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**HOUSE COMMITTEE ON TRANSPORTATION  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2004**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
79TH TEXAS LEGISLATURE**

**MIKE KRUSEE  
CHAIRMAN**

**COMMITTEE CLERK  
LAURIE MCANALLY**

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Committee On  
Transportation

November 23, 2004

Mike Krusee  
Chairman

P.O. Box 2910  
Austin, Texas 78768-2910

The Honorable Tom Craddick  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Transportation of the Seventy-Eighth Legislature hereby submits its interim report including recommendations for consideration by the Seventy-ninth Legislature.

Respectfully submitted,

Handwritten signature of Mike Krusee in cursive script.

Mike Krusee, Chairman

Handwritten signature of Larry Phillips in cursive script.

Larry Phillips, Vice Chairman

Handwritten signature of Al Edwards in cursive script.

Al Edwards

Handwritten signature of Linda Harper-Brown in cursive script.

Linda Harper-Brown

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James E. "Pete" Laney

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Peggy Hamric, CBO

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Timoteo Garza

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Fred Hill

Handwritten signature of Ken Mercer in cursive script.

Ken Mercer

Larry Phillips  
Vice-Chairman

Members: Peggy Hamric (CBO), Al Edwards, Timoteo Garza, Linda Harper-Brown,  
Fred Hill, James E. "Pete" Laney, Ken Mercer

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## INTRODUCTION

At the beginning of the 78th Legislature, the Honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Transportation. The committee membership included the following: Chairman Mike Krusee, Vice-Chairman Larry Phillips, CBO Peggy Hamric, Al Edwards, Timoteo Garza, Linda Harper-Brown, Fred Hill, James E. "Pete" Laney and Ken Mercer.

Pursuant to House Rule 3, Section 34, the Committee has jurisdiction over all matters pertaining to:

- (1) commercial motor vehicles, both bus and truck, and their control, regulation, licensing, and operation;
- (2) the Texas highway system, including all roads, bridges, and ferries constituting a part of the system;
- (3) the licensing of private passenger vehicles to operate on the roads and highways of the state;
- (4) the regulation and control of traffic on the public highways of the State of Texas;
- (5) railroads, street railway lines, interurban railway lines, steamship companies, and express companies;
- (6) airports, air traffic, airlines, and other organizations engaged in transportation by means of aerial flight;
- (7) water transportation in the State of Texas, and the rivers, harbors, and related facilities used in water transportation and the agencies of government exercising supervision and control thereover;
- (8) the regulation of metropolitan transit; and
- (9) the following state agencies: the Texas Department of Transportation and the Texas Transportation Commission.

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## **HOUSE COMMITTEE ON TRANSPORTATION**

### **INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS**

During the interim, Speaker Craddick charged the committee with the following issues:

1. Review transportation best practices in other states to determine possible improvements in administration, operations, delivery of projects, and improving overall efficiency of the Department of Transportation.
2. Review and study all existing legislation affecting the development of transportation infrastructure in areas adjacent to the Texas-Mexico border. Study international trade issues as they relate to transportation, the adequacy of existing infrastructure to facilitate international traffic related to trade, and potential for development of inter-modal hubs and other mixed use facilities which promote more efficient trade and economic development, and the opportunities for contracting with Mexico or any of the Mexican states for joint development of transportation infrastructure. (Joint Interim Charge with House Border and International Affairs Committee)
3. Actively monitor and review Texas Department of Transportation's rulemaking, promulgation of policies and procedures, implementation of programs, and other activities related to the implementation of HB 3588, 78th Legislature. (Joint Interim Charge with Senate Infrastructure Development and Security Committee)
4. Actively monitor agencies and programs under the committee's jurisdiction, including identifying possible ways to merge or streamline agency functions to produce long term financial benefit to the State and better efficiency of the agencies.

All charges were studied by the committee as a whole.

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### Charge 3

Actively monitor and review Texas Department of Transportation's rulemaking, promulgation of policies and procedures, implementation of programs, and other activities related to the implementation of HB 3588, 78th Legislature.

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## It All Starts Here -- HB 3588

*"I have seen the future of highway finance and it works."*<sup>1</sup>

*"A clear vision for the future, coupled with a commitment to providing Texans with better mobility, a better economy and a better quality of life, provided the foundation for what today, by any measure, is overwhelming success in funding and delivering major mobility projects for the citizens of Texas."*<sup>2</sup>

*"I believe there are three key elements...funding, leverage and sweat equity. And what I mean by that is the ability of raising funds, leveraging them in a partnership program, and ensuring those who leverage the funds are able to move forward with transportation projects without fear money is moved to some other portion of the state. And all those tools are in place now for the first time."*<sup>3</sup>

### Background

HB 3588, passed during the regular legislative session, and HB 2, enacted during the third called special session of the Legislature, changed the transportation landscape in Texas dramatically. Existing transportation policy was bolstered with new initiatives and financing mechanisms designed to accelerate project delivery and generate additional cash flow. The legislation gives a voice to approved local authorities by providing them the tools to build the infrastructure they deem most necessary to their region. The Texas Department of Transportation has been given new responsibilities, such as rail management and public transportation, and new abilities to bring long-conceived transportation initiatives into the realm of reality, including the Trans-Texas Corridor.

### Testimony from Public Hearings

The Committee heard testimony on the implementation of HB 3588 and HB 2 during two scheduled hearings in Austin. Those who testified and their representation were:

January 26, 2004

Michael Behrens, *Texas Department of Transportation*  
Brian Cassidy, *Central Texas Regional Mobility Authority*  
Frank Elder, *Texas Department of Public Safety*  
Bob Jackson, *Texas Department of Transportation*  
Michael Kelley, *Texas Department of Public Safety*  
Mark Rogers, *Texas Department of Public Safety*

May 4, 2004 (Joint Hearing with Senate Infrastructure Development and Security Committee)

Michael Behrens, *Texas Department of Transportation*  
Robert Daigh, *Texas Department of Transportation*  
Bob Jackson, *Texas Department of Transportation*  
Robert Nichols, *Texas Transportation Commission*  
Amadeo Saenz, Jr., *Texas Department of Transportation*

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Michael Stevens, *Governors Business Council/Texas Urban Transportation Alliance*

### **A New Vision: The Trans-Texas Corridor**

HB 3588 established the groundwork for Governor Perry's vision: the Trans-Texas Corridor. The Trans-Texas Corridor, as conceived, is a 4,000 mile transportation network with separate highway lanes for passenger vehicles and trucks, high-speed passenger rail, high-speed freight rail, commuter rail, and a dedicated utility zone.

While the actual routes of the Corridor are only conceptual at this point, their purpose is to link major metropolitan areas. With that concept in mind, there are four areas that have been identified as priority segments. These segments parallel I-35 from Denison to the Rio Grande Valley, I-69 from Texarkana to Houston to Laredo, I-45 from Dallas-Fort Worth to Houston, and I-10 from El Paso to Orange.

Although ambitious, the plan does have its precedents. The interstate highway system and the transcontinental railroad both had their critics, and both changed history. But more importantly, the Trans-Texas Corridor will help Texas solve its own transportation problems, which are expected to grow significantly during the next fifty years.

HB 3588 broadens the authority of the Texas Department of Transportation to finance the Corridor. TxDOT can use toll equity, right-of-way leasing and the Texas Mobility Fund to either fully or partially fund the Corridor. In addition to appropriations, fees, and bonds, financing may also include federal loans, grants and reimbursements, private investments, and donations. TxDOT may authorize any other governmental or private entity to build or operate any part of the Corridor. It may grant franchise rights and access licenses and may contract with rail operators, public and private utilities, communications systems, common carriers, transportation systems, or other entities to use corridor facilities. Instead of selling their property, landowners may enter into corridor participation agreements, receiving percentages of identified fees related to a corridor segment. TxDOT may also buy land and lease it back to the sellers, and buy land from willing sellers in advance of final project location.<sup>4</sup> TxDOT may also used expedited condemnation to acquire land for the Corridor.

In response to a request for proposals (RFP), TxDOT has received three proposals from consortiums wishing to develop the I-35 parallel portion of the Trans-Texas Corridor (from the Rio Grande Valley to Dennison). It is anticipated that TxDOT will elect a team to begin negotiating a contract before the end of the year. The first phase of the contract allows the team to begin the study and development of specific segments of the I-35 corridor. Actual construction of the Corridor would entail the letting of an additional contract with any successful bidder.

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## Funding Tools

### Texas Mobility Fund

Historically, Texas has used a “pay-as-you-go” model to fund infrastructure projects. With Texas only receiving 90% of its gas taxes back from the federal government, and with TxDOT forced to maintain an increasing number of lane miles with a stagnant revenue source, this system has allowed only about one-third of the new capacity required by the state to be constructed. The Texas Mobility Fund (TMF), established during the 77th legislative session through legislation by Senator Shapiro, and a constitutional amendment approved by Texas voters, sought to supplement the current system by allowing the Transportation Commission to issue bonds on a limited basis for transportation infrastructure needs. Although the fund was put in place, a revenue source was not established until the 78th legislative session.

HB 3588 created the funding source for the TMF with revenues from the Driver Responsibility Act and increased traffic fines that are expected to direct \$138.7 million to the fund in fiscal year 2004. This amount is expected to increase each fiscal year; the furthest forecast is \$325.1 million in fiscal year 2011. In fiscal year 2006, vehicle registration fees will directly fund the TMF and the Driver Responsibility Act funds and the increased traffic fines will be directed into the General Revenue fund. The Transportation Commission will issue bonds funded by the revenue stream directed into the Texas Mobility Fund. Under current interest rates, TxDOT should be able to issue approximately \$2 billion of bonds. These new funds will allow TxDOT to accelerate completion of highway improvements and start new projects. This large, one-time-only allocation is not expected to be available again for many years.

As a result of the new tools provided by HB 3588, the Texas Department of Transportation awarded about \$4 billion in contracts during this fiscal year. By comparison, Texas spent a billion dollars more than California, and \$2.9 billion more than New York.

### The Metropolitan Mobility Plan

In the past, the Texas Transportation Commission determined how much Fund 6 money was available every two years and then prioritized projects from across the state. Funds were then allocated to the various regions across the state based on the prioritized projects in that region. Last year, TxDOT implemented a new system for allocating funds, known as the Texas Metropolitan Mobility Plan. Under this plan, the eight largest metropolitan areas (Dallas-Fort Worth, Houston-Galveston, San Antonio, Austin, El Paso, Lubbock, Hidalgo County (McAllen) and Corpus Christi) are given block grants from the state to use on projects those regions give the highest priority. The regions, through their metropolitan planning organizations, are required to submit a list of priorities to the state by the fall of 2004. Final authority for spending on specific projects will still rest with the Transportation Commission, but each region will be allocated a certain amount of funding. The

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new plan will make it easier for local officials to predict how much money will be available on an annual basis, as well as what projects will be financed. In the past, desperately needed but expensive projects were often deferred to another funding period.

This new funding plan also eliminates the historical “punishment” incurred by a region when it decided to use its own money to accelerate construction of a badly-needed project. In the past, such a decision would mean that the state money that would have come to the area for that project in future years was lost. It was instead given to the next project on the statewide list as opposed to replacing the local funds the region spent on that project. That should no longer be the case with the Metropolitan Mobility Plan.<sup>5</sup>

### **Regional Mobility Authorities**

Regional Mobility Authorities (RMAs) were created during the 76th legislative session for the purpose of constructing, operating and maintaining toll road projects in the state. At the time, it was envisioned that RMAs would provide more local control and investment in projects of significance to the region encompassed by an RMA. The RMAs, however, were not given the necessary authority and tools to fully accomplish this objective until the 78th legislative session.

Among other tools, HB 3588 gave RMAs the power of eminent domain, the authority to enter into comprehensive development agreements, and the authority to issue revenue bonds for transportation projects. HB 3588 also expanded the projects an RMA can develop to include airports, rail projects and ferries.

HB 3588 also allows an RMA to acquire, construct, operate, maintain, expand or extend a transportation project in a county that is not part of the authority if the transportation project in the affected county is a continuation of the RMA’s transportation project extending from an adjacent county. RMAs can now enter into agreements with a public or private entity, a toll road corporation, the federal government or any individual state, Mexico or any one of its individual states, another governmental entity or a political subdivision, to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend or expand a transportation project. RMAs can use surplus revenue to finance other local transportation projects, and can participate in the development of the Trans-Texas Corridor.

Those counties interested in forming an RMA must submit a request to the Texas Transportation Commission. The request must include a regional implementation program outlining projects, a preliminary financing plan, and the proposed makeup of a board to oversee the RMA. Participating counties appoint board members with the chair named by the governor.

The Texas Transportation Commission has approved RMAs in Grayson and Bexar counties, joining the Central Texas RMA already in existence prior to the 78th session. Petitions for RMAs have also

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been filed by Cameron County, Webb County, and the North East Texas RMA (Smith and Gregg Counties).

Hays County commissioners have created a committee to study whether the county should form its own RMA or attempt to join the Central Texas Regional Mobility Authority, currently made up of Travis and Williamson counties. The Paris Economic Development Council, City of Paris and Lamar County commissioners are also considering formation of an RMA. Others interested include the Temple area, and several counties encompassing the Corpus Christi/Laredo region. All of these regions are weighing the merits of forming an RMA as a vehicle for developing needed projects.

## **Tolling**

### **New Technologies**

Tolling is not a new concept. The state of Texas has had tolling authority since 1913. Many opponents of the practice picture an outdated scenario: a motorist approaches a toll booth, stops, tosses his money into a basket, and waits for the arm to raise to allow him to continue on his way. This collection method has changed dramatically.

New technology allows motorists to purchase an electronic toll tag, which is affixed to their windshields. Scanners mounted above the toll road read the tag and deduct payment, or charge payment to a credit card while the car is traveling at a normal rate of speed. A camera snaps a picture of the license plates of those who do not have the tags, and they are mailed a notice of payment. Most who receive the notices pay up promptly. One toll booth is typically available to those who are not regular commuters, and don't have passes.

A human toll taker can handle 300 cars per hour, says Jack Finn, national director of toll services for the engineering firm HNTB in New Jersey. Dedicated electronic tolling lanes, with reduced speeds through the toll plaza, can process 1,000 cars per lane per hour. The most efficient of all, the transponder system where toll plazas are eliminated altogether, can manage 2,200 cars per lane per hour.<sup>6</sup>

With this type of technology, Houston and Dallas can combine their resources to allow a motorist to use one toll tag for both regions. It is predicted toll tags will eventually be used interchangeably with other systems on a nation-wide basis. Other innovations being considered include using one's toll tag to pay for fast food in a drive-through establishment. Credit card companies are looking into the feasibility of awarding "frequent toll miles" instead of "frequent flier miles" to their customers.

Tolling was addressed in several ways in HB 3588. The legislation authorizes the RMAs to issue revenue bonds backed by tolls and to enter into comprehensive development agreements with private

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entities to design, construct and operate toll road facilities. In addition, the Texas Transportation Commission was given authority to convert regular state highways to toll facilities and to transfer them to RMAs for operation and maintenance; and TxDOT can now provide payment of per-vehicle fees (pass-through tolls) as reimbursement to RMAs for construction and maintenance of state highways or as compensation for the cost of maintaining toll facilities transferred to an RMA.<sup>7</sup>

### **A Policy of Tolling**

The federal transportation re-authorization bill remains unresolved, and according to Transportation Commission Chairman Ric Williamson, the gasoline tax receipts of the entire state now just equals the maintenance cost of the state's highway system. Obviously, the resources are going to be far fewer than the needs; only about 36% of the needs can be funded.

It is now policy in Texas to look first at tolling for all new limited-access highway projects. Commissioners have been very up front about the fact that money from the Texas Mobility Fund will be used primarily for the implementation of toll roads. This policy is not intended to be punitive, but to stretch tax dollars further. By financing through toll revenues, a road that would otherwise be built entirely with tax dollars would now require less than 40% in tax dollars. Future maintenance on the road, which has taken a large portion out of TxDOT funding for years, would now be paid out of toll revenues. Toll roads can be used by RMAs, regional toll authorities, TxDOT, and certain counties to build a revenue stream. Consider this comparison: It has taken 14 years to build the eleven miles of Highway 183 in Austin on the pay-as-you-go basis. On the other hand, the current toll road construction on the north end of Loop 1 and SH 45 (45 miles of pavement) will be completed entirely in less than five years.

Motorists will always have a free alternative to toll roads, although the alternative will typically be congested with an uncertain travel time. Money raised through tolls will remain in the community of origin, not used for projects in other parts of the state.

Opponents of tolling prefer that roads remain "free." They envision traffic pouring into quiet neighborhoods by drivers unwilling to pay tolls, resulting in neighborhood decline and loss of property values. Others, such as the city of El Paso, feel that TxDOT should first correct past transportation inequities before looking at tolling. El Paso mayor Joe Wardy testified before a joint committee in May that the city would prefer a phased-in approach. The mayor testified that the region does not have the basic infrastructure to meet the traffic and commerce needs imposed by NAFTA, and does not have the economy to support the use of toll roads. Projects that are commonplace and long existing in other cities have yet to be completed in the city of El Paso. Once El Paso has the basic transportation infrastructure components in place, it will be able to contribute to the advancement of Texas mobility with the development of tolled expansion projects in the community. Although El Paso knows tolls are inevitable, its leadership does not believe that the city is currently equipped to move in that direction.

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The Austin area reports its pockets of resistance, mainly among upper middle-class citizens who do not believe that TxDOT will use Mobility Fund money only for toll projects, although that has been stated policy. Tolling has gained its proponents as the populace has become more informed about the financial situation, and the Capital Area Metropolitan Planning Organization voted to approve the region's road plan last July.

The Dallas-Fort Worth and Houston areas, having introduced tolls to their regions some years ago, report less resistance than cities where tolling is a new concept, and officials from those areas report they will gladly toll whatever is needed for a larger share of transportation money freed up by those metropolitan areas who refuse to embrace tolling. The Dallas/Fort Worth area has submitted proposals for twelve projects that would require the entire \$6 billion of one-time funding. All of these projects are being examined for toll viability.

San Antonio expects to begin collecting tolls by 2009; the city's first toll project is expected to be Loop 1604 on the north side of the city. If San Antonio had waited for conventional funding for the project, construction would not have begun until 2015.

Smith and Gregg counties would like to work together to complete Loop 49, which has been on the books for years. A preliminary toll analysis indicates a completion of the southern, western, and northern segments to be partially toll viable. Regional leaders support the tolling concept to finally complete this long-awaited project.

### **Pass Through Tolling**

A pass through toll, also known as a "shadow toll," is a payment by TxDOT of per-vehicles fees as reimbursement to public entities or private companies for road construction, operation, or both. Pass-through tolling can be used by RMAs for construction and maintenance of state highways or as compensation for the cost of maintaining toll facilities transferred to an RMA. The payments are not made until after project completion, and completion of projects can often be expedited because the entity has the assurance that TxDOT will repay them. The local area benefits from timely improvements in mobility and safety, and the state benefits by not having to pay the hefty initial investment associated with road building and maintenance. TxDOT plans to use the money that it generally allocates to counties through various programs, although those rules have not yet been established, but generally it is money that would normally come to the county through the regular planning process. Rules will most likely set a minimum and maximum amount that can be used to reimburse the counties.

Montgomery County, which has the highest death rate per capita of any other county in the state of Texas, has a goal of passing a bond issue of \$100 million towards high priority system projects that normally would have been funded by ISTEA or TEA-21. Part of the \$100 million would go towards Montgomery County's first two toll projects. After the first phase is complete, Montgomery County

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is requesting that TxDOT pay them back a portion of the dollars through pass-through tolls. As they are paid back through the first round, the county is proposing to take those proceeds and reinvest them into new state highway projects. It has been calculated that the \$100 million in local bonds could be leveraged into about \$800 million in projects. The total source of funds will be from the TIF, the state pass-through money, toll dollars and local bonds. Critical projects will be moved forward as much as five to ten years. Montgomery County leaders anticipate that this money will make the county more self-sufficient, and they will no longer need to visit TxDOT on a regular basis to request funding for their projects.

Lamar County commissioners are teaming with Paris city leaders to determine if shadow tolls would be feasible for the widening of U.S. 271 from Paris to the Sulphur River. According to County Judge Chuck Superville, widening would be an economic, as well as a safety issue. Trucking companies charge a penalty for picking up and delivering freight to a location that does not have a four-lane connection to the interstate, which increases the costs of shipping to and from Lamar County.<sup>8</sup>

### **Highway-to-toll Conversion**

The Texas Transportation Commission may transfer non-toll road highway segments to counties, which would then assume all liability and full responsibility for maintenance and operate them as toll roads. The toll revenue would be deposited into the state highway fund and it would be used to fund the improvement, extension, expansion, or operation of the converted segment of highway and may not be collected except for those purposes. TxDOT has proposed converting an eight-mile stretch of the Tomball Parkway into a toll road. Revenues generated by tolls would be used to extend the freeway around Tomball and through Magnolia to Navasota in Grimes County, where it would link up with Texas 6 into College Station. The state will go through the public hearing process while analyzing the viability of the toll road.<sup>9</sup>

### **Toll Equity**

Toll equity gives TxDOT the ability to put money into a project and not be reimbursed. For instance, should TxDOT provide a portion of the funding for a toll project, a private entity would provide the rest. This saves the state money, since TxDOT isn't providing all of the money for construction. When TxDOT provides a portion of the funding, the road usually reverts back to the state after a certain period of time. TxDOT is currently limited to providing \$800 million a year for toll equity projects.

Public testimony indicated that legislation may be needed to clarify funding when an existing road is converted to a turnpike. The money put in by TxDOT prior to the road becoming a toll facility should not count against the \$800 million per year that TxDOT is allowed for toll equity projects.

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## Public-Private Partnerships

### Design-Build

Design-Build is a method of project delivery in which one entity (design-builder) forges a single contract with the owner to provide for architectural/engineering design services and construction services. By contrast, the “traditional” design-bid-build approach means that the owner commissions an architect or engineer to prepare drawings and specifications under a design contract, and subsequently selects a construction contractor by competitive bidding (or negotiation) to build the facility under a construction contract.

HB 3588 addresses design-build, and its more encompassing counterpart, comprehensive development agreements, as they apply to regional mobility authorities. According to the legislation, "a comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design and construction ["design-build"] of a transportation project and may also provide for the financing, acquisition, maintenance, or operation of a transportation project."

Benefits of design-build include a singular point of responsibility for quality, cost and schedule adherence, which serves as a motivation for quality and proper project performance. Delivery of the project is done in a more time-efficient manner as the designers and contractors work as one team during the entire design process. Because design and construction are overlapped, and because bidding periods and redesign are eliminated, total design and construction time can be significantly reduced. Change orders due to “errors and omissions” are virtually eliminated, as the design-builder has responsibility for developing drawings and specifications as well as constructing a fully-functioning facility.<sup>10</sup>

### Comprehensive Development Agreements

A comprehensive development agreement (CDA) is an agreement with a private entity that provides for the design and construction of a turnpike project. It can also provide for financing, acquisition of property, and the maintenance and operation of the facility. It is particularly advantageous to those entities, such as start-up RMAs, that are constrained in both financial and human resources.

CDAs are not a not a new concept. The Federal Highway Administration, as well as a number of states, have been successfully designing and building smaller road projects through CDAs or design-build since 1988. They are an accepted method of project delivery in roughly half the states in the U.S.

Texas’ first experiment under a comprehensive development agreement is State Highway 130, currently the largest highway contract in the nation at \$1.3 billion. This particular CDA takes a

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design-build approach and covers it with a toll financing package. By being able to sign the CDA before designs of SH 130 were 100 percent complete, TxDOT was able to enter into a contractual agreement for a guaranteed maximum price. Working in design-build speed, the new state highway should be completed by December 2007.<sup>11</sup> If the project had been built in the traditional, pay-as-you-go method, construction would have begun in 2007, and concluded in 2020.

Dallas officials are looking into using a CDA to reconstruct LBJ Freeway. TxDOT officials hope to begin construction in July 2005, and have it finished in five or six years. Conventional construction practices would add five years to the opening.<sup>12</sup>

Testimony during a joint hearing in May indicated that there seems to be a tendency to define the CDAs too rigidly on the front end, and leave no flexibility on the back end, consequently defeating the purpose of the CDA. The more pre-engineering that is done on the front end by the owner, the more constrained the responses and innovation on the finished product. Testimony indicated that CDAs should be less constrained, rather than half-conceived and then low-biddered to the finisher. The balancing act is complicated--the more engineering done by the owner before the CDA is awarded, the more allowance is left for innovations. However, the less engineering done beforehand means that more risk is taken by the bidders, and less by the owners (the taxpayers).

The Texas Transportation Commission is still working to develop CDA policy, and has included the issue as a discussion item during its monthly meetings. TxDOT has recommended that CDAs be used on large projects, especially in the turnpike area, and that they not be utilized for a broad range of nonspecific services.

As to unsolicited proposals, TxDOT is leaning towards proposals that focus on the business and the financial aspects, and specifically their ability to leverage state and federal dollars. A high level of engineering would not be required, but enough to understand the basic concepts and validity of the plan. Proposers would rather see a process where the goal is defined, the amount of money is decided upon, and the proposers decide how to get to the goal. Commissioners have indicated that they believe the rules and guidelines ought to be focused more on goals and objectives and less on process.

The issue of stipends paid to unsuccessful proposers is also being examined by the Commission. Proponents of stipends have testified that pre-engineering work can make a bid expensive, and some sort of reimbursement is necessary. Testimony before the Senate Infrastructure and Development Committee in May indicated that proposers would also like the opportunity to reject the stipend and retain ownership of the design concept instead.

Transportation Commission Chairman Ric Williamson has indicated that the commission needs to be very cautious in developing rules and guidelines to not protect those with whom they do business and guarantee their profits. Williamson admonished TxDOT that "what's in the public's interest is

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getting railroads and asphalt roads and water roads and air roads built in the state as fast and as cheaply as possible. It's not in the public's interest to guarantee an engineering firm a profit; it's not in the public's interest to guarantee that 72 construction companies get a shot at the same billion-dollar contract. Be cautious about that, please."<sup>13</sup>

## **Other Innovations**

### **Land Acquisition**

Land acquisition is often a big obstacle to new highway projects, so HB 3588 introduces two creative new approaches. First, the Texas Transportation Commission may purchase options for possible right of way for a project, before the final alignment has been determined. This does not affect situations where condemnation is involved, only willing sellers. Second, TxDOT may offer the owner of the property [needed for right of way] a percentage of the [toll] revenue associated with a particular segment of a turnpike rather than a single fixed payment for the property.<sup>14</sup> The General Land Office may manage an acquired property at the request of TxDOT. In addition to saving tax dollars, early right-of-way acquisition alleviates the hardship on the public due to the development of new homes and businesses between the time of route determination and approval to acquire right-of-way.

### **Rail**

Texas metropolitan areas utilize freight rail more than other U.S. metropolitan cities. Moving freight by rail has a lot of pluses -- Rail moves freight with less energy, and has a lower fatality rate and shipping cost than trucks.<sup>15</sup> Additionally, rail does not take up valuable highway space, or idle in congestion, which helps with air quality issues.

Narrowly-drawn legislation during the 77th Session allowed TxDOT to acquire the 391-mile South Orient Rail Line that runs from Presidio to just north of San Angelo. The department is currently working to ensure that the line is rehabilitated to provide freight transportation and economic development along this vital corridor.

Since the passage of HB 3588, TxDOT now has broadened ability to put money toward owning, operating, and maintaining rail facilities, but must contract for rail operation. The department is allowed \$12.5 million annual maximum use of state and federal funds for rail, excluding money spent on corridor rail projects, grading and bed preparation, and acquisition of certain abandoned rail facilities.

Rail is expected to play a larger portion in regional transportation solutions. Testimony in May indicated that according to demographics in Dallas, more people will live outside of the current three transportation authorities than inside by 2025. Planners in the region are preparing an institutional

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recommendation to solve that problem in the Dallas-Fort Worth region, probably through the creation of a regional rail authority.<sup>16</sup>

Austin and San Antonio are working toward a commuter rail system, with the goal of moving Union Pacific from the central rail corridor to a line further east. HB 3588 authorized and encouraged TxDOT to use excess bond proceeds from the Central Texas Turnpike project or from the Texas Mobility Fund to bring freight rail into the State Highway 130 corridor. The legislation also authorizes and encourages TxDOT to negotiate with a Class 1 railroad in achieving that goal.

Due to a number of factors, the region missed the chance to get freight rail into the northern segment of state highway 130. It is still possible to move traffic to an alternate route, and to place freight rail into the southern portion of 130 that moves between Lockhart and Seguin. Union Pacific railroad recently completed a major study of upgrades needed to accomplish the relocation. Relocation would significantly reduce the truck traffic through the Austin-San Antonio corridor and lessen the destruction caused by those vehicles. The cost of maintaining the infrastructure needed would shift to the railroads, the private sector, and off of the taxpayers. In addition, capacity would be freed on I-35, public safety and air quality would be enhanced, and NAFTA traffic would be sped to its destinations across the country. Capacity would also be freed to service the needs of the new Toyota plant in San Antonio.

Although some commuter rail plans lean toward private investment and assistance, railroad officials caution against hoping for too much. Even though railroad productivity has increased since deregulation in 1980, the railroads are not earning enough to meet their cost of capital to reinvest in added infrastructure. Most of today's railroad budgets are committed to maintenance and preservation. Without significant investment in improved infrastructure, railroads will be unable to satisfy the increased demand.<sup>17</sup>

Dennis Kearns, of BNSF, testified before the joint committee in May that the railroad is a very capital intensive industry, with BNSF responsible for over 30,000 miles of rail nationwide that needs to be maintained, along with over six thousand locomotives that pull trains over this network. The average price of a locomotive is \$1.3 million, and the cost of maintaining the right-of-way is over one billion dollars a year. Although the railroads made \$9 billion last year, the bottom line profits were \$816 million.

According to Kearns, what freight rail can offer is leveraging of physical track structure, and railroads can participate on a pay-as-you-go mechanism, like a toll road. The current network can handle existing traffic, and the railroads operate in such a productive manner that other countries are coming to America to see how the class one railroads operate so well. However, the exponential growth of traffic on the highways and railroads is expected to increase dramatically as the American economy changes from a manufacturer of goods to an importer of goods from the Pacific Rim. The railroads are moving goods from the California area to the cities. Once the cities are reached

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however, trucks move the goods from that point.

The railroads are willing to partner with urban and regional transportation agencies when excess capacity is available on their lines, the railroads are made whole for the use of their right-of-way, and their capacity to handle freight goods is not diminished in the future.

### **Local Option Taxes**

Local option taxes are currently not available in the state of Texas. Several municipalities would like the opportunity to raise the gas tax a few cents within its own area only, and use the money for local transportation needs. One of the drawbacks to this plan is that one quarter of the gas tax in the state of Texas is constitutionally obligated to education. A community that voluntarily taxed itself higher for transportation needs would see one quarter of their extra effort diverted to the state for education. As a gas tax of this nature can only be passed by a vote of the people, it is unlikely that the populace would vote for it.

The Texas Urban Transportation Alliance, made up of members from Dallas, Fort Worth, Houston, Austin and San Antonio, would like the legislature to consider two measures during the next regular session. One would allow the gas tax to increase with inflation. A second measure would allow regions to hold elections for a local-option transportation tax. The group also supports consideration of a measure to dedicate revenue from any future gas tax increase solely to transportation.<sup>18</sup>

### **Committee Recommendations**

Statutory authorization to use "design/build" procurements to develop tolled and non-tolled projects should be considered.

Language regarding the CDA process should be revised to assure that innovative ideas are encouraged and rewarded. Also, consider language to permit "pre-qualification" of teams to avoid delays in the CDA process.

The current "cap" on the amount of toll equity TxDOT may invest in projects should be raised or removed completely.

Language should be considered regarding presumptive valuation of used cars for sales tax purposes.

Issues concerning toll conversions should be clarified. This includes defining at what point in the project planning and development process a conversion will be deemed to occur, and what approvals are necessary for a conversion.

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Language should be considered to assure that "franchises" can be awarded either within the existing CDA authorization or through separate statutory provisions.

Language should be considered requiring TxDOT to release a list of projects throughout the state which may be toll viable based on TxDOT studies.

**Rules Implementing HB 3588/HB2  
As of August 31, 2004**

Subject	Status	Office of Primary Responsibility
<b>ARTICLE 1 - TRANS-TEXAS CORRIDOR</b>		
Comprehensive Development Agreements	Adopted August 2003	OGC / TTA
Environmental Review and Public Involvement	Adopted January 2004	OGC / TTA
Acquisition of Real Property	To be proposed Summer 2004	ROW
Relocation of Utilities	To be proposed Summer 2004	ROW
Use of Corridor Property	To be proposed Summer 2004	ROW
<b>ARTICLE 2 - REGIONAL MOBILITY AUTHORITIES</b>		
Creation and Regulation of RMAs	Adopted February 2004	OGC / TTA
<b>ARTICLE 3 - ADVANCED ACQUISITION</b>		
Conforming Amendments to ROW Acquisition Rules	Proposed June 2004	ROW
<b>ARTICLE 4 - RAIL FACILITIES</b>		
Acquisition of Abandoned Rail	Adopted January 2004	TPP
Acquisition of Real Property	To be proposed Summer 2004	ROW
Relocation of Utilities	To be proposed Summer 2004	ROW
Environmental Review and Public Involvement	Proposed July 2004	OGC / ENV
Contracting Procedures	Adopted April 2004	OGC / TPP
<b>ARTICLE 5 - ISSUANCE OF BONDS</b>		
Project Eligibility and Selection Criteria -	Adopted March 2004	TRF
<b>ARTICLE 6 - PASS - THROUGH TOLLS</b>		
Project Development, Determining Amount of Toll, and Risk Allocation	Adopted March 2004	OGC / TTA

<b>Subject</b>	<b>Status</b>	<b>Office of Primary Responsibility</b>
<b>ARTICLE 7 - CONVERSION OF NONTOLL STATE HIGHWAY</b>		
Conversion to County Toll Road Under Chapter 284	Adopted February 2004	OGC / TTA
Conversion to TxDOT Turnpike Project Under Chapters 361 and 362	Adopted February 2004	OGC / TTA
<b>ARTICLE 14 - CONDITIONAL GRANT PROGRAM</b>		
Eligibility Requirements	Adopted November 2003	HRD
<b>ARTICLE 15 - TEXAS TURNPIKE AUTHORITY</b>		
Comprehensive Development Agreements	Adopted August 2003	OGC / TTA
Contract Claim Procedure	Adopted September 2003	OGC
Toll Conversion	Adopted February 2004	OGC / TTA
Repeal of Obsolete Provisions	Adopted February 2004	OGC / TTA
<b>ARTICLE 17 - NONREPAIRABLE AND SALVAGE MOTOR VEHICLES, SALVAGE VEHICLE DEALERS</b>		
Comprehensive Revisions to Existing Rules	Adopted February 2004	VTR
<b>ARTICLE 18 - FUNDING OF PORT SECURITY, PROJECTS, AND STUDIES</b>		
Port Authority Advisory Committee	Adopted August 2003	OGC / TPP

Projected dates are subject to change.

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### Charge 1

Review transportation best practices in other states to determine possible improvements in administration, operations, delivery of projects, and improving overall efficiency of the Department of Transportation.

### Charge 4

Actively monitor agencies and programs under the committee's jurisdiction, including identifying possible ways to merge or streamline agency functions to produce long term financial benefit to the State and better efficiency of the agencies.

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## Best Practices

*"People hate flexibility because they have to give up control." <sup>19</sup>*

*"There has to be permission and encouragement to find new solutions to problems. The one thing I have found, in looking at government, is that there is no incentive to innovate. There is no reward for assuming the risk." <sup>20</sup>*

*"Tolls aren't popular. But mobility is." <sup>21</sup>*

## Background

HB 3588 created many innovations that have expanded the ability of the Texas Department of Transportation to do its job more effectively. More creativity will be required in the future, as states continue to grapple with ever-increasing needs, and ever-decreasing funding. Learning from the best practices of other states expands Texas' ability for innovative thinking.

## Testimony from Public Hearings

The Committee heard testimony during two scheduled hearings. Those who testified and their representation were:

February 9, 2004, in Austin, TX

Phil Russell, *Texas Department of Transportation*  
Amadeo Saenz, *Texas Department of Transportation*  
Steve Simmons, *Texas Department of Transportation*

August 24, 2004, in Austin, TX

Bill Albaugh, *Florida Department of Transportation*  
Jim Ely, *Florida Department of Transportation*  
Pete Rahn, *former Secretary of Transportation, New Mexico*  
Shirley Ybarra, *former Transportation Director, Commonwealth of Virginia*

## Texas Testimony

In 2001, the Texas Department of Transportation developed a report, "Transportation Partnerships." The report established five transportation goals that TxDOT is now using: reliable mobility, improved safety, preserving existing transportation systems, streamlining project delivery, and increasing economic vitality. The 78th Legislature changed some of the performance measures that the Department follows. Some of those include: the number of engineering plans that the Department is producing, the dollar value of contracts, the number of projects awarded, and the miles of seal coat and overlay that are done.

One of the innovative ideas that TxDOT is examining to improve their efficiency is balancing the letting schedule. TxDOT lets about \$3 billion of projects a year. In the past, letting would be light

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when the fiscal year began in September, and would fluctuate throughout the year. Towards the end of the fiscal year, there would be a rush of lettings, which created problems in planning in the contracting industry. TxDOT is moving towards a set letting amount, somewhere in the neighborhood of \$250 to \$300 million per month, planning the number of projects that will be let monthly, and examining what TxDOT can do with their own resources.

The district offices have been authorized to design twenty percent more projects than can be let with available resources. Often, an approved project will run into a stumbling block such as problems acquiring the right-of-way, or issues with utilities or the environment. If a selected project cannot be let by its due time, there will be an alternate project ready to go.

### **Environmental Streamlining**

Environmental streamlining is generally used to describe a new way of doing business that brings together the timely delivery of transportation projects with the protection and enhancement of the environment. TxDOT has looked at this problem from several angles. External efforts include Memorandums of Agreement and Memorandums of Understanding with other state environmental resources agencies such as Texas Parks and Wildlife and the Texas Commission on Environmental Quality. Internal efforts include advance right-of-way acquisition and improved contracting agreements. Mitigation efforts include wetlands banking, conservation easements, and fee in lieu of mitigation.<sup>22</sup>

TxDOT is looking for ways to streamline the planning process by looking for environmental shortcuts. TxDOT works with the Federal Highway Administration to put into place “programmatic agreements.” For certain environmental documents, eighty percent are “categorical exclusions.” Under the categorical exclusions, there are some sub-agreements that are much simpler, and TxDOT has identified different types of documents that would fit into this program as routine categorical exclusions, expediting projects by using a checklist for the environmental process, and TxDOT is able to clear the environmental much quicker. The programmatic agreements have just been approved by FHWA, and TxDOT has begun implementation.

### **Design and Construction**

In the design phase, TxDOT has been working with the districts and trying to equalize their design capabilities and use of consultants. Some districts that don’t have as much work as others are helping other districts with their work.

TxDOT is trying to speed up construction by using pre-fabricated bridge construction pieces, and their pre-fabricated construction practices are now being used nationwide. In an area where the road must be kept open, the bridge can be entirely prefabricated offsite. The old bridge can then be torn down, and the new one constructed in a shorter amount of time than previously.

### **Outsourcing**

Capital transportation programs in all states continue to grow at record levels, while staff levels at

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state DOTs have remained constant or declined. This has prompted many state DOTs to increase the volume of outsourced activities. Florida, South Dakota and Iowa have all experienced reductions in staff during the past few years.

Design activities most commonly outsourced include surveying and mapping, location studies, plans and specifications, environmental impact studies, design/build, program management and engineering design. Maintenance activities most commonly outsourced include roadway surface, roadside, drainage, bridges, traffic signals and traffic signs.<sup>23</sup>

Outsourcing of engineering services is encouraged in the state of Texas, although the concept seems slow to gain ground, possibly due to quality concerns. Where an analysis was undertaken, the literature clearly indicates that consultant plans are at least equal to those produced in-house. Nowhere in the literature is there any indication of poor quality work on the part of private engineering firms performing work for state DOTs.

Some states outsource less than 10% of their program, whereas others outsource more than 75%. One report published in the *Professional Services Management Journal* attempted to determine an optimal level of outsourcing by comparing the cost of engineering with the total cost of construction for both in-house and outsourced projects. After reviewing 11 years of data from the FHWA, the authors concluded that states that contract out 50% to 70% of their engineering services have the lowest overall cost of engineering for their total program of projects. Those with less than 10% have the highest cost of engineering for their program.<sup>24</sup>

### **Taking Tools to the Next Level**

Most of TxDOT's attention at this time is directed towards the federal level. TxDOT is working at the federal level to revise rules in order to maximize the use of state-level tools provided by HB 3588. For instance, TxDOT is working to have rules amended in order to compress the timetable for the environmental process without affecting the quality of environmental review.

### **Florida**

#### **Lessons From Tolling**

James Ely, Executive Director and Chief Executive Officer for Florida's turnpike, testified that he is not an advocate of toll roads, but an advocate for transportation and enhanced mobility. Florida faces a \$30 billion shortfall for the next twenty years, and toll roads and toll bridges are helping to fund that gap. Florida has over ten billion dollars invested in user-financed facilities. At the present time, \$800 million is collected annually on the toll roads, and is plowed right back into enhanced transportation opportunities. There are over ten billion vehicle miles traveled every year on Florida's toll roads and bridges, and every day 2.5 million daily customers choose to use a toll road or bridge in the state of Florida.

Florida has been tolling since the 1950's. In 1969, the turnpike authority became part of the Florida Department of Transportation. The system currently covers 449 miles. One main line is the economic backbone of several expansion lines, providing capital to leverage the other lines. 129

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additional miles have been built in the last ten years, with leverage from the main line.

The turnpike underwent more changes in 2000, when Governor Jeb Bush issued a challenge to run the turnpike more like a business. In that year, the legislature re-invented the turnpike authority as a statewide enterprise, and the turnpike became a true public-private sector organization model. Expectations of the new enterprise included enhancement of the financial leveraging capability and increasing revenues, but the bottom line was the enterprise was expected to expand the capital program, improve the level of service to its customers, and protect the bondholders. In short, the turnpike was now expected to achieve public sector motives using private sector methods.

Ninety percent of all turnpike employees are outsourced, only one out of ten employees is an actual employee of the DOT. All turnpike staff were removed from the state's service career system two years ago. There is no job protection or job security if you work for the turnpike. All serve at the pleasure of the executive director. The turnpike is exempted from all DOT policies, procedures, and regulations, and that exemption increases their efficiency in business operation. The legislature has allowed the turnpike to experiment with new ways to deliver their program, and if those experiments work, they are replicated in the remainder of the DOT. Revenues are increasing, becoming more diversified, and costs of doing business have decreased over the last five years. The turnpike authority is maintaining a competitive edge in the technology field, and has a AA bond rating.

In 2003, 950,000 Floridians used electronic tolling, called "Sunpass." That number has risen to over 2 million this year, as the turnpike authority encourages the use of this measure to reduce congestion. 75% of all toll transactions now use Sunpass. There are over 200 dedicated Sunpass lanes, and since 2003 all new interchanges have been constructed as Sunpass only facilities. The new decals that are applied to the windshield of the car will be interoperable with other like toll facilities in the nation. Before the end of 2008, the turnpike will complete the conversion to open road tolling on one of its expressways. With open road tolling, there will be no toll plazas, and therefore, no lines. Variable priced express lanes are now opening for Sunpass users only.

Florida provided six lessons that they have learned from their tolling experiences:

**Studies are important.** Traffic and revenue studies are part art, part science, and based on many variables and many assumptions, some of which are out of the control of the toll agency. If you bond a project that does not provide the projected revenue, there can be significant financial implications, especially for a stand-alone project. If one project does not materialize as expected, every project gets a black eye. Time and effort must be invested in traffic and revenue studies. Test the reasonableness of the assumptions, perhaps even obtain peer reviews on traffic and revenue studies. These studies should be realistic and independently done.

**The power of leveraging.** In 1986, the authority faced a turning point, becoming basically debt free. Some thought that the best thing to do would be to remove all the tolls from the turnpike in the mid-eighties. Fortunately for the turnpike, the Florida Transportation Commission was created in 1987. The agency and the legislature took an entirely different route in 1990, and decided to leverage the \$85 million a year in revenues provided by the turnpike mainline and build more toll roads. Revenue bonds were issued based on this dedicated financial engine, and currently Florida

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has \$1.8 billion dollars of revenue bonds outstanding, and plans to issue a total of \$4.5 billion by 2010. Since 1990, another 140 miles of turnpike have been constructed or acquired, valued at 2.4 billion dollars. Each day about 1.5 million residents or visitors ride the new facilities. Enterprise revenues will exceed \$600 million this year. Just 15 years ago, revenues were only \$85 million per year. At the current interest rates, every dollar can bond 14 or 15 dollars. Today, one out of every four dollars in revenue comes from one of the expansion projects built over the last ten years. Texas is uniquely positioned, like Florida, with growing populations and growing revenues, to leverage toll road revenues for transportation.

**Safeguard your revenues.** Tolls are not always the most popular, but their revenue streams are coveted. The rating agencies expressed concern in 1990 that as the revenue streams increased, there would be greater pressure to divert a portion of these revenues to non-turnpike projects or even non-transportation projects. Florida's legislature passed into statute a law that forbids moving turnpike revenues off the turnpike system. Every dollar collected must be put back into the transportation system for the benefit of current and future users. This is one of the reasons Florida enjoys such a high bond rating.

**Customers, not motorists.** Run the turnpike like a business. Customer service, workforce, project delivery and financial stability are the primary objectives of the turnpike.

**Go electronic together.** Toll collecting is an expensive and labor intensive operation, costing about 14.7 cents per transaction. Electronic toll collection costs less than ten cents per transaction. Currently, about 52% of the tolls in Florida are collected electronically through the Sunpass program, and Florida's goal is to increase that to 75% by 2008. 1.5 million transponders are in use statewide, and Florida hopes to increase that to two million next year, as the Sunpass is fully interoperable with other transponders in the state. One percent of the turnpike revenues are spent to promote electronic tolling. Florida recently raised the tolls for cash customers on the main turnpike, to see if the different toll would create more electronic users. Sunpass sales went from 1500 a day to 8500 per day by creating that differentiated toll.

**Expand out, not in.** In 1990, a major workforce decision has paid major dividends for the turnpike program. The decision was to maintain a small cadre of highly-qualified internal staff, but also use consultants and other private sector groups to deliver the state-wide program. Of the staff of 4600, only one out of ten are DOT employees. All turnpike design, all construction and engineering inspection and maintenance have been privatized, as well as all toll collection and service plaza areas. As workforce needs have changed, the turnpike program has expanded externally, rather than internally, for its staff. Private and state employees work as one unit. As a general rule, private salaries are higher than those for state employees, particularly in the professional engineering ranks. If you look at the DOT as a whole in Florida, of all the construction, engineering, and inspection, 81% is privatized at FDOT, in the right-of-way support area, 76 %, maintenance 80% and design about 82%. All toll collectors used to be DOT employees, and as they were privatized, were offered their jobs as private sector jobs.

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## **Stretching the Dollars Further**

Florida encourages the involvement of the private sector. In one instance, the Disney corporation paid for half the cost of a new toll road that was needed, the state the other half, and the state kept the revenues. Donating right-of-way and design consulting are other ways that the private sector has become involved.

As the cost of land continues to increase, Florida tries to identify future transportation corridors with the goal of purchasing right-of-way early.

Revenues come mainly from tolls, but also from concession revenues. Florida currently has eight service plazas on the turnpike that generate revenue. Florida has also constructed a convention center along the turnpike, and it has already been booked for the next five years. Two years ago, the Florida legislature directed the turnpike to look at other revenue streams, with the goal of bringing in as many dollars as possible for transportation needs.

## **Asset Management**

Although Texas and Florida both have asset management programs, Florida's approach is different from that of Texas. Asset management is generally described as contracting for routine maintenance work and management services. Florida expands that definition by also contracting out the planning of the work, administrative decisions, and inspection of the completed work.

The Florida Department of Transportation is well-known for its demonstration of cost savings from decreasing in-house employees and increasing privatization. In Florida, private contractors perform nearly all department toll collection and most construction and engineering, design, right-of-way, and routine maintenance work. The percentage of work performed by private contractors continues to increase, and the department has eliminated more than 800 state maintenance positions by expanding privatization between 1995 and 2003.

The Department has an innovative highway asset management program whereby the Department contracts with a private entity for the management of all assets located within the right-of-way for an entire geographical area or portion of roadway. The contractor is responsible for all routine maintenance activities associated with the roadway, structures, drainage, roadside, rest areas, wayside parks, vegetation and aesthetics, traffic services, structure inspection, and incident management.

The contractor invoices the department monthly, providing a breakdown of all work completed and associated charges. The contractor is required to respond and deploy resources within 15 minutes of initial notification, 24 hours a day, seven days a week, of any emergency. If the contractor does not arrive within one hour of the initial notification, \$1,000 is deducted from the contractor's monthly lump-sum payment for each hour past the allowed response time it took the contractor to be on site.<sup>25</sup>

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As of November 2003, the department reported saving 15.3% over the life of asset management contracts totaling \$463.3 million. By July 2008, the department plans to have 28 active asset management contracts totaling \$978.4 million.<sup>26</sup>

Florida's program is based on performance based results. In the past, the department would send personnel out to determine when it was time to mow, and issue a work order to a contractor. Mowing contractors were paid depending on how many acres they mowed. Now the department sets a minimum and maximum height of vegetation, and it is up to the contractor to keep within those standards, whether they have to mow seven times a year, or twelve.

When contracts are bid, it is at a fixed price, for six to ten years. Monthly payouts are fixed for the term of the contract. The assumption of risk is taken on by the contractor. If Florida has a particularly rainy year, and the mowing has to be done more often, that cost is paid by the contractor.

Florida began their program with corridor contracts; a contract let for a specific number of center lane miles. They have expanded with geographical contracts, which is a contract let out for a specific geographic area, such as roadways within a five county region; facilities contracts, which include rest areas, weigh stations, and welcome centers; and bridge contracts, where contractors are responsible for the maintenance of both fixed and movable bridges.

A typical asset management roadway contract includes all traditional routine maintenance activities, compliance with environmental requirements, incident response, natural disaster preparedness and damage repair (such as the recent cleanup from Hurricane Charley), permitting (the contractor does the legwork, the department signs the final permit), highway lighting and call box maintenance, customer service complaint resolution, formal inspection of bridges and safety features, and motorist aid service patrols.

Florida has compared traditional maintenance contract methods with asset management contract methods and found that the number of contracts under traditional methods would number 980. Asset management contracts number 28. With traditional maintenance contracts, Florida would have to process 11,760 invoices annually. With asset management, Florida processes 336. Annual In-House maintenance costs would be \$144 million, declining to \$134 million with traditional maintenance contracts, and declining further to \$121 million with asset management contracts. Florida has also seen a declining need to maintain some of its own equipment and facilities.

Asset management companies contract out services, just as the Florida Department of Transportation did in the past. However, unlike the state agency, asset management companies have typically hired more minority and small business firms, due to the ability of the company to provide the performance bonding to these smaller businesses.

Florida recommends several factors that make their program work. The scope should be properly defined, so all parties can easily understand what work is to be done. Established performance measures, procedures and policies are used. Revisions are included throughout the contract period in the event that FDOT changes its procedures or policies. For instance, guardrail standards change

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regularly, and contracting policies must conform to those changes. Should those changes result in more than a five percent change to the contract cost, FDOT will consider amending the contract. Adequate start up time must be provided to contracting entities.

Florida selects its base contractors on a scoring method that includes technical proposal and price. Technical counts for 60% of the score and 40% price. On the technical side, the contractor must provide details on how the work is to be done. A team evaluates the technical portion of the proposal so that FDOT is comfortable that the bidder can do the job. Bidders are scored on both technical and price, so that the lowest bidder may not get the job if he cannot prove that he can perform the job technically.

Florida requires an annual performance bond, pre-determined reductions in payment for failure to meet established performance measures, and future contracting contingent upon satisfactory performance history (when scoring technical ability, a contractor who did not perform well the first time will be scored lower and probably lose the bid the next time around). Proposals are written into the contract so that promises made during the original presentation are kept. Anything the contractor puts into their contract proposal becomes a technical requirement.

### **Georgia Public Private Initiatives**

Due to passage of legislation in 2003, road contractors would be allowed to come to the state Department of Transportation with projects before they have been planned or funded. Potential competitors would be given 90 days to study bids and submit their own proposal. Also, oversight of unsolicited contracts are required from the Governor and legislature under the bill and unsolicited proposals would be limited to those that do not have funding or are not on the Department of Transportation's project list. Intentions are to speed up projects that are low on the DOT's priority list.<sup>27</sup>

### **Kansas Innovative Contractors**

The state of Kansas looked at innovations for construction of 7.5 miles of Interstate 135 south of Newton. The first, an accelerated construction schedule, was suggested by the engineering staff of KDOT District Five. Engineers felt that the project, originally slated to be completed in two construction seasons, could be completed in one. Contractors were given the option of providing two bids, one for completing the work in two years and one for a one-year completion.

When the project was opened for bids, the winning company submitted the lowest overall bid for the 2-year option (\$18.5 million) and also submitted a bid for the 1-year option at an additional one dollar. The 1-year schedule was selected to reduce disruption to the traveling public.

KDOT also added financial incentives to speed reconstruction of the most heavily traveled interstate ramps. Due to a \$2,000 per day in incentives for early completion of the ramps, they were rebuilt in 23 days. Other incentives included a \$93,000 smoothness incentive, paid as a result of the pavement

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profile on the project. A \$302,000 quality incentive was paid as well. The project was completed far ahead of the accelerated schedule and has proven to be a high-quality highway improvement.<sup>28</sup>

## **New Mexico**

### **Innovation from Desperation**

In 1995, New Mexico's system was deteriorating quickly. The number of deficient road miles on the system had increased every single year for 23 years. With few resources and few people, something different had to be done.

Newly-appointed transportation secretary Pete Rahn came from outside the transportation and government arenas; an illogical choice for the job. He was appointed to "do something different." He believed that two things must be in place for innovation to occur: permission/encouragement to find new solutions to problems; and a recognition that there is an obstacle that traditional behavior will not solve. In government, there is traditionally no incentive to innovate, there is no reward for assuming risk.

The driving force behind New Mexico's undertakings was the desire and need to "plug their transportation system into the regional system and economy." The needs were huge and the resources scarce. Rahn believed that the lack of transportation infrastructure led to the lack of economic activity. New Mexico is 48th in per capita income, and transportation had never been a major issue for the state. An extremely aggressive goal was set to build 650 miles of new four-lane highway that would connect with 570 miles of existing isolated sections of four-lane roads to create a contiguous 1200 mile (non-interstate) four-lane system that would link over 97% of New Mexico's municipal residents with a safer, more efficient transportation system. And it was to be completed in six years.

The process that delivered this goal was the Malcolm Baldrige Quality management structure that demands organizational responsiveness to customer needs and complete involvement by department employees. NMDOT implemented a performance measurement system, named the Compass, that tracked 16 tangible results that customers could reasonably expect to be delivered if their needs were truly being met. Seventy-eight indicators were reported quarterly to the Governor, the Legislature, the Commission and the media.

### **Delivering the Goods**

NM 44 was the first road built in the U.S. with a 20-year warranty. This warranty allowed NMDOT to empower the designers and contractors with wide discretion in the use of materials and construction techniques. 118 miles of completely new four-lane highway was constructed--under traffic--in 29 months, start to finish. Traditionally, the project would have been built in 3-5 mile increments, and would have taken approximately 27 years to complete.

The Big I Interchange set a national construction record when the \$300 million project was reconstructed--under traffic--in 23 months. In the heart of Albuquerque with 300,000 cars a day, the project was delivered using traditional bid/build procurement but put market derived/performance driven incentives into the contracts.

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Innovative Financing--meaning either advancing future dollars or receiving funding that normally would not have been available at all--became crucial. USDOT and USFS GARVEE Bonds were one technique utilized. The first issue of GARVEE bonds were \$100 million, issued in 1997 to fund the first piece of NM 44. They were to be paid back with future federal dollars. The New Mexico legislature then gave NMDOT the ability to issue state-backed bonds with the full faith and credit of the state of New Mexico. NMDOT officials moved to this revenue source instead of GARVEE bonds, due to the lower interest rate of the state-backed bonds. Local participation was also stressed and private sector commitments were leveraged.

Costs and standards were managed rigorously. Construction costs to add two lanes of highway to an existing two went from \$1.3 million a mile in 1996 to \$740,000 in 2001. This was accomplished by creating as competitive a market as possible. Although some contractors found the methods too draconian, other contractors worked closely with the department. The department hired retired contractors to come in and evaluate the projects beforehand for a constructability review. Utilizing corridors for consistent development improved the department's control over risks and correct project sizing optimized competition.

Training was emphasized--every employee was expected to receive 80 hours annually in job related training. Supervisors were evaluated on their employee's success in meeting this goal.

Business executives from outside government were brought in to sit on management selection panels as full voting members. For example, District Engineers were selected using a five member panel with one of its members coming from the private sector (and also one from the district the DE would be managing).

New Mexico also outsourced some of its functions, such as striping, as part of the state's overall effort to reduce the number of state employees.

## **Ohio**

### **Shortening the Environmental Process**

Ohio has gotten a reputation for being among the most adept transportation departments at complying with federal environmental requirements. ODOT's work, in close cooperation with the FHWA, lets projects with minimal environmental impact be processed as categorical exclusions rather than requiring the more complex environmental assessments or environmental impact statements. Projects like simple culvert and structure replacements can now be processed without lengthy documentation. Currently, 99 percent of ODOT's projects can be cleared through the categorical-exclusion process or are completely exempt from the environmental process. Ohio officials credits its improved ability to coordinate, review, and approve highway projects to more efficient processes and better partnerships with the pertinent government agencies.<sup>29</sup>

## **Pennsylvania**

### **Environmental Streamlining**

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In the mid to late 1990's, PennDOT conducted several environmental streamlining conferences with neighboring state DOTs and with key federal and state resource agencies. During this same time frame, the Department began an extensive environmental mapping effort to document natural, social and cultural features that require impact avoidance or minimization during project development. The Department also began its first initiatives to promote better coordination between land use and transportation planning and decision-making. Agency Coordination Meetings also were begun whereby all federal and state resource agencies met with Penn DOT and its consultants on a regular basis to expedite preliminary engineering and NEPA-clearance documents.<sup>30</sup> The Department has developed project development processes that facilitate coordination and consensus building, invested in database development, and instituted various programmatic and cooperative agreements.

The Department would now like to advance its streamlining effort further, and will be presenting their final report and recommendations to senior management at PennDOT in the next few months. PennDOT would like to be allowed to obtain certification on all or individual environmental actions.

The Department has already begun the process to become ISO 14001 certified via its Strategic Environmental Management Program. As this program advances, the Department would like to use this as a means to obtain delegation for many state or federal environmental requirements.

The Department would also like to eliminate or reduce the review process for minor projects, and set a maximum review time for federally required documents. Currently there are no mandated time frames for review and comment on environmental documents. The Department would also like to establish timelines for issue resolution, and is working with AASHTO to encourage a holistic review of federal environmental requirements. PennDOT feels that because numerous environmental laws and regulations were written over a long period of time and designed to protect a specific interest, little consideration has been given to the total impact of trying to comply from a holistic perspective. PennDOT would also like to see improved linkage between the environmental process and the planning process.<sup>31</sup>

## **Virginia Paving Roads**

The Rural Rustic Road Program offers savings in paving rural roads by paving within existing right-of-way and making minimal improvements. It contrasts with the more traditional approach of purchasing additional right-of-way, widening and reconstructing the road, and improving alignment.

To qualify for the program, the road must already be a state-maintained road in the secondary system of state highways. The road cannot have any special needs regarding alignment, drainage, or safety.

It must carry a minimum of 50 vehicles per day and a maximum of 500 vehicles per day. Growth and traffic cannot be expected to increase significantly over the next 10 years. The county governing board and local citizens must support the paving concept, and the board must pass a special resolution declaring the road a "rural rustic road."

In Augusta County, Virginia, six projects were completed under the Rural Rustic Road Program that resulted in 7.85 miles of paved road for \$405,207. The original cost estimate for the projects was nearly \$3.5 million.

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The Pave-In-Place Program is very similar to the Rural Rustic Road Program except an eligible road is allowed to carry a maximum of 750 cars instead of 500. Additionally, the Pave-In-Place Program does not require a special resolution from the county and does not place restrictions on future growth and traffic. Paving is done within the existing right-of-way, but abutting property owners are expected to donate additional right-of-way for spot widening if necessary for safety. Minor improvements in alignment and drainage also are made if needed.<sup>32</sup>

### **New Ways to Toll**

Virginia is looking at using tolls to address the problem of overcrowding of highways by truck traffic. One of North America's "scenic byways," the portion of Interstate 81 that winds through Virginia's Shenandoah Valley has become one of the nation's busiest truck routes. Legislators are considering building truckers their own road - and making them foot the bill. A private consortium has proposed to build a \$7.9 billion, four-lane truckway alongside I-81, complete with truck ramps at some busy interchanges and "fly-over" ramps to let trucks access remaining exits. The project would use \$1.6 billion in federal funds over 15 years, and at least \$95 million in state funds. Trucks would pay 23 cents a mile in 2004 dollars, though tolls could be reduced by 5 percent for each \$200 million in state funding or through tolls assessed on cars.<sup>33</sup>

### **Unsolicited Projects**

In 1995, the Virginia legislature passed the Public Private Transportation Act. The legislation included the concept of accepting solicited and unsolicited proposals. Those submitting proposals could be any entity; county, city or state, that had the ability to construct either a road, parking garage, or any transportation-related project. The proposals had wide latitudes, they could be operation, maintenance, or capital-related. The first project proposed was a maintenance project; a total asset management project proposed for all of the interstate. The project came in at the right time. Virginia government was experiencing a downsizing movement, and VDOT had lost fifteen percent of its employees--eighty percent in the maintenance division. Since it was a new concept, Virginia did a pilot project of 250 miles, on a five year term with a five year extension. This contract enabled VDOT to put their remaining maintenance employees on the secondary roads, the roads where population was greater. After the first five years, independent studies showed Virginia saved \$18 to \$23 million, and the contract was renegotiated for another five years. The legislature is expected to extend the pilot project once the second five years has been completed.

### **Special Tax Districts**

Virginia has experimented with special tax districts, a concept where businesses tax themselves to support the bond for a road. This was used on Route 28 near the Dulles airport. The businesses voted to support the project by taxing themselves with a property tax, and using those revenues to support the bonds. Another project to bring rail to Dulles will also use a special tax district, along with state and federal funds.

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## **Committee Recommendations**

Legislation should be considered that would allow the Texas Department of Transportation to remove its requirement that its executive director be an engineer.

Legislation should be considered that requires long-term maintenance and capital improvements (i.e., life-cycle costs) to be considered in CDA and design/build procurements.

RMAs can be a valuable tool for developing much needed infrastructure throughout the state while benefiting the regions that utilize the RMA model. Legislation should be considered to assure that start-up funding is available for RMAs, so that the financial burden of start-up and organizational costs does not rest solely on the counties forming the RMA.

Language permitting non-tolled travel on HOT lanes by hybrid and other vehicles should be reconsidered.

Toll violation and enforcement authority for various types of tolling entities should be harmonized and should accommodate increased use of electronic tolling.

Language should be considered regarding participation by local entities as investors in toll projects who can receive a return on amounts contributed.

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## Charge 2

Review and study all existing legislation affecting the development of transportation infrastructure in areas adjacent to the Texas-Mexico border. Study international trade issues as they related to transportation, the adequacy of existing infrastructure to facilitate international traffic related to trade, the potential for development of inter-modal hubs and other mixed use facilities which promote more efficient trade and economic development, and the opportunities for contracting with Mexico or any of the Mexican states for joint development of transportation infrastructure.

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## **Border Transportation**

*"NAFTA was a good idea, but it wasn't our idea."*<sup>34</sup>

*"Expecting border states or cities to finance NAFTA-related border infrastructure is akin to requiring border states to finance border patrols and the immigration service."*<sup>35</sup>

*"NAFTA has added to the stress of the border, but the bottom line is the shortfall was here long before we ever thought about NAFTA."*<sup>36</sup>

*The infrastructure built today to handle growth is insufficient to handle the congestion of yesterday, much less tomorrow."*<sup>37</sup>

## **Introduction**

### **Road Building Initiatives**

Canada, Mexico and the United States each built their transportation systems in pieces, according to the needs of over a century ago. Canada and the United States have tended to develop their transportation network in an east-west direction, the United States, in part, did so to unite the two coasts. The United States began their east-west planning with the Transcontinental Railroad, and continued that pattern when planning the U.S. Interstate Highway System.

Mexico, in contrast, did develop north-south routes, but focused on the central region of the country, especially Mexico City. Infrastructure along the northern border states was largely ignored due to their remoteness and Mexico's desire to limit contact with the United States.

Since the original roads were built in all three countries, existing infrastructure was reinforced, but not re-routed in line with today's economic conditions. All three countries independently pursued their transportation goals along the economic lines and needs of the times, and all three were unprepared for NAFTA.<sup>38</sup>

### **Testimony from Public Hearing**

The committee heard testimony on border transportation issues jointly with the House Committee on Border and International Affairs at a hearing in Laredo on August 19, 2004. Those who testified and their representation were:

John Adams, *Laredo Development Foundation*

Hope Andrade, *Commissioner, Texas Transportation Commission*

Phil Bunker, *Teamsters Local 657*

Alfonso Casso, *Border Affairs Coordinator, Texas Secretary of State*

Larry Dovalina, *City of Laredo*

Les Findeisen, *Director of Policy, Texas Motor Transportation Association*

Elizabeth G. Flores, *Mayor, City of Laredo*

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Juan Gonzales, *City of Del Rio*  
Rene Gonzalez, *Laredo Development Foundation*  
Dr. Ray M. Keck III, *President, Texas A&M International University*  
Jay Kimbrough, *Office of the Governor*  
Augustin Redwine, *Senior Research Analyst, Texas Comptroller of Public Accountants*  
Mark Rogers, *Texas Department of Public Safety*  
Amadeo Saenz, *Texas Department of Transportation*  
Gerald Schwebel, *Alliance for Security and Trade*  
Bill Stockton, *Texas Transportation Institute*  
Juan R. Vela, *Teamsters Local 657*  
Jorge Verduzco, *The Alliance for I-69 Texas*  
Regino Villareal, *Coordinator de Logistica, FIDENOR*

## **NAFTA Fallout**

NAFTA was written as a trade policy. There are no adjustment provisions for the resulting impacts on other policy areas such as transportation.

Since the enactment of the North American Free Trade Act (NAFTA), United States trade with Mexico has increased 400% over the last 15 years. There were 2,871,624 northbound truck crossings in 2003 in Texas. According to Texas A&M International University, there were 2,306,639 southbound crossings. Approximately 79 percent of all Mexico/U.S. truck traffic enters through a Texas border point of entry.

The Laredo area accounts for the largest amount of border truck traffic of any port of entry on the Mexican border. Laredo has four points of entry with two used specifically for commercial traffic only. More than 45 percent of all import truck movement in Texas comes through Laredo. It is the busiest southwest border port with over 1.3 million northbound truck crossings in 2003. Second- and third-ranking San Diego-Tijuana and Ciudad Juarez - El Paso handle less than one-half the volume of Laredo. Moreover, Laredo accounts for nearly 45 percent of cross-border traffic railcars.

Although the enactment of NAFTA has brought increased prosperity to the Texas border, it has also brought strained infrastructure. The NAFTA traffic *through* Texas is significantly more than the total traffic through any other border state. Texas has spent much more of its own money on border infrastructure than other states.

Between 1994 and 1998, Texas spent over \$500 million of its own money on border infrastructure, compared to \$150 million spent by California. Federal spending during that same period provided over \$1 billion to California, compared to approximately \$630 million for Texas. New Mexico received 37 times more federal funding in relation to truck traffic volumes than Texas.

Two federal programs, the "National Corridor Planning and Development Program and Coordinated Border Infrastructure Program" can be utilized to pay for certain of the costs generated by NAFTA-related transportation impacts. However, while Texas received the largest share of such funds, these only amounted to \$32.32 million for FY 99 and FY 00 combined. If funding from these programs is

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split in half for each program, then Texas, with 79 percent of the U.S.-Mexico border crossings, received only 26 percent of the Coordinated Border Infrastructure grant funding.<sup>39</sup> Texas is clearly not receiving its fair share of funding from the federal government.

According to a Dallas Federal Reserve Report, due to the rapid growth in truck traffic and its concentration on major arteries, the border may need even greater spending to reduce congestion and the associated social costs. According to these findings, the current rate of border infrastructure development will not meet the future trade expansion and population growth Texas wants to enjoy in the future and to maintain its leadership position. As industry outpaces the number of highways and customs booths, border cities are becoming bottlenecks, chasing away tourism, diminishing the quality of life for border residents, and crippling the Texas economy.<sup>40</sup>

Prior to September 11, 2001, more than 100 federal agencies had some role in approving or processing or sharing data on truck traffic crossing the border. That number does not include the host of state, local and private interests that have legitimate roles in the crossing process. Cross-border traffic has slowed down even more since the September 11 attacks. The American Trucking Association, the trade organization for the U.S. trucking industry, says that beefed up security procedures are causing truckers hours-long delays at border crossings. As a result, U.S. firms that rely on parts shipped quickly from Canada--automakers, for example--have had to rethink distribution strategies.<sup>41</sup>

### **One Main Route**

Interstate 35 has become the main NAFTA highway, linking the United States to Canada and Mexico. The I-35 corridor is a trade axis that runs north from Laredo through the American heartlands and into the Red River Trade Corridor, which includes North Dakota, South Dakota, and Minnesota, and the Canadian province of Manitoba. The route and its connecting corridors are the only central, existing interstate highway corridor linking the three NAFTA countries, according to North America's Superhighway Coalition, Inc. a Kansas City-based trade organization that represents communities along the border.<sup>42</sup> Eighty percent of the United States' trade with Mexico is passing through Texas, and 75% of that is traveling by truck up I-35. NAFTA trucks comprise 16.5% of all truck traffic on Texas highways. From 1998 to 2002, Texas had the largest number of people killed in traffic accidents involving large trucks, excluding large truck occupants, with 2,043 fatalities.

The fastest growth in vehicle miles of travel in our urban regions was trucks, from about 1996 to 2001. In the Dallas-Fort Worth region, it is not uncommon for a major truck to be one in six vehicles on the system, and one-third of that truck traffic is related to NAFTA growth.<sup>43</sup>

In 1999, the federal government did a study of I-35, all 1700 miles from Mexico to Canada, and what they found was the highest vehicle counts, the highest fatality rates, the lowest levels of service, the most congestion, the slowest average speed per mile all occurred in the Austin-San Antonio corridor. The study recommended that Texas try to shift 50% of what is currently being transported by truck between Laredo and Dallas to rail carriers. HB 3588 contains language specifically drawn to attempt to address this recommendation.

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## **State Efforts**

Although previous legislative studies have reported that the Texas Department of Transportation has provided little investment to the border areas, the Department is working to correct that impression. In 1999, the Department put together a task force that eventually produced a border infrastructure report that identifying approximately \$1.8 billion in transportation needs on the border. Designed to be a ten-year program, TxDOT has been working to accomplish the identified projects. Between 2000 and 2003, the Department has let \$1 billion of that \$1.8 billion, or about 58% of what was originally promised. However, the \$1.8 billion original estimate has grown to about \$2.6 billion, due to refined cost estimates and inflation, and current revenue estimates indicated that the ten-year program could easily become a twelve-year program. Although the transportation needs of the border far outweigh the level of resources available to address them, the Transportation Commission has stated that it remains strongly committed to fulfilling the pledge to let the remainder of those projects as quickly as possible on schedule, and using a variety of means to accomplish that task.

There is a possibility that some relief might come from the federal government. Congress is currently in negotiations over the federal re-authorization of the Transportation Act. The Senate version increases funding for all fifty states by \$300 billion. TxDOT is working with their three border districts to get their projects ready to go, in the event that increased federal funding should suddenly become available.

## **Federal Programs**

The federal government has attempted to address the border problem with the passage of two programs that were part of the Transportation Equity Act for the 21st Century (TEA-21) in 1998. One of them, the Coordinated Border Infrastructure Program, was to improve the safe movement of people and goods at or across the border between the United States and Canada and the border between the United States and Mexico. This program was joined with another program, the National Corridor Planning and Development Program, which was conceived as a way to provide allocations to States and metropolitan planning organizations for coordinated planning, design, and construction of corridors of national significance, economic growth, and international or interregional trade.

During the first few years of the program, Texas submitted candidate projects to the United States Department of Transportation. The first few years, Texas was highly successful, but lost ground as the Congress began to chip away at the funding with earmarks. In addition, funding was often misdirected to non-border states and corridors lacking international significance. One of Texas' main federal transportation goals is to rework the program during the re-authorization of TEA-21, currently before Congress.

It is important that Congress and the USDOT give priority to nationally-significant corridor systems already identified as High Priority Corridors and that support U.S./Mexican/Canadian trade patterns. This means that priority should be given only to north/south High Priority Corridor routes and border improvements connected to them that will enhance the flow of trade to and from border crossings in that direction.

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Texas Senator Kay Bailey Hutchison, Congressman Michael Burgess, and Congresswoman Eddie Bernice Johnson authored legislation to make this focus a reality. The bills would require the USDOT to direct funding only to projects on High Priority Corridors that connect to Mexico or Canada, giving priority to corridors where the trade traffic has increased under NAFTA. The bills would also maintain the USDOT discretionary aspects of the current Coordinated Border Infrastructure Program to allow states and localities to do more in the key area to improve the efficiency of border transportation infrastructure.

Alternative legislation by Michigan Congressman Vernon Ehlers and Michigan Senator Carl Levin would fully or partially eliminate the discretionary aspects of the coordinated border infrastructure program and allocate program funding among the border states by a formula. The proposal also would maintain the discretionary aspect of the corridor program by making eligible both corridors that connect to the border crossings and those that serve as an intermodal connector. This language made its way into the recently passed Senate version of the reauthorization of the TEA-21.

SAFETEA (S 1072 as passed by the Senate on February 13, 2004) contains separate programs for borders and corridors. The Border Planning, Operations, Technology, and Capacity Program would distribute more than \$1 billion in program funds over six years among the 15 border states by a formula (weight of cargo, value of cargo, number of trucks entering, and number of passenger vehicles entering). The Multi-state Corridor Program would give the Secretary of Transportation the discretion to distribute more than \$1 billion in funds over six years to any state and MPO for multi-state highway and multimodal planning studies and construction.

TEA LU (HR 3550 as introduced in the House in November 2003) also contains separate programs for borders and corridors. No details are currently available on the proposed corridor program. However, TEA LU's Border Infrastructure Program would distribute \$1.975 billion over six years by formula (number of incoming commercial trucks, number of incoming passenger vehicles, cargo weight on commercial trucks, and number of ports of entry) among the 15 border states.

Between the SAFETEA and TEA LU border program formulas, Texas gets a larger share of the available program funds under the SAFETEA formula. FHWA analyses show Texas receiving 28% of the program funds (\$284.5 million out of \$1.012 billion) in SAFETEA and 24% of the program funds (\$487.8 million out of \$1.975 billion) under TEA LU.<sup>44</sup>

At the time of this report, negotiations in the conference committee of Congress were continuing concerning the total level of funding with some issues resolved. It is expected that a short-term extension will be enacted to the end of September.

## **Trucking Issues**

NAFTA originally called for Mexican carriers to have access to operate within twenty miles inward from the border, and to be given total access to operate throughout the United States and Canada after December 18, 1995.

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Until the summer of 2004, trucks carrying goods from Mexico and points south had to stop at the U.S.-Mexico border to change tractors, drivers and sometimes trailers. That requirement produced a brisk business in short-haul trucking, in which drivers ferried their goods within the 20-mile wide border zone along either side of the international divide.<sup>45</sup>

Mexican access to the border was slowed by the courts. An appeal was made to the Supreme Court due to concerns by environmental and labor groups over truck standards. It was felt that lower Mexico pollutant standards would contribute significantly to the pollution problems along the border. Concerns have also been expressed relating to truck weights--maximum truck weights in Mexico are much higher, and there is fear that these trucks will significantly damage United States roads, which are built to design standards for lower-weight trucks.

Aging tractors and safety concerns are refuted by both U.S. and Mexican sources. Dilapidated tractor-trailers are used only as short-haul drayage trucks that brokers use to ferry loads across the border. Those trucks are not the same trucks used to haul loads from their point of origin. To save the wear and tear of long periods of idling, Mexican truckers start with loads hitched up to one truck, then switch to an older and indifferently maintained truck to make the border crossing. Once on the United States side, the load is re-hitched to a U.S. truck. Mexican and U.S. experts say lifting the barriers to allow Mexican long-haulers into the United States would eliminate the need for the elaborate hitching and unhitching and encourage the use of the modern Mexican fleet. Mexican carriers, like their United States counterparts don't want to risk a breakdown of equipment or delays in delivering goods.<sup>46</sup>

The Supreme Court ruled on June 7, 2004, that the Bush administration can open U.S. roadways to Mexican trucks as soon as it wishes. But barriers remain. The Department of Homeland Security did not exist when NAFTA rules were first drafted, and terrorism concerns will have to be addressed. In addition, Mexican truckers will need extra insurance, and will need to abide by U.S. safety and environmental standards.

In addition, now that they have preliminary approval to cross the border, truckers on both sides aren't sure they want to. Mexican truckers fear larger, faster, more efficient American companies stealing their customers, while American truckers fear that lower-paid Mexican drivers might erode what they can charge for their services.<sup>47</sup> In addition, Mexican truckers can haul only international cargo. A Mexican trucker must immediately head back to Mexico after unloading cargo in a U.S. city, either with goods bound for Mexico or empty-handed, which cuts profits.

Texas Department of Transportation officials believe that opening the border to Mexican long-haul trucks will not specifically cause more trucks to be on Texas highways, but simply provide a different mix of trucks. Rather than only United States trucks operating on Texas highways outside the commercial zone, some of those U.S. long haulers will be replaced with Mexican long haulers. The Texas Department of Public Safety has estimated that opening the border will mean only up to about 500 Mexican trucks driving on Texas roads in the near future. Should NAFTA trade continue to grow, however, steady growth of vehicles will continue.

Removing the barriers to Mexican trucks allows the state to treat every carrier, whether it is

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Canadian, U.S. or Mexican, in the same way, and facilitates federal compliance with NAFTA. In addition, traffic and commerce may move more smoothly, by reducing truck re-hitching and allowing long-haulers to move straight through. The agreement, however, does not diminish the need for improvements of our bridges and roads on the border.

### **Terrorism Regulations**

Tighter security at the border since September 11 has improved the flow of traffic for large trucking companies that have the staff and resources. But smaller trucking companies say they can ill-afford the new regulations. New border safety programs like CT-PAT (Customs-Trade Partnership Against Terrorism), the OSC (Operation Safe Commerce), or US-VISIT (United States Visitor and Immigrant Status Indicator Technology) have increased their burden. US-VISIT was specifically mentioned during testimony in Laredo as being burdensome to the border. Under the new regulations, trucking companies sending anything north of the Mexican border have to notify U.S. customs inspectors of the shipment at least two hours before arrival at the border. They have to provide a thorough profile of the driver, vehicle, and cargo.<sup>48</sup>

### **Studying the Bottleneck at the Border**

Although infrastructure is a major concern at the border, traffic is originally slowed by time consuming border checks. One of the goals of the Federal Highway Administration is to help improve the economic efficiency of the U.S. transportation system by reducing delays in the border crossing process. Getting traffic through the border and on its way is an issue that has been studied by various entities. The Texas Department of Transportation commissioned the Texas Transportation Institute and the Center for Transportation Research of UT-Austin to examine the feasibility of an expedited border process, which would facilitate trade while permitting the federal and state agencies to maintain their inspection responsibilities.

Phase One of the initial research on the Texas Model Border Crossing Project determined that automation of the crossing process is feasible and will not generate substantial additional costs. The project showed that the greatest opportunity for efficiency gains comes with the implementation of express lanes for pre-cleared trucks. In 2003, the U.S. Bureau of Customs and Border Protection initiated the express lanes with the implementation of FAST (Free and Secure Trade) lanes. The FAST program is an initiative between the United States and its NAFTA partners using common risk-management principles, supply chain security and advanced technology to improve the efficiency of screening and clearing commercial traffic at U.S. borders. The program offers expedited clearance to importers, carriers, foreign manufacturers, and intermediaries enrolled in the program by reducing Customs inspection requirements for low-risk shipments, dedicating lanes at major crossings to FAST participants (where possible), using common technology, and physically examining cargo transported by these stakeholders with minimal frequency.<sup>49</sup>

### **Tolling**

According to the Governor's Business Council, over a ten-year period, vehicles increased more than 26 percent, population increased 23 percent, and workers have increased more than 20 percent.

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Vehicle Miles Traveled increased more than 40 percent, while new lane miles increased less than 4 percent. The traditional pay-as-you-go financing has been unable to keep up with the increased demand.

Tolling, one of the funding mechanisms of HB 3588, is the fastest way to improve mobility in Texas. However, the tool has been resisted by communities where it is a new concept. This is especially true on the border.

The City of El Paso, in particular, has been vocal that their transportation needs have been overlooked for a long time. The area is in need of a loop, and states that their economic base is insufficient to finance the project with tolls. The city supports the concept of tolls in the future, but not until their basic infrastructure has caught up with the rest of the state's metropolitan areas. Other border areas state that population densities and per-capita earnings would make it difficult to find the financial base to support a toll road. Testimony by Elizabeth Flores, Mayor of Laredo, indicated that city leaders there feel the same.

The Texas Department of Transportation is committed to thoroughly evaluating all controlled-access highway projects as possible candidates for tolling in order to ensure that the state's limited transportation dollars are used to their fullest potential. This includes roadways where one has not existed before, and increased capacity projects such as adding additional main lanes or constructing new main lanes. The intent is to identify projects that make sense for tolling. Projects that are not toll viable will proceed through the traditional funding process.

An example of such an evaluation can be found in the Rio Grande Valley. TxDOT has been looking into the possibility of building a bypass around the city of Pharr to connect the Pharr International Bridge to U.S. 281. At the present time, if the trucks need to travel north, they have to go through downtown Pharr and countless signals. TxDOT is working to develop a corridor for the area, but will not be able to finance it until 2010. The project was found to have a tolling feasibility of about 40%. If the project is a \$200 million project, TxDOT can issue revenue bonds for \$80 million of that \$200 million. This accomplishes two objectives: Instead of having to allocate the entire \$200 million on that project, \$80 million can be applied to another project.

TxDOT understands that not every project will be toll-feasible. Some projects are important and they will still have to be constructed. But if there is a possibility additional resources of money can be brought in, then dollars can be stretched or leveraged to do a lot more for less.<sup>50</sup>

The Hidalgo County Commissioners Court hopes to form a Regional Mobility Authority to study the possibility of toll roads near the border. County officials want to examine the possibility that toll roads near the international bridges will steer some of the commercial truck traffic away from residential roads.<sup>51</sup>

## **Truck Tolling**

Truck-only tolls are gaining favor on the federal level. The Federal Highway Administration has predicted a 31% increase in truck freight nationwide by 2015. In 2003, 77 million trucks hauled

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13.2 billion tons of freight. Truck-only toll (TOT) lanes would allow highways to be widened without using tax dollars. Construction would be paid for with toll money. Concessions to truckers are being considered, such as the lifting of a 13-year-old restriction on double and triple trailers for TOT lanes, saving a potential \$40 billion a year for truckers. Truckers, thus far, have been opposed to the idea.<sup>52</sup>

## **Rail**

Five out of seven railroad crossings from Mexico to the United States go through Texas. Freight rail traffic has doubled since the enactment of NAFTA. If more companies involved in NAFTA-related trade would ship via railroad, it could offset the amount of damage done to Texas roads due to increased truck traffic. Recognizing the need for an improved and competitive rail system, Mexico began privatizing and revitalizing its rail service in 1995. Since then, according to Instituto Mexicano del Transporte (IMT) estimates, Mexican rail systems have grown (in terms of freight tonnage), on average, 10.1 percent annually--largely due to better performance and coordination between U.S. and Mexican carriers.<sup>53</sup>

Four years ago, the legislature authorized the funds for transportation to purchase tracks and right-of-way for the South Orient railroad, to save it from destruction. TxDOT has oversight of the rehabilitation of the South Orient Rail line from near Coleman to Presidio. The public-private partnership between the State of Texas and Texas Pacifico Transportation Ltd. will return rail service along the entire line, from a deep water port on the west coast of Mexico through a re-opening of the line at Presidio, one of only seven U.S.-Mexico rail crossings.

The Brownsville rail relocation project is a county project designed to minimize highway-rail grade crossings. Significant safety benefits are expected by the elimination of seventeen existing highway-rail crossings in Brownsville, and six highway-rail crossings in Matamoros. Freight train transit time from Brownsville to Monterrey would be cut by approximately two-and-a-half hours, congestion would be reduced, and a new highway corridor could be developed in the City of Brownsville. After construction of the new line, the plan calls for use of the existing right-of-way through Brownsville for future roadway construction projects. This would provide an additional roadway transportation corridor that is needed to access western Brownsville, the Amigoland Mall area, and the current B&M roadway-rail bridge into Mexico.<sup>54</sup>

The City of El Paso, with about forty crossings per day, is considering moving its downtown railroad to facilitate transportation safety. A consulting firm has determined that moving the railroad lines would be a \$921 million investment over a twenty year period. Complicating the move is El Paso's terrain, with mountains on one side, a river on the other, and Mexico to the south.<sup>55</sup>

## **Bridges**

Bridges connecting Texas and Mexico are owned by various entities. Twenty-three are currently operating, two have been closed. There are also two dam crossings, one hand-drawn ferry, and five rail-only bridges that cross the border. Seven new bridges have been proposed.

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Sixteen bridges are owned or operated by cities and/or counties, which charge a toll. Cameron County, owner or part-owner of three bridges, has over eight million crossings annually with a gross revenue of over \$60 million.<sup>56</sup>

Bridges owned by the federal government are not tolled. Federal legislation would be required to allow Texas to toll United States-owned bridges.

### **The Effect of the Trans-Texas Corridor**

Border cities and counties have found themselves burdened with the increased costs related to traffic congestion and accidents occurring in the farm-to-market roads and off-system streets that connect major NAFTA trade corridors. Commercial vehicles, choosing the fastest route available, use roads that were never meant to handle traffic of that nature.

The Trans-Texas Corridor is a system of roads, railroad systems and auxiliary services that will reduce traffic congestion and environmental pollution within our metropolitan areas, and will offer a safer alternative for the transportation of hazardous material throughout the state. The Trans-Texas Corridor will be a valuable tool in the effort to transport freight efficiently and safely. An important facet of the Corridor will be to move freight more efficiently and safely from the border to its destinations further inland.

Congress has identified two important trade corridors: One is the I-69 corridor, that starts in the Rio Grande Valley in Laredo and comes up through Houston and up to northeast Texas and continues all the way to Canada, the other is the I-35 corridor, which currently carries the most commerce through the state of Texas. TxDOT is working to determine the environmental impacts and specific locations for both corridors. Public comments are continuing and will continue through the project. The Transportation is putting emphasis on multi-modal operations, both in the rail area and the deep water port activities to help complement the needs and demands of Texas' transportation system.

Governor Perry and TxDOT officials have met with northern Mexican state governors to discuss the Trans-Texas corridor. Mexican officials are also working on developing a corridor; expanding the existing corridor in Nuevo Leon, specifically from Colombia to try to make a connection down to Monterrey. The Mexican corridor is expected to be similar to the one in Texas, although smaller, and with all the different modes of transportation envisioned in the Texas plan. They are also working to make sure that they have enough right-of-way to transmit utilities in the manner of the Texas portion of the Corridor. The signing of the historic joint declaration by Governor Perry and Nuevo Leon Governor Fernando Canales to plan the extension of the Trans Texas Corridor into Mexico marks the first time a Texas governor and a governor of Mexico have agreed to coordinate transportation efforts.

Transportation officials from Oklahoma see gains for their state in the Corridor, and are currently examining a 130-mile extension from the Red River to Tulsa. Members of Oklahoma's Department of Transportation have traveled to Texas for Corridor presentations, and are in close contact with Texas officials.

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## **Other Considerations**

### **The Pacific Rim**

As more manufacturing and production shifts to Asia, especially China, more freight will be crossing the Pacific Ocean for the U.S. market. With oceanic freight growing at 8 percent to 9 percent a year worldwide, new ports will become necessary. The problem is that all West Coast ports, United States, Mexico and Canada, are operating at capacity, with no room to expand. Ports on the East Coast are expected to reach capacity by or before the end of this decade. Reducing truck traffic is becoming a priority in many Eastern states, compounding the problem. That leaves the Gulf Coast.<sup>57</sup>

### **Increased Cargo**

The new trend in shipping freight is container ships. Containerization is a system of intermodal cargo transport using standard containers that can be loaded on container ships, railroad cars, and trucks. Container capacity is measured in twenty-foot equivalent units (TEU). A twenty-foot equivalent unit is a measure of containerized cargo equal to one standard 20 ft. x 8 ft. x 8.5 ft. Most containers today are of the 40-ft. variety and thus are 2 TEU.<sup>58</sup> A container ship can unload and load again in 24 hours, compared to up to four days for a conventional freighter. A container ship can be handled at one berth in port, instead of being shifted between piers to deal with different cargoes. One container ship, it has been estimated, can do the work of six ordinary freighters.<sup>59</sup>

This increased cargo will eventually find its way to the Gulf Coast. Altogether, the Gulf Coast container market posted a 9 percent increase to 1.5 million TEUs in 2003 compared with a national growth of 8.9 percent to 22.1 million TEUs in the same year. If construction begins as planned, the new \$600 million Texas City container terminal between Houston and the Gulf of Mexico could open by mid-2006. The first phase of the Port of Houston's \$1.2 billion Bayport Container Terminal is expected to open about the same time. Although Asian trade is not expected to be at the same level as what is occurring on the West Coast, major retailers such as Walmart and Home Depot want flexibility in the event of another West Coast strike. The Panama Canal cannot handle the largest container ships at this time, but they can handle up to 4500 TEUs.

Obviously, once the container freighters arrive and are unloaded, truckers and rail carriers will travel with them across Texas' already over-burdened infrastructure. Supporters of the construction of I-69 have testified before the Texas Transportation Commission that container trade is expected to triple in the next twenty years, and I-69 is vital to alleviate the upcoming crush, particularly if it contains a freight element.<sup>60</sup>

### **Short Sea Shipping**

Short sea shipping, common in Europe, is the movement of goods from Mexico to the United States across the Gulf of Mexico. Transportation time is generally shorter than overland movement, and short sea shipping is less polluting than trucks. Difficulties include finding cargo to transport on the

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return trip, and find adequate overland routes once the cargo has arrived. Increased pressure on existing infrastructure should make this alternative viable eventually.

The Port of Victoria is working to expand their operations to short sea ship goods to the Port of Houston. Although their initial grant application to the Texas Commission on Environmental Quality was denied, the port will be re-submitting their application in the near future with additional information required by the TCEQ.

## **CAFTA**

The Central American Free Trade Agreement (CAFTA) is expected to be approved by Congress next year. This agreement between United States, five central American countries, and the Dominican Republic is designed to eliminate trade barriers, including government regulations that indirectly affect trade, such as zoning restrictions, and environmental regulations in goods and services between these seven countries. Traffic effects have not yet been determined.

## **Committee Recommendations**

Texas state officials and lawmakers need to continue to seek increased federal assistance in responding to NAFTA-related costs.

Border communities need to continue to work closely with TxDOT personnel to evaluate potential tolling projects. Regional mobility authorities should be considered, particularly at border crossings, where tolling projects would be most viable.

The state would realize significant benefit from aggressively pursuing full integration into the FAST program, which, as described in this report, is a harmonized clearance process by U.S. Customs for shipments of known compliant stakeholders. The Texas Department of Public Safety has been diligent, but thus far unsuccessful, in gaining access to relevant data maintained by U.S. Customs for the FAST program, nor does the FAST program incorporate data from the DPS, such as identification data, violation histories, credentials, operating authority and insurance coverage.

Policies regarding short sea shipping should be as liberal as possible, to encourage use of this alternative to overland routes.

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## Federal Funding

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## Federal Funding

*"We have so many growing needs. We can't afford to keep making such generous subsidies to these other states."*<sup>61</sup>

*"Highway congestion is compounded by Texas' unparalleled growth in population. Texas is presently the fastest-growing state in the nation, and its population is expected to be nearly double within the next 30 years."*<sup>62</sup>

*"We want a bigger slice [of the pie], and we don't want them to tell us how to eat it."*<sup>63</sup>

### Background

Texas has a roadway network of over 300,000 miles, nearly twice that of the state of California. Every six years, the federal government considers multi-billion dollar legislation to fund highways and other transportation projects in the United States. The current legislation, TEA-21 expired in 2003, and its reauthorization has been delayed five times.

Rep. Baron Hill, D-Ind., a leader in pushing for state equity, said that when the trust fund was established in 1956, the main goal was to build the Interstate Highway System, originally promoted as a Cold War defense tool. Less-populated Western states got a much better rate of return. Republican House Majority Leader Tom DeLay of Texas contends that the spending inequity since 1956 has cost his state \$5.3 billion and 250,000 jobs.<sup>64</sup>

### The Legislation

Conference committee members are currently working with several pieces of legislation:

The RAPID Act: (Reforming, Accelerating, and Protecting Interstate Design Act) Filed by Congressman Burgess, a design-build transportation bill. Originally targeted to help donor states get additional flexibility to help make up for the lack of highway funding equity. Donor-state specific language ultimately removed and now applies to any state. Revised bill language now being used in proposals for conference amendments on HR 3550 (TEA reauthorization)

HR 3550 - TEA LU - Transportation Equity Act - A Legacy for Users.

S1072 - SAFETEA Senate version.

### What Texas Wants

**A 95% rate of return for all states by FY 2009.** Depending on how you look at the numbers, Texas currently receives approximately 87 to 90.5 cents for every dollar the state sends to the federal government. States receiving much more than what they send include South Dakota; \$2.11 for every dollar sent, Alaska; \$7 for every dollar sent, and New Mexico; \$1.21 for every dollar sent. If Texas could increase their rate of return to 95%, that would mean approximately an extra \$200 million

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dollars for road construction a year.

TEA LU provides a 78% rate of return. SAFETEA promises a 95% rate of return by FY 2009, but holds high growth states such as Texas at a 90.5% rate of return every year through FY 2008, providing Texas with an 81% rate of return on average. Texas loses ground under both versions of the bill.

**Texas-style design-build procurement for federal-aid projects.** HB 3588 allowed the Texas Department of Transportation to hire a single contractor to conduct the environmental review, design, and project construction portions of a transportation project. The state needs HR 2864, the RAPID Act, allowing a single consultant to do environmental work as well as design and construction work a single contract. Currently, the federal government still favors using a consecutive approach to project development, requiring separate environmental review, design, and construction contracts. This process adds unnecessary delay, leading to extra costs and reduced efficiencies. Texas needs authority under federal law to follow state procurement practices for concurrent design/build contracts.

**Unlimited federal-aid highway tolling authority language included in the RAPID Act.** More and more high-growth cities and states have turned to tolls in recent years. But the many federal restrictions on how and where tolls can be used severely limit their options. The RAPID Act allows states to construct and impose a toll on a highway, bridge, or tunnel on the Interstate System, and to reconstruct a previously toll-Interstate highway and convert it to a toll facility. Also allows states to use toll revenues from a federally funded project to be used on a project that is not eligible for federal funds. It currently requires an act of Congress for a specific route segment to apply tolls to any portion of the Interstate. Although the House Bill addressed the subject of expanded use of tolls, the Kennedy Amendments severely stifled their use. The Kennedy Amendments dedicate all tolls to the road on which they were paid, forbid the use of cash tolls and toll booths, and abolish the toll once the costs of building the road were paid (leaving no money for maintenance). **New Developments:** Congress is edging toward a decision to give states broad authority to levy tolls as a way to break the gridlock over the funding levels.

**Language inserted to modify the calculation of federal toll credits.** States are rewarded by the federal government when toll roads are built with the awarding of toll credits. These credits can be used to draw down federal transit dollars, reducing the non-federal share of a federally-funded project, thereby granting the state greater flexibility in its financing options for needed infrastructure improvements and transit projects. Currently, a state cannot receive toll credits if any federal money is used in a project. Texas would like the federal government to allow at least a partial benefit when federal money is part of a toll project.

**Encourage private participation in surface transportation infrastructure projects by expanding the types of projects eligible for exempt facility bonds to include highway facilities and freight transfer facilities.** Currently, private activity bonds are used to finance projects that are run by a non-governmental entity, but are for public good such as airport terminals, public housing and airports. Texas desires to expand the types of projects eligible for exempt facility bonds to

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include highway facilities and freight transfer facilities. This allows private entities to operate major infrastructure projects while maintaining the tax-exempt status of the bonds issued to finance the projects. This legislation is currently HR 3857 by Johnson, the Private Bonds for Modern Roads Act.

**Bring the borders and corridors program back to its original purpose, separate into two programs, and give priority consideration to corridors in which traffic has increased since the date of enactment of NAFTA implementation.**

**Allow for federal reimbursement of options that are exercised when acquiring land for a final alignment.** Allows states to use federal funds to pay an option to purchase property that the state ultimately incorporates into an eligible surface transportation project.

Due to the current political climate, it is likely that a new transportation bill will be delayed for another year, until after the presidential elections. There are very few days left for Congress to work this year. Currently, conferees cannot agree on a budgetary number, and have not begun to tackle contentious issues within the legislation.

Both the House and Senate approved a two-month extension of current law the week of July 19. The measure continues the authorization of transit and safety funds until September 30. This latest extension also continues highway funding until September 24.

Unlike past extensions, this extension changed current law by not allowing for the continuation of contract authority to allow the twelve donor states to retain their 90.5% minimum rate of return in highway aid. It also set aside \$1.8 billion for unspecified, unauthorized House projects. The House committee's original version of the extension would have added \$400+ million in contract authority for the purpose of ensuring that every state ends up with 90.5% rate of return for FY 2004, which is what TEA 21, the current law, requires. However, budget hawks and Senators from recipient states objected and the provision was stripped from the extension. Budgeters claimed the additional contract authority took the transportation bill over its budget limit, and recipient state's Senators didn't want to see donor states getting any additional money in the extension. The twelve donor states who deserved the additional contract authority may end FY 2004 with less than a 90.5% ROR of the programs covered by the TEA 21 Minimum Guarantee, a bad precedent for Texas and other donor states.<sup>65</sup>

Texas currently stands to lose \$115 million in highway funding that it should get if the TEA 21 Minimum Guarantee provisions are applied using the latest motor fuels tax contributions to the federal Highway Trust Fund. So far, this year, the various extensions of TEA 21 have used FY 2003 factors. If the latest contribution rates are factored in, Texas would have an 87.5% rate of return in FY 2004 highway fund. If Congress chooses to hold the other states harmless for this adjustment (meaning they won't lose any funds they've already received in FY 2004 due to using older FY 2003 data), then they will have to add new funding to make this adjustment for Texas and 16 other donor states for FY 2004. It was the addition of these new funds that caught the attention of the budget hawks and the recipient states, and they raised an objection to the "fix." While Texas stands to lose \$115 million, the next highest state's adjustment is only \$46 million, so Texas' loss is significantly

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more than other states.<sup>66</sup>

The Texas Department of Transportation is actively involved in the process in Washington, and is working to communicate inequities in the system to those with a stake in the future of transportation funding.

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