measures. The agency will begin reporting annually on the attainment of our goals early this year, with quarterly reports on agency performance levels published through our online TxDOT Tracker System, which includes Project Tracker. The Statewide Transportation Plan will also be developed to align project programs with new agency goals, and will be consistent with new planning rules under development by the Transportation Planning and Programming Rules Advisory Committee. The Statewide Transportation Plan will be drafted this summer and we anticipate approval this fall.

Along with the efforts of the Transportation Planning and Programming Rules Advisory Committee, our Unified Transportation Program (UTP) Working Group is continuing its efforts toward developing a revised project planning and development tool in response to Sunset recommendations. The group is incorporating the critical need for reliable TxDOT financial forecasts that are coordinated into the statewide planning and programming documents on a continuing basis in the vision for the new plan. They are also looking at implementation of fiscal constraint and increased communication, transparency and accountability into the planning processes. The department recognized the development of planning guidelines, selection of projects, establishment of program funding categories and the creation of formulas for the allocation of transportation funds are of the utmost importance to all of Texas, and the agency has actively sought the inclusion of its various transportation partners and the general public to participate in the process. Coordinated with the results from the Transportation Planning and Programming Rules Advisory Committee, we anticipate draft rules incorporating recommendations from both groups to be presented to the Transportation Commission in a public hearing in late spring or early summer. After we receive public comments and incorporate any changes, we hope to start implementing the new rules this fall.

In relation to the creation of rural planning organizations, the department is considering revisions to its current planning and project development rules that will incorporate the concepts and intent of the provisions of HB 300, which did not pass during the 81st Legislative Session. We are drafting proposed rule revisions to implement these concepts to the extent possible without enabling legislation, which should be completed and enacted by July 1, 2010 or sooner.

Regarding TxDOT's on-going public involvement efforts, the department is using multi-faceted approaches. Internally, a workgroup including agency staff from various functional areas is working to define acceptable public involvement practices to be utilized for department projects and programs. This group identified best practices from other states for consideration and the minimum public involvement activities required by existing state and federal regulations, rules and policies.

TxDOT is also seeking an external means to evaluate its efforts. A vendor, most likely from a university, will examine TxDOT's current public outreach efforts and document the results. This includes obtaining input from current and previous public participants in events. The vendor will identify and utilize specific case studies (e.g., the MY 35 initiative) in developing relevant issues and outcomes and study the outreach efforts of the American Association of State Highway and Transportation Officials as well as other state DOTs. We expect the vendor will conduct an exhaustive analysis of the agency's public involvement efforts, the results of those efforts, and make recommendations on improvements.

The MY 35 initiative is utilizing a citizens-led advisory committee to develop a mobility blueprint for the Interstate 35 corridor. This effort is directed by the I-35 Corridor Advisory Committee with the actual public involvement activities carried out by the four I-35 Segment Advisory Committee members. This citizen public involvement effort for a corridor is the first of its kind in Texas.

The department continues to use traditional and non-traditional public involvement practices by initiating a broader use of mass mailings and e-mails to stakeholders, podcasts, and the use of social media. The department also has established a new outreach effort where members of the Commission and Administration have traveled to various communities across the state (such as Nacogdoches, Kingsville, Temple and El Paso, with more to follow in the near future) to hold "town hall" meetings with local elected officials, members of the media and citizens of that area of the state. These meetings are broadcast via the Internet so the public can view and participate by submitting questions and comments in real-time online. These meetings also allow the Transportation Commission and TxDOT Administration to learn more about that area of the state, its transportation needs, and engage in an open conversation about transportation issues without the formal structure of public meetings and hearings.

In addition to the initiatives mentioned above, Sunset recommended TxDOT strengthen oversight and accountability of professional services contracts in district offices, and the department's regionalization efforts have completed this action. Regional directors and project

development staff were hired to develop detailed business implementation plans, including improved consultant selection, negotiation and management plans. Consultant oversight measures have been implemented, and standard operating procedures were reviewed and developed by department staff and industry stakeholders. In addition, a mandatory training program has been developed for professional services and scientific services contracts. The training includes week-long contract management and administration classes, in addition to a new parallel class developed for scientific services and other professional services contracts with a similar procurement process. The department continues to conduct the training and will do so regularly to ensure all appropriate personnel receive this mandatory training.

Federal Activities Update

Congress will be working in the coming months to identify the transportation policies and funding levels the state will operate within during the next six-year cycle of the federal transportation program. The Congressional Budget Office recently issued its annual budget and economic forecast for the upcoming fiscal year and for the next ten years, which estimates the federal Highway Trust Fund will need more than \$65 billion in tax increases or general fund subsidies to fund a six-year highway bill at 2010 levels plus inflation. These estimates will shape the discussions at the federal level and it is anticipated the actual legislation authorizing the program will not pass until later this fiscal year or next.

The Transportation Commission directed department staff to develop a proposed federal legislative agenda which identifies key policy objectives for Congress to consider as they debate reauthorization of the federal transportation program. Ultimately, these key policy objectives will be provided to members of the Texas Congressional Delegation as a resource in the upcoming months as the issue is debated in both committees and on the floors of each chamber of Congress.

Agency staff reached out to both stakeholders and the general public in an attempt to solicit input and ideas into what principles should guide the future transportation policy of this state and the nation. TxDOT published a call for ideas through the internet and through more traditional means such as the Texas Register. Staff met with coalitions such as the Border Trade Advisory Committee and the Texas Municipal League and with principles from the Ports to Plains and the Midland-Odessa Transportation Alliances. Staff met with the state's small urban and rural transit providers through the Texas Transit Association and with the Texas Association of Metropolitan Planning Organizations. TxDOT also met with representatives of some of the state's local toll project entities (specifically, the North Texas Tollway Authority, Harris County Toll Road Authority, Central Texas Regional Mobility Authority, Alamo Regional Mobility Authority, and the Camino Real Regional Mobility Authority). And of course, staff gathered input from within the agency as well.

To that end, department staff presented a draft document to the Transportation Commission at their December 16, 2009 meeting which identifies the critical policies and principles to help

guide Texas' decisions makers through this process. We sought public comment on these significant federal transportation policy issues facing the state through mid-January, 2010 and the document was adopted by the Transportation Commission at their January meeting. The information gathered will be used to inform Congress of the needs of the State of Texas regarding surface transportation, and we requested both general ideas and specific recommendations.

There are several principles outlined in the document, including:

Rate of Return and Minimum Guarantee

Commission Position

Throughout deliberations on the next federal reauthorization bill, Texas should take every opportunity to increase its rate of return on federal fuel taxes. If Congress decides to increase fuel taxes, all new funds above the current tax rate should accrue to each state at a 100 percent rate of return, should provide a higher degree of flexibility than present funding allows, and existing guarantees on current gas tax revenue should be maintained. Reauthorization of the surface transportation program must ensure that the Equity Bonus program is retained and that the program title be reverted back to the Minimum Guarantee program as that is more reflective of its purpose.

Expanded Funding Options

Commission Position

The federal transportation program should include provisions which ensure that a variety of both public and private funding options are available and utilized at the discretion of state and local entities. Congress should establish new sources of funding for rail projects.

Clearly Defined Goals and Performance Measurement

Commission Position

Congress should establish overarching goals and desired outcomes of the federal transportation program, including passenger and freight movement, and align resources to meet them. There should be a clearly defined federal focus on addressing congestion relief in our metropolitan areas, safety improvements throughout the system, connectivity between our urban centers, and in maintaining and preserving this nation's highway assets with specific focus on improving the Federal aid highway system. Each focus area should be tailored to the unique challenges of that state or region. The Federal program should maximize transportation funds through efficient program implementation and outcome-based decisions. Additional programmatic requirements should only be considered if they measurably enhance project delivery through time and cost savings.

Program Consolidation and Funding Flexibility

Commission Position

Reauthorization should consolidate programs where it makes sense to do so and ensure that state and local governments are authorized to utilize federal funds across modal lines.

Strengthened Partnerships

Commission Position

As Congress moves towards establishing and increasing performance measures, appropriate outcomes must be identified for all levels of government. Because one size cannot fit all, states and local governments must have a significant role in the establishment of these measures and the unimpeded authority to implement solutions. To that end Federal reauthorization of the surface transportation program should recognize and support the roles and responsibilities that state and local governments and the private sector provide in addressing each of these goals.

Expedited Project Delivery

Commission Position

Reauthorization of the federal transportation program must focus on expedited project delivery. Specifically, there should be firm establishment of additional permitting approvals and continued progress in the delegation of environmental review to the states. In addition, federal law should contain provisions which expedite resolution of environmental disputes and allow all records of decisions for projects to be processed within a specific time frame.

Efficient International Freight Movement

Commission Position

Congress should take every opportunity to improve, not hinder, the efficient movement of freight between the United States and its international borders.

The American Recovery and Reinvestment Act (ARRA) funds have provided stimulation to the national economy in the wake of the economic situation the country is facing. TxDOT, in addition to many other State of Texas agencies, received a significant amount of funding from ARRA. TxDOT continues to work diligently to identify how our funding is allocated to allow for the biggest impact to our economy. To date, Texas has obligated more than \$1.8 billion in ARRA funds. This includes \$1,741,153,549 for highway and bridge projects, \$50,587,402 for transit projects, \$17,526,834 for aviation projects, and just over \$7 million for the state's ferry system.

Just over \$200 million of the funds remain to be obligated, and states have until March 1, 2010 to complete project obligations. If projects already bid or completed came in under the amount originally obligated, the underrun amount has to be re-obligated prior to March 1, 2010. If projects bid or completed after March 1, 2010 underrun, Texas then has until September 30, 2010 to re-obligate those funds. As Transportation Commission-selected projects experience underruns, department staff selects other projects previously approved by the Commission from the original "short list" of projects that were scored and ranked to receive funding. These underrun funds stay within the same region from which they were generated to ensure the

geographic balance staff developed to achieve initially. For underruns on Metropolitan Planning Organization (MPO) selected projects, the MPOs are selecting the additional projects to fund. We do not anticipate having unobligated funds by the March 1, 2010 deadline. It is expected that the return of unobligated funds across the country will be low, but any received will be redistributed based on formula which would provide Texas with an estimated 8% of those funds.

As part of ARRA, \$1.5 billion in Transportation Investment Generating Economic Recovery (TIGER) Grants was made available nationwide for surface transportation capital improvements. States may receive between \$0 and \$300 million and no funding is guaranteed. The grants are to be awarded based on a variety of factors, including long-term outcomes, economic competitiveness, sustainability, and safety aspects of projects among other criteria. As of September, 2009, TxDOT processed more than 80 support letters for projects submitted by local transportation entities across the state. The department submitted applications for five projects falling outside of MPO boundaries that MPOs and other entities could not submit directly, which include: I-35 in McClennan County, South Orient Rail Line rehabilitation, SH 35 in San Patricio County, SH 349 in Midland and Martin Counties, and US 281 in Comal County. We anticipate the decision from the Secretary of Transportation on how the grants will be distributed across the country by the February 17, 2010 deadline.

With the success of ARRA, Congress and the Administration are discussing possible Stimulus II legislation in Washington DC. The US House of Representatives has passed such legislation and the US Senate may be taking that legislation up in the next few weeks (or months). As with the ARRA requirements for awarding transportation projects quickly, any second stimulus legislation will certainly have similar time frames and requirements. The department will continue to closely monitor the situation and will provide updates as they become available.

In addition, Texas submitted nine rail projects totaling \$1.8 billion for consideration at the federal level of the more than \$8 billion made available nationwide for rail projects. The Federal Railroad Administration received over \$100 billion worth of projects through pre-applications, which served as the first step in the application process and as a means to gauge demand. Just last week the White House announced projects across the country that would receive funding under the High Speed Intercity Passenger Rail (HSIPR) grant program. Funding for this program comes from two sources: the American Recovery and Reinvestment Act (ARRA) and the FY 2009 Appropriations Act.

Two Texas rail projects were awarded funding for a total of roughly \$11 million. Of that amount, approximately \$4 million is funded by ARRA with the remaining \$7 million coming from the FY09 appropriations bill. Both of the Texas grant awards directly impact existing passenger rail in the state, allowing existing lines to travel at higher speeds or avoid congestion.

Texas received about \$4 million in HSIPR ARRA funds to adjust signal timing for several at-grade crossings for Amtrak's Heartland Flyer in the Fort Worth area. Changing the signal timing

will increase speeds for the Heartland Flyer from 49 MPH to 79 MPH in Texas, as it already operates at speeds of 79 MPH in Oklahoma. Once complete, this project will reduce travel time on the Texas leg of the Heartland Flyer by over 15 minutes and should increase on-time performance and service reliability.

Texas also received approximately \$7 million from the FY09 appropriations bill to lay additional track along a portion of the Trinity Rail Express (TRE) in Fort Worth. This project will improve commuter rail service between Fort Worth and Dallas, allowing more frequent and reliable service between the two cities. The project will also allow TRE to begin the movement of Amtrak off the Union Pacific Corridor onto the TRE Corridor, freeing up critical time at Tower 55 in Fort Worth for more freight movements through that intersection.

The grant notification from USDOT can be accessed online at <http://grants.ost.dot.gov/public/ViewMessage.cfm?MsgID=ic56oyrjth>.

Proposition 12 Update

In July 2009, the Texas Legislature authorized TxDOT to go to contract on approximately \$2 billion in general obligation bonds for highway improvements. Texas voters approved these Proposition 12 bonds, which are backed by the state's general revenue not by fuel tax revenues, with 63 percent in support of the initiative in November 2007.

TxDOT districts and Metropolitan Planning Organizations identified more than \$8.9 billion in possible projects eligible for these funds. In October 2009, the Texas Transportation Commission was presented with a narrowed list of projects recommended by staff. The Commission approved a final project list at their regular November 19, 2009 meeting in Austin.

The list of approved projects include corridors of statewide significance, rehabilitation and safety projects focusing on improving declining pavement scores and driver safety, and mobility projects focusing on relieving congestion on specific roadway segments. At this time, we anticipate the first Prop 12 project contracts to be set for bids in April, with the construction beginning in June. By September, 2011, we expect approximately \$1 billion in the funds will have been expended. Additional details about the projects and the status of their development are available on our website at http://www.txdot.gov/project_information/default.htm.

Various Department Activities

In addition to the programs and activities mentioned above, the department has been working on various matters to determine how to provide essential transportation services within our limited available resources.

Current statute requires TxDOT to adopt a Memorandum of Understanding (MOU) with the appropriate state agencies to address the need for a responsibility to protect the natural environment, or for the preservation of historical or archeological resources. It also states that

every five years TxDOT and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources review, revise and adopt revisions of the MOU, although there is no penalty in statute for noncompliance.

In order to ensure continued effective coordination for reviews on the environmental impacts of highway projects, TxDOT proposed a new MOU with the Texas Parks and Wildlife Department (TPWD) to comply with statute. Some of the components of this new MOU include a reduction in coordination with TPWD for projects that are classified as a categorical exclusion (i.e. projects that individually or cumulatively do not have a significant effect on the environment), that could reduce coordination efforts by roughly 37% annually and would allow for a shorter environmental review process on eligible projects.

TxDOT's current policy, which would remain unchanged under the revised MOU, is to avoid and minimize impacts to the environment. The proposed MOU provides a new policy that TxDOT would make payments to TPWD for impacts to unregulated resources when avoidance and minimization are not possible. For mitigation costs, we estimate payments to TPWD to be \$3 million annually. These cash payments would replace TxDOT's current practice, in which, in some instances, we mitigate impacts to unregulated resources on a project by project basis. In addition, due to what could be a reduction in coordination with TPWD of environmental review on certain low-impact projects, we would experience a reduction in staff costs and could expedite the review process in a timelier manner. Moreover, the results of inflation have historically meant that a project's costs increase the more it is delayed.

The proposed MOU went through the public hearing and public comment process, and the deadline to submit public comments was extended at the request of Senator Carona and various others. Several comments were received both in support and in opposition to the new language. Those in support of the revised MOU felt the benefits include potential cost savings through reduced reviews of routine and minor projects, minimized delay for minor projects, and it sets up a fair and efficient procedure for the environmental review and mitigation of small transportation projects. Those comments in opposition to the proposed MOU feel it represents a significant departure in how environmental approvals and mitigation are currently accomplished and are concerned with the \$3 million annual cost when transportation funding is lacking among others.

Department staff recently met with TPWD to discuss the proposed MOU on January 20, 2010 and the comments received. To allow for further review of the comments and opportunities to receive additional input from interested parties, both entities have withdrawn the proposed MOU at this time to work together and develop a new draft MOU addressing issues and concerns brought to our attention. It is anticipated the new draft could be developed sometime this summer.

Another item of interest is the recent proposal of rules to amend the pass-through financing program to allow for agreements with both public and private entities. Current law authorizes

the department to enter into an agreement with a public or private entity where the state reimburses that entity based on the number of vehicles passing through the project. This payment can include reimbursements for the public or private entity's design, development, financing, construction, maintenance, or operation costs for a toll or non-toll facility on the state highway system. The proposed amendments and new section to the Texas Administrative Code will allow the department to solicit private pass through proposals in circumstances other than a program call, as has been done in the past under the current program. The new rules will also allow the department to make payments to a private developer from the revenue of a toll project as reimbursement of financing costs and to provide a return on any private sector investment. The proposed rules will facilitate the timely financing and development of critical highway improvement projects that could not otherwise be developed on a timely basis because the department has insufficient highway funds.

Under the existing program, the department can only reimburse a private entity what it would cost the department to construct the project if a pass-through financing agreement was not used. There are critical highway improvement projects the department cannot currently construct because there is insufficient funding or other financing methods available to do so. These proposed rules allow for the potential to use a pass-through financing agreement to obtain private financing of these priority projects. In order to obtain private financing, the department will need to reimburse the private entity's financing costs and to pay a reasonable return on investment, which is prohibited under the existing program. In order to leverage scarce state highway funds and to comply with applicable legal requirements, those payments would be paid from project revenue.

A public hearing was held January 26, 2010 in Austin at TxDOT's Greer Building on the proposed rules, and the deadline to submit public comments on the rules was January 31, 2010. Department staff is in the process of carefully reviewing the comments to determine where suggestions and changes can be incorporated prior to any further action by the Transportation Commission to adopt new rules on the pass-through financing program. The department is dedicated to achieving complete support by all interested parties, including local stakeholders and elected officials, prior to utilizing this potential tool to develop a project.

Conclusion

These are just a few of the activities and changed the department is working on and researching to provide the highest quality transportation system possible to the taxpayers of Texas. The Texas Department of Transportation is driven to a higher standard—a standard that includes accountability, open government, ethical practices, and transparency. With your continued guidance and support, we look forward to working together to meet the transportation challenges facing Texas.