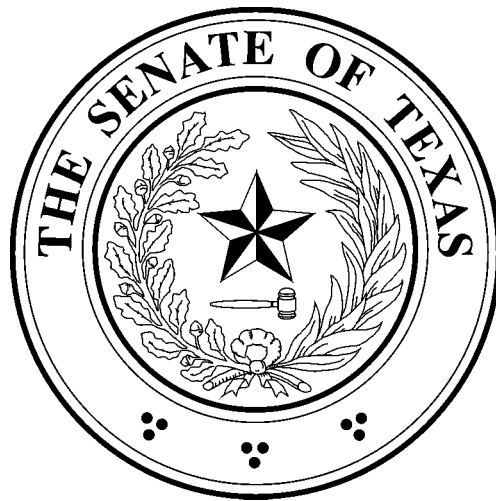


The Senate Committee on Transportation and Homeland Security



Interim Report to the 82nd Legislature

February 2011



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CHAIRMAN

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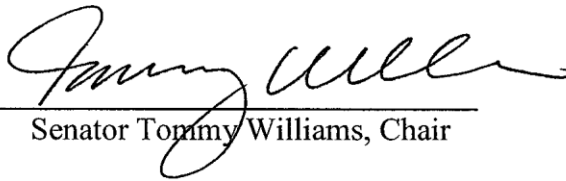
February 2011


The Honorable David Dewhurst
Lieutenant Governor of Texas
Members of the Texas Senate
Texas State Capitol
Austin, Texas 78701


Dear Governor Dewhurst and Fellow Members:

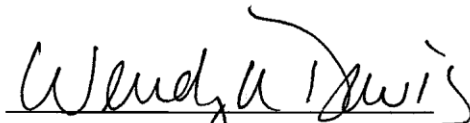
The Senate Committee on Transportation and Homeland Security of the Eighty-First Legislature hereby submits its interim report for consideration by the Eighty-Second Legislature.

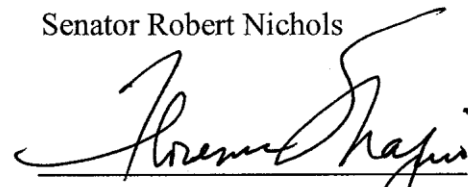
Respectfully Submitted,

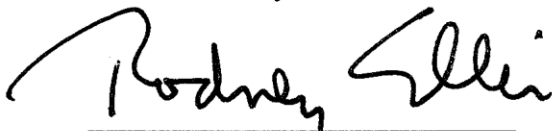

Senator Tommy Williams, Chair


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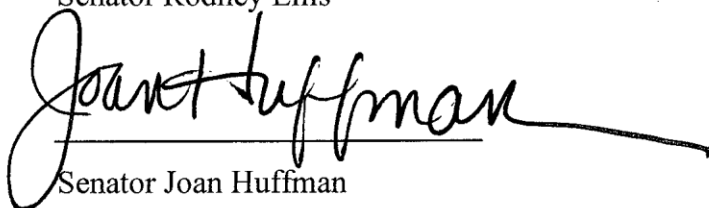

Senator Robert Nichols

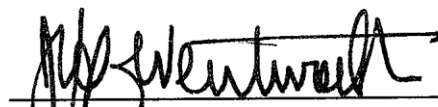

Senator Wendy Davis


Senator Florence Shapiro


Senator Rodney Ellis

Senator Eliot Shapleigh


Senator Joan Huffman


Senator Jeff Wentworth

Charge 1:

Recommend ways to maximize the contribution of alternative transportation modes and evaluate what impacts they have on congestion and air quality. Identify statutory barriers to reducing transportation's impact on air quality and preventing any restrictions on or loss of federal funds due to air quality. Study the incidence of fraudulent automotive emissions certifications in the state and recommend changes in enforcement which will increase the effectiveness of state emissions regulation and assist in attainment of federal air quality standards.

Background

The Environmental Protection Agency (EPA) sets standards for ambient air quality. While there are many sources of emissions that affect air quality in the State of Texas, motor vehicles emit several pollutants that the EPA classifies as known or probably human carcinogens. Mobile source emissions can be divided into two categories: on-road and non-road. On-road emissions include highway vehicles. Emissions produced by these vehicles include six criteria pollutants such as nitrogen oxides (NO_x) and carbon monoxide (CO), volatile organic compounds (VOCs), numerous air toxics such as formaldehyde and benzene, and a few green house gases such as carbon dioxide (CO₂).¹ On-road vehicles contribute the most CO and NO_x emissions. They are the second most producing source of volatile organic compound emissions.² The 1990 Clean Air Act requires the EPA to specifically regulate air toxics from motor vehicles in the form of standards for fuels, or vehicles, or both. Non-attainment areas are areas that have failed to meet the EPA's standard for ambient air quality. Texas has three non-attainment areas: Houston-Galveston- Brazoria, Dallas- Fort Worth, and Beaumont- Port Arthur. Additionally, Texas has some areas that are nearing non-attainment status.³ Reducing mobile source emissions plays a vital role in bringing all areas of Texas to attainment status.

The Cost of Congestion

There is a cost associated with congestion: the economy suffers and the state stands to lose federal funds for highways if they do not reach attainment status. Since 1982, the cost of congestion has grown at 8% per year, more than double the rate of growth of the economy. Continued growth at this rate will bring the cost of congestion to over 4% of Gross Domestic Product in less than twenty years.⁴

The Port of Houston is one of the largest ports in the United States and in the world. Since its inception it has been a primary driver of economic growth in Texas. As the volume of goods coming in and out of the port increases, there is only so much capacity that the physical infrastructure allows until congestion becomes a barrier to economic growth. Each year, traffic,

¹Testimony by Josias Zietsman, Ph.D., P.E. Director, Center for Air Quality Studies, Texas Transportation Institute, The Texas A&M University System to the Senate Committee on Transportation and Homeland Security on May 3, 2010 in Houston, Texas.

² <http://www.epa.gov/air/emissions/index.htm> .

³ Environmental Fact Sheet, United States Environmental Protection Agency, August 1994, <http://www.epa.gov/oms/toxics.htm#what> .

⁴ Testimony by Louis G. Neudorff, P.E., Vice President, Iteris, Inc., Chair, Technical Forum on Sustainability, Intelligent Transportation Society of America to the Senate Committee on Transportation and Homeland Security on May 3, 2010 in Houston, Texas.

congestion, and pollution associated with this port and others across the United States continues to grow. A 2009 mobility report released by the Texas Transportation Institute found that in 2007, the overall cost of congestion through wasted fuel and lost productivity reached \$87.2 billion, more than \$750 for each U.S. traveler. In other terms, this congestion cost 2.8 billion gallons of wasted fuel and 4.2 billion hours, which is equivalent to an extra week of work (or vacation) for each traveler.⁵

Existing technology gives us many ways to improve congestion and traffic movements through the use of intelligent transportation solutions in ports, highways, and even through cities. Even simple traffic alert systems save time and offer economic value by providing information about incidents and congested areas. More complex systems that use emerging technologies such as mobile web and radio frequency identification can actually control traffic routing on roads and highways are being used.⁶

Strategies to Improve Air Quality

The transportation sector accounts for nearly a third of Greenhouse Gas (GHG) emissions in the United States, of which carbon dioxide (CO₂) represents the vast majority. This makes transportation the second highest source of GHG next to electricity generation. About 25% of GHG is caused by light and heavy duty gasoline vehicles, which are also the fastest growing source of GHG in the United States.⁷

The Federal Clean Air Act preempts all states, except California, from enacting state regulations on mobile source categories that are already controlled by federal regulations unless waived by the Environmental Protection Agency (EPA). This preemption includes, but is not limited to, fuel control strategies and exhaust emissions standards for vehicles, lawn and garden engines, recreation and commercial marine engines, and non-road compression engines. Although mobile emissions contribute to about 53% of the total statewide nitrogen oxide (NO_x) emissions, Texas has limited ability to regulate these emissions except through in-use restrictions. These include, but are not limited to, engine idling restrictions, no-drive days, and time of day restrictions. So although mobile sources contribute a high amount to the overall emissions inventory, Texas Commission on Environmental Quality (TCEQ) has limited authority to enact control strategies to reduce air pollution from mobile sources.⁸

The State Implementation Plan (SIP) ensures that Texas does not lose federal funds to poor air quality in areas that do not meet the National Ambient Air Quality Standards (NAAQS). The Texas Commission on Environmental Quality works with these areas to reduce emissions from all sources, whether these emissions are point, area, or mobile sources.⁹

⁵ Testimony by The Honorable Rob Quartel, Chairman & CEO, NTELX to the Senate Committee on Transportation and Homeland Security on May 3, 2010 in Houston, Texas

⁶ Id.

⁷ Id at 4.

⁸ Testimony by Guy Hoffman, Mobile Source Team Leader, Texas Commission on Environmental Quality to the Senate Committee on Transportation and Homeland Security on May 3, 2010 in Houston, Texas.

⁹ Id.

There are several measures Texas takes to achieve reductions in mobile sources. Voluntary mobile sources emissions reduction measures have the potential to contribute, in a cost effective manner, emission reductions. The Environmental Protection Agency believes that it is appropriate for states to receive credit for voluntary mobile sources emissions reduction measures where the state has confidence that the measures can achieve reductions. Some examples include, economic and market-based incentive programs, trip reduction programs, ozone action programs, and targeted public outreach. These programs attempt to gain additional emission reductions beyond mandatory Federal Clean Air Act programs by encouraging the public to make changes in activities that will result in reducing mobile source emissions.¹⁰

Transportation Control Measures (TCMs) are strategies used to manage traffic congestion and reduce vehicle emissions. The Congestion Mitigation and Air Quality program is one source of funds for TCMs.

Examples of TCMs include:

- Improved public transit
- Traffic flow improvements and high-occupancy vehicle lanes
- Shared-ride services (vanpools, park and ride facilities)
- Bicycle/pedestrian facilities
- Flexible work schedules
- Trip-reduction ordinances
- Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use
- Programs to control extended idling of vehicles
- Programs to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks

They have generally been found to contribute only a small fraction of regional emission reductions.¹¹

Alternative Modes of Transportation

On a state and local level, Texas has been actively exploring a multi-modal approach to address the public's transportation need. Texas Department of Transportation (TxDOT) administers the Transportation Enhancement Program for the Federal Highway Administration of the United States Department of Transportation. The Transportation Enhancement Program offers funding opportunities to help expand transportation choices. Transportation enhancement activities have been eligible for funding under the Surface Transportation Program. This federal program provides funding for transportation related activities that promote the environment through aesthetic enhancement associated with transportation.¹²

¹⁰ Id.

¹¹ Id.

¹² Testimony by John Barton, Assistant Executive Director for Engineering Operations, Texas Department of Transportation to the Senate Committee on Transportation and Homeland Security on May 3, 2010 in Houston, Texas.

In 2009, the Sunset Advisory Commission and the Texas State Legislature encouraged TxDOT to take a multi-modal approach to transportation through the creation of a new Rail Division within TxDOT. As of December 1, 2009, TxDOT's Rail Division is in full operation. The Texas Department of Transportation has a vision for a more effective and reliable freight and passenger rail system and hopes the Rail Division will assist Texas in achieving reduced congestion, improved air quality, and enhanced economic opportunity.¹³

The Houston Galveston Area Council (H-GAC) supports an aggressive program promoting the use of alternative transportation modes, including cars and van pooling, bicycle and pedestrian travel, expansion of mass transit services, tele-working, and livable centers. The Houston Galveston Area Council's Star Vanpool program, operated by Houston Metro, has almost 750 vanpools on the road. The program has reduced 85 tons of Nitrogen Oxides (NOx) and nearly 52 million vehicle miles of travel in the first nine months of 2009 alone.¹⁴

The Houston Galveston Area Council also promotes a Clean Cities/Clean Vehicle program that provides grant assistance and in some cases supplemental loans or credit enhancements for the retrofit and replacement of older, heavy duty truck and bus engines. This program has reduced over 1,100 tons of NOx emissions per year.¹⁵

The Houston Galveston Area Council also provides limited funding support for an online trip reduction service known as NuRide. Commuters can use NuRide to find rideshare partners in their area, plan trips online, and earn points that may be redeemed for rewards such as coupons or discount vouchers for local restaurants, entertainment venues, retail and grocery stores. In 2009, NuRide documented a reduction of 8.5 million vehicle miles traveled and almost 5.6 fewer tons of NOx emissions in addition to those resulting from the use of transit vehicles and vanpools.¹⁶

Fraudulent Automotive Emissions Certifications

The vehicle emissions inspection and maintenance (I/M) program in Texas is administered as a partnership between Texas Commission on Environmental Quality (TCEQ) and Texas Department of Public Safety (DPS) as part of the DPS vehicle safety inspection program. In order to obtain a safety sticker in one of the affected counties, the vehicle must pass the prescribed emissions tests in addition to vehicle safety inspection requirements. Over 7.5 million vehicles are inspected annually in 17 counties of the Austin-Round Rock, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas. Vehicle owners that do not comply with this program are flagged in the Texas Department of Motor Vehicle's database and denied renewal of the vehicle registration until the vehicle has complied with the I/M program requirements.¹⁷

¹³ Id.

¹⁴ Testimony by Alan C. Clark, MPO Director, Houston-Galveston Area Council to the Senate Committee on Transportation and Homeland Security on May 3, 2010 in Houston, Texas.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id at 7.

The Texas Commission on Environmental Quality is working with DPS to establish additional tools and provide funding for local law enforcement to specifically identify potential fraudulent activity within the I/M program. In addition, TCEQ is investigating methods to improve the effectiveness of the I/M program. These enhancements may include improvements to procedures for auditing on-board diagnostic (OBD) emissions inspection analyzers, methods for reviewing emissions inspections data to identify potentially fraudulent activity of stations and inspectors and non-compliant vehicle emissions inspection analyzers, and stopping improper inspections from proceeding when a vehicle is undergoing an OBD inspection.¹⁸

The Texas Commission on Environmental Quality, DPS, and local law enforcement agencies are all working on improving emissions enforcement relating to the state's I/M program. A 2009 software change by TCEQ also prevents inspectors from erroneously entering the vehicle's Diagnostic Link Connector as "not found" into the analyzer so vehicles would divert to a tailpipe test, which does not include check engine light as a pass/fail item. This software change resulted in a 98% decrease in vehicles diverting to a tailpipe test.¹⁹

Currently, inspectors use various methods to provide inspection certificates to vehicles failing the emissions test through altering the information they enter into the emissions analyzer. The number of emissions inspections in the Dallas-Fort Worth nine county nonattainment region that were improperly conducted due to inspectors altering vehicle information decreased from 14% in 2008 to 3% in 2009. The drop is largely a result of increased enforcement by the Dallas County Clean Air Emissions Task Force, the Ellis County Emissions Enforcement Program, and other local area law enforcement agencies.²⁰ The Houston Galveston Area Council recently began a similar program to also cut down the large number of fraudulent automotive emissions certificates.²¹

Conclusion

The impact that transportation has on air quality is unquestionable. There are many moving parts to the process of mitigating congestion and improving air quality. All federal, state, and local entities involved should continue to work together to not only improve air quality but to manage the transportation needs of a rapidly growing population. The legislature should continue to monitor these issues closely.

¹⁸ Id.

¹⁹ Testimony by Chris Klaus, Senior Program Manager, North Central Texas Council of Governments to the Senate Committee on Transportation and Homeland Security on May 3, 2010 in Houston, TX.

²⁰ Id.

²¹ Id at 13.

Charge 2:

Review and make recommendations relating to the Texas Department of Transportation's organizational structure and working relationship with local governments, Metropolitan Planning Organizations, Regional Tolling Authorities and Regional Mobility Authorities.

Background

In 1917, the Texas Legislature through House Bill (H.B.) 2 created the Texas Highway Department. In 1991, the Texas Highway Department became the Texas Department of Transportation (TxDOT). Governed by a five member commission that oversees and directs activities, TxDOT plans, constructs, and maintains a multimodal statewide transportation system.¹ Additionally, other entities have been formed to address local and regional transportation needs of Texas. These entities include local governments, Metropolitan Planning Organizations (MPOs), Regional Tollway Authorities (RTAs), County Toll Road Authorities (CTRAs), and Regional Mobility Authorities (RMAs). Because the Texas transportation system not only includes roads and bridges, but also public transit, rail, airports, and waterways, federal, state, and local agencies must work together to provide transportation planning and delivery.

In recent years, the growing population in Texas has created a demand for additional roadway capacity. In an effort to address this problem, some areas have introduced toll facilities to alleviate congestion. Texas Department of Transportation and three other types of entities have toll authority under current law. These include RTAs, RMAs, and CTRAs.

Texas Department of Transportation Organizational Structure

The role and responsibilities of the Texas Department of Transportation (TxDOT) have evolved since the inception of the Texas Highway Department in 1917. Some notable dates include:

- 1991 - The Texas Highway Department became the Department of Transportation
- 1991 - TxDOT acquired the Department of Aviation and Motor Vehicle Commission
- 1995 - TxDOT acquired railroad planning and motor-carrier responsibilities
- 1997 - TxDOT acquired the Texas Turnpike Authority
- 2009 - The Department of Motor Vehicles became its own agency²

The Texas Department of Transportation has a five-member commission (Commission) with an administrative control of the department. The Commission's responsibilities include:

- Oversee and direct activities of TxDOT to plan, construct, and maintain a multimodal transportation system
- Meet with governmental officials and the public on transportation-related matters
- Approve transportation projects and related funding activities

¹ Texas Department of Transportation Management and Organizational Review Final Report, Grant Thornton, May 26, 2010.

² Id.

- Oversee and direct investigations and audits or resolve complaints or improve agency services
- Oversee administration of budget and direct expenditures of departmental funds or grants
- Review and analyze legislation, laws, and public policy and recommend or approve changes³

The Texas Department of Transportation headquarters is located in Austin. Twenty-five field offices are located throughout the state. Headquarters offices include: Office of General Counsel, Office of Strategic Policy and Performance Management, and Government and Public Affairs Division. All of these offices report directly to the Executive Director. All other offices and divisions report directly to Assistant Executive Directors and the Chief Financial Officer.⁴

The field operations are structured around geographical districts. This is to ensure that transportation solutions are based on geographical need. Each of the districts performs similar functions focused on transportation planning, project design, environmental studies, construction oversight, and maintenance for on-system roadways. The districts are managed by district engineers who are responsible for providing executive-level direction, management, and engineering oversight of all district activities. Until February 2009, the district engineers reported directly to TxDOT's Executive Director. Currently, district engineers report to the Assistant Executive Director for Field and District Operations.⁵

Support personnel and resources for districts function from four Regional Support Centers (RSCs). Each RSC is led by a Regional Director and two Assistant Regional Directors, one for operations support and one for project delivery support.⁶

Metropolitan Planning Organizations

A Metropolitan Planning Organization (MPO) is a transportation policy-making organization that is made up of representatives from local government and governmental transportation authorities. Congress created MPOs to ensure that existing and future expenditures for transportation projects and programs were based on a continuing, cooperative, and comprehensive planning process. The MPOs determine how to spend the federal and state funds allocated to their regions. By federal law, any urbanized area with a population greater than 50,000 must have an MPO. There are twenty-five MPOs in Texas.⁷

Each MPO is required to develop a twenty-year Metropolitan Transportation Plan (MTP). These plans are updated every five years (or every four years in areas not meeting federal air quality standards). Each MPO is also required to develop a Transportation Improvement Program (TIP). Transportation Improvement Programs are four year lists of near-term projects taken from MTPs

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Testimony by John Barton, Assistant Executive Director for Engineering Operations, Texas Department of Transportation to the Senate Committee on Transportation and Homeland Security on October 13, 2010 in Austin, Texas.

(updated every 2 years).⁸ The Texas Department of Transportation incorporates TIPs from across the state to form the Statewide Transportation Improvement Program.⁹

Regional Tollway Authorities & County Toll Road Authorities

A Regional Tollway Authority (RTA) is a political subdivision formed by two or more counties, acting through their respective commissioner's court. Regional Tollway Authorities may be formed by counties from a contiguous territory that have populations of not less than 300,000. This limits the creation of RTAs to Bexar, Cameron, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Hidalgo, Nueces, Tarrant, Travis and their adjoining counties.¹⁰

A County Toll Road Authority (CTRA) can be created by a county meeting any of the following specifications:

- A county with a population of 50,000 or more that borders the Gulf of Mexico or an inlet opening into the gulf (Cameron, Nueces, Brazoria, Galveston, Jefferson, and Orange counties)
- A county that has a population of 1.5 million or more, or is adjacent to a county that has a population of 1.5 million or more (Harris, Dallas, and adjoining counties)
- A county that borders Mexico (El Paso, Hudspeth, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron counties).¹¹

The Texas Department of Transportation, RTAs, and CTRAs have mutual goals of improving infrastructure and increasing mobility options. These agencies should work together to meet the demands of a rapidly growing population. While RTAs and CTRAs are more focused on regional solutions and TxDOT is charged with maintaining a state-wide system, there are many instances where TxDOT and various RTAs and CTRAs have worked together to deliver a project. For a more detailed description of these specific projects, see John Barton's testimony before the Senate Committee on Transportation and Homeland Security on October, 12, 2010.

Regional Mobility Authorities

A Regional Mobility Authority (RMA) is a political subdivision formed by one or more counties whose purpose is to finance, design, construct, operate, maintain and expand various transportation facilities. Regional Mobility Authorities are governed by a board of directors; the chair is appointed by the Governor, and members are non-elected county residents appointed by county commissioner's courts of member counties.¹²

Regional Mobility Authorities interact with the Texas Department of Transportation (TxDOT) on everything from approval of projects, project development agreements, planning, coordination of maintenance activities, State Infrastructure Bank and toll equity financing, and participation in various aspects of procurement and project delivery process. Regional Mobility

⁸ Sunset Advisory Commission Final Report, Texas Department of Transportation, July 2009.

⁹ Id.

¹⁰ Id at 7.

¹¹ Id.

¹² Id.

Authorities are dependent on TxDOT for project funding and for certain administrative funding. Regional Mobility Authorities have no taxing authority, but projects can be financed through tax-exempt bonds, private equity, public grants, government loans, and revenue from existing transportation facilities.¹³

Statewide Transportation Plans

Federal and state law requires the Texas Transportation Commission (Commission) to develop statewide long-range transportation priorities. The Commission works under the direction of the governor and Texas Legislature to develop these priorities. Once the Commission establishes the state's long-range transportation priorities, it identifies the needs of the urban and rural areas by creating a statewide transportation plan. The statewide plan consists of two major components: Metropolitan Transportation Plans (MTPs) developed by each Metropolitan Planning Organization (MPO), and statewide corridors that provide regional connectivity of which the Texas Department of Transportation (TxDOT) is responsible. There is no guarantee that projects within the statewide transportation plan will be built.¹⁴

Each MPO and TxDOT district develops a local Transportation Improvement Plan (TIP) as required by federal law. These TIPs are combined to make up the State Transportation Improvement Plan (STIP). The State Transportation Improvement Plan identifies all projects receiving federal funds for the next four years.¹⁵

The Unified Transportation Plan (UTP) is another plan that is prepared by TxDOT. This plan is not required by federal or state law. It is an eleven year financial and project implementation plan. The plan consists of the current year's planned letting and includes a listing of projects that are planned to be constructed and/or developed during the following ten years. The Texas Department of Transportation projects how much federal and state transportation funding will be available in 12 project categories, and how much will be allocated to each MPO and district. The projects within the first four years of the UTP make up the STIP.¹⁶

TxDOT Restructuring

Over the past several years, there have been many recommendations made to the Texas Department of Transportation (TxDOT) about the agency's management, organization, and other issues. In 2010, TxDOT charged the TxDOT Restructure Council (Council) to review and evaluate all audits and reviews, to determine areas of emphasis and implementation priorities. The Council has developed a comprehensive database that includes all the recommendations made to the department from the Grant Thornton review, as well as from other management reviews from the past few years. The database is available to the public and can be accessed on the TxDOT website.¹⁷

¹³ Testimony by C. Brian Cassidy, Attorney, Locke Lord Bissell & Liddell to the Senate Committee on Transportation and Homeland Security on October 13, 2010 in Austin, Texas.

¹⁴ Id at 7.

¹⁵ Id.

¹⁶ Id.

¹⁷ <http://apps.dot.state.tx.us/apps/recommendations/default.htm>

The Council's final report was presented to the Commission on January 5, 2011. Several recommendations were made regarding TxDOT's organizational structure and the final report can be accessed on the TxDOT website.¹⁸

Conclusion

The Texas Department of Transportation (TxDOT) has been given the task of delivering a modern transportation system that will meet the demands of a rapidly growing population. The agency must work with many other entities to be able to accomplish this and has worked hard to team with their transportation partners. However, TxDOT faces a lack of public confidence. The recommendations of the Sunset Commission and the TxDOT Restructuring Council suggest that significant changes need to be made at the agency in order for TxDOT to be successful. The changes made in the upcoming months, and even years, need to be closely monitored.

¹⁸ http://www.txdot.gov/about_us/organizational_review.htm

Charges 3 and 12:

12. Study and make recommendation for legislation to inform Texans about best practices for hurricane preparation, response, and recovery, including information about basic state operations and pre-designated locations for PODs across the state. Establish procedures and penalties for non compliance by local jurisdictions that hinder response and recovery efforts.

3. Recommend improvements to homeland security, including the state's infrastructure and housing recovery operations. Make recommendations for incorporating best practices and addressing any gaps in existing procedures, and disaster preparation and response, including volunteer involvement, evacuation and sheltering and trauma care, and communications interoperability.

Due to the close relationship between interim charge 3 and 12, the Senate Committee on Transportation and Homeland Security has chosen to evaluate the two charges as one.

Background

The Texas Department of Public Safety (DPS) provides a detailed description of its role in preparedness for, response to, and recovery from disasters across the state. That description states that:

- The Texas Department of Public Safety is the lead agency in disaster preparedness, response, and recovery for Texas. There are numerous local, state and federal agencies that are critical to the state's emergency management capabilities. In fact, the strength of the state's disaster response efforts are at the local level, supported by the State of Texas through the Texas Division of Emergency Management (TDEM), a division of DPS, and the established unified command throughout the state.

The Texas Division of Emergency Management has Regional Liaison Officers (RLOs) are TDEM's direct link to local emergency management professionals. These field response personnel are stationed throughout the state. Regional Liaison Officers have a dual role: they carry out emergency preparedness activities and coordinate emergency response operations. In their preparedness role, RLOs assist local officials in carrying out emergency planning, training, and exercises, and developing emergency teams and facilities. They also teach a wide variety of emergency management training courses. In their response role, RLOs deploy to incident sites to assess damage, identify urgent needs, advise local officials regarding state assistance, and coordinate deployment of state emergency resources to assist local emergency responders.

Preparedness

Preparedness is critical to emergency management. Preparedness involves all of the actions required to establish and sustain the level of capability necessary to execute a wide range of incident management operations. It is implemented through a continual cycle of planning, training and equipping, exercising and evaluating, and taking action to correct and mitigate.

The Texas Division of Emergency Management (TDEM) Preparedness staff develops and maintains state-level emergency plans, promulgates state standards for local emergency management plans, assists cities and counties in developing local emergency plans, and reviews more than 1,500 local planning documents each year for compliance with state planning standards. The Texas Division of Emergency Management Training & Exercise Unit provides a diverse curriculum of emergency management, homeland security, and hazardous materials training for state and local emergency responders, state, local, and regional officials, and volunteer groups active in disasters. More than 90,000 hours of training is provided each year at facilities in Austin and other locations around the state by the TDEM staff and contract instructors. The Training & Exercise Unit designs, conducts, and evaluates state-level emergency exercises and the TDEM staff also monitors local emergency exercises. The state exercise program includes regional and multi-agency emergency exercises as well as state participation in major interstate exercises planned and conducted by various Federal agencies.

The Texas Division of Emergency Management Mitigation Section maintains the State Hazard Mitigation Plan, reviews local mitigation plans, and provides hazard mitigation training for local officials. Texas Division of Emergency Management's Mitigation staff also administers the Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation and the Repetitive Flood Claims grant programs for cities, counties, and other eligible entities.

Emergency Response

Texas Division of Emergency Management manages and staffs the State Operations Center (SOC), located at Texas Department of Public Safety (DPS) headquarters in Austin. The State Operations Center serves as the state's situational awareness center and the principal command and control center for the state during a disaster. It operates around the clock to monitor threats, make notification of threats and provide information on emergencies to local, state, and federal officials, and coordinate state emergency assistance to local governments that have experienced an emergency situation for which local response resources are inadequate. During major emergencies, the state agencies and volunteer groups that make up the State Emergency Management Council and federal liaison teams convene at the SOC to identify, mobilize, and deploy state and volunteer group resources to respond to the emergency.

Regional emergency operations are coordinated in emergency facilities activated at the DPS Disaster Districts, which are organized on the same boundaries as existing state planning regions. Disaster District emergency operations centers are staffed by personnel from DPS, other state agencies, and volunteer groups, with operations directed by a DPS captain or lieutenant. Texas Department of Public Safety commissioned officers from around the state are frequently deployed to disaster areas to provide traffic control, convoy escort, and security for evacuated areas. Texas Department of Public Safety helicopters and fixed-wing aircraft frequently support response operations for major emergencies and disasters.

Disaster Recovery

When a disaster of a magnitude that state and federal assistance might be needed occurs, the Texas Division of Emergency Management (TDEM) recovery staff will organize damage surveys with local and federal agencies in the affected area to coordinate the overall recovery process. For major disasters, state and federal recovery staffs co-locate in a Joint Field Office

established to administer recovery programs. The Texas Division of Emergency Management Recovery staff includes specialists who carry out disaster recovery programs for individual disaster victims and families under Federal Emergency Management Agency (FEMA)'s Individual and Households Program. The staff aid local governments and public entities, such as school districts and hospitals, with programs to repair or reconstruct facilities that were damaged or destroyed under FEMA's Public Assistance Program. Restoring damaged buildings and equipment and constructing new facilities to replace those that were destroyed may require demolition, decontamination, debris removal, design, and modification or new construction; hence, large recovery projects may take years to complete.

In the aftermath of major disasters, TDEM Mitigation Section staff members deploy to the Joint Field Office to plan for post-disaster mitigation programs with their federal counterparts and with local officials. The Mitigation Section staff administer post-disaster Hazard Mitigation Grant Program funds that are authorized for major disasters declared by the President. Hazard Mitigation Grant Program funds provide federal grant funding for cities, counties, and other governmental entities to carry out mitigation projects to prevent future disasters where possible, or to reduce the impact of hazards that cannot be prevented.

State Hurricane Plan and Points of Distribution

On April 20, 2010, the state approved and implemented the new State of Texas Hurricane Plan, which replaced the previous Hurricane Evacuation and Mass Care Plan that had been originally dated June 2007. In the plan, state, federal, and evacuation authorities are presented with guidance on how government officials can establish mutual aid agreements and contingency plans. The plan carefully details the roles of involved parties at all stages of preparedness, response, and recovery to hurricanes. A portion of the Texas Hurricane Response Plan addresses the proper steps for establishing Points of Distribution (PODs).

Points of Distribution are areas selected and operated by a county as temporary staging for distribution of basic commodities to citizens following a disaster. Points of Distribution are considered continuous drive-through sites, meaning that the public does not get out of their vehicle; rather they drive through the site where volunteers load resources into the trunks of cars and the public can obtain information.

Specifically, Attachment 14 of the plan outlines organizational arrangements, operations concepts, responsibilities and procedures used to open PODs and associated components required to provide basic commodities to the public following a disaster; whether a natural or manmade event.

In Section 3, the State Hurricane Plan identifies the County Judge (Emergency Management Director) as the designated point of contact for the County Service Agent (CSA) and POD locations, activation and deactivation. The plan further requires that each county identify one CSA and four POD locations and provide these locations to the State Operations Center (SOC) via the Region's Disaster District Center (DDC). Maintaining local control of POD placement, activation, and deactivation is important due to the fact that local officials are often better equipped with knowledge of affected areas and the resources available. While the state maintains a list of 350 potential locations for PODs that is available to local and state officials as well as

related emergency management personnel, the challenge in utilizing such a list lies in that, until a natural or man-made disaster passes, one is not equipped to identify which area might be best utilized.

State of Texas Emergency Management Plan

The State of Texas Emergency Management Plan allows for the Texas Department of Health and Human Services (HHS), to coordinate with emergency response personnel, local and state officials, and other related organizations to supply food and water to disaster stricken areas. This authority sets the HHS to be involved in the operations of the Points of Distribution. The Texas Department of Health and Human Services refers to the State Drinking Water Contingency Plan of March 1999 for guidance. Detailed requirements and processes can be found on the Texas Department of Public Safety website, under the State of Texas Emergency Management Plan section.

Volunteers

In 2008, Hurricane Ike prompted the Texas Department of Insurance's (TDI) largest disaster response effort to date. Texas Department of Insurance sent volunteers to southeast Texas a few days after the storm made landfall and, by early October, was sending groups of 40 volunteers to 29 Federal Emergency Management Agency (FEMA) Disaster Recovery Centers (DRCs) every five days. Volunteers assisted more than 2,000 victims in the first month of the effort, with disaster deployments lasting through the end of the year.

While volunteer coordination can happen at any level, often times, agencies, non-profits and businesses will direct their own members to participate. A clear place for them to be able to do this can be found within the Texas Department of Emergency Management (TDEM). The Texas Division of Emergency Management Public Information Office (PIO) responds to media inquiries, issues news releases and conducts press conferences relating to emergency management programs. The Public Information Office staff provide public education materials for citizen preparedness and coordinates public information programs with the Governor's Press Office, other state agencies, the FEMA, and volunteer groups.

Radio Interoperability

The Texas Department of Public Safety's (DPS) [Report on Interoperability to the Texas Legislature](#) outlines the challenges facing Texas regarding radio interoperability. Written in conjunction with the Texas Radio Coalition and other stakeholders and published in August 2010, the report provides important information about the flow of federal interoperable communication funds. It also discusses the state of interoperability across the state and details the steps necessary for improving communication. Lastly, the report provides an updated version of the Statewide Communications Interoperability Plan.

More than 5,300 emergency response agencies respond to emergency situations and life-threatening incidents throughout the state. Equipment currently in use is often limited in its ability to share vital information with multiple agencies. This inability to communicate across agencies and in some cases, within agencies, puts lives at risk, hinders emergency response effectiveness, and is seen as a severe obstacle to proper emergency response.

The Texas Department of Public Safety Report on Interoperable Communications to the Texas Legislature lists the following consequences of a failure to provide access to improved communications:

- A lack of radio communications equipment
- Limited coverage for some agencies
- Obsolete and ineffective radio systems, radio towers, and antenna systems
- Disparate frequency bands
- Limited and fragmented funding
- Many agencies across the state currently do not have the equipment necessary to meet the Federal Communications Commission mandate for narrow banding. Failure to meet this requirement by the end of 2010 will result in zero voice communications capabilities for non-narrow banded agencies.
- Proprietary radio systems that do not meet the current standards
- Varying procurement processes
- A lack of effective governance structures

Interoperability is crucial in all types of emergency response: wild land fires, hurricanes, border communications, and any event requiring the need for multiple emergency responders either within an agency or across agencies. An investment in infrastructure and communications equipment is necessary to achieve the aforementioned communications interoperability vision and to enable basic communications operability. The Texas Department of Public Safety Report goes on to find that in order for Texas to attain interoperability, emergency response agencies will need \$84 million per year in state funds over five years, in addition to federal and local funds.

Conclusion

Due to the current economic climate in the State of Texas, the Senate Committee on Transportation and Homeland Security will make no recommendations at this time that would impose mandates on local jurisdictions. The legislature should continue to work with the Texas Division of Emergency Management and local jurisdictions to ensure that the needs of the state are addressed and that our citizen are provided with appropriate resources and aid.

List of Summary Documents Used:

Texas Division of Emergency Management, State of Texas Hurricane Response Plan 2010
<http://www.txdps.state.tx.us/dem/>

Federal Emergency Management Agency Guide, National Incident Management System (NIMS), IS-700, 2005,
<http://www.fema.gov/emergency/nims/>

Federal Emergency Management Agency Guide, Fundamentals of Emergency Management, 2010,
<http://www.fema.gov/emergency/nims/>

TDInsight, A publication of the Texas Department of Insurance, November 2008, Vol. 5, Number 4,
<http://www.tdi.state.tx.us/pubs/insight/200811.pdf>

Texas Department of Public Safety: Report on Interoperable Communications to the Texas Legislature, August
2010, <http://www.txdps.state.tx.us/LawEnforcementSupport/documents/fullRpt.pdf>

Charge 4:

Examine the public policy implications of Comprehensive Development Agreements (CDAs) and recommend whether they should be reauthorized to construct specific roadways.

Background

In 2003, the structure of Texas transportation finance changed as the Texas Legislature approved House Bill (H.B.) 3588. This bill allowed for private-public partnerships as a means for developing transportation infrastructure through Comprehensive Development Agreements (CDAs).¹

The 79th Legislature authored additional legislation refining the previous statute.² By the time the 80th Legislature came into session, the public had started to learn more about CDAs, particularly through the negative publicity garnered by the Trans-Texas Corridor. Additionally, the public learned of competing facilities agreements and termination provisions that were not of the greatest benefit to the state. As a result, the legislature passed Senate Bill (S.B.) 792 which included a two-year moratorium on private participation in toll projects and safeguards on CDA contract provisions, including the market valuation process, which was established to determine the fair market value of a project.³ This legislation also included a directive for a special legislative study committee on the concept during the interim.

The Legislative Study Committee on Private Participation in Toll Projects concluded that Texas does not have the public-sector funding necessary to build and maintain the type of highway system essential to the growing population.⁴ The Committee's report recommended that the legislature consider allowing privately-funded comprehensive development agreements as one of the options for the financing of public roadways.⁵

81th Regular Session and Special Session Legislation

During the 81st Regular Session, the primary legislation addressing this issue was Senate Bill (S.B.) 17, by Senator Robert Nichols.⁶ Senate Bill 17 would have repealed the market valuation process established by S.B. 792; established a streamlined process for project delivery; created a first right of refusal guarantee for local and state entities to build future toll projects; and ensured all methods of public transportation finance are exhausted before a private entity can finance, build, and operate a toll project. The bill established several provisions required to be included in any future private toll road contract, and established a process and protections in the event Comprehensive Development Agreements (CDAs) were continued, but did not authorize or expand the state's ability to enter into private CDAs.⁷ While this bill quickly progressed through the Senate, it was held up on the House General State Calendar and never reached the House

¹ Tex. H.B. 3588, 78th Leg., R.S. (2003).

² Tex. H.B. 2702, 79th Leg., R.S. (2005)

³ Tex. S.B. 792, 80th Leg., R.S. (2007).

⁴ Legislative Study Committee on Private Participation in Toll Projects, Final Report, December 2008.

⁵ Id.

⁶ An identical companion, House Bill 2929, was filed by Representative Wayne Smith, who also sponsored SB 17 in the House of Representatives.

⁷ BILL ANALYSIS, Tex. S.B. 792, 80th Leg., R.S. (2007).

floor for debate. This legislation was also included in House Bill (H.B.) 300, the Texas Department of Transportation (TxDOT) Sunset bill. H.B. 300 was passed separately in both chambers, but was unable to make it through the conference committee process.

Additionally, S.B. 404, by Senator Carona would have continued the authorization for CDA authority for both TxDOT and the Regional Mobility Authorities, whose CDA authority were to expire in August of 2009 and 2011 respectively.⁸ This legislation was contingent on the passage of S.B. 17 (or similar legislation) and like S.B. 17, was included in H.B. 300. Neither approach worked, and S.B. 404 died on the House General State Calendar. Both the North Texas Tollway Authority (NTTA) and the Harris County Toll Road Authority (HCTRA) do not have an expiration date in their CDA statutes.

Since none of the major legislation addressing CDAs passed, on June 25, 2009, Governor Perry called a Special Session to convene at 10:00 am on July 1, 2009 to address three specific issues including the reauthorization of CDAs. Senate Bill 3 (and the identical House Bill 3) would have extended existing contracts between governments and private builders who agree to invest their money in return for the authority to collect a toll on the new road, more commonly known as comprehensive development agreements, until 2013 and allowed new ones under strict limitations. The Comprehensive Development Agreements legislation did not enjoy much support and was not passed out of committee in either the House or Senate.

The Future of Comprehensive Development Agreements

While both the North Texas Tollway Authority and the Harris County Toll Road Authority have continued Comprehensive Development Agreement (CDA) authority, the question arises about other regions of the state that have a Regional Mobility Authority (RMA) as their local toll authorities who will not be able to use CDAs. Additionally, in both the Houston and North Texas regions, there may be projects that the local tolling authorities decline to build, and that the Texas Department of Transportation (TxDOT) could build if they had the proper authority.

As a result, during the 1st Called Special Session, the idea was discussed that CDA authority be granted to TxDOT for specific projects only. Additionally, thought was given to giving RMAs the same CDA authority as other local tolling entities. These proposals were ultimately dismissed, and there was no additional CDA authority granted or extended during the 81st Regular Session or 1st Called Special Session.

Conclusions

The Senate Committee on Transportation and Homeland Security recommends that the Texas Department of Transportation (TxDOT) and Regional Mobility Authorities (RMAs) have limited, project specific, public-private partnership authority for specific transportation projects. That authority should be granted to TxDOT and RMAs through individual pieces of legislation that identifies specific projects. The project specific bills should be authored by legislators whose districts are in close proximity to the recommended projects and ideally, these bills should have the support of the local legislative delegation.

⁸ Tex. S.B. 404, 81st Leg. R.S. (2009).

Charge 5:

Explore the policy implications of transportation reinvestment zones funded by state sales and use taxes as an alternative to public financing of transportation projects.

Background

What is a Transportation Reinvestment Zone?

Transportation Reinvestment Zones (TRZs) are a tool for generating transportation project funding by capturing and leveraging the economic growth that results from a project.¹ As development occurs, property values in the area surrounding the project increase. A Transportation Reinvestment Zone allows a city or county to designate an area around a project and to capture the increase in ad valorem tax revenues resulting from an increase in property values for use in connection with the financing of the project.² The economic growth attributable to the project is used to support the funding of this project.³

Under current law, TRZs may only be established for a project which is anticipated to be the subject of a pass-through financing agreement⁴ with the Texas Department of Transportation. Transportation Reinvestment Zones benefit local governments by funding the initial construction of a project connected with a pass-through financing agreement or by repaying loans.⁵

Transportation Reinvestment Zones v. Transportation Finance Zones

During both the 80th and 81st Legislative Sessions, Senator Ogden proposed legislation that would have allowed the Texas Transportation Commission to designate a zone within two miles on either side of an existing or proposed state highway. The state portion of the sales and use taxes collected in the zone would have been deposited into a fund used for the highway projects. This concept is called a Transportation Finance Zone (TFZ) and was not passed into law either session it was proposed. As proposed in the 81st session, the TFZs would have included a prohibition on the use of private developers or Comprehensive Development Agreements.

While Transportation Reinvestment Zones are considered to be a local government program, Transportation Finance Zones are a state tool, with the funds potentially funneling into one of the dedicated transportation funds.

¹ Testimony by C. Brian Cassidy, Partner, Locke Lord Bissell & Liddell, at a joint hearing of The Senate Committee on Transportation & Homeland Security and The House Committee on Transportation, February 1, 2010.

² Id.

³ Id.

⁴ According to the Texas Department of Transportation, Pass-Through Financing is a way for project developers to fund and be reimbursed for the upfront costs of constructing or expanding a state highway project. The public or private entity developing the project will finance, construct, maintain, and/or operate a project. TxDOT then reimburses a portion of the project costs by making periodic payments to the developer for each vehicle that drives on the highway. These projects may currently be tolled or non-tolled.

⁵ Testimony of James Bass, Chief Financial Officer, at a joint hearing of The Senate Committee on Transportation & Homeland Security and The House Committee on Transportation, February 1, 2010.

Implementation of Transportation Reinvestment Zones

The statutory purposes for which a TRZ may be formed are to:

- Promote public safety;
- Facilitate development and redevelopment of property;
- Facilitate the movement of traffic; and
- Enhance a local entity's ability to sponsor a pass-through project.⁶

A Transportation Reinvestment Zone may be formed by either a municipality or a county, but while the formation process is similar for both, the collection mechanism is not.

The following general steps must be taken to form a TRZ:

1. The governing body of a municipality or county must determine that an area is unproductive or underdeveloped, and that formation of a TRZ would further the purposes described above (i.e., promote safety, facilitate movement of traffic, etc.).⁷
2. The governing body may propose, by ordinance or resolution, to designate a contiguous area within its jurisdiction as a TRZ to promote a transportation project authorized under the pass-through statutes and which cultivates development or redevelopment of the area.⁸
3. The governing body must hold a public hearing on formation of the TRZ no less than 30 days before acting to adopt the ordinance or resolution, and must provide newspaper advertisement of the public hearing at least 7 days before the hearing.⁹
4. The ordinance or resolution establishing a TRZ must:
 - a. describe the boundaries of the zone “with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone”;
 - b. provide that the zone takes effect immediately upon passage of the ordinance or resolution;
 - c. assign a name to the zone; and
 - d. contain findings that the project will cultivate development or redevelopment within the zone.¹⁰

Additionally, the ordinance creating a municipal TRZ must establish an ad valorem tax increment account for the zone.¹¹

⁶ TEX. TRANSP. CODE ANN. §222.105.

⁷ TEX. TRANSP. CODE ANN. §§222.106(c), 107(c).

⁸ TEX. TRANSP. CODE ANN. §§222.106(c), 107(c).

⁹ TEX. TRANSP. CODE ANN. §§222.106(e), 107(e).

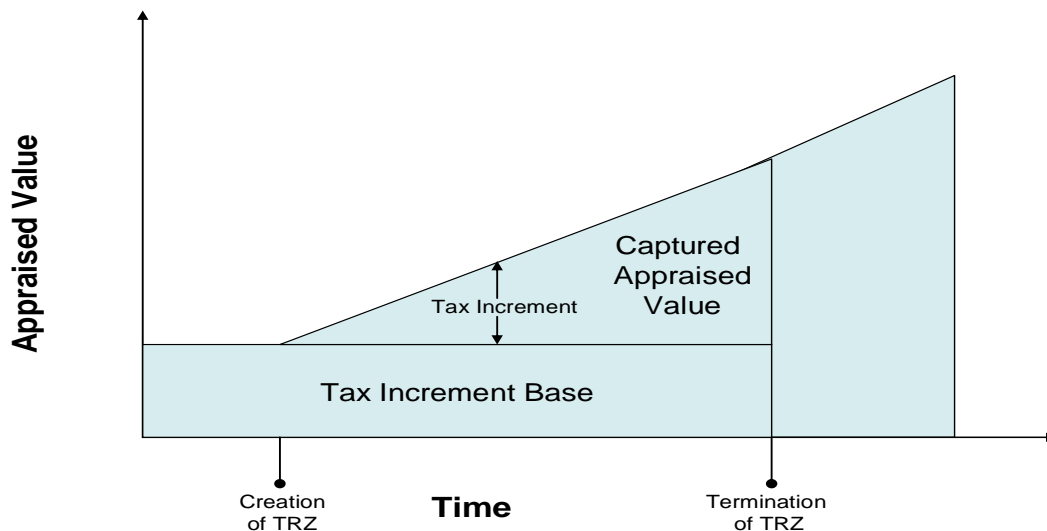
¹⁰ TEX. TRANSP. CODE ANN. §§222.106(g), 107(f).

¹¹ TEX. TRANSP. CODE ANN. §222.106(g).

The tax increment generated by a TRZ is determined as follows¹²:

1. The tax increment for a zone is the amount of ad valorem taxes levied and collected on the “captured appraised value” of property within the zone;
2. The “captured appraised value” is the total appraised value of property within the zone for a year minus the “tax increment base”; and
3. The “tax increment base” is the appraised value of all property in the zone in the year in which the zone was established.

The application of these concepts, and the aggregation of TRZ revenues, is depicted below¹³:



While the formation process for municipal and county TRZs is virtually identical, there are differences in the manner in which each secures the benefit of the tax increment.

A municipality establishes a tax increment account and pays an amount equal to the tax increment into the account each year. All of the tax increment amount must be deposited into the tax increment account.¹⁴ Funds in the tax increment account must be used to fund projects authorized under the pass-through statutes.¹⁵ As a result, municipalities do not appear to have discretion to utilize a portion of the tax increment for other purposes; it must all be used for pass-through projects.¹⁶

In order to obtain the benefit of the tax increment, a county may abate taxes in an amount up to the amount of the tax increment; form a road utility district (RUD) with the same boundaries as

¹² TEX. TRANSP. CODE ANN. §§222.106(a), 107(a).

¹³ Testimony by C. Brian Cassidy, Partner, Locke Lord Bissell & Liddell, at a joint hearing of The Senate Committee on Transportation & Homeland Security and The House Committee on Transportation, February 1, 2010.

¹⁴ TEX. TRANSP. CODE ANN. §222.106(h).

¹⁵ TEX. TRANSP. CODE ANN. §222.106(i).

¹⁶ Testimony by C. Brian Cassidy, Partner, Locke Lord Bissell & Liddell, at a joint hearing of The Senate Committee on Transportation & Homeland Security and The House Committee on Transportation, February 1, 2010.

the TRZ; and allow the RUD to impose taxes in the district in an amount equal to taxes abated.¹⁷ This collection mechanism is necessary due to an apparent constitutional limitation on the authority of a county to implement tax increment financing. Art. VIII, Sec. 1-g(b) of the Texas Constitution authorizes “an incorporated city or town” to issue bonds for development or redevelopment of property and to pledge increases in ad valorem tax revenues for the repayment of those bonds or notes. Art. VIII, Sec. 1-g(b) does not expressly grant that same authority to counties. Therefore, as noted by the Office of the Attorney: “...county-initiated tax increment financing may potentially be subject to constitutional challenge until such time as the constitution is amended.”¹⁸ In the event a RUD is used to collect the tax increment, funds not used for financing of the project may be used “for any district purpose.”¹⁹ The scope of permissible uses of TRZ generated funds is therefore broader under the county/RUD structure, as municipalities are restricted to using TRZ funds for pass-through-type projects.

Legislative History

80th Regular Session

Transportation Reinvestment Zones (TRZs) were intended as a mechanism to help replenish the availability of pass-through funds. They were established by Senate Bill (S.B.) 1266, in the 80th Legislative Session by Senator Kim Brimer.²⁰ Senate Bill 1266 amended Chapter 222 of the Transportation Code, and the TRZ provisions appear in §§222.105-107. This legislation made Texas the first state in the nation to provide legislative authorization for the capture of the tax increment resulting from the increase in property values that is specifically related to transportation.²¹

81st Regular Session

As a result of practical experience with the TRZ legislation, several changes to the TRZ statutes were proposed during the 81st Session. These were embodied in companion bills field by Rep. Pickett (H.B. 1810) and Sen. Nichols (S.B. 2378). Those bills would have made the following changes²²:

- **De-couple TRZs from the Pass-Through Program.**
“De-coupling” TRZs from the pass-through program would have allowed TRZs to be created to support a broad range of transportation projects. The engrossed versions of H.B. 1810 and S.B. 2378 both provided for the use of TRZs for transportation projects as defined by §370.003, Transp. Code, which would therefore have included passenger and freight rail projects, pedestrian or bicycle facilities, intermodal hubs, certain types of airports, and various other transportation projects (in addition to

¹⁷ TEX. TRANSP. CODE ANN. §222.107(h)-(k).

¹⁸ Office of the Attorney General, 2008 Economic Development Handbook, p. 117, fn 551.

¹⁹ TEX. TRANSP. CODE ANN. §222.107(k).

²⁰ Tex. S.B. 1266, 80th Leg., R.S. (2007).

²¹ Testimony by Rafael Aldrete, The Center for International Intelligent Transportation Research, Texas Transportation Institute, at a joint hearing of The Senate Committee on Transportation & Homeland Security and The House Committee on Transportation, February 1, 2010.

²² Tex. S.B. 2378, 81st Leg., R.S. (2009).

tolled and nontolled roadways) among the types of facilities which TRZs could support.

- Increase Flexibility for Municipal Use of Tax Increment Amounts.
This change would have allowed a municipality to designate “all or a portion” of the tax increment amount generated in a TRZ to be used for a project. Current law appears to require that all of the tax increment in a municipal TRZ be used for pass-through projects, which can be a disincentive to the use of a TRZ as it may be perceived as placing too much restraint on the use of future revenues. The proposed legislation would have allowed a municipality to determine how much of the tax increment was to be used for the transportation project for which the TRZ was created, and to determine the purposes for which the remaining increment was to be used.
- Improve County Collection Mechanism.
This change would have provided an alternative mechanism for collection and use of TRZ proceeds by counties.
- Permit Amendments to TRZ Boundaries.
This proposed change would have allowed for amendments to TRZ boundaries to accommodate changes to the scope of a project. A TRZ may be formed before the exact limits of a project are defined (or those limits may change due to subsequent events), and without express authority to amend the boundaries of a TRZ it may not be legally permissible to do so.
- Recognize Pre-Existing Tax Increment Commitments.
For purposes of determining the amount of the tax increment within a TRZ, this change would have made clear that the increment amount should not include amounts attributable to TRZs or other economic development agreements that were established within the boundaries of a TRZ before the TRZ was formed. In other words, pre-existing TRZs and prior commitments made through economic development agreements should be recognized and excluded from the tax increment generated by a TRZ.
- Prohibit Reductions in Funding.
This change would have provided an express prohibition against the reduction in traditional funding to a municipality, county, or the Texas Department of Transportation (TxDOT) district because a TRZ is formed within those areas, and would have specifically precluded the reduction in funding previously identified by TxDOT for a project because a local government decides to create a TRZ for the project.
- Delegate Project Development Responsibility. Consistent with what is currently provided for under the pass-through program, this change would have provided for the delegation of responsibility to local entities for various aspects of the development of projects that are otherwise subject to oversight by TxDOT (provided that projects

on the state highway system must comply with state design criteria unless TxDOT grants exceptions).

- Clarify Authorization to Pledge TRZ Revenues. The proposed legislation would have clarified language regarding the pledge of revenues from a TRZ as part of a project financing.

Senate Bill 2378 died on the House General State Calendar at the end of the legislative session. The House companion made it through the House, but died in the Senate Administration Committee.

The legislation was also added to the TxDOT Sunset bill, H.B. 300, which ultimately died in conference committee.

Conclusion

Additional funding tools for the enhancement of transportation infrastructure in Texas should continue to be explored, including both the Transportation Reinvestment Zones and the examined Transportation Finance Zones. Flexibility in financing road projects and mechanisms that leverage local support will continue to be vital in road planning and construction.

Charge 6:

Examine transportation funding concepts contained in legislation considered during the 81st Legislature, Regular and Special Sessions. Analyze options and make recommendations relating to historical funding strategies including prioritization of existing revenues, as well as alternative state and local transportation funding concepts.

Background

Texas' transportation funding situation is dire, and existing revenue streams for transportation projects are inadequate. Multiple factors have propelled the slow disintegration of the Texas Department of Transportation's (TxDOT) road construction revenue streams, and individually, these factors would be considered minor wounds in the TxDOT budget. However, when taken together, diversions, inflation, increased fuel efficiency, and uncertain federal funding contribute a large, almost fatal blow, to TxDOT's ability to build new roads while maintaining existing infrastructure.

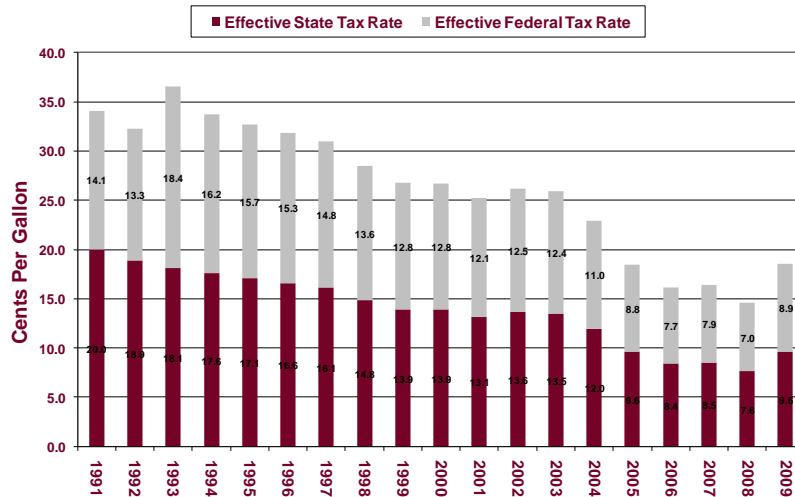
Inflation

According to Texas Transportation Chairwoman, Deirdre Delisi, in her testimony before a joint hearing of the House Committee on Transportation and the Senate Committee on Transportation and Homeland Security on February 1, 2010, "One of the most significant challenges we face is the declining purchasing power of the State Highway Fund."¹ In Texas, construction inflation increased 65% between 2002 and 2008. Since the downturn in the national economy, prices have fallen almost 12%. But as the economy improves, it is likely that prices will continue their upward trend.²

¹ Testimony by Deirdre Delisi, Texas Department of Transportation to the House Committee on Transportation and Senate Committee on Transportation and Homeland Security, February 1, 2011. p. 4

² Id. p. 5

Effective Texas and Federal Fuel Tax Rate Adjusted by Inflation in Roadway Construction Costs



As evidenced by the chart above from the Texas Transportation Institute, the current purchasing power of the twenty cent gas tax is 9.6 cents, compared to 20 cents in 1991.

Increased Fuel Efficiency

Motor fuels tax revenue has also been impacted by the increased fuel efficiency of motor vehicles. As technology has improved, the combustion engine has become more efficient, and alternative fuel vehicles have entered the vehicle market. A flat 20 cent state fuel tax is levied on each gallon sold. The tax does not rise or fall with the price of fuel. Consequently, as fuel efficiency rises less fuel is purchased and therefore less revenue is collected.³ The emergence of alternative fuels like natural gas and hybrids vehicles creates further fuel efficiencies with the ultimate result being less motor fuels tax revenue for the state.

Diversions

"Diversions" is the term given to the practice of appropriating State Highway Funds to agencies and certain functions unrelated to the development and administration of transportation facilities.⁴ In the 2008-2009 biennium, diversions totaled \$1.57 billion and equaled 28.2% of the Texas Department of Transportation's (TxDOT) State Highway Fund Appropriation. This calculation excludes bond proceeds and federal funding. During the 2010-2011 biennium, some diversions were eliminated such as those for the Health and Human Services Commission, Texas Education Agency, and the Texas Workforce Commission. State Highway Fund Appropriations to the Texas Department of Public Safety were reduced by \$138 million. These diversion reductions roughly totaled \$300 million. The total amount of diversions in the biennium is \$1.15 billion, 20.15% of TxDOT's State Highway Fund appropriation.⁵

³ Id. p. 6

⁴ Id. p. 6

⁵ Id. p. 6-7

Federal Funding

Texas relies heavily on federal funds to help address the state's transportation needs. Unfortunately, federal funding is increasingly unreliable, due to the expiration of the federal-aid program, the insolvency of the Federal Highway Trust Fund, and the lack of clear goals and strategies for transportation at the federal level. The lack of reliability is highlighted by the uncertain nature of the federal surface transportation legislation.⁶

SAFETEA-LU is the name given to the federal surface transportation authorization act covering certain transportation programs from 2005-2009. The act expired on September 30, 2009 and there has been little movement in Congress to reauthorize the act. Instead, states are operating under a series of continuing resolutions, the last of which passed in December 2010 and will expire in March 2011.⁷

Rescissions further add tenuousness to federal funding. A rescission is simply the acknowledgment that projected funding won't be available for future projects. Legislation is then enacted by Congress that cancels the availability of budget authority it had previously enacted. While the concept of rescissions is not new, the frequency of rescissions since 2006 and the willingness of Congress to remove the flexibility with which states may handle rescissions have increased.⁸

During the 81st Texas Legislature, First Called Session, House Bill (H.B.) 1 authorized the issuance of general obligation bonds to pay all or part of the costs of highway improvement projects. The bonds are payable from revenue not already dedicated by the constitution, i.e. general revenue. The amount that can be issued, up to an aggregate amount of \$5 billion, is subject to appropriation. \$100 million of general revenue is appropriated to the Texas Department of Transportation (TxDOT) in 2011 for debt service and \$2 billion in bonds is appropriated in the biennium. \$1 billion is deposited into the State Infrastructure Bank and the other billion is available to make payments on \$1.85 billion in lettings plus \$150 million in engineering and Right of Way (ROW) acquisition. Since the legislature instructed the department to enter into contracts valued at a greater amount than what was appropriated, the legislature needs to fund the remaining debt service, or risk money being taken from other projects, such as maintenance, to pay for new construction.⁹

Conclusion

This session, at a minimum, the legislature must fund the debt service for at least \$1 billion of the remaining \$3 billion in unissued Proposition 12 bonds in order to complete already started construction projects. Ideally, the legislature should fund the debt service on all \$3 billion of unissued Proposition 12 bonds.

Ultimately, Texas' transportation challenges cannot be solved by borrowing money. The legislature should develop a sound, dedicated revenue stream for mobility projects. This new

⁶ Id. p. 8

⁷ Id. p. 9; <http://www.aashtojournal.org/Pages/123010extension.aspx>

⁸ Id. p. 8

⁹ Id. p. 13

revenue stream should incorporate both a local component and a state component. The state component should sit atop the existing highway funding framework to ensure there are no diversions, while the local component should resemble a school bond issue in which citizens authorize a local funding stream for a specific set of transportation projects.

Charge 7:

Study and make recommendations to expedite the environmental review process for transportation projects.

Background

Beginning in the mid-1960's, a number of federal and state environmental laws were created. One of these laws, The National Environmental Policy Act, commonly called "NEPA", requires federal agencies to conduct an environmental review prior to taking a "major federal action" such as, approving use of federal funds for constructing a highway. The rules of the federal Council on Environmental Quality, and of the Federal Highway Administration (FHWA), require that a written report be produced describing, for example, an analysis of project alternatives, and direct and indirect effects of the project. An opportunity for public participation is required, as is coordination with experts related to the project. The environmental review, public involvement and coordination must be completed before the project can be approved. The Texas Transportation Code requires Texas Department of Transportation (TxDOT) to develop environmental review procedures for projects that are not subject to review under NEPA.¹

A project's design and location is affected by the environmental review and public involvement processes. Environmental review includes distinct tasks such as scoping, field work, technical analysis and report development, compiling documentation, developing plans for mitigating impacts, agency coordination, public involvement, obtaining permits, and final approval of the environmental document. The environmental studies that are part of the environmental document may investigate impacts to wetlands, water quality, trees, plants, animals, flood plains, air quality, farmlands, parks, open spaces, endangered species, hazardous materials, cultural resources, community issues, environmental justice communities, habitat, storm water pollution, and traffic noise.²

The environmental document demonstrates how the project complies with numerous laws, rules and agreements, and how it does or will comply with specific permitting requirements. Texas Department of Transportation must satisfy the requirements of, and coordinate with, a number of state and federal agencies including:

- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Services
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- National Marine Fisheries Service
- Federal Highway Administration
- Texas Commission on Environmental Quality
- Texas Parks and Wildlife Department
- Texas Historical Commission and State Historical Preservation Officer

¹ Testimony by John Barton, Texas Department of Transportation to the Senate Committee on Transportation and Homeland Security, June 8, 2011. p2

² Id. p2

- Texas General Land Office
- Coast Coordination Council³

The coordination with each agency has a separate timeline to follow. Texas statute requires TxDOT to develop and adopt a Memoranda of Understanding (MOU) with the Texas Historical Commission, Texas Parks and Wildlife Department, and the Texas Commission on Environmental Quality for their separate review and comment on highway improvement projects. Each of the MOU's has separate timelines, which adds to the complexity of the environmental process.⁴

The work is completed by highly specialized personnel, both TxDOT employees and contractors. Texas Department of Transportation's districts handle the project design, location and environmental studies and public involvement process. Many of the smaller districts have one person responsible for all environmental planning and studies. Texas Department of Transportation's largest district, Houston, has 11 people responsible for this. Each district also has a Director of Transportation Planning and Development, with broad responsibility for the planning of projects, including environmental issues. The districts also have staff responsible for other environmental issues that occur during construction, maintenance or operations of Texas' highways.⁵

Different types of environmental assessments are performed depending on the significance of the anticipated impacts. Routine projects that are not anticipated to have significant impacts are assessed as a "categorical exclusion." If the significance of the impacts is unknown, TxDOT will prepare a more detailed "environmental assessment." If it is anticipated the project will have significant impacts, TxDOT will prepare an "environmental impact statement."⁶

For any project, TxDOT may have to prepare a re-evaluation of the environmental document. An average minimum amount of time to complete a re-evaluation is 60 days for the simplest changes, to 180 days for the most complex changes, plus possible additional time.⁷

Texas Department of Transportation faces many challenges while trying to ensure compliance with state and federal law including but not limited to:

- Different project types, ranging in scope from small to large
- Different environmental settings for each project
- Varied public support for projects
- Changes to project scope
- Design changes
- Limited resources
- Competing priorities
- Coordination with other agencies involved in the review of projects⁸

³ Id p2-3

⁴ Id. p3

⁵ Id. p3

⁶ Id. p3-4

⁷ Id. p4

In an effort make the environmental process more efficient, TxDOT has implemented or is in the process of implementing several initiatives. First, TxDOT is pursuing various programs in an effort to minimize the number of revisions, eliminate unnecessary studies, properly allocate resources and improve project scheduling. Second, TxDOT is developing the Comprehensive Data and Reporting System (CEDARS). The program records the process, outcomes, and on-going requirements for environmental compliance on a project-by-project basis. The program should take about two years to develop. Third, TxDOT has entered into an agreement with the FHWA and the U.S. Fish and Wildlife Service (USFWS) in which USFWS will provide environmental services. These services include assisting TxDOT and FHWA in transportation planning, early project assistance, and project consultation. Fourth, TxDOT has developed a training curriculum of 21 courses on environmental topics. These training courses will be made available to TxDOT personnel, contractors, and local government personnel. The additional training will make compliance with the environmental process more easily understood and thus hopefully reduce inefficiencies in the process.⁹

Conclusion

The Texas Department of Transportation (TxDOT) recognizes inefficiencies in the environmental review process contributes to the delay and expense of transportation projects, and is trying to correct the problem by undertaking several improvement programs.

In an effort to assist TxDOT, the previous Senate Transportation and Homeland Security Committee Chairman, Senator John Carona, created a workgroup to examine the environmental process and make recommendations. On November 1, 2010, the workgroup presented its findings to the new committee chairman, Senator Williams, see Appendix A. Those recommendations include:

1. Add a new Texas Transportation Code section authorizing TxDOT to enter into funding agreement with state or federal agencies to facilitate the agency's performance of its duties related to the environmental review process for a transportation project of TxDOT.
2. Grant TxDOT general authority to adopt deadlines by amending Transportation Code 201.607 so that TxDOT must, by rule, adopt procedures concerning coordination with governmental entities about a proposed transportation project. The procedures should provide that the governmental entities will provide any comment no later than 45 days of TxDOT submitting a request for comment. The actual timeframe can be negotiated between TxDOT and the governmental entity but should not exceed 45 days.
3. Create deadlines for Texas Parks and Wildlife Department (TPWD) to submit comments by amending Texas Parks and Wildlife Code, 12.0011(b) concerning TPWD's submission of comments to governmental entities that construct developmental projects (such as TxDOT). The amended section should state that the TPWD must provide any comment to TxDOT no later than 45 days of TxDOT submitting a request for comment. The actual

⁸ Id. p 6

⁹ Id. p6-8

timeframe can be negotiated between TxDOT and the TPWD about should not exceed 45 days. TPWD's sunset legislation in the 81st session (H.B. 3391) added requirements (§12.0011(c)) concerning a governmental entity must respond in writing to TPWD comments within 90 days of approval of the project. This proposal would not change the recent sunset legislation.

4. A resource agency's failure to submit comment by the specified deadline should not impede the processing of an environmental document. Amend Transportation Code 201.607 to allow TxDOT to adopt procedures by rule so that comments submitted by governmental entities after the deadline will be considered by TxDOT to the extent possible.
5. Create an environmental review certification process by which TxDOT can certify district environmental specialists. These TxDOT district employees would be certified to work on all documents subject to both state and federal environmental review. The process would also allow for continuing education which would be necessary for recertification. The certification would also be available to private contractors who routinely do work for TxDOT, counties and cities.

The legislature should consider the workgroup's proposals to streamline TxDOT's environmental review process.

Charge 8:

Evaluate TxDOT's policy for permitting overweight vehicles and recommend ways to ensure overweight vehicles do not cause significant damage to the state's roadways and bridges. Examine the limited operation hours and staffing of highway weigh stations across the state and consider whether expanded operations or other alternatives would improve compliance with weight restrictions.

Background

The trucking industry supplies needed goods and services and has a massive impact on the Texas economy. To increase efficiency and meet the needs of certain industries, trucks must carry loads that exceed the design capacity of some state roadways and bridges and cause potential harm to other users. To ensure safety on Texas roadways, the Texas Department of Transportation requires that overweight and/or oversize vehicles acquire special permits.

Texas' Permitting Process Overview

Generally oversize/overweight permits are issued to transport non-divisible loads that are greater than 8 feet 6 inches wide, 14 feet high and 65 feet long for a truck and trailer combination, with a gross weight of 80,000 pounds.¹ These maximum legal sizes and weights are federally mandated.

By law, permitted loads are engineered to minimize damage to roads and bridges. Texas Department of Transportation (TxDOT) issues 20 different statutory permit types each with their own unique requirements and fee structures.² Fees vary from \$60 for a single trip permit with no weight, to \$4,000 for an annual permit for unlimited trips for loads up to 12 feet wide, 14 feet high and 120,000 pounds.³

"Weight tolerance" permits, also known as "2060/1547" permits named after their enabling legislation (71st Session, 1989/74th Session, 1995), are a statutory exemption to the non-divisible load and weight requirements.⁴ These are annual permits that allow the transport of divisible loads that exceed gross weight by up to 5%, and axle weight tolerances of 12% for agricultural commodities and 10% for non-agriculture commodities on state and county roads. These vehicles are not allowed to travel on the interstate system, or exceed posted weights on bridges unless the bridge provides the only vehicular access to or from the transporter's origin or destination. Permit holders pay a base fee of \$75, a \$5 administrative fee, and an additional graduated fee depending on the number of counties in which they will be transporting their materials. Fees are distributed between the State Highway Fund and the counties based on the formula outlined in statute and can be seen in the chart below.⁵

¹ Testimony by John Barton, Texas Department of Transportation to the Senate Transportation and Homeland Security Committee, May 3, 2010.

² Id.

³ Id.

⁴ Id.

⁵ Id.

WEIGHT TOLERANCE FEE DISTRIBUTION				
Fee	Deposited To		Distribution/Use	Statute Reference
\$50 Base Fee	General Revenue		Distributed to each county based on the ratio of the number of county road miles in the county to the number of county road miles in the state.	§621.353(a)
\$25 Base Fee	Highway Fund		To be used to administer the weight tolerance permit program, under §623.011, §623.0111, §623.0112	§623.353(a)
Additional Fee for # of Counties Selected	GR	HWY	GR distribution to counties selected on the permit application based on the ratio of county road miles in the county to the number of county road miles of all the counties selected on the permit.	§621.353© & 623.0111(a)
1-5 \$175	\$125	\$50		
6-20 \$250	\$125	\$125		
21-40 \$450	\$345	\$105		
41-60 \$625	\$565	\$60		
61-80 \$800	\$785	\$15		
81-100 \$900	\$900	-0-		
101-254 \$1,000	\$1,000	-0-		
\$5 Administrative Fee (set by Administrative Rule)	Highway Fund		To be used for windshield sticker (§623.011(d)), distribution of fees (621.353), and notification to counties (§623.013)	§623.0112

Mid-heavy and super-heavy permits are for loads over 200,000 pounds and must meet even more stringent requirements including a pre-trip route survey prior to permit approval. While all permits have seen a general increase, the mid to super-heavy loads have seen a dramatic increase recently with the number of super-heavy permits increasing from 208 in 2005 to over 1,500 in 2009.⁶

Permit fees were effectively doubled by the legislature in 2007, with the additional fees going to the State Highway Fund. In 2009, TxDOT collected over \$95 million in permit fees, with over \$69 million deposited to the State Highway Fund and \$26 million to General Revenue with 579,000 permits issued that year.

With the fee increase, TxDOT was able to add 25 full time equivalent employees (FTEs) to their permitting department to increase the number and speed of permits being issued. In addition to the increased manpower, TxDOT is currently developing an automated routing system--called TxPROS. Texas Department of Transportation recently received Legislative Budget Board transfer authority for the final funding piece of the project and implementation is expected in early 2011.⁷

Impact of Overweight Vehicles

Any vehicle exceeding the legal gross vehicle weight or axle weight is classified as an overweight vehicle. The current legal load limits are 20,000 pounds for a single axle, 34,000 pounds for a tandem axle, 42,000 pounds for a triden axle, and 80,000 pounds total gross weight. Overweight damage on pavements is primarily attributed to overweight axles rather than gross weight.⁸

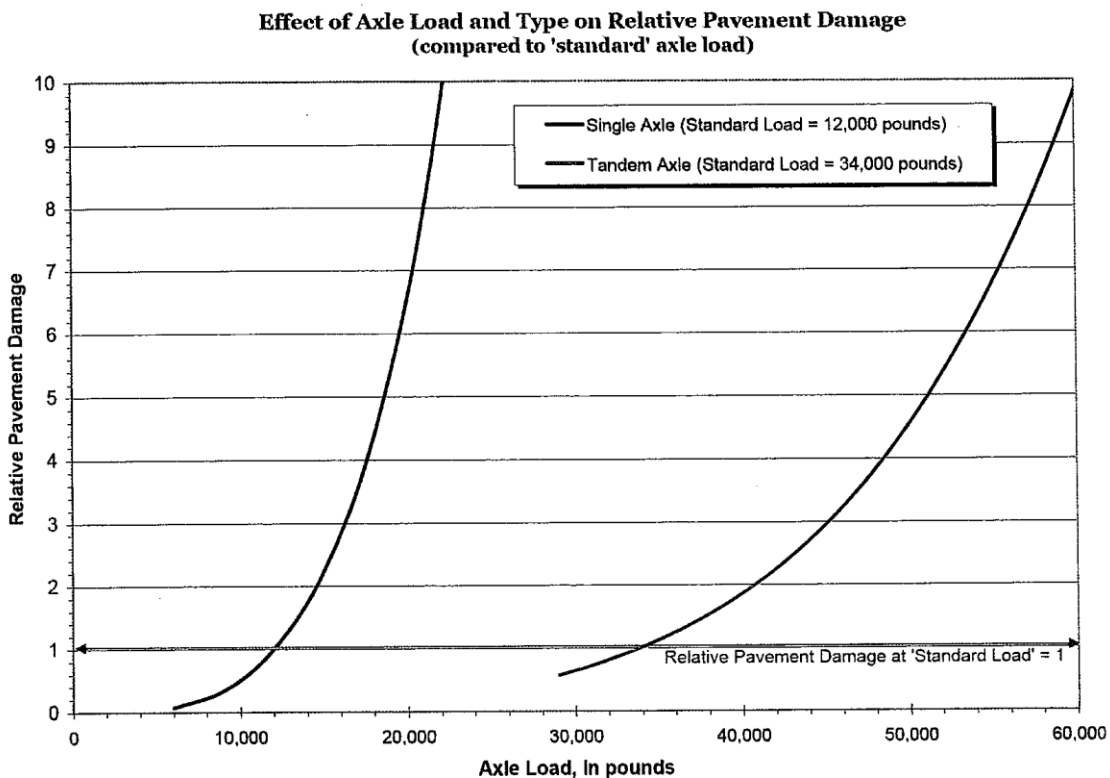
⁶ Testimony by John Barton, Texas Department of Transportation to the Senate Transportation and Homeland Security Committee, May 3, 2010.

⁷ Id.

⁸ Id.

Trucks with axle weights over the legal limit are a major concern because pavement damage increases exponentially to the "fourth power" of the increased axle weight. For example, doubling an axle weight will produce 16 times the pavement damage. Therefore, even the legally overloaded vehicles that are overloaded by 5% increase their relative pavement damage by more than 5%. This results in a 22% (1.05 to the 4th power =1.22) increase in relative damage.⁹

However, one University of Texas study from 2001 found that the pavement damage from vehicle traffic depends mainly on the number of axle passes over the pavement and axle weights.¹⁰ That being said, many in the industry feel that gross weight limits can be increased so long as axle weights do not change. The chart below compares the effect of axle load and type on relative pavement damage.¹¹



With significant increases in pavement damage comes a decrease in pavement life and the ultimate result is an increase in road maintenance costs.

⁹ Testimony by John Barton, Texas Department of Transportation to the Senate Transportation and Homeland Security Committee, May 3, 2010.

¹⁰ David Lusken and C. Michael Walton "Effects of Truck Size and Weights on Highway Infrastructure and Operations: A Synthesis Report" UT 2001

¹¹ Testimony by John Barton, Texas Department of Transportation to the Senate Transportation and Homeland Security Committee, May 3, 2010.

Bridges

Texas has 51,019 bridges: 33,393 are on-system and 16,262 are off-system. Unlike the primary factor for pavement damage being axle weight, the impacts of truck size and weight on bridges depends upon several factors including the gross weight of the vehicle, the weight on various groups of axles, the distance between axle groups, and the type and length of the bridge.¹² 44% of Texas' bridges were built before 1970. The majority of these bridges were designed for a useful life of fifty years; in other words, almost 40% of Texas' bridges will have met their service life by 2020.¹³

Enforcement Activities

Texas Department of Transportation

Most enforcement activity is the responsibility of the Department of Public Safety (DPS), however, Texas Department of Transportation (TxDOT) has a size and weight administrative enforcement program that was initiated in 2007 in response to H.B. 2093 (80th session). This division's investigations are similar to audits, in that TxDOT staff reviews law enforcement citations, company records, shipping documents and permits to determine if violations have occurred. In this process, TxDOT has the authority to assess fines as well as revoke a carrier's right to obtain oversize/overweight permits and request that the Department of Motor Vehicles (DMV) also revoke a carrier's operating authority. Administrative penalties are set by statute at an amount up to \$30,000 for multiple violations, with each day a violation continues or occurs being a separate violation. All fines collected are deposited to the general revenue.¹⁴

Texas Department of Public Safety and Weigh Stations

The primary enforcement mechanism for handling the problem of overweight trucks on Texas roads are weigh stations operated by the Texas Department of Public Safety (DPS). There are 103 weigh station facilities in Texas, but due to current manpower shortages and other law enforcement missions, the majority are operated less than 40 hours per week.¹⁵

In 2002, it was estimated that to enable 46 of its weigh stations to operate 24 hours a day would cost the state approximately \$27 million. At the time these figures were based on needed infrastructure upgrades, including buildings and site improvements to most of the locations as well as the cost of additional personnel and operating costs to run the stations 24 hours a day. It is thought that the \$27 million estimate would be substantially higher today based on current costs and inflation.¹⁶

Since the cost of staffing these weigh stations is so high, Texas has also tried to leverage technology to help monitor vehicle weights by using Weigh-in-Motion (WIM) systems at some weigh station facilities. Weigh-in-Motion systems are designed to capture and record truck axle and gross vehicle weight while a vehicle is traveling on a roadway. Collected data is used for

¹² Testimony by John Barton, Texas Department of Transportation to the Senate Transportation and Homeland Security Committee, May 3, 2010.

¹³ Id.

¹⁴ Id.

¹⁵ E-mail between Aaron Kocian and Mark Rogers at Texas Department of Public Safety on Sept. 22, 2008

¹⁶ E-mail between Aaron Kocian and Major David Palmer of the Texas Highway Patrol on March 16, 2009

highway design, bridge design, pavement design, pavement management and transportation planning. Currently, the Texas Department of Transportation operates 23 WIM sites statewide, and DPS operates an additional 6 WIM sites along the Texas/Mexico border.¹⁷

The weigh station data collected on any individual pass is typically within ± 5 of 15% of the actual vehicle weight. Static scales used for enforcement purposes are generally accurate to within $\pm 0.1\%$.¹⁸

While we have the WIM technology at these stations and the data collected is used for planning purposes, the stations cannot be used for enforcement due to federal requirements. However, similar technology offers options to better utilize the information collected by WIM stations to enforce vehicle weight standards. Programs like PrePass and NorPass work with the trucking industry and use transponders to communicate truck weights with the vehicle never even having to slow down.

The major advantages of using a software system that communicates directly with the industry are threefold:

- Vehicle weights can be screened 24 hours a day 7 days a week.
- Compliant vehicles can bypass weigh station stops and DPS can focus attention on non-compliant carriers.
- Uncontrolled bypasses can be greatly reduced, if not eliminated all together.¹⁹

Conclusion

The trucking industry is a valuable and integral part of the economic stability and development of the state. Maintaining and improving Texas roads is a vital part of keeping this industry strong and meeting the needs of the citizens of this state. The issue of enforcing current oversize/overweight requirements should continue to be studied by state legislators.

¹⁷ McMahan, Charles. Letter to Charles McMahan from John A. Barton, P.E. Assistant Executive Director of Engineering Operations at Texas Department of Transportation presented to the Senate Committee on Transportation and Homeland Security on May 3, 2010.

¹⁸ Id.

¹⁹ Testimony by Richard P. Landis, President and CEO of HELP, INC. to the Senate Committee on Transportation and Homeland Security on May 3, 2010.

Charge 9:

Review the 100 most congested roadway segments and determine if alternative congestion relief modes have been identified to relieve segments in areas where the addition of lanes is not possible. For example, review whether TxDOT and MPOs consider instituting park & rides and encouraging employee flex times to relive congested roadway segments.

Background

In the 81st Legislative Session, the Lieutenant Governor of Texas by budget rider instructed the Texas Department of Transportation (TxDOT) to develop information identifying the 100 most congested roadway sections in the state and post that information on the TxDOT website.¹ Texas Department of Transportation was also instructed to estimate the annual hours of travel delays and the economic cost of the delays for each of the road sections. Additionally, the rider stipulated that no TxDOT District in which the congested road sections are located could receive any transportation money from the state until the information was posted. The information was posted to the department's website prior to September 1, 2009, and has been updated and will continue to be updated as new information and analysis becomes available.²

All roads in the state were included in the analysis, but as a practical matter, only the freeways, toll roads, expressways, frontage roads, major arterial streets and minor arterial streets were included. These are the most heavily traveled roads and the ones with the most comprehensive sources to collect data to conduct the necessary research. The sections identified for analysis were reviewed by transportation staff from each of the associated TxDOT districts and by local Metropolitan Planning Organizations (MPOs) familiar with the local road network to ensure the appropriateness of the section definitions. The list was also reviewed by the Lieutenant Governor's office prior to posting to ensure the information conformed to the requirements of the rider and their intent as authors of the rider.³

Of the 100 Most Congested Roadways, TxDOT has identified projects that will have congestion relieving impacts on about half of those roadway segments. These projects include congestion relief measures such as:

- Building, improving or widening frontage roads
- Building or improving high occupancy vehicle or managed lanes
- Building or improving an interchange or direct connector
- Adding main lanes
- Other improvements to smooth the flow of traffic such as reversing on-ramps, building dedicated turn lanes, or widening shoulders⁴

Projects that will impact congestion levels but do not include adding capacity to the roadway include managing access points to better reflect road use and the installation of intelligent

¹ Rider 56, 2010 - 2011 General Appropriations Act, Article VIII, Texas Department of Transportation Budget

² Testimony by John Barton before the Senate Committee on Transportation and Homeland Security, June 8, 2010 p.1

³ Id, p. 1

⁴ Id. p. 2

transportation systems to help the department manage traffic levels and inform motorists of situations that impact their travel speeds and roadway congestion levels. While TxDOT has little authority to dictate the use of alternative relief measures, TxDOT works with the MPO's and stakeholders to evaluate what can be done.⁵

For those areas of the state that generate commuting traffic that contributes to congestion in our metropolitan and large urban areas, TxDOT has participated in the development of park-and-ride facilities in these rural and small urbanized areas, most often through the selection of park-and-ride projects submitted to TxDOT in response to grant opportunities. For example, when oil overcharge funds were available, several park-and-ride facilities were acquired and constructed around the state. In fact, these are usually called park-and-pool lots because they provide parking space most often for riders using car pools instead of buses. Most recently, five park-and-ride lot projects were funded through the American Recovery and Reinvestment Act. Those projects are located at Sterling Ridge north of Houston, at State Highway 36 in Ft. Bend County, in Mineral Wells, in Cleburne, and in the Sherman-Denison Area.⁶

Ride sharing, which involves matching unused capacity in private vehicles with individuals needing rides, is encouraged by TxDOT, MPOs, and Metropolitan Transit Authorities (MTAs). Texas Department of Transportation also participates in metropolitan planning for travel demand management activities that encourage alternatives to single occupancy vehicle trips. This includes ride sharing, car pools, van pools, planning for managed lanes, telecommuting, development of flex work schedules or compressed work schedules, and similar activities.⁷

Aside from TxDOT, various transportation agencies and private entities engage and promote alternative congestion relief options. In an effort to reduce traffic congestion on some of the state's busiest roadways, several MTAs operate High Occupancy Vehicle (HOV) and High Occupancy Toll (HOT) lanes as well as park-and-ride lots. The Metropolitan Transit Authority of Harris County (METRO), for example, operates 29 park & ride lots with over 33,000 parking spaces. It also manages 104 miles of HOV lanes on six of Houston's major freeways. This HOV system carries over 45,000 vehicles and over 133,000 people per day. The agency estimates that during the peak rush hour, one HOV lane carries the same as three freeway lanes.⁸

The Metropolitan Transit Authority of Harris County is currently considering converting 88 miles of HOV lanes into HOT lanes. By using technology to manage and monitor traffic conditions and charging a toll, METRO can permit a single occupant vehicle (SOV) to access a HOV system thereby removing traffic from the more congested main lanes. The toll rate would be adjusted to control the volume of non-HOV vehicles in the HOT lane. As congestion builds and speed reduces, the toll would be increased to discourage drivers from entering the HOV lane. The toll would be decreased as congestion improves.⁹

⁵ Id. p.2

⁶ Id. p. 4

⁷ Id. p. 4

⁸Testimony by Vincent R. Obregon, METRO to the Senate Committee on Transportation and Homeland Security, June 8, 2010. p. 1-2

⁹ Id. p. 3

Metropolitan Transit Authorities do not limit their congestion relief measures to only HOV and HOT lanes. Many MTAs operate vanpool programs. Similar to carpools, vanpooling often involves 5-15 people meeting at a central location and traveling in a van operated by an MTA to one single destination or a limited number of destinations. Houston METRO, the Fort Worth Transportation Authority (the 'T'), Dallas Area Rapid Transit (DART), and Capital METRO all offer vanpooling programs.¹⁰

Various public and private entities also participate in congestion relief strategies, some through rewards programs. One program, called NuRide, encourages private citizens to track their environmentally friendly commuting methods in exchange for various benefits. Under the NuRide program, each time a citizen carpools, vanpools, or telecommutes, that person receives points which he or she can redeem for rewards such as restaurant coupons or retailer discounts. In 2008, the United Services Automobile Association (USAA) San Antonio Office, which has been operating a vanpool program since 1977, participated and sponsored the USAA 3,000,000 Mile NuRide Commuter Challenge. Over 2,800 commuters from 164 different San Antonio companies participated in the event and saved close to \$1 million in commuting costs and 3.1 million commuting miles in exchange for rewards from various retailers and service providers. In 2009, HEB sponsored a similar 15,000,000 mile commuter challenge through the same program.¹¹

While TxDOT, MPOs, MTAs, and private entities all pursue alternative congestion relief strategies, there are challenges. Individuals still have diverse travel patterns along with an ongoing need to perform multiple tasks during the day. This makes vanpooling, carpooling, busing, and other mass transit methods less appealing to the commuter. Another challenge is the growth of the peak travel period. As the peak travel period extends over a longer period of the day it becomes more difficult and more costly to provide alternatives to congestion.¹²

Conclusion

Texas Department of Transportation, Metropolitan Planning Organizations, Metropolitan Transit Authorities, and private entities all pursue alternative congestion relief strategies, however some challenges still remain. The legislature should continue to monitor the implementation of alternative congestion relief strategies, and further explore means to mitigate congestion on Texas' 100 Most Congested Roadways.

¹⁰ Testimony by Dr. Katie Turnbull, TTI, to the Senate Committee on Transportation and Homeland Security, June 8, 2010.

¹¹ Id., www.nuride.com

¹² Id.

Charge 11:

Review the possible increase in number of unlicensed and uninsured drivers resulting from license suspension or indigence resulting in a driver's inability to pay Driver Responsibility surcharges in light of new Department of Public Safety Rules.

Background

During the 78th Legislative Session, Representative Krusee authored House Bill 3588, which initially created the Driver Responsibility Program (DRP).

This program assesses surcharges on drivers based on certain traffic offenses that occurred on or after September 1, 2003. The bill created a point system for identifying drivers who habitually violated traffic laws, assigning points for different kinds of violations. Drivers accumulating six points or more, over a 36-month period, pay surcharges of \$100 for six points and \$25 for each additional point. Driving while intoxicated (DWI) incurs a \$1,000 surcharge per year for three years and \$1,500 per year for third or subsequent violations. Driving with an invalid license or without proof of financial responsibility incurs surcharges of \$250 per year for three years. Driving without a valid license would incur a \$100 annual surcharge for three years. The program's intention is to penalize habitual speeders and those who violate mandatory car insurance, driver's license, and driving while intoxicated laws.¹

Points in the DRP are assigned as follows:

- Two points for a moving violation conviction in Texas or that of another state
- Three points for a moving violation conviction, as applicable to the program, in Texas or another state that resulted in a vehicle crash

Surcharges in the DRP are assigned as follows:

- \$1,000 for first offense DWI
- \$1,500 each subsequent offense for DWI
- \$2,000 DWI with blood alcohol concentration of .16 or more
- \$250 Driving without insurance
- \$250 Driving while license invalid (DWLI)
- \$100 Driving without a license

The Texas Department of Public Safety is required to notify drivers when they have earned the fifth point, informing violators of assessment levels and payment conditions. Failure to pay surcharges results in driver's license suspension.²

¹ Texas Department of Public Safety Home page for the Driver Responsibility Program: http://www.txdps.state.tx.us/director_staff/public_information/pr081903c.htm

² Texas Department of Public Safety Driver Responsibility Surcharge page: <https://www.txsurchargeonline.com>

Who receives money from the surcharges

The surcharges collected by the department under this law are remitted to the comptroller on a monthly basis. Trauma centers and county and regional emergency medical services receive 49.5% of the collected money through the Texas Department of State Health Services. Another 49.5% of the money goes into the Texas Mobility Fund administered by the Texas Department of Transportation. Then, the remaining 1% of the collected money goes to the Department of Public Safety for operation of the Driver Responsibility Program (DRP).³

Since September 2004, levied charges have totaled \$2 billion. However, only \$806 million of that total have been collected, a 40% collection rate. When the collection rate is broken down by each category we can see the following:

- 72% is from point accumulations
- 41% is from intoxication convictions
- 40% is for driving without insurance and/or with an invalid license
- 29% for driving without a driver's license

In the chart below, the Department of Public Safety's (DPS) surcharge assessment can be compared next to the actual collection of the same surcharges over the past 5 years.

Assessed Surcharges by FY	Collected Surcharges by FY
FY05: \$179 million	FY05: \$41 million
FY06: \$299 million	FY06: \$100 million
FY07: \$428 million	FY07: \$159 million
FY08: \$363 million	FY08: \$167 million
FY09: \$356 million	FY09: \$167 million
FY10: \$405 million	FY10: \$170 million

There have been 6,552,956 notices sent to persons who have committed DRP worthy violations, representing \$2,032,244,603 in potential surcharge collections. Below is a break down of these numbers by violation, which gives a good representation on where collections are most difficult for DPS.

	<i>Intoxication</i>	<i>Points</i>	<i>No insurance/ DWLI</i>	<i>No DL</i>
Notices Mailed	768,647	320, 245	3,554,666	1,909,398
Revenue Billed	\$812,151,400	\$35,814,666	\$968,225,407	\$ 216,053,130
Revenue Collected	\$328,989,998	\$25,677,973	\$389,082,638	\$63,055,862
Collection Rate	41%	72%	40%	29%

Recent estimates indicate that 1.2 million Texas drivers currently hold suspended licenses due to nonpayment of DRP surcharges.

³ <http://www.capitol.state.tx.us>, page 152 of the Adobe text version

Changes to the Driver Responsibility Program

Legislative Changes

During the 80th Legislative Session, Senate Bill 1723, authored by Senator Ogden and sponsored by Representative Krusee, passed allowing for more extensive collection techniques, reinstatement of installment plans, amnesty programs, and a reduction in surcharges or the number of years a surcharge would be paid when the offender demonstrates an improvement in behavior. The 81st Texas Legislature amended the law to move power from the discretionary authority of the Department of Public Safety (DPS) to implement an indigent payment reduction mechanism that pays into the Driver Responsibility Program (DRP).

Department of Public Safety approved Changes

The Public Safety Commission approved changes to the DRP in July of 2010. Those changes included adding an Amnesty Program, an Indigency Program, and an Incentive Program.

The Amnesty Program:

- Applies to individuals who have been in default, and the DPS will determine the time in default for each amnesty period
- Reduces amount to 10% of total surcharges owed, not to exceed \$250
- Rescinds suspension for those who receive amnesty while payments are being made

The Indigency Program:

- Applies to individuals at or below 125% of poverty level, using a sworn affidavit
- Reduces amount to 10% of total surcharges owed, not to exceed \$250
- Rescinds suspension for those who receive Indigency while payments are being made

The Incentive Program:

- Applies to individuals above 125% and below 300% of poverty level, using a sworn affidavit
- Individuals will pay a reduced amount if all three years are paid in full:
 - Reduced to 50% of what's owed if paid within 30 days after notice
 - Reduced to 60% if paid within 60 days after notice
 - Reduced to 70% if paid within 90 days after notice

OR

- Reduced payments for continued compliance
- First year, pay 100%
- Second year, reduced by 50%
- Third year, reduced by 75%

The programs will be phased in over several months with the Amnesty Program being implemented during tax season. The Indigency Program will be implemented immediately after the amnesty period ends. The Incentive Program will be evaluated for implementation.⁴

Testimony before the Senate Committee on Transportation and Homeland Security

The Senate Committee on Transportation and Homeland Security took testimony in October of 2010 on Interim Charge 11 regarding the Driver Responsibility Program (DRP). A major concern is that the DRP leads to high percentages of uninsured, unlicensed drivers in the state due to the inability for a great majority of citizens to pay the surcharge. Senator Shapleigh stated that one out of nine persons in El Paso is in the DRP and if a person in the DRP fails to make a payment then they are unable to get to work or to obtain work because of a driving requirement. Judge Atkinson of the Texas Center for the Judiciary stated that suspending the license of a driver who is in default was meant to be a punitive measure. He also pointed out several ways that would cause a license to be suspended and suggested that the state reduce first-time offense, while strengthening a second offense of driving while intoxicated (DWI). Recall that DWI carries the highest monetary penalty per offense of all qualifying offenses.

Legislative Board Analyst Meredith Melecki, stated the 40% compliance rate for the program has resulted in \$373.4 million going to 280 hospitals for trauma care with a balance remaining of \$331.3 million as of fiscal year 2011. Dr. Carlos Brown, director of trauma for Seton Family of Hospitals, stated that the Seton Medical Facilities had \$8 million in fiscal year 2009 and \$9.6 million in fiscal year 2010 in uncompensated care and that the DRP allowed those facilities to recoup 31% of the uncompensated care costs. An elimination of the program would make it difficult for hospitals to provide the same level of trauma care.

Conclusion

The Driver Responsibility Program (DRP) succeeds in penalizing habitual violators of traffic offenses while simultaneously providing beneficial funds for emergency medical and trauma services and the Texas Mobility Fund. Ensuring that the violation payments are fulfilled is key to providing the services necessary to meet the needs of the citizens of this state; however, the safety of those whose license and insurance are suspended as a result of nonpayment should not be disregarded. Thus, the increasing number of unlicensed and uninsured drivers as a result of the inability to pay surcharges allocated by the DRP is an issue that should continue to be studied by state legislators.

⁴ Department of Public Safety Press Release date 10-21-2010:
http://www.txdps.state.tx.us/director_staff/public_information/pr102110.pdf

Charge 13:

Monitor the implementation of legislation addressed by the Senate Committee on Transportation & Homeland Security, 81st Legislature, Regular and Called Sessions, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Monitor the implementation of gang-related legislation passed during the 81st Legislature and its impact on drug cartel-related transnational gangs and crime in Texas.

Background

Texas Fusion Center Duties

S.B. 379, 81R

Authored by: Senator John Carona

Sponsored by: Representative Ryan Guillen

Shortly after September 11, 2001, Governor Perry announced the creation of the Texas Task Force on Homeland Security. The task force was composed of several individuals appointed by the Governor to study and provide advice on matters relating to homeland security, including emergency preparedness and response, facilitating coordination among agencies, and other related matters. The task force identified several issues to be addressed by state and local entities; however, the predominant theme of proposals revolved around communication and coordination. In response to taskforce findings, the 78th Legislature enacted House Bill (H.B.) 9 which created the Texas Infrastructure Protection Communications Center, now called the Texas Fusion Center. The Texas Fusion Center serves as the primary point for planning, coordinating and integrating government communications capabilities to ensure effective response in the event of a homeland security emergency.

Recently the international border between Texas and Mexico has become an increasingly violent and dangerous place due mainly to Mexican drug cartels. These Mexican cartels use Texas street gangs to extend their reach into the United States and to sell narcotics. Due to this increased gang activity the legislature established a reporting requirement for the Texas Fusion Center.

Unfortunately, the Texas Fusion Center has had difficulty receiving up-to-date and accurate information from state agencies and needed state coordination on intelligence in order to provide recent in-depth gang information to law enforcement.

Senate Bill (S.B.) 379 required the gang section of the Texas Fusion Center to annually submit a report assessing the threat posed statewide by criminal street gangs and identify strategies effective in deterring gang-related crime and gang involvement in human trafficking.

The bill also requires the Texas Attorney General, the Department of Public Safety, the Texas Department of Criminal Justice, other law enforcement agencies, and juvenile justice agencies to provide, on request, certain information to the gang section of the Texas Fusion Center.

Lastly, S.B. 379 made federal rules governing criminal intelligence systems applicable to certain information received by the Texas Fusion Center and requires the first annual report regarding criminal street gangs to be submitted to the governor and the legislature no later than September 1, 2010.

Compiling Gang Intelligence Information—S.B. 418

S.B. 418, 81R

Authored by: Senator John Carona

Sponsor by: Representative Joe Moody et al.

Law enforcement agencies across the state deal with thousands of different criminal street gangs and their members. Gathering gang-related information may assist in dealing with these dangerous groups, such as providing invaluable information to law enforcement. This information may even save the lives of law enforcement officers. According to Section 61.02, Code of Criminal Procedure (Criminal Combination and Criminal Street Gang Intelligence Database; Submission Criteria), a law enforcement agency in Texas has the option to compile gang data into a local or regional database. If a law enforcement agency compiles the data, it must provide the information to the Texas Department of Public Safety (DPS) to be included in the statewide database. However, there was prior to this bill, no requirement that local law enforcement agencies collect any data on gangs within their jurisdiction. Texas Department of Public Safety operates and maintains a statewide database, the Texas Gang Database, which is housed in Austin. This database was established in 1999 and has the capability to receive, maintain, and share information provided by more than 1,000 law enforcement agencies in Texas.

Senate Bill 418 required, rather than authorized, a criminal justice agency and certain local law enforcement agencies to compile criminal information into an intelligence database for the purpose of investigating and prosecuting the criminal activities of criminal street gangs.

The bill also required DPS, not later than December 1, 2009, to enter into a memorandum of understanding with the U.S. Department of Justice or other appropriate federal departments or agencies to provide any person who enters or retrieves information from a criminal street gang intelligence database with training regarding certain federal operating principles and required any person who enters or retrieves information from such a database to complete continuing education training on this material at certain intervals.

Gang-Related Offenses—H.B. 2086

H.B. 2086, 81R

Authored by: Representative Joe Moody

Sponsored by: Senator John Whitmire

House Bill 2086 added to the offense of engaging in organized criminal activity the offenses of: escape, permitting or facilitating escape, providing implements for escape, and providing a prohibited substance or item in an adult or juvenile correctional or detention facility or on the property of the Texas Department of Criminal Justice or the Texas Youth Commission. House Bill 2086 also expanded the conditions that constitute the offense of engaging in organized criminal activity and assists in the prosecution and punishment of prison gang members and those who assist them from outside the prison walls. The Committee Substitute for House Bill (C.S.H.B.) 2086 amended the law relating to the prosecution and punishment of the offense of engaging in organized criminal activity.¹

¹ For a section by section break down please visit: <http://www.senate.state.tx.us/src/pdf/81stHighlights.pdf>, pg 42

Penalty for Soliciting Membership for a Criminal Street Gang

H.B. 2187, 81R

Authored by: Representative Joe Moody et al.

Sponsored by: Senator John Carona

Previously, two related offenses existed under the Penal Code related to gang recruitment activity: coercing, soliciting, or inducing gang membership and soliciting membership in a criminal street gang. These offenses criminalized similar, but not identical, conduct related to initiation in a criminal street gang, and both offenses provided similar, but not identical, punishment for that conduct. These similarities caused confusion in the enforcement of these laws.

House Bill 2187 repealed one of the two existing offenses and amended the other to stipulate that a person commits a third degree felony organized crime offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person threatens the child or a member of the child's family with imminent bodily injury, or causes bodily injury to the child or a member of the child's family.

A Report to the Legislature

While previous legislation has made positive impacts on the ability of Texas law enforcement to combat gang related criminal activity it is recognized that such activities are transforming into new threats. The Texas Department of Public Safety (DPS) has identified at least four different models of gangs existing in the State of Texas.² Gangs in Texas engage in a wide variety of criminal activity ranging from non-violent property crime such as vandalism, to more brutal violent crimes like murder and kidnapping. In DPS's Texas Gang Threat Assessment of 2010, a legislatively required annual report as established in S.B. 379, key points regarding gang development, organization, and activities were made. These points are as follows:

- Transnational gangs represent the most significant organized crime threat to the State of Texas. The Mexican cartels are employing Texas-based gangs to support their criminal operations on both sides of the Texas-Mexico Border.
- Gangs recruit new members in Texas prisons and Texas schools and routinely engage in murder, kidnapping, aggravated assault, robbery, auto theft burglary, drug trafficking, weapons trafficking, prostitution, human trafficking, and money laundering.
- The Mexican cartels now depend upon these gangs to conduct their drug and human trafficking operations throughout the United States and provide resources to combat rival cartels and the government of Mexico. These gangs are enlisted with the promise and delivery of enormous profits.
- Gangs are responsible for a disproportionate amount of crime in our communities, as much as 60% in some areas. They seek to expand relationships with regional and local gangs to increase their profits from wholesale and retail drug distribution in Texas.

² According to the Texas Gang Threat Assessment of 2010: the four models are: Transnational, Prison, Street, and Outlaw Motorcycle gangs

- As the Mexican cartels increase their reliance on transnational gangs in Texas to support their criminal operations it is likely that the scope and degree of that gang violence in our communities will increase, especially in our major urban areas.
- To maximize the impact on escalating crime, a statewide strategy that combines local, state and federal information and intelligence to support multi-jurisdictional, multi-agency criminal enterprise investigations & prosecutions should be developed.

In summary, a holistic approach must be adopted to successfully combat gangs. In the Senate Committee on Transportation and Homeland Security hearing in November 2009, Colonel Steve McCraw stated that many tools enacted by the 81st Legislature including allowing for gang and cartel enterprise prosecutions, providing funding for overtime for DPS officers and prosecutors, and establishing a statewide fusion center have had positive effects. In a later hearing on November 8, 2010, Director McCraw stated that the most significant vulnerability is an insecure Texas border. He presented tools being utilized to track and identify criminal gang activity like TxMap, a local law enforcement resource tool that can track state and local law enforcement resources. Citing that 64% of the United States-Mexico border falls within the State of Texas, securing that border has become increasingly challenging and also critical for combating the threat of transnational gangs.

Components of Organized Crime

Equipping local and state law enforcement, the Texas Department of Public Safety, and other state organizations involved in combating organized crime and gang activity must remain a top priority for the State of Texas.

Drug Trafficking

The Office of National Drug Control Policy (ONDCP) estimates that \$60 to \$108 billion is spent on illegal drugs in the United States on an annual basis.³ It is estimated that roughly 4 to 10 billion of these narco-dollars pass through the El Paso/Juarez area annually enroot to the Mexican drug trafficking organization coffers. The National Drug Intelligence Center (NDIC) estimates that proceeds from drug trafficking generated in the U.S. are smuggled across the southwest border and the proceeds total between \$18 billion and \$39 billion a year. In addition, a November 2009 study issued by Immigration Customs Enforcement (ICE) stated that gross

³ These figures were derived by multiplying the total quantity of Mexico-and Columbia produced drugs available at the wholesale level in the United States by wholesale prices for those drugs. See U.S. Department of Justice, National Drug Intelligence Center, *2009 National Drug Threat Assessment* (Johnstown, Pa.: December 2008). Using a different method, NDIC estimated that at least \$17 billion was smuggled into Mexico in bulk cash shipments alone over a 2-year period. NDIC based this estimate on a review of U.S. banknotes repatriated from Mexico. The estimate represents only U.S. currency returned to the United States not all U.S. currency that was smuggled to or through Mexico. This estimate is based on analysis of U.S. banknotes purchased by U.S. financial institutions from Mexican financial institutions from 2003 through 2004. See U.S. Department of Justice, National Drug Intelligence Center, *2010 National Drug Threat Assessment*, (Johnstown, Pa.: February 2010).

revenue generated by Mexican drug trafficking organizations and smuggled into Mexico, is substantial.⁴

Drug trafficking continues to pose challenges at our borders and within the state. Several solutions have been suggested including increasing personnel, adding resources, and improving surveillance capabilities.

Human Trafficking

A special focus component of the Texas Gang Threat Assessment of 2010 found that:

While gangs are involved in a range of violent criminal activity, one of the most heinous is trafficking in human beings. The challenges associated with measuring the true number of trafficking victims in Texas also makes it difficult to estimate the extent to which gangs control human trafficking. The Texas Human Trafficking Prevention Task Force mandated by H.B. 4009 81(R) is charged with collecting data on the nature and scope of this crime. The Task Force is working with law enforcement agencies across the state to identify the appropriate mechanisms to report this data. Cartels and gangs have increased their involvement in human smuggling because of its high profit. As a result, the distinction between human trafficking and human smuggling has become blurred.

In some areas, juvenile gangs participate in human trafficking by operating sex trafficking rings. Often gang members will use threats and violence to force minors into prostitution rings. In one case in Fort Worth, several teenage gang members forced five minors to work as prostitutes in an apartment complex, while also physically and sexually abusing them.⁵

Some Texas-based gangs are involved in human smuggling, which is sometimes viewed separate from human trafficking. As opposed to human trafficking, many human smugglers initially receive the victim's consent, but then subsequently hold them against their will and force them to perform labor to pay a debt or force young females into prostitution.

Money Laundering

Criminal enterprises use several methods to launder drug money. Those methods included bulk currency smuggling and digital currency smuggling in the form of wire transmissions, stored value cards, and digital remittances. Many aspects of money laundering are relatively unregulated and lack oversight. The extent to which these gaps can be filled requires additional research and investigation by the legislature.

⁴ Immigration and Customs Enforcement, *Mexico Bulk Currency Study: A Project Conducted by the Homeland Security Institute in Collaboration with U.S. Immigration and Customs Enforcement and the DHS Office of Counternarcotics Enforcement*, (Washington D.C.: Nov. 2009).

⁵ Office of the Attorney General, State of Texas, *The Texas Response to Human Trafficking*, Report to the 81st Legislature

Bulk Currency Smuggling

As the primary U.S. border law enforcement agency, the Customs and Border Patrol Department (CBP), a division of the Department of Homeland Security, has been involved in seizures of bulk cash leaving the United States. The Customs and Border Patrol Department readily identifies that collaboration with other federal entities as well as state and local law enforcement is key to successful border operations. The Customs and Border Patrol Department coordinates with the Drug Enforcement Agency (DEA) by providing staff and intelligence to the El Paso Intelligence Center (EPIC), a national tactical intelligence center led by the DEA and designed to support law enforcement efforts, with a significant emphasis on the southwest border. Among other functions, EPIC analyzes bulk cash seizure data and develops various reports on bulk cash smuggling methods which are provided to various law enforcement agencies. As a result of its outbound enforcement activities, CBP seized about \$41 million in illicit bulk cash leaving the country at land ports of entry from March 2009 through June 2010. The vast majority of this currency, 97%, was seized along the southwest border.⁶

Digital Currency Smuggling

As we move to an era in which individuals primarily utilize digital forms of currency transfers, storage, and exchange, the opportunities for organized gangs and drug cartels to move cash become more difficult to detect. The Mexican Government estimates that over \$22 billion was wired into Mexico by relatives working in the United States in 2008. While a great majority of those transfers are from legitimate hard-working individuals, the sheer volume of transfers makes money laundering difficult to detect.

A report by the U.S. General Accountability Office found that the primary digital currency smuggling obstacles can be found not only in wire transfers, but also in stored value cards. Stored value cards are prepaid cards bought for various dollar amounts that can be used at most businesses. These cards can also be used to make transactions in which funds are applied to financial institutions in various countries. The report observes that these card services lack uniform regulation and oversight. The U.S. Department of Treasury has acknowledged the need to modify and clarify existing regulations related to the stored value card industry, but regulatory action alone may not be sufficient to suppress the money laundering threat posed by these cards.⁷

Conclusion

Homeland security is essential to the safety and prosperity of the citizens of this state and the nation at large. An unsecured border and its associated crimes of gang activity, drug trafficking,

⁶ During this time, CBP seized about \$40.0 million in bulk cash leaving the country at ports of entry on the southwest border. CBP also seized about \$1.2 million in bulk cash leaving the country at ports of entry on the Northern border. On the Northern border, outbound inspections are conducted at the discretion of the Port Director. CBP officials report that unlike seizures at the southwest border, outbound seizures along the Northern border are primarily drugs flowing out of the United States into Canada, specifically cocaine. The cocaine is generally purchased in the Los Angeles area after being shipped through Mexico and is then transported to Canada, where it can be sold at a higher price.

⁷ Moving illegal proceeds: Challenges Exist in the Federal Government's Effort to Stem Cross-Border Currency Smuggling, United States Accountability Office, October 2010 GAO-11-73
<http://www.gao.gov/new.items/d1173.pdf>

human trafficking, money laundering, and bulk currency smuggling present issues that should continue to be studied by the Texas Legislature. While the demand to combat these issues has yielded some solutions, there is more that can be done to enhance the safety of Texas' citizens.

Appendix A



ROBERT L. NICHOLS
STATE SENATOR

November 1, 2010

The Honorable Tommy Williams
Chairman
Senate Committee on Transportation and Homeland Security
GE 7

Chairman Williams:

As you are aware, our committee's former chairman Sen. Carona appointed a workgroup to make recommendations on Interim Charge # 7, "study and make recommendations to expedite the environmental review process for transportation projects." The environmental review process, set in place by the National Environmental Policy Act (NEPA), serves a good purpose yet sometimes slows project delivery. Some of these delays are unnecessary and the process might be improved with some legislative and administrative changes.

Although we cannot address many of the procedures involved with projects using federal dollars, there is an opportunity to make our state process more efficient. Below are some ideas we believe should be explored by your committee during the next legislative session.

1. Add a new Texas Transportation Code section authorizing TxDOT to enter into funding agreements with state or federal agencies to facilitate the agency's performance of its duties related to the environmental review process for a transportation project of TxDOT.
2. Grant TxDOT general authority to adopt deadlines by amending Transportation Code, 201.607 so that TxDOT must by rule adopt procedures concerning coordination with governmental entities about a proposed transportation project. The procedures should provide that the governmental entities will provide any comments no later than 45 days of TxDOT submitting a request for comment. The actual timeframe can be negotiated between TxDOT and the governmental entity but should not exceed 45 days.
3. Create deadlines for Texas Parks and Wildlife Department (TPWD) to submit comments by amending Texas Parks & Wildlife Code, 12.0011(b) concerning TPWD's submission of comments to governmental entities that construct developmental projects (such as TxDOT). The amended section should state that the TPWD must provide any comment to

TxDOT no later than 45 days of TxDOT submitting a request for comment. The actual timeframe can be negotiated between TxDOT and the TPWD but should not exceed 45 days. TPWD's sunset legislation in the 81st session (HB 3391) added requirements (§12.0011(c)) concerning a governmental entity must respond in writing to TPWD comments within 90 days of approval of the project. This proposal would not change the recent sunset legislation.

4. A resource agency's failure to submit comment by the specified deadline should not impede the processing of an environmental document. Amend Transportation Code, 201.607 to allow TxDOT to adopt procedures by rule so that comments submitted by governmental entities after the deadline will be considered by TxDOT to the extent possible.
5. Create an environmental review certification process by which TxDOT can certify district environmental specialists. These TxDOT district employees would be certified to work on all documents subject to both state or federal environmental review. The process would also allow for continuing learning education which would be necessary for recertification. The certification would also be available to private contractors who routinely do work for TxDOT, counties and cities.

We recognize there may be additional ideas to streamline this process and are open to exploring all options. These recommendations represent ways to help accelerate project delivery while still respecting the NEPA process and the importance of the environmental review process.


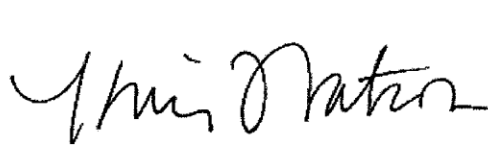
We stand ready to work with the full committee on addressing this issue during the upcoming legislative session.

Sincerely,



Robert L. Nichols

Wendy Davis



Kirk Watson

Joan Huffman