
**HOUSE COMMITTEE ON TRANSPORTATION
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2006**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
80TH TEXAS LEGISLATURE**

**MIKE KRUSEE
CHAIRMAN**

**COMMITTEE CLERK
LAURIE MCANALLY**



Committee On
Transportation

September 8, 2006

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

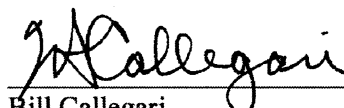
Dear Mr. Speaker and Fellow Members:

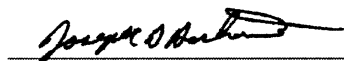
The Committee on Transportation of the Seventy-Ninth Legislature hereby submits its interim report including recommendations and legislative suggestions for consideration by the Eightieth Legislature.

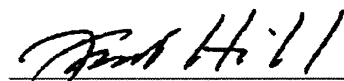
Respectfully submitted,

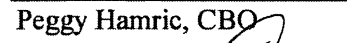

Mike Krusee, Chairman



Larry Phillips, Vice Chairman

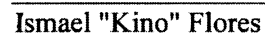

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INTRODUCTION

At the beginning of the 79th 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, Bill Callegari, Carter Casteel, Joe Deshotel, Ismael "Kino" Flores, Fred Hill and G.E. "Buddy" West.

Pursuant to House Rule 3, Section 38, 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.

HOUSE COMMITTEE ON TRANSPORTATION

INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

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

1. Review the regulation of utilities by the Texas Department of Transportation relating to utility access along the edge of the road right-of-way and placement of utility facilities along public road rights-of-way. Recommend strategies for the Public Utility Commission and the Department of Transportation to deliver assets of value to the state.
2. Study the relationship between Texas Department of Transportation, the Federal Aviation Administration and other federal agencies, including the Department of Homeland Security. Review the effectiveness and efficiency of the funding process for airports, and capacity needs for commercial and private demands. Examine further needs with regard to private and public airports.
3. Examine the transportation planning and coordination of land use, including planning for large transportation corridors.
4. Research and study the permissibility of rental car companies to sell used rental motor vehicles on credit union premises and other locations not continuously used for the conduct of used rental motor vehicle sales. Analyze comparative laws from other states permitting such sales by rental car companies on premises other than those owned by the rental car companies.
5. Consider the rail relocation needs of the major metropolitan areas in Texas. Identify possible funding sources.
6. Study the economic infrastructure of the state's main trade corridors with special emphasis on the ability to enhance trade and transportation through increased use of technology. (Joint Interim Charge with the House Committee on Border and International Affairs)
7. Study the current border and coastal transportation infrastructure and any enhancements needed to meet growing international trade and economic development. (Joint Interim Charge with the House Committee on Border and International Affairs)
8. Monitor the agencies and programs under the committee's jurisdiction.

All charges were studied by the committee as a whole.

Charge 1

Review the regulation of utilities by the Texas Department of Transportation relating to utility access along the edge of the road right-of-way and placement of utility facilities along public road rights-of-way. Recommend strategies for the Public Utility Commission and the Department of Transportation to deliver assets of value to the state.

Utility Relocation

State government has certain obligations to its citizens. There must be schools. There must be roads. There must be law enforcement. There must be access to utilities. But how are these obligations to be funded? Should consumers of a certain benefit pay the cost? Or is it the responsibility of the entire citizenry to share the burden? And if the burden is to be shared, how can it be done equitably and administered efficiently?

Currently, state government purchases right-of-way for transportation and safety purposes. Utilities locate in the available space of the right-of-way. The state does not charge for this access. Eventually, however, those utilities have to relocate, due to road widening or other construction. Because the utilities incur the cost of moving, they tend to delay the event as they work the cost into their budgets. But these delays cost the Texas Department of Transportation, and thus, taxpayers, additional expenditures by extending the construction process. Motorists suffer time delays, as traffic is snarled around those scenic orange cones longer than necessary. Many of the expenses related to relocation delays come from TxDOT's fund to build roads, leaving less money to actually lay asphalt. Would it be fairer for those who use the utilities or otherwise benefit from the free right-of-way to pay the cost? Or should the costs be paid by the taxpayers through the federal gas tax, as they are now? And is it fair to force a vital business, such as an electric provider, to pay additional revenue? The question is how, not who. Because either way, the taxpayers pay.

The Railroad Precedent

Before there were paved roads, there were railroads. In one of the first instances of public-private partnerships in transportation, Congress passed a law in 1852 to allow any railroad company, then existing or created within ten years after passing the law, the right-of-way over and through any public lands. The young state of Texas, whose economy was faltering due to a lack of adequate transportation, was more than happy to offer economic advantages to any railroad company willing to locate there. In 1854, the Texas Legislature authorized granting 10,240 acres for each mile of railroad completed, with a minimum requirement of twenty-five miles of track. In 1856, the Legislature authorized loans of \$6,000 per mile once twenty-five miles had been constructed. In 1850, the Buffalo Bayou, Brazos, and Colorado Railway was chartered as the first railroad in Texas, and was quickly followed by dozens of others. By 1860, Texas had granted thousands of acres and loaned nearly \$2 million, but had only about four hundred miles of railroad tracks to show for it.¹ But a precedent had been set. Land had been given by the state to encourage location of a needed service. Utilities could expect no less.

Utilities Come On-Line

In 1874, the Texas Legislature granted telegraph companies the right to be present in the right-of-way along public roads, streets, and waters of the state. In addition to telegraph services, water and gas utilities were also given right-of-way occupancy by the Texas legislature. In 1911, electricity joined the group, and cable came along in 1983.

During Texas' early years, public roads were not in abundance. There was no central agency

responsible for roadways, and each county was responsible for its own roads. In many cases, the utilities were in place before the road was present, or acquired rights to the property somewhere along the way. "The utilities were there first" is also known as a compensable property interest, and means that TxDOT must pay to move the utilities if the road needs to be widened. TxDOT does have the eminent domain authority to purchase the compensatory right from the utility, but prefers to attempt a cooperative, rather than adversarial, relationship with the utilities. But as the number of utilities wanting to use the right-of-way increases, so does the level of adversity. And as our population grows, and market forces such as deregulation continue, there will be increasing pressure on the available right-of-way.

Where's the Right-of-Way?

There are two definitions for right of way, and they are sometimes used interchangeably by attorneys when confronting the state. The first definition is the actual stretch of land needed for a facility and its related structures, such as a highway or railroad, to function properly. The second refers to the right to pass across someone else's land. When referring to the right-of-way in this report, the first definition applies.

When a utility wants to locate in a right-of-way, it's basically a first come, first serve situation. The utilities file a notice of intent with TxDOT and work with the department to find a location that will work for both parties. The permission that TxDOT gives acknowledges the request and agrees to the location. This acknowledgement is not to be considered a "permit." The department employs standard policies on spacing, to keep utilities such as water lines away from sewer lines. Some utilities must be buried at a certain depth, and for safety reasons, TxDOT is reluctant to allow utilities such as high-pressure gas lines too close to roadways, or to other utilities. In consideration of the safety of motorists, TxDOT also tries to keep utilities away from the front slope towards the pavement, and away from areas where workers might be working to clear a ditch or a drainage area. Remember, the Department purchases right-of-way for safety reasons. The Department is not in the utility business, and does not wish to be.

The roadways of the state of Texas fall into two categories: controlled access and non-controlled access. A controlled access road is one that looks like a basic highway. There are on- and off-ramps controlled by the Texas Transportation Commission. A non-controlled access road has multiple access driveways, normally leading to individual businesses. Many roads have changing access, depending on where you are on the road. For instance, a state highway through a rural area has ramps only to access the road, and would be considered "controlled." But if that same road enters a town, it generally becomes "non-controlled" as the speed limit slows and multiple driveways are available to access local businesses. Both types of roads have specific guidelines regarding where a utility line may be placed, and both have a standard "control of access line."

A control of access line is defined two ways. Imagine the frontage road system. There are main lanes of traffic, then, typically, a green space, then the frontage road. In this case, the control of access line is on the side of the frontage road closest to the main lanes. Utilities may locate to the right of the frontage road, as TxDOT typically owns that right-of-way. On major roads where there is no corresponding frontage road, there are the main lanes, then a small stretch of green space on either side. The control of access line in this case is where TxDOT's right of way ends,

to the right of the green space. Because the small green space that is owned by TxDOT is needed to be kept clear for safety purposes, there is no public space to place the utilities. There is no law that requires utilities to use the right-of-way. When public spaces are not available, utilities generally negotiate with private property owners for an easement.

There is little TxDOT can do when a frontage road does not exist. But on controlled access roads where the control of access line eliminates the usage of the green space between the main lanes and the frontage road, exceptions can be made if a utility makes certain showings to justify the risks involved. The utility must show that:

- (1) the accommodation will not adversely affect the safety, design, construction, operation, maintenance, or stability of the freeway;
- (2) the accommodation will not be constructed and/or serviced by direct access from the main lanes or connecting ramps;
- (3) the accommodation will not interfere with or impair the present use or future expansion of the freeway; and
- (4) any alternative location would be contrary to the public interest. (This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility.)²

Controlled access of roads is not a TxDOT invention. The controlled access concept began with the federal government, during construction of the National System of Interstates and Defense Highways.

The Interstate System

When President Eisenhower signed the National Defense Highway Act in 1956, the key word was "defense." Movement of troops and their equipment was considered vital in a post World War II world. The standard 16.5 feet vertical clearance for an interstate overpass is in place because that was the height of certain military hardware at that time.³ President Eisenhower's vision was that the interstate system would have limited access whenever defense movements would need to take place. In the event of a major troop movement, the ramps and limited entrances would be shut down to civilian traffic.

Texas, like other states, was given authority to purchase right-of-way to cover interstate transportation needs for 25 years, but no longer. This is one reason interstates like I-35 have expanded as far as they are able without additional right-of-way purchase. Even if the state could have foreseen the tremendous growth Texas would experience in the next fifty years, its leaders would still not have been able to purchase the necessary right-of-way to solve today's roadway overcrowding problems.

Because federal aid was involved during construction of the interstate, federal statute allowed relocation expenses of utilities to be paid by the states. Some states, such as Texas, carried that provision forward in state statute. Texas wanted to build its part of the system quickly, and save the time it would take if utilities were required to provide funds. Too, in the 1950's, the utilities

weren't as numerous, and relocation was not the financial burden that it is now. And, of course, utilities have always been considered necessary, and "in the public interest." Although the interstate system and the utility network have essentially been completed in Texas, the provision remains in state statute. To this day, if the utilities are along an interstate highway and need to be relocated, the state pays for relocation. And those expenses have climbed dramatically. The state expects to pay \$300 million to relocate utilities along the Katy Freeway project.

Ante Up

In addition to paying the relocation costs along the interstate system, the state also pays when a utility with a compensable property interest needs to be relocated. As stated previously, "compensable property interest" means that the utility was there before the roadway.

Right-of-way access on tolled roads was visited through HB 2702 during the 79th regular legislative session. The basic agreement is that TxDOT must share the cost of relocating utilities when the road to be constructed or widened includes tolled elements. After that time period, the utilities will be required to pay the full costs of moving.

For Trans-Texas Corridor construction, the state will use a new approach for right-of-way location. The state will purchase the needed right-of-way for utility construction, and then lease the space to the utilities, probably on a monthly or annual basis. There are limited exceptions to charging utilities a fee that apply in certain circumstances, such as those public utilities already in existence in the right-of-way before establishment of the Trans-Texas Corridor, and those public utilities that are merely crossing the Trans-Texas Corridor. Utilities, of course, do not have to locate within the Corridor. They are always free to secure alternate locations on their own.

Moving Day

As Texas continues to grow, more roads are being widened and revamped. Before construction can begin, the utilities must move. TxDOT attempts to give utilities several years notice, but there is no incentive for utilities to move in a timely manner, especially when their own funds are involved. There are no penalties for foot-dragging. TxDOT, however, faces delayed and rescheduled construction, which can result in contractor claims or litigation. Safety is also an issue when excavation sites are left open while waiting for the utilities to act. Motorists pay the tab in extended traffic delays and, although they are unaware of it, taxpayers pay when precious road-building money is wasted by delays.

The 78th Legislature attempted to address this issue with SB 487, requiring a utility to enter into an agreement with TxDOT within 90 days, or be relocated at the utility's expense. The 90-day period can be extended for any period of time if the utility is negotiating in "good faith." The legislation has been a disappointment, partly because the utilities still get reimbursed if they are entitled, and partly because "negotiating in good faith" is not defined, making a difficult judgment call. In addition, TxDOT faces liability issues and doesn't want to be in the utility relocation business. The utilities know this.

But It's a Utility

Although a utility is a private industry, they are required to do many things through state law that other private businesses can't imagine.

Utilities, unlike other businesses, have an obligation to serve. If an area becomes unprofitable, a utility can't pick up its lines and leave. They are required by state law to remain. And a utility is required to do much more than provide a service. For instance, the state at one time assessed a fee on telephone service to provide grants to public schools and libraries for computers. The money generated by that fee now goes directly into the General Revenue fund. Other phone fees placed there by the state pay for phone services for the deaf and hearing-impaired, for centers staffed by medical personnel to provide aid in cases of accidental poisonings, and for upgrades to 9-1-1- emergency services dispatch centers throughout the state. Cities also place demands on utilities. Local phone companies remit a "municipal fee" that is used by cities to recover their costs for managing the right-of-way.

Finding Solutions

One of the provisions of HB 2702, passed during the 79th regular legislative session, directed the Texas Department of Transportation to hire a consultant to study how to maximize the use of highway rights-of-way by public utilities. Although the TxDOT study is not due until December of 2006, preliminary recommendations envision a leasing fee for use of the right-of-way. If a leasing fee were established, TxDOT would put the money into an escrow account. Once the need for relocation comes about, TxDOT could then use that money to "pay the utilities back" for moving their facilities. Utilities would no longer have to build their budget up to handle the expense. They would be immediately reimbursed.

The escrow method would also assist TxDOT when they are purchasing right-of-way for new roads. The department buys more right-of-way than is needed for the actual road. Sometimes this is done to solve grade problems, to build bridges, or to reroute channels coming in. It's also done to avoid having to relocate businesses later when the road needs to be expanded. Present law, however does not allow TxDOT to purchase right-of-way specifically for the future needs of utilities. If utilities could be consulted as to how much right-of-way they might need for the future road, that specific need could be addressed with the escrow fund. Utilities could recognize significant savings by not having to deal with individual landowners themselves.

This method also makes sense if you look at utilities in the right of way from a consumer point of view. Right now, those who pay the gasoline tax are the ones who pay for right-of-way relocation. Those "rates" cannot be raised if costs go up. Under the escrow method, those consumers who actually use the utility would pay. Utilities would presumably be able to raise their rates to cover necessary costs, or ask shareholders to absorb the costs. Utilities respond that under new business practices, where consumers have a choice as to who their utility provider will be, this puts some service providers at a disadvantage. Consumers will simply switch their service to those utilities who do not have the burden of relocation, typically newer providers.

At the Committee's hearing, a representative of a telecommunications provider offered the point of view that asking telegraph to come to the state years ago and giving free right-of-way at that time has "morphed" into a real property right. Further, in the same way that Texas offered free land to early settlers, utilities have a legitimate property right. And it is impossible to provide services without encroaching upon the right-of-way at some point.⁴

Further Study

HB 2702, 79th Regular Session, directed TxDOT to conduct a study to determine how to maximize the use of highway rights-of-way by public utilities. It should be noted that the Texas Transportation Institute (TTI) is currently gathering information for the Texas Department of Transportation for that report.

TTI is charged with examining the technical feasibility to accommodate an increasing number of utilities within the right-of-way and, in general, to create strategies to optimize the accommodation of utilities within the right-of-way.

TTI plans to examine engineering aspects such as traffic safety during and after construction, access to utility installations for maintenance and repair purposes, and compliance with engineering standards and specifications. The work will include a review of current and recent TxDOT-sponsored projects and survey strategies at other state departments of transportation. TTI is also scheduling meetings with a sample of utility companies in Texas to gather their perspective on utility accommodation issues.⁵ TTI will submit their report to TxDOT by the end of October, and TxDOT is expected to issue their ensuing report in December.

Conclusion

Utilities have lots in common with the Texas Department of Transportation. They are perceived to have money. They are raided by other interests. And they cannot leave. To force either one to pick up the relocation expense burden is considered unfair by someone. But unfortunately, life is not fair. Sometimes, you just do the best you can with what you've got.

First, a greater cooperation needs to exist. Utilities should be in on construction planning from the beginning. They have the expertise to suggest small changes in road placement that could result in big savings in relocation expenses. A specific timeline needs to be set in place for utilities to relocate, keeping in mind that all cannot relocate at once. The utilities should be at the table when these timelines are set, and "negotiating in good faith" should no longer be an excuse to extend deadlines. If utilities cannot work with TxDOT on this issue, penalties and leasing fees should be considered.

However, if the legislature considers leasing fees for the right-of-way, it should impose such economic obligations in a competitively and technologically neutral manner, and those costs should be easily recoverable by the utility.

The legislature needs to keep tabs on this controversy carefully. In the next two-year period, TxDOT and the utilities should maintain close contact with this committee as they work to settle

these issues. This situation has taken far too long to resolve, and patience has been depleted.

Lastly, language from the Transportation Code requiring utilities to be reimbursed if the placement is along the interstate system should be considered for removal. Many other states do not reimburse under these circumstances, and it is not a requirement made by the federal government. The committee could consider a two-year period of shared expenses to ease the burden for utilities, because this will be an enormous burden for some utilities, as it has been for TxDOT for many years. But for the sake of uniformity and planning, the removal of this clause could be considered.

It should be noted that attempts in the past to alter the right-of-way access for utilities has resulted in litigation, and such a scenario should be kept in mind when drafting legislation.

**The Texas Department of Transportation
Utility Relocation Costs 1995-2006**

FY	COSTS TO RELOCATE UTILITIES¹	COMMENTS
2000	\$16,874,324.00	
2001	\$18,142,390.00	
2002	\$30,059,050.00	
2003	\$45,121,543.00	Includes IH-10 Houston
2004	\$66,118,843.00	Includes IH-10 Houston
2005	\$95,841,805.00	Includes IH-10 Houston
2006	\$73,356,710.00 ²	Includes IH-10 Houston
¹ The cost to reimburse public utilities who relocate their facilities at TxDOT's request		
² Utility costs through 6/15/06		

By _____

B. No. _____

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the relocation of utility facilities required by
3 improvement of an interstate highway.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 203.092(a), Transportation Code, is
6 amended to read as follows:

7 (a) A utility shall make a relocation of a utility facility
8 at the expense of this state if[+

9 ~~[-(1) relocation of the utility facility is required by~~
10 ~~improvement of a highway in this state established by~~
11 ~~appropriate authority as part of the National System of~~
12 ~~Interstate and Defense Highways and the relocation is eligible~~
13 ~~for federal participation; or~~

14 [+2] relocation of the utility facility is required
15 by improvement of any segment of the state highway system and
16 the utility has a compensable property interest in the land
17 occupied by the facility to be relocated.

18 SECTION 2. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas
21 Constitution. If this Act does not receive the vote necessary .
22 for immediate effect, this Act takes effect September 1, 2005.

Charge 2

Study the relationship between Texas Department of Transportation, the Federal Aviation Administration and other federal agencies, including the Department of Homeland Security.

Review the effectiveness and efficiency of the funding process for airports, and capacity needs for commercial and private demands. Examine further needs with regard to private and public airports.

Aviation

A growing state relies on a multi-modal system of transportation services, and Texas' airports are a vital contributor to our economic engine. Our best known airports are the twenty-seven that provide commercial service. These international airports serve the major cities, and enplane at least 10,000 passengers annually. However, the majority of aircraft operations in Texas occur at the smaller airports. General aviation makes up ninety percent of the facilities in the Texas Airport System Plan, and serves as an important contributor to both the state and national economies.⁶

The Texas Department of Transportation oversees these remaining airports in the state, currently 273 airports are categorized as general aviation facilities. General aviation airports are designed to serve private aviation, but are generally not intended for scheduled commercial service. General aviation is broken down into several sub-categories:

23 Reliever airports that help ease congestion at metropolitan commercial service airports by providing alternative facilities for general aviation use;

59 Transport airports that provide community access by business jets;

125 General Utility airports that provide community access by single and light twin-engine aircraft, and a limited number of business jets; and

66 Basic Utility airports that provide air access for communities less than 1/2 hour drive from commercial, reliever, transport or general utility airports, and/or support essential but low level activity.

Prior to 1993, general aviation oversight was provided by the Texas Aeronautics Commission, a stand-alone agency, and was supplied with approximately \$1.85 million annually in general revenue for small airport funding. In a cost-cutting measure, the Texas Department of Transportation was given the program, general revenue funding was deleted, and the department absorbed the costs of running the program with their own monies.

Airport funding prior to 1993 was difficult, as federal funds were applied for and received directly by the general aviation facilities. Airports that had a manager or representative familiar with the requirements and the process for securing the capital improvement grants were mostly the only ones that received the funding, and thus those funds were not always equally applied across the state to every airport. As a result, many small airports went unfunded or underfunded and were not properly maintained.

General Improvement

General aviation has seen great improvement in the state since TxDOT took over the program. The mission of the aviation division at TxDOT is to provide technical and financial assistance to the communities that own those airports to try to help them improve and maintain those airports to meet air transportation and economic development needs.⁷ General aviation in Texas provides

about 56,000 jobs per year, does almost \$6 million in economic activity, and provides support for law enforcement, agricultural and recreational aviation.

In 1993, the Federal Aviation Administration selected Texas as one of nine states to become a part of the state block grant program. TxDOT inventoried all airports across the state. Owners and operators were contacted, and a 25 year plan was put into place to try to bring all airports up to an equitable level.

Equity would be a difficult task, as some of the facilities had been neglected for years. In 1992, the overall condition of general aviation airports was embarrassing, particularly in the rural areas of the state. A lack of funding from central government had taken its toll. Many general aviation airports had insufficient facilities, such as a trailer for a terminal. In an age where cell phones were not yet widely used, many terminals had no phone service. In some areas, restrooms were not available. Some airports had specific, ongoing problems, such as Galveston Island, whose airport had serious drainage issues due to a terrain where the highest point is six feet above sea level.

Making Funding Fairer

The federal agency turned the entire block of funding for Texas over to TxDOT, which undertook a massive rebuilding effort, helping communities build basics such as terminal buildings that included bathroom facilities. In many cases, existing facilities had to be bulldozed and begun again from scratch.

Last year, TxDOT distributed \$70 million in funding to general aviation airports, approved in monthly grants by the Texas Transportation Commission. Priorities for the state block grant fund are (in descending order) safety, preservation of what has been done before, meeting federal standards, upgrades (which would be extending a runway or building a new taxiway), and lastly, capacity.

Texas receives funding from the federal government by an established formula, much like the highway program. Texas does well under this program, as the formula is based on two criteria at which the state excels: population and geography. TxDOT blends the federal grant program funds for general aviation airports with the state grant program, giving the department more flexibility and a better opportunity meet the needs. Texas also competes nationally for discretionary funding against all other airports in the nation, and has been relatively successful with those efforts.

Overall, TxDOT maintains a good working relationship with the Federal Aviation Administration, and has been cited by that agency for its fiscal responsibility. The department also interacts with the Department of Homeland Security, the agency with primary responsibility for security on our nations' air carrier airports. Security at general aviation airports has been conducted primarily as an airport watch program, which is similar to the neighborhood watch program, and has been effective. TxDOT also maintains relations with the numerous federal agencies that it must coordinate with for environmental reasons, such as the Corps of Engineers and U.S. Fish and Wildlife.

During the committee's hearings, several small airports expressed deep appreciation for the technical expertise provided by TxDOT. Unlike large commercial airports that have large engineering and environmental departments, general aviation must do without or hire expensive consultants. TxDOT provides small airports with the expertise to ensure that the projects undertaken are eligible under federal requirements. Assistance is given with regulatory requirements, and to help move those projects from planning, to engineering and design, to construction, to closeout, to final audit of the project.⁸

Economic Development Engines

Historically, the demand for aviation services and its effect on the economy have been linked. The growth of overseas markets, the decentralization of large manufacturing centers, and the ease of electronic communications have opened up opportunities for general aviation. Many Texas cities once served only by turboprop aircraft operated by national carriers are now served by regional carriers connecting those turboprops to major hub airports. In some areas, regional jet aircraft have begun replacing the turboprops.⁹

An example of this phenomenon is the Sugar Land Regional Airport, which has developed its identity as a corporate airport serving as a reliever to Intercontinental and Hobby. Since 1993, Sugar Land has constructed an air traffic control tower, developed a major taxiway, brought in radar, and now does thirty clearances a month of international traffic, including Mexico, India, China, Switzerland and Germany. Business has tripled since upgrades began, and is expected to increase another fifty percent this year.

During the past ten years, the Gillespie County Airport in Fredericksburg has transformed itself.¹⁰ With a strong local consensus envisioning the airport as a possible economic asset, and assistance from TxDOT, the airport built new taxiways and aprons to provide access to new hangars, installed an automated weather observation system, constructed a new terminal building, and strengthened the runway. The \$3.8 million investment made by TxDOT and the community has resulted in \$6.2 million in private investment in facilities and the infrastructure is in place to facilitate future growth. Ten years ago the airport had one business with two employees, and today there are six businesses with 35 employees. Currently, an exclusive \$65 million golf retreat is being constructed just north of Fredericksburg, and the general aviation airport asset was a necessity for landing the development.

Galveston Island's airport has seen major economic development since their airport received some much needed attention.¹¹ In 2000, with the assistance of the TxDOT Aviation Division and the state block grant program, a master plan was developed for Galveston. The facility replaced the circa World War II aircraft tower with a new one, and also constructed a new taxiway and runway. New tenants include Schlitterbahn Water Park, Moody Gardens and an 18-hole golf course. Over 2200 full time jobs are located on the airport property, and studies show the airport has had an economic impact of \$109 million on the island. During the last hurricane, over 600 neonatal and cancer patients were evacuated via the airport.

McKinney has been recognized as the fastest growing city in the nation, with a population over

50,000.¹² The region's population is approximately 104,000 and is growing at an average rate of 1.2 new residents per hour. Since July 2002, TxDOT has paid or committed more than \$7.1 million in federal funds to conduct a master plan update and noise study, and plans construction of three taxilanes, and a \$4.1 million taxiway and runway rehabilitation project to extend the life of the 25-year-old pavement another 25 years. Since July 2002, Collin County Regional Airport's annual economic impact on the city is 527 jobs with a payroll of \$14.7 million and a total output of \$101.3 million.

Making the Match

The ten percent match by a local entity for the block grant program is difficult for some communities to meet, although TxDOT acts as a bank whenever it can. Most general aviation airports do not have the ability to generate revenue through concessions, higher fuel flow fees, or land lease rates. Aransas County, for example, is preparing to start a \$3.5 million program this year, but it took them three years to collect the \$330,000 match.

Some areas of the state have made their match in creative ways. The local development corporation in Sugar Land helped the airport provide for a local match to build a taxiway. The taxiway provided a lot of revenue to the airport to enable them to begin making their own matches independently. The city also funnels property taxes produced by the corporate aviation aircraft back to the airport, which amounts to \$200,000 to \$300,000 per year. Sugar Land has also developed a policy that if an aircraft is sold at the airport, the percentage of sales tax returned to the city returns to the airport. Last year, the airport received over \$800,000 in sales taxes.

Galveston Island released some of their airport-owned land for residential development, for an additional \$500,000 to use for airport development.

An economic development sales tax in McKinney assisted that city to provide the match when a major employer, EDS wanted to build a \$5 million hangar, but needed the general aviation airport to build a taxiway.¹³

RAMP Program

Once general aviation infrastructure is in place, it needs maintenance, which can also be a financial burden to small communities. Routine Airport Maintenance Grants are designed to encourage improved maintenance of these airports to extend their useful life. The program provides up to \$30,000 in state funds to each publicly owned general aviation, reliever, and non-hub commercial airport each year. A 50-50 match is required, but a community has great flexibility and latitude in how the money is used. The funds must be used on publicly owned facilities, and can be used for anything in the airport that improves, maintains, or beautifies the appearance of the airport facility. Smaller airports such as the Aransas County Airport have used this program to maintain pavement, repair runway lights, address safety issues, maintain hangars, and similar items that would not be covered under a state block grant program.¹⁴ Aransas County was the second airport in the state to utilize this type of grant, and used the funds to install and replace aged buildings that had been in use since the 1950's. The airport now has a new terminal

building that offers modern amenities, with room to expand in the future.

Terminal Grants and AWOS

Terminal building grants are available to sponsors of general aviation airports that have a full time airport manager on site and aviation fuel available for sale to the general flying public. TxDOT's Aviation Division can provide a 50 percent match up to \$300,000 for the construction of a new terminal or remodeling of an existing structure.

Texas was one of nine states offered federal funding in 1997 to install automated weather observing systems (AWOS), visual approach aids, and protective fencing. Texas continues to fund the AWOS program with state funds as necessary.¹⁵

Future Needs

Many current capacity needs have been resolved, as most airports with a single runway can support most of the incoming and outgoing traffic. One exception is West Texas, where crosswind runways are needed due to drastic wind changes that frequently occur.

A general aviation airport is desperately needed in the Central Texas area, but it has proven difficult to sell the idea to Austin area communities. San Marcos is willing to take up the area's lack of vision. The city has shown interest in providing increasing air service for the Central Texas region.¹⁶ The airport, centrally located near I-35, is popular with pilots. In recent years, the city council has expressed willingness to expand the airport and make it available as a state regional facility. Significant airport improvements have been made in past years; including rebuilding the primary runway, and many others are planned; including a control tower, fire station and training center, new fixed base operator facilities at the terminal building and hangars.

TxDOT continuously updates their assistance plan, and currently sees a need for \$100 million dollars a year for general aviation airports. With state and federal funds, TxDOT is averaging somewhere between \$65 million and \$70 million worth of investment each year, so there is somewhere between a \$30 million to \$35 million dollar shortfall to provide an optimum investment.

Conclusion

General aviation has come a long way under the leadership of Dave Fulton, head of the Aviation Division at TxDOT. Under Fulton's leadership, federal and state funds have been disbursed in a fair, even-handed manner, and the Texas program has received favorable auditing from the United States' General Accounting Office. Unfortunately, the available funds aren't enough. The Texas Airport System Plan projects a need for approximately \$100 million per year for reliever and general aviation airport development in Texas. With current approximate federal funding of \$54 million per year, and state funding of \$16 million annually available from the non-dedicated portion of the State Highway Fund, a shortfall exists. And the challenges of general aviation continue to grow.

Once consolidated under TxDOT, general aviation no longer received general revenue funding. TxDOT paid for the program out of Fund 6, which receives its money mainly from a tax on gasoline for motor vehicles and vehicle registrations.

Texas, Connecticut and Rhode Island are the only states without some type of tax on general aviation aircraft use. It is time for Texas to reconsider its no-tax position on aviation or commercial fuel. Such a tax has been considered often in the past as a source of general revenue for the state. The aviation industry already contributes to general revenue through the sales and corporate franchise taxes, and such taxes on manufacturing of aircraft and parts accounts for over thirty percent of the tax collected every year. Fuel-based fees could be easy to collect by fuel wholesalers, and would be uniform to all users.

When contemplating general aviation funding, a tax on aviation fuel could be considered an option to explore, given that general aviation is currently funded out of a motor vehicle gasoline tax. Thirty-one of the 47 states collecting aviation user fees dedicate the revenue to aviation uses. A tax on aviation or commercial fuel in Texas should be considered, however, only if it is to be used solely for general aviation airports, and should be of an amount designed to raise enough to cover the \$30 million shortfall and lessen general aviation's reliance on the State Highway Fund.

Charge 3

**Examine the transportation planning and coordination of land use;
including planning for large transportation corridors.**

Corridor Planning

Texas remains a state with weak county regulatory powers. Due to the inability of the counties to zone, for example, a subdivision's next door neighbor could very well be a rock quarry. High-growth counties struggle to manage their growth, and lack the ability to plan adequately for their future. While these strict measures have been seen as a way to protect Texas' private property rights, these rights have not come without cost to the state. And, of course, costs to the state mean costs to taxpayers.

The way the counties are allowed to oversee the platting process is indicative of the problem. When a plat is filed in an unincorporated area, the county government has the responsibility to approve the plat. Plats may be denied if they fail to meet local regulations regarding the provision of adequate streets, drainage, and sewage. Plats cannot be denied on the basis of land use, buildings, or the number of residences. This causes a problem for the planning of future transportation corridors.¹⁷

HB 2021, filed by Representative Carter Casteel during the 79th regular session, sought to enhance the coordination between TxDOT and counties in planning for the development of transportation facilities. The goal of the legislation was to discourage the development of land located within future transportation corridors through notifications to developers, purchasers, and lessees of certain land.¹⁸

The Cost of Acquisition

When you travel on a roadway, more has been purchased than just asphalt, signage and guardrails. The state of Texas owns the land and surrounding right-of-way, and the costs of obtaining the necessary land are increasing. The state of Texas, like other states, has the power to acquire land for public improvement. The power of eminent domain is not a recent invention. All states have the ability to condemn land for purposes of serving the general public. Whether or not the land is acquired is not an issue. The issue is the cost to taxpayers.

Acquisition of land can be a sensitive process. The state, using an independent appraisal process, has the obligation to offer a fair price to the landowner, but also has an obligation to the taxpayer to spend as little as possible. Although the price may be fair monetarily, the landowner also puts an "emotional value" on their land. No amount of money can repay the landowner for the memories evoked and the work he has put into the property. TxDOT must somehow negotiate between the emotional interests of the landowner and the fiscal interests of the taxpayer. It can be a difficult balance. Adding a third party to the negotiations can increase those difficulties.

Enter the condemnation attorneys.

Increased Litigation

As Texas gears up for a major road-building initiative, some attorneys have been busy contacting landowners and advising them to refuse whatever offer they receive from the state and take the issue to condemnation court.

When the state and the landowner cannot agree, acquisition becomes condemnation. A judge appoints a panel of three special commissioners to hear the case. The panel hears from attorneys and appraisers, and eventually decides on a monetary award. If either side is dissatisfied with the amount, a jury trial can be requested. Regardless of the outcome, the land will be condemned. The issue is the amount of compensation.

Approximately eighteen percent of all land parcels statewide end up in condemnation court. But certain projects are especially contentious. During construction of the Katy Freeway, for example, fifty percent of the affected landowners thus far have chosen to take their case to court. It is estimated that figure will climb to seventy percent by the time the process is complete.

The Texas 130 project has also seen a high rate of condemnation cases, partially due to the speed of the road-building, and the need to acquire land quickly. There also seems to be a disconnect in thinking about the value of the land. TxDOT, by law, must negotiate based on the land's current value, and landowners want a figure closer to what the land will be worth once TxDOT builds the road.

Developer Manipulation

Developers have also had a hand in the increase in the cost of land. Once a transportation corridor is planned by TxDOT, a lengthy process begins. The process is required by federal and state law, and includes environmental studies and public hearings. There is plenty of time for speculators to begin purchasing the land, subdividing it, and forcing TxDOT to negotiate for each division, rather than the one swath they had planned on purchasing.

There will always be those who seek to "work the system" for personal enrichment. When it comes to roadways planned in unincorporated areas, it is surprisingly easy. A developer becomes aware that a transportation project is planned along a stretch of open land. For the sake of example, the land in question is agricultural, there are no improvements that have been made to the land. The developer purchases a 200 acre tract from the owner.

To maximize profit from the taxpayers, the land is subdivided into many parcels, with as many property lines intersecting the proposed road as possible. TxDOT must now negotiate separately for each piece of land. If a piece of land has been improved with a residence, the value of the land has increased exponentially. TxDOT must pay to relocate those living in the residences.

TxDOT is currently in the process of developing Loop 49 in Tyler, located in Smith County. Loop 49 was originally slated to be built over undeveloped land. The department is engaged in the environmental and public hearing process, but when a plat to subdivide the property was presented to the county, the county had no authority under current statutes to deny it. In this instance, the proposed subdivision, which includes HUD-subsidized rental properties, was granted. Fifty-seven of the sixty lots had to be purchased by the department, and twenty-four of those had homes on them. Instead of the planned \$225,000 that TxDOT had planned to spend for the land, a total of \$3.3 million was paid instead. The local government, which traditionally pays ten percent of the land acquisition, was billed \$330,000 instead of the planned \$22,500.

Counties, traditionally strapped for cash, can find those cost overruns overwhelming. With the proper statutes in place, the county might have been able to direct the applicant for the plat to develop the subdivision in a manner that took into account the highway that was coming through.

The landowners suffered, too. Those who purchased homes probably didn't realize they were going to have to move. It's also an inconvenience for those who don't have to move to suddenly have a highway in their backyard.

A Patchwork of Authority

Some counties have the authority to set aside 120 feet to widen existing roads, as long as the road is named in the county commissioners' court's "thoroughfare plan." These counties have this authority for one of four reasons: the county is adjacent to an international border with a population of 150,000 or more; the county has a population of 700,000 or more; the county is adjacent to a county with a population of 700,000 or more within the same metropolitan statistical area; or the county is adjacent to a county with a population of 700,000 or more not within the same metropolitan statistical area but with an increase in population of more than 40% between the 1990 and 2000 census data.

Counties adjacent to an international border with a population of 150,000 or more	Cameron, El Paso, Hidalgo, Webb
Counties with a population of 700,000 or more	Bexar, Dallas, Harris, Tarrant, Travis
Counties adjacent to a county with a population of 700,000 or more within the same metropolitan statistical area	Atascosa, Bandera, Bastrop, Brazoria, Caldwell, Chambers, Collin, Comal, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Hays, Johnson, Kaufman, Kendall, Liberty, Medina, Montgomery, Parker, Rockwall, Waller, Williamson, Wilson, Wise
Counties adjacent to a county with a population of 700,000 or more not within the same metropolitan statistical area, but with an increase in population of more than 40% between the 1990 and 2000 census data	Blanco, Burnet

Some of these counties have authority to set aside more than 120 feet if their metropolitan planning organization named the road in their transportation plan.

Counties with ability to use MPO authority: Bexar, Brazoria, Cameron, Chambers, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Harris, Hays, Hidalgo, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Travis, Waller, Webb, Williamson	Counties with no MPO: Atascosa, Bandera, Bastrop, Blanco, Burnet, Caldwell, Comal, Guadalupe, Kendall, Medina, Wilson, Wise
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Right-of-Way Options

During the 78th regular legislative session, HB 3588 authorized the Transportation Commission to purchase an option to acquire real property for possible use in a transportation facility before a final alignment had been determined. During the 79th regular session, HB 2702 specified that TxDOT may not purchase that option in increments longer than five years, and may not renew for periods longer than five years.

An option to purchase would be negotiated with an individual landowner, and could include a price for which the department would purchase the property after a set time period. Options also include an agreement that the landowner would not subdivide or develop the property during the length of the agreement in exchange for some consideration from the state. The department is currently in negotiations with several landowners and have entered into various stages of discussion with others.

Conclusion

The premise of last session's HB 2021 is that TxDOT will be allowed to work with the counties in developing future transportation corridors. Information would be published in the Texas Registry and local newspapers to let the public know that these agreements exist. All future plats would be required to state that the land lies within a future transportation corridor. All counties would be given infrastructure planning authority.

The committee expresses some reservations regarding the period of time that the land would be dedicated, and therefore not available for landowner use. This concern must be addressed in a satisfactory manner before legislation is brought to the committee during the 80th regular session.

**The Texas Department of Transportation
Right of Ways Costs 1995-2006**

FY	NO OF PARCELS ACQUIRED	COST TO ACQUIRE LAND AND IMPROVEMENTS	COSTS TO RELOCATE INDIVIDUALS AND BUSINESSES	AVERAGE COST PER PARCEL¹	COMMENTS
1995	1,214	\$80,070,635.57	\$5,604,614.00	\$70,572.69	
1996	922	\$55,935,892.18	\$5,437,958.00	\$66,566.00	
1997	1,504	\$109,997,877.49	\$6,512,822.00	\$77,467.22	
1998	1,670	\$101,127,843.36	\$7,364,739.46	\$64,965.62	
1999	1,993	\$112,623,039.10	\$6,543,133.00	\$59,792.36	
2000	1,804	\$188,956,858.75	\$7,931,979.00	\$109,140.15	
2001	1,832	\$175,927,106.87	\$7,511,432.61	\$100,130.21	
2002	1,475	\$131,166,965.76	\$9,392,454.73	\$95,294.52	
2003	1,382	\$123,710,407.53	\$8,422,595.00	\$95,609.99	Includes IH-10 Houston
2004	2,004	\$151,771,857.63	\$5,437,285.00	\$78,447.68	Includes IH-10 Houston
2005	1,986	\$445,570,224.13	\$10,559,077.00	\$229,672.36	Includes IH-10 Houston

¹ Acquisition costs plus relocation costs divided by the number of parcels acquired

Acquisition figures exclude SH 130 and all incidental right of way costs borne by TxDOT (such as title and closing expenses, appraisal reports, technical experts, reimbursed expenses incidental to the acquisition of right of way, court costs, special commissioner's fees, etc).

A BILL TO BE ENTITLED

AN ACT

relating to the identification and administration of land located in a future transportation corridor of a county.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.617 to read as follows:

Sec. 201.617. COOPERATIVE PLANNING WITH COUNTIES. (a) The department and a county may enter into an agreement for the purpose of identifying future transportation corridors within the county. The corridors identified in the agreement must be derived from existing transportation plans adopted by the department or commission, the county, or a metropolitan planning organization.

(b) The department shall publish in the Texas Register and in a newspaper of general circulation in the county with whom the department has entered into an agreement under Subsection (a) a notice that copies of the agreement and all plans referred to by the agreement are available at one or more designated department offices.

SECTION 2. Section 232.001(b), Local Government Code, is amended to read as follows:

(b) To be recorded, the plat must:

- (1) describe the subdivision by metes and bounds;
- (2) locate the subdivision with respect to an original corner of the original survey of

which it is a part; ~~and~~]

(3) state the dimensions of the subdivision and of each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part; and

(4) if the subdivision is located on land within a future transportation corridor identified in an agreement under Section 201.617, Transportation Code, state that fact.

SECTION 3. Subchapter A, Chapter 232, Local Government Code, is amended by adding Section 232.0033 to read as follows:

Sec. 232.0033. DEVELOPMENT IN FUTURE TRANSPORTATION CORRIDORS. (a)
This section applies to a subdivision located on land within a future transportation corridor identified in an agreement under Section 201.617, Transportation Code.

(b) Each purchase contract or lease made between a subdivider and a purchaser or lessee of land in the subdivision shall contain a statement that the land is within a future transportation corridor.

SECTION 4. Section 232.023, Local Government Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) If the subdivision is located on land within a future transportation corridor identified in an agreement under Section 201.617, Transportation Code, a plat required under this section must state that fact.

SECTION 5. Subchapter B, Chapter 232, Local Government Code, is amended by adding Section 232.0251 to read as follows:

Sec. 232.0251. DEVELOPMENT IN FUTURE TRANSPORTATION CORRIDORS. (a)
This section applies to a subdivision located on land within a future transportation corridor identified

in an agreement under Section 201.617, Transportation Code.

(b) Each purchase contract or lease made between a subdivider and a purchaser or lessee of land in the subdivision shall contain a statement that the land is within a future transportation corridor.

SECTION 6. Section 232.100, Local Government Code, is amended to read as follows:

Sec. 232.100. APPLICABILITY. This subchapter applies only to the subdivision of the land that is[~~:~~

~~[(1)] subject to county regulations under Subchapter A or B[; and~~

~~[(2) in a county that:~~

~~[(A) has a population of 150,000 or more and is adjacent to an international border;~~

~~[(B) has a population of 700,000 or more;~~

~~[(C) is adjacent to a county with a population of 700,000 or more and is within the same metropolitan statistical area as that adjacent county, as designated by the United States Office of Management and Budget; or~~

~~[(D) is adjacent to a county with a population of 700,000 or more, is not within the same metropolitan statistical area as that adjacent county, and has a population that has increased after the 1990 decennial census, from one decennial census to the next, by more than 40 percent].~~

SECTION 7. Section 232.102, Local Government Code, is amended to read as follows:

Sec. 232.102. MAJOR THOROUGHFARE PLAN. By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may:

(1) require the dedication of land for use as a state highway in accordance with a major thoroughfare plan adopted by the county or the metropolitan planning organization of the region;

(2) require a right-of-way on a street or road that functions as a major thoroughfare of a width of not more than 120 feet; or

(3) [~~2~~] require a right-of-way on a street or road that functions as a major thoroughfare of a width of more than 120 feet, if such requirement is consistent with a transportation plan adopted by the metropolitan planning organization of the region.

SECTION 8. This Act applies only to a plat filed on or after the effective date of this Act.

SECTION 9. This Act takes effect September 1, 2005.

Charge 4

Research and study the permissibility of rental car companies to sell used rental motor vehicles on credit union premises and other locations not continuously used for the conduct of used rental motor vehicle sales.

Analyze comparative laws from other states permitting such sales by rental car companies on premises other than those owned by the rental car companies.

Off-Site Sales by Rental Car Agencies

"This bill...alter(s) the procedures and qualifications for master's dealer's plates, to provide for special new regulations for dealer's plates for motor vehicle dealers."-- Bill Analysis, CSHB 1953, 68th Regular Legislation Session, 1985.

"...there is more to this bill than consumer protection; it would give established dealers a handy weapon to use against competitors entering the market on a low budget."--Analysis of CSHB 1953 by the House Study Group, 1985.

"We were not here two years ago. The reason we were not here is that we were not aware that there was a bill pending in the legislature...to effectively restrict or perhaps eliminate credit union off-site sales." --John Lederer, attorney and counsel for the Texas Credit Union League, in testimony before the House Committee on Transportation in 1987.

"I think what we have here is a classic confrontation between consumer interests on one hand and the interests of an industry in protecting its market. A very understandable interest."-- Eileen Harrington, Credit Union National Association, in testimony before the House Committee on Transportation in 1987.

Once Upon a Time...

...twenty years ago, credit unions offered a special benefit to their members. A member of a credit union, typically a blue-collar or lower income white collar worker, would have an opportunity to purchase good, used-cars. Rental car agencies, who must turn over their inventory on a regular basis, would bring their vehicles to credit union lots. The credit union would negotiate special pricing of these vehicles, and offer financing on the spot. A one-stop deal. The rental car agencies were able to turn over their fleet at a profit, the credit union was able to invest the members' money in other members, and the purchasers of the vehicles got a reliable, warrantied vehicle for less than the cost of a regular dealer's price. It was too good to be true, and it couldn't last.

Concerned about the rights of consumers, who didn't appear to be complaining, in 1985 the Automobile Dealers' Association supported HB 1953, legislation that purported to correct abuses in the dealer plate system. Prior to 1985, almost anyone could apply for a GDN (general distinguishing number) which is a license to sell motor vehicles. Armed with a GDN, one could then receive a "master dealer's license plate." With the plate, a person could operate a vehicle on the roads of Texas without titling or registering the vehicle in his name. Many of those who obtained such plates did not pay state fees and taxes on those vehicles.

According to the bill analysis of HB 1953, the intent was to tighten up the law to ensure that only dealers had access to these plates, and hopefully, to increase collection of fees due the state. However, the bill did more, effectively hamstringing competition in the automobile dealers market.

Within the legislation, dealer restrictions were tightened. The restriction that caught the rental

car agencies was one that forced them to sell vehicles only at a permanent place of business. Credit union lots were not eligible under the definition of “permanent.”

Despite the fact that the bill analysis of HB 1953 indicated that no new rulemaking was implied, the Motor Vehicle Board’s began their rulemaking process during the succeeding interim. Hertz, Budget and National sought a temporary injunction prohibiting the department from enforcing its rules with respect to rental car agencies’ off-site sales. The Third Court of Appeals upheld the district court’s decision that the rental car agencies were not entitled to a temporary injunction.

In 1987, another HB 1953 was introduced. During testimony, it became obvious that the real goal of the legislation two years prior was to “level the playing field” for automobile dealers. In this case, “leveling” meant that rental car agencies would no longer find it a legal option to sell their vehicles to anyone except automobile dealers. The 1987 legislation clarified things further by exempting nearly everyone from the off-premise requirements of the original legislation with the exception of rental car agencies.

The purported goal of this HB 1953 was to try to eliminate “fly-by-nighters” or “curbstoners,” those who came to Texas, dumped sub-standard vehicles on an unsuspecting consumer, and then left with no forwarding address. Rental car agencies, however, DO have a permanent address, and can be located if there is a problem with the vehicle.

The Role of Credit Unions

Credit unions are non-profit institutions that exist to serve their members. Their purpose is to increase their member’s standard of living and better their lifestyles. They see the relationship between their organization and rental car agencies as mutually beneficial. The car sales events provide their members with high quality, late-model, certified used cars at competitive prices. It is to the credit union’s best interests to provide their members with services that enhance their lifestyles. If a credit union finances a car at one of these sales, the consumer has recourse against the credit union as the ultimate holder of the contract. They have no incentive to engage in agreements with "fly-by-night" companies.

Credit unions did not testify on HB 1953 in 1985 because they were unaware that legislation was being considered that would hamper their long-established ability to serve their members with off-site car sales.

They did testify before the Committee in 1987 en masse:

“Credit unions, as lenders, are in a very competitive market. We compete with car manufacturers and car dealers for the car loan market. And that’s life. If someone comes in and offers a car loan at 3.9 percent, that is a fact that all lenders have to deal with, but we are not asking for this body or any group to forbid other lenders from doing business. That would ultimately be harmful to competition and consumers, and I think that this kind of restrictive legislation that was enacted in 1985 and looking at again tonight has a similar result.”¹⁹

“With our members, we have found that the prices that they have been able to get at the sales we

have sponsored, they have not been able to find the same type pricing structure by going out in the open market. ”²⁰

*“It will eliminate one avenue that has been available to consumers in the state of Texas that they won’t have any more.”*²¹

Testimony from rental car agencies was also in abundance:

*“Although supporters of HB 1953 claim that rental car companies and credit unions are acting unfairly, there is, in fact, nothing sinister or suspicious with these arrangements. Sales by credit unions of rental company cars are the result of competitive market conditions. Credit unions offer their members low financing and broad selection and they offer the rental car companies a large block of potential buyers. When the two come together, it’s only natural car prices would be lower than might be possible than if credit unions were trying to buy cars by driving around to various different locations on their own.”*²²

*“We’ve been in business a long time. We’ve purchased in excess of 5000 new cars a year. And what this bill does is take the ability of us to dispose of those cars away. We also sell our cars to the retail public, we sell to credit unions, and quite often we sell our cars back to the dealers that we originally bought the cars from to begin with. Now this bill is saying they’ve got the right to sell our cars, but we don’t have the right to sell our cars.”*²³

The Texas Automobile Dealers’ Association gave testimony that they were only trying to level the playing field, that all car dealers should play by the same rules, and that off-site sales hurt car dealers who operated permanent sites. However, there is nothing to prohibit automobile dealers from also making arrangements with credit unions to sell their used vehicles off-site. In fact, in testimony before the House Committee on Transportation in 1987, credit union representatives said they would welcome such partnerships.

Two States and Two Outcomes

At the same time that Texas was considering banning the use of off-site sales, Illinois passed a bill prohibiting automobile fleet dealers from selling their cars at locations other than a licensed, permanent dealer lot. The Federal Trade Commission sent the Illinois legislature a letter stating that the probable cause of such legislation would be to increase the prices paid by consumers for used cars, taking the position that consumers would best be served by competition in a market free from unnecessary regulatory constraints. Illinois Governor James Thompson vetoed the bill by amending it to allow off-site sales when certain conditions are met. Legislation **permitting** offsite sales was passed by the Illinois General Assembly in 1991.

The Federal Trade Commission also sent the governor of Texas a similar letter in 1987, stating the bill would “virtually eliminate fleet sales as they are presently conducted. The unjustified limitations on fleet sales are likely to increase fleet dealers’ costs, and correspondingly, increase the prices consumers pay for used vehicles.” The Commission also found that “the effects may be particularly pronounced in certain areas of the state...many fleet sales are made in smaller cities or towns where there may only be a limited number of conventional dealerships.

Competition from the fleet sales may be especially important in this context.” The FTC also found that rental car consumers would suffer. “By prohibiting fleet sales as they are now conducted, House Bill 1953 would tend to increase the cost of car rentals.”

Conclusions

If the original intent of the legislation twenty years ago was to increase the collection of registration fees due the state, it is uncertain if that goal has been accomplished. One of the major problems facing the state today is the counterfeiting of temporary paper tags. A system that would tie the tag to the car and the operator is opposed by the Texas Automobile Dealers' Association.

The practice of curbstoning continues. On the weekends, large empty parking lots fill up with cars that come from unknown sellers. The legislation of twenty years ago has not stopped this practice. The only practice halted by this legislation is the ability of the rental car agencies to turn over their fleet in a fair and efficient manner. Rental car agencies buy their cars from automobile dealers, and sell them back to the same automobile dealers, allowing the dealer to profit twice from the same vehicle. The dealers who buy back the cars know that rental car agencies have limited options. Many of the used cars featured on new dealer lots are former rental cars.

Low income purchasers of vehicles have been severely hamstrung by regulations during the past two decades. Although legislation such as banning children from the beds of pickups is an important safety issue, it further erodes vehicular choices for poorer Texans. Credit union off-site sales specifically addressed the needs of these Texans. Eliminating the dealer middleman could make these cars more affordable.

Recommended Legislation

Legislation should be enacted to allow reputable, large rental car agencies to hold sales in conjunction with credit unions at an off-site location at least quarterly. ALL automobile dealers, including the rental car agencies, and franchised dealers, should carry a security bond of at least \$250,000. TxDOT should be given at least a ten day notice of upcoming sales, and an event fee should be submitted. Rental car agencies should resell only used vehicles that have been in their possession at least 90 days, and have actually been used in the rental car fleet.

If you could write, I suppose, a set of rules for the good guys and another set of rules for the bad guys, maybe laws could be written in a different fashion. But the rules, whatever they are, have to apply to everybody, whether it's a wreckage firm out of Arkansas, a salvage outfit out of Louisiana, or one of our fine Texas companies, the rules have to be applied equally.” -- Gene Fondren, President, Texas Automobile Dealers' Association, in testimony before the House Committee on Transportation on HB 1953 on April 2, 1987.

The Committee respectfully submits that it is possible to write rules to apply to the “bad guys.” Reputable Texas companies should not be put in the same category as “fly-by-nighters” from other states who dump their damaged vehicles on unsuspecting consumers and disappear. Texas

rental car agencies have, in the past, offered a consumer-friendly environment to assist lower-income Texans with reliable transportation options, and it is the committee's opinion that they should be given the opportunity again.

Additionally, it has long been averred that the Motor Vehicle Board is under the control of special interests. Motor Vehicle Board guidelines vary, depending on what type of vehicle is being regulated. The Texas Department of Transportation needs uniform laws from the legislature to make their job more efficient, and to put to rest "special interest" rumors once and for all.

By: _____

____.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to security requirements for motor vehicle dealers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 503 of the Transportation Code is amended as follows:

Sec. 503.033. SECURITY REQUIREMENT. (a) The department may not issue or renew a motor vehicle dealer general distinguishing number or a wholesale motor vehicle auction general distinguishing number unless the applicant provides to the department:

(1) satisfactory proof that the applicant has purchased a properly executed surety bond in the amount of ~~\$25,000~~ \$250,000 with a good and sufficient surety approved by the department;

~~(g) This section does not apply to a person licensed as a franchised motor vehicle dealer by the department's Motor Vehicle Board.~~

Charge 5

**Consider the rail relocation needs of the major
metropolitan areas in Texas.
Identify possible funding sources.**

Rail Relocation

“This line of rails connecting the Atlantic and Pacific, and affording to commerce a new transit, will prove, we trust, the speedy forerunner of increased facilities. The Pacific Railroad will, as soon as commerce shall begin fully to realize its advantages, demonstrate the necessity of rich improvements in railroading as to render practicable the transportation of freight at much less rates that are possible under any system which has been thus far anywhere adopted.” --Leland Stanford, President, Central Pacific Railroad, May 10, 1869, Promontory Point.

“China is in the midst of the world’s biggest burst of railway construction, adding thousands of miles every year in an expansion that rivals the building of the railroads in the 19th century American West.” --Joe McDonald, “China barrels toward major railway projects,” Associated Press, March 13, 2006.

We lost the vision, and fell behind.

Somewhere between the striking of the golden spike in 1869 and the 21st century, Americans’ increased reliance on vehicles that travel on asphalt has pushed the railroad to the back of the transportation pack. The railroad became a quaint little sideshow for our amusement, and lost its prime reason for being--the movement of freight. And now we need it more than ever.

Deregulation

Between the years of 1950 and 1982, rail market shares declined dramatically, for a variety of reasons. One of the most important factors was the government’s vigorous promotion of competing transportation modes. The airways system received federal funds amounting to \$20 billion from 1925 to 1976. In 1950, all air carriers accounted for only two percent of the market. By 1982, the share had increased to 14 percent.²⁴ Also in the 1950’s, the interstate system was conceived and construction begun. In 1950, railroads accounted for 56 percent of the domestic intercity ton-miles. By 1982, the rail share had declined to 36 percent. In the meantime, the motor carrier share increased from 16 percent to 22 percent.

Deregulation came to the railroad industry in 1980. The lagging industry became profitable by improving its productivity. It did, so, however, by downsizing and streamlining its operations and keeping its capital costs low.²⁵ Mergers have occurred in waves, and unprofitable lines have been abandoned.

In the post-regulation environment, one of the most important elements driving the business decisions of the rail sector continues to be the high level of fixed costs that they face. Although railroads, like other modes of transportation, must purchase and maintain their own rolling stock and locomotives, they must also, unlike competing modes of transportation, construct and maintain their own roadbed, tracks, terminals, and related facilities. In the regulated environment, recovering these fixed costs can be difficult, hindering the profitability of the industry.²⁶

Getting the Goods

In the meantime, between 1980 and 2003, the population in Texas increased by eight million people, bringing our total to about 22 million. That number is expected to increase to 36 million in another twenty years. Additional people consume additional goods, and those goods must be delivered to them in a timely manner. Freight tonnage on Texas highways is projected to increase from just over 1 billion tons in 1998 to nearly 1.9 billion by the year 2020, or about an 85 percent increase.²⁷ No matter how quickly the Texas Department of Transportation lays asphalt, it will not be enough. It will never be enough. Texas must use every mode of transportation available, including rail. And rail is expected to be hit hard: freight tonnage on the Texas rail systems is expected to increase from 282 million tons in 1998 to 473 million tons in 2020, or about a 68 percent increase. And consider this: that projected increase is low, because rail has not kept up with the demand.

From Bust to Boom

In a very short period of time, the rail industry has gone from a state of overcapacity where unprofitable track was being abandoned; to a constant, steady demand; to a strong demand where capacity has been strained. There have been several contributors to this "perfect storm." Traffic has shifted from truck to rail, due to fuel costs, highway congestion, and a driver shortage in the trucking industry. There has been a very significant growth in the past few years in import traffic from the Pacific Rim and Mexico. And coal transportation has increased dramatically. BNSF and UP are currently each running about 35 loaded coal trains a day from the Powder River Basin of Wyoming to the Midwest, South, and into Texas. Coal demand is expected to grow as gasoline and natural gas prices continue to spike upwards.²⁸

A Link in the Trade Chain

Also following on the heels of rail deregulation was NAFTA, with rail operating as a vital link in the trade chain. There are seven locations for rail traffic to cross the border between the United States and Mexico. Five of those seven locations (El Paso, Presidio, Eagle Pass, Laredo and Brownsville) are in Texas. Rail car border crossings in Texas have more than doubled between 1994 and 2000.

A significant increase in trade from the Pacific Rim has also strained rail traffic at Texas ports. Cargo shipments from Asia to the United States have been growing by about ten percent a year, and much of the freight that arrives by ship is transferred to trains for the final leg of its journey. Ten Texas ports (Brownsville, Corpus Christi, Port Lavaca, Freeport, Galveston, Texas City, Port Arthur, Orange, Beaumont and Houston) comprise some of the nation's busiest rail hubs with the Port of Houston representing one of the busiest in the nation.²⁹

An added problem with growing trade with China is that many of the entry points in Texas are quickly moving from north/south to east/west. Texas will soon be facing decisions of international magnitude as the ports in California become significantly more congested and new ports are established in Mexico. Texas must be ready to develop plans in a more comprehensive, flexible way that will respond quickly to market changes.³⁰

Do the Math

Train A leaves Chicago at eight o'clock in the morning, traveling 50 miles per hour. Train B leaves Atlanta at 10:15 a.m., traveling 35 miles per hour. At what point will the two trains meet in the Dallas-Fort Worth area, and cause a tremendous backlog?

Major Cities

Tower 55, in the Fort Worth Metroplex, is considered the largest bottleneck west of the Mississippi River, if not the entire nation. The nation's trains traveling in a north/south direction meet trains traveling east/west right in the middle of downtown Fort Worth. The rail-to-rail intersection of these two major corridors underneath the existing IH 35/IH 30 interchange contributes significantly to vehicular congestion and pollution in that area. The rail intersection requires trains to stop and wait their turn to cross the intersection, which can cause delays of one full day. Some waiting trains cause blockage of a vehicular-grade crossing upstream of the rail intersection.³¹

The Union Pacific line that parallels I-35 between San Antonio and Georgetown was designed and engineered over 100 years ago, and ran out of expansion room long ago. This heavily congested area is used for freight service to and from Mexico, and has been the site of several collisions and derailments over the past few years. In June of 2004, a collision resulted in the release of toxic chlorine gas into the air, resulting in three deaths in San Antonio. In San Marcos, a derailment of cars carrying tanks holding hazardous chemicals temporarily displaced 200 residents in February of 2005.

Overall, Texas ranks first in the nation when it comes to injuries caused by train accidents. Texans suffer more than 400 vehicle-train collisions every year.

Growing Cities, Growing Problems

Large cities are not the only ones struggling with an inadequate rail system. San Marcos, for example, has a population of 45,000, with an additional 27,000 college students, half of whom commute on I-35 each day. In addition, six million people a year visit Texas' fourth largest tourist attraction, the Prime and Tanger outlet malls.³²

San Marcos has been on the railroad freight line since the 1880's. There are two major UP lines coming into the city, and more than thirty mile-and-a-half long trains a day pass through. They frequently block the major roads of the city and create traffic back-ups that impact the highways at the same time, delaying up to 40,000 cars a day, for a total of about three and a half hours per day. And in a potentially life-threatening situation, the hospital, fire and police stations are on one side of the tracks, and the population lives mainly on the other side.

After 25 years of work, the first railroad overpass in the city is finally under construction. Trains carrying hazardous materials go through downtown, the college campus, and residential neighborhoods. The city would desperately like to relocate freight trains to the loop outside their city.

A Union Pacific mainline runs through Bryan/College Station, causing frequent impacts to student pedestrian traffic, delays and congestion. In May 2002, a locally preferred alternative was chosen, which would remove the railroad tracks from downtown Bryan and relocate the rail to the west. The alignment would also provide several grade separation structures for major streets in Bryan, College Station, and through Texas A&M University. Estimated costs for the project are expected to approach \$100 million.³³

Port Problems

Texas ports collectively handle more cargo than any other state in the nation, while providing about one million jobs for Texans, and more than \$30 billion in personal income. The 473 million tons of cargo that Texas ports handled in the past year had an impact on local, regional, state, and national economies.³⁴ Inbound and outbound rail freight handled by Texas Gulf Coast Ports is expected to increase from 106 million tons in 1998 to more than 144 million tons by 2025.³⁵

In Corpus Christi, there are twenty-six miles of port-owned rail lines that serve the public docks within the inner harbor, and three Class I railroad lines. Beaumont and Corpus Christi are strategic military ports, with 40% of the equipment headed to Iraq being processed through these ports. Currently, the port is working with TxDOT to build a road and rail around the port at a cost of about \$55 million. The port is in the process of developing a long-range master plan for rail to ensure adequate facilities and enhanced economic opportunity.³⁶

A former Surface Transportation Board Chairman noted that Houston has the most serious railroad urban mobility issue in the nation. Unlike the Chicago area, where many trains just pass through on their way to somewhere else, Houston has many origination and destination points. The Port of Houston has over 150 private terminals along a 25 mile portion of the Houston ship channel, and of the approximately 2,000 trains per week on the system, only seventy do not have business in the area. Commodities are shipped to and from the Port of Houston through a network of railroads linking the Class 1 railroads to each other. Houston links six rail lines through the region with the Louisiana Gulf Coast, the Midwest, the West Coast, and Mexico.³⁷

There are 752 at grade crossings in Harris county, which do not include private crossings, causing 30,000 hours of vehicle delay per day. And freight tonnage is expected to double in Houston by 2025, with chemical and petrochemical products constituting the large majority of the cargo. The port authority moved 1.5 million TEU's (twenty foot equivalent units) of containers in 2005, more than 64 percent of the containers in the Gulf of Mexico, and 94 percent of the waterborne container market in Texas. The port is expected to open the first phase of a container terminal in Bayport this summer, which, when fully built, will be twice as large as the current facility, thus adding another hurdle for freight rail to overcome.

Border Problems

Due to safety and congestion issues, train operations are limited to between the hours of midnight to six a.m. for travel between El Paso and Juarez, causing serious problems for railroads trying to

ship goods. Projects being considered include building a new rail bridge on the outskirts of the city or a depressed rail channel to allow freight and vehicular traffic to move freely over a 24 hour period.

The Port of Brownsville recently relocated the main switching hub outside of downtown Brownsville. However, trains must still travel through the city to get across the border. Cameron County is planning to begin construction of a new rail bridge southwest of the city to eliminate the congestion and allow trains to move faster by bypassing downtown Brownsville. Cameron County is working with the government of Mexico on the bridge and related facilities, and has overcome the numerous hurdles associated with international negotiations. However, they lack funding to complete the project, and the longer it takes to receive that funding, the more the construction costs will escalate. In the meantime, the Cameron County Regional Mobility Authority is looking into converting the old rail bridge into a toll road.³⁸

Laredo has been heavily affected by NAFTA and its rail system contains many at-grade crossings and yards, resulting in accidents, congestion, delays, and negative environmental impacts. Projects under consideration include a new international rail bridge around Laredo to the west, connecting to existing rail infrastructure somewhere north of Laredo. Projects costs are estimated at \$500 million.³⁹

The Short Lines: Keeping the Faith

When the railroads were deregulated in 1980 by the federal government, the Texas legislature authorized local governments to form railroad districts to buy and try to operate the lines that were being scuttled by the major railroads. Rural Rail Transportation Districts are formed by counties in order to save an abandoned short line. RRTD's have no revenue sources from the state or federal government, and rely on county appropriations or earmarks from Congress. There are currently twenty-six RRTD's in the state of Texas, and they are not held accountable to any state agency.

Short line operators typically have lower labor, overhead and regulatory costs than Class I railroads, and are often able to operate profitable lines that lost money for their original owners.⁴⁰ Despite these efforts, Texas has lost 39 percent of its total track miles since 1932, and the loss of these lines has had a negative economic impact on many rural communities. Meanwhile, what small systems are left are being burdened by steadily increasing traffic.

Short lines generally fall into three categories:

To link two industries requiring freight movement by rail;

The Blacklands Railroad traverses four counties: Hunt, Hopkins, Franklin and Titus, totaling 66 miles. Companies wishing to send goods by rail through one of five cities from Greenville to Mount Pleasant can utilize this short line.

to interchange rail traffic with other larger railroads;

McLennan County commissioners formed the McLennan County Rural Railroad District in 2005, in an attempt to draw major industrial companies to a defunct military weapons plant in McGregor. The plant is more than a mile from existing rail routes.⁴¹

or to operate a tourist passenger train service.

Operated by the Parks and Wildlife Department, the Texas State Railroad travels 25 miles from Rusk to Palestine.

Short lines could also be used to create trade hubs. The city of Lubbock, for instance, could benefit from the extension of a local short line railroad, which would result in more freight making its way through the area, thus increasing economic opportunity.

Trying to Keep Up

Burlington Northern Santa Fe and Union Pacific are the two major railroad presences in Texas. Both railroads are working on private projects to improve their mobility. BNSF plows between seventeen and twenty percent of its profits back into the system. BNSF is currently spending approximately \$26 million in the state of Texas to double-track their transcontinental main line in the state's panhandle and to expand their Alliance intermodal facility.⁴²

Union Pacific is spending about \$400 million a year in capacity expansion projects. UP is currently working to double track their line of railroad on the Sunset Route from El Paso to Los Angeles. Currently, Union Pacific has three routes that meet at El Paso, one from Chicago, one from Dallas-Fort Worth, and one from Houston-San Antonio. All three of those lines feed into a single rail line that is currently handling about 45 trains a day. The railroad expects to have half of the 800 mile route double-tracked by the end of the year, at a cost of \$1.5 to \$2 million per mile.⁴³

Both railroads are working with TxDOT on a number of ongoing rail movement studies involving the areas of Houston, San Antonio, El Paso, Tower 55 and NAFTA corridor flows.

Public-Private Partnerships

Public-private partnerships with the railroad industry can be difficult to attain. When a project is proposed, funding becomes an issue. The Texas government is not interested in paying for anything that will benefit the railroad financially. The railroad does not want to pay for a public good that does not benefit their shareholders. When looking at a project, how does one determine what percentage is to the public good, and what percentage is of private value? Finding the equilibrium where public benefits meet up with private benefits will be difficult.

But there are success stories. On March 29, 2006, Cintra Zachry, LP proposed a new grade-separated freight railway from the Dallas-Ft. Worth Metroplex to the U.S./Mexico border. The developer proposes private financing through the use of revenues generated from railroad operators and shippers using the new infrastructure.⁴⁴ The proposal, which would be the most extensive addition to the rail system in Texas since the early 1900's, could pull one million trucks

a year off of Interstate 35.

The Rail Relocation Fund

Proposition One, establishing a rail relocation and improvement fund, was approved by voters in November of 2005. The constitutional amendment authorizes grants of money and issuance of obligations for financing the relocation, rehabilitation and expansion of rail facilities. To build all of the projects identified in the Texas Rail System Plan would cost \$16.9 billion. Currently, the fund is empty. The Texas Department of Transportation is researching many funding options. Five of them are outlined here.

Funding Options⁴⁵

Diesel Fuel Tax on Freight Rail

One proposed funding option would be a statewide transportation-related sales tax on diesel fuel consumed by railroad users on tracks in Texas. Currently, Texas imposes a \$0.20 per gallon diesel fuel tax on suppliers, importers, exporters, distributors blenders, dyed diesel fuel bonded users, interstate truckers and International Fuels Tax Agreement (IFTA) licensees. Railroads are exempt from this tax. It should also be taken into consideration that the federal diesel tax, currently \$.024 per gallon, will be reduced to \$.001 on December 31, 2006.

The tax could be collected on the basis of point of sale collection when locomotives purchase gasoline in Texas. Or it could be a diesel fee based on the number of miles traveled in the state as a function of their gas mileage; similar to the current International Fuel Tax Agreement based sharing of state fuel taxes. IFTA equalizes the taxes paid on sales and the mileage actually driven in each state.

Every state taxes motor fuel for highway use, but it does not appear that any US states impose fuel taxes on locomotive use. Most states do, however, collect a percentage of property or ad-valorem tax based on the percentage of miles of track, rail activity or some other method of apportionment of their presence within that state.

This proposed tax is estimated to bring in \$22.5-\$70 million per year based on a tax per gallon range of \$.043 to \$.20. After bonding, this would provide a one-time \$225 million to \$1.082 billion.

Tax on Ramping and Deramping Containers at Multimodal Facilities

Another funding option could be a tax assessed statewide when a multimodal container is ramped or deramped at a rail yard. The tax could be assessed based on gross weight or on a per container basis. This could also include lifting containers on and off ships at ports that are connected to rail lines. This fee would be collected by the port or intermodal facility based on the volume of containers or tonnage moving in and out of the twenty to thirty separate intermodal terminals and the five to ten container port terminals in Texas. The ports and intermodal facilities would remit the fee to TxDOT.

Port authorities in other states enact their own versions of tariffs and fees for various services. For example, both the port terminals and the Port Authority of NY/NJ, who financed infrastructure improvement, impose \$40/TEU fees for ocean to rail movements of containers at an intermodal yard located in Port Elizabeth, N.J. There does not seem to be any additional fee or tax imposed by states on highway to rail intermodal movements.

This proposed fee is estimated to bring in \$21.8 million per year based on a \$10 fee, and thus would provide, after bonding, a one time infusion of \$247-\$337 million.

Per Ton Mile Fee on Rail Operators

This option would be a fee charged to rail operators based on the ton miles (defined as one ton of freight shipped one mile) they travel in the state of Texas. Operators that ship Hazmat could be charged an extra fee per ton mile. Collection of the fee would be based on the number of ton miles each rail operator reports to their shareholders or regulatory agency. TxDOT could send a bill annually for the operator to pay.

Most states collect taxes based on either gross revenue or property or ad valorem taxes based on the percentage of miles of track, rail activity or some other method of apportionment of their presence within that state. New Mexico imposed a weight/distance tax that assesses truckers rates a bit less than \$.001 per mile traveled. Oregon is exploring a weight-distance fee by number of axles to replace the traditional fuel tax.

If railroads were charged between \$100-\$300 per million net-ton-miles, the estimated beginning revenue would be \$11.7-\$35.1 million, with a bonding range of \$133 - \$543 million.

Origin/Destination Fee on Rail Operators

This fee would be charged to rail operators based on the number of trips taken in Texas. Operators that ship Hazmat could be charged an extra fee per origin/destination. Collection of the fee would be based on the number of Texas origin/destination trips each rail operator reports to the Association of American Railroads (or similar reporting agency). TxDOT would bill annually.

Other states' various port authorities enact their own versions of tariffs and fees for rail car load originations and terminations. Typically, there is a service, such as rail switching or unloading, as well as the capital investment of the track and roadbed that is accompanied by this payment.

In 2004, there were approximately 1.26 million originating carloads, and 2.10 million terminating carloads in Texas. At \$20 per carload, the \$65.9 million annually collected could be bonded to approximately \$747 million - \$1.02 billion.

Sales Tax on Freight Transportation

This option would assess a sales tax on freight transportation charges. Taxes would be paid by the buyer or shipper on the amount it costs to ship goods.

Utah recently repealed a sales and use tax on transportation services, although they still require tour operators who charge for transportation of passengers by jeep, snowmobile or boat to charge sales and use taxes on those services. South Dakota charges sales tax on the transportation of petroleum products.

If TxDOT charges a ½% tax on freight charges, it is estimated that \$19.7 million in revenues would be realized. After bonding, this would result in a one-time \$223-\$304 million.

Legislative Priorities

Texas must become a multi-modal state to continue to compete economically. Rail relocation is an important component to our infrastructure, and should be treated as such. In addition, rail relocation improves safety and air quality in city centers, and will contribute to the quality of life for Texans. The Rail Relocation Fund needs to be capitalized, and that funding should be a high priority for the state legislature next session.

The state faces many needs in the relocation arena, and making those decisions should be the responsibility of TxDOT. The Legislature should resist the temptation to prioritize, and thus politicize, rail projects through legislation.

It has been suggested that small rural railroads could not bear the burden of any additional fees, and exemptions could be an avenue to examine. The economics and equity of such a scenario would have to be carefully considered.

TxDOT needs the ability to operate their non-dedicated funding in the way the Governor's office runs the Enterprise Fund. When rail lines are abandoned or put up for sale, the department needs the flexibility to react immediately to acquire the asset for the state without waiting for an appropriation from the Legislature.

Charge 6

Study the economic infrastructure of the state's main trade corridors with special emphasis on the ability to enhance trade and transportation through increased use of technology.

Charge 7

Study the current border and coastal transportation infrastructure and any enhancements needed to meet growing international trade and economic development.

Border Corridors and Infrastructure

Cory Henrickson

“Security and trade facilitation are natural byproducts of an efficiently operated border, If we can coordinate the overall process to improve order and efficiency, we will improve both border security and trade opportunities. -- Bill Stockton, Associate Agency Director of the Texas Transportation Institute, Texas Transportation Researcher, Vol. 37 No. 4, 2001.

Information Sharing / Integrated Management Information Systems

The Texas-Mexico border is an expansive and intricate economic artery for the United States and Texas. The operations of the border depend on an exhaustive list of Federal, State, and local agencies, as well as private stakeholders to properly function. Cross-agency and private industry information sharing will be essential and necessary to speed up border crossing times, increase economic efficiency, and increase border security.

Federal Level

The International Trade Data Systems is a Federal Government information technology initiative that is in the works to establish “single window” government data collection and distribution facility.⁴⁶ Realizing the vast complexity of all the agencies information systems and their relative functions, this program seeks to unify information collected by the different agencies into one accessible database. The system will operate by streamlining data into a single database. This will enhance information retrieval efficiency; while at the same time enhance security by only allowing agencies to retrieve information that is “relevant to its mission.”⁴⁷

State Level

The state must work to integrate statewide data systems between state and local agencies and then link them with the ITDS. State and local agencies may create a “single window” data information system modeled after the ITDS. Though the state may not be able to integrate their system into the federal ITDS because of federal compliance and usage laws, the state may link them and only have to deal with two databases, drastically cutting down on information retrieval time.

One such system that was implemented by the U.S. Customs and the federal government is trying to integrate into the ITDS, is the FAST program. FAST is a “harmonized clearance process for shipments of known compliant stake holders.” It allows pre-approved shipments to securely pass through borders with minimal stoppage time, and creates an efficient means of data collection.⁴⁸

While these programs and information systems have increased efficiency and data collection for some agencies, they still lack their full potential. The Texas Department of Transportation has had problems gaining access to relevant information gathered by the U.S. Customs agency and the FAST program. At the same time, the FAST program has failed to incorporate data from DPS such as, “identification data, violation histories, credentials, operating authority and

insurance coverage.”⁴⁹ Integration of such information systems can prove to be highly effective and mutually benefit all parties involved at little extra cost.

Binational Information Sharing

Not only is it important for the all governmental agencies to integrate and have access to each other’s data systems, it is also important for the foreign countries with whom we trade to have access and give access to their relevant data systems. As Cesar Quiroga a TTI associate research engineer said, “Lack of access to data showing operations on both sides of the border leads to an incomplete understanding of border needs.”⁵⁰

Private Stakeholders

Mr. Stockton of the TTI also makes clear in his recommendations that other essential partners in information sharing and integration in addition to government agencies are domestic and/or foreign private industry stakeholders.⁵¹

Summary

Using a model for information data collection and retrieval systems such as that being implemented at the federal level with the ITDS program, the state may allow all relevant stakeholders to submit data onto a single database. At the same time, with the proper security measures, information will be secure by only allowing retrieval of information relevant to that agency’s needs. This process can effectively streamline all relevant data onto one database, eliminate repeat data shared by parties, vastly increase data retrieval time, help to automate commercial border crossings, decrease government use of personal and resources allocated to border crossings, speed up commercial goods travel time. These combined advantages will cut consumer prices, increase private profit margins and save tax payers money in the long run. Everyone who shares the data has access to the system and all stakeholders benefit.

Without the implementation of information sharing, all the technological advancements of structural infrastructure may prove to be a worthless investment. Increasing capacity will rely on more man power if it is not matched with increased integrated information systems. Advancements in structural infrastructure must be accompanied if not preceded by technological advancements in information systems and data integration.

Corridor Specific Solutions

Another important aspect of properly and efficiently utilizing such technologies is to keep in mind the specific needs and functions of each trade corridor. “Each border crossing is a unique entity with site-specific circumstances that affect the border crossing process. For example, the heavy concentration of maquiladoras in Juárez, Chihuahua generates hundreds of truck crossings over El Paso’s international bridges. Laredo’s short-haul drayage process generates thousands of border crossings annually as shipments crossing at the Laredo port of entry are off-loaded in the border zones, before proceeding to their final destination.”⁵² This is just as important today whether it is applied to physical infrastructure improvements or technological infrastructure

improvements. Once the systems are integrated and the information is accessible, corridor specific usage and implementation will play a crucial role in how efficient such information is utilized.

Radio Frequency Identification

Radio frequency identification is helping to expedite border traffic and increase security around the United States for both commerce transportation and commuter traffic. The RFID technology consists of a very small microchip that can be imbedded in commercial products or identification tools such as a driver's licenses and/or passports. This chip usually contains a passive frequency that is only activated to transmit the data it contains when it is triggered by a responder or reader.

Public Commuters and RFID

Texas has already begun to use RFID technology to alleviate some transportation issues. In Houston and Dallas interoperability between tolling systems has been available since November of 2003, allowing nearly two million TollTag and EZTag users the convenience of wireless payment (RFID) on four major toll roads in both cities. This allows the cars to pass straight through the toll booths without ever stopping. Similar uses of the RFID technology are being implemented at border crossings to more efficiently expedite the flow of commuter and commercial traffic.

A small pilot program called Nexus that was started at a port in Port Huron, Michigan is now being rolled out and implemented along many of the major United States-Canada trade corridors. RFID chips are being used in passes to allow pre-screened and identified commuters to cross the border more quickly. The primary function of the program in these situations is to process non-commercial commuter traffic as quickly and efficiently as possible. Participants must apply by filling out an application that allows the relevant information needed by the federal and local authorities to be gathered; they are then interviewed and given a pass with an RFID tag in it if approved. Once participants have their Nexus card they may use the designated lanes at border crossings.⁵³

Commuters may only use the lane if every passenger in the car has a Nexus card. The commuter enters the lane and holds up their card to a RFID reader. The information is then sent to a computer screen inside a booth where an inspector verifies by photo the vehicle's occupant. This process takes approximately 5 seconds. The program has allowed much more man power to focus on higher risk border crossings and commercial vehicle inspection.⁵⁴

Texas may be able to convert existing lanes into so called 'Fast Lanes' at minimal cost to the State. The State can reduce the amount of manpower that was previously used. The cost of such programs infrastructure, such as the responder and computer system can be financed by the private companies who stand to profit from the purchase of the passes.

Another appealing aspect of such a system is that it provides state and federal agencies an alternative, privately subsidized means for data collection that can be integrated into the border management information systems previously discussed in the report.

Commercial Border Crossings and RFID

RFID can also be utilized exactly the same for commercial border crossings as it is for commuter crossings. RFID Technology will help speed up the identification process and information sharing of commercial transporters as it does for the average commuter. This use of this technology will free up time will allowing for more secure vehicle and product inspections.

Installation of these current RFID readers/ responders for the identification of commuters and commercial drivers and/or their vehicles may also prove to be worthwhile investment for even more advanced future uses. There is a trend in the production and manufacturing industries to rely on RFID tags installed in their individual products to increase efficiencies in their industries.

Not only are large manufactures and producers of products beginning to rely on the benefits of RFID in the production plants and warehouses, large retailers such as Wal-Mart and Target are asking their suppliers to use RFID to help expedite their side of the commercial transaction.⁵⁵ Processes such as just-in-time inventory, automated ordering, stocking and tracking of products and production control are beginning to rely heavily on RFID to more efficiently conduct business.

As more producers introduce RFID tags into their products, border crossings with RFID readers/responders will be able to get a real-time notification of what types of cargo or products are inside of the vehicles and cargo compartments as they pass through the border check points.

Along with RFID tags and responders, current x-ray machines may be used to find products hidden in cargo containers that are not equipped with RFID tags.

Agile Port Systems

Agile port systems are networks of marine and intermodal hubs and terminals that are connected by freight corridors.⁵⁶ These systems are being implemented and brought to realization throughout numerous ports in Texas and the United States. APS allows numerous marine terminals to service one single intermodal hub simultaneously. The systems are helping to increase efficiency and data collection at the ports.

There are many different approaches to APS and their implementation. The legislature should continue to monitor the success of such systems and continue to work with APS developers. One such system that has received particular attention from the large West Coast ports is the Efficient Marine Terminal (EMT).

Efficient Marine Terminal (EMT)

Efficient Marine terminals are an attractive APS because it is one of few systems that allows for simultaneous loading and unloading of vessels. This process can nearly cut in half the amount of time a ship spends docked. While the EMT is relatively new concept, its progress should be closely monitored to determine if it is viable option for Texas ports.

The Importance of Inland Intermodal Hubs

Because the major ports in Texas are near and/or in major cities, access to more land for expansion projects is usually an issue. Most ports are limited in how much space is available at or near the port. Also, lands closer to coastal regions are more often than not more expensive to acquire. With trade increasing, the need for extra capacity will unquestionably be an issue in the coming years. More capacity usually requires more space. This is where inland intermodal hubs will play a vital role in supporting an increase in capacity capabilities and unclogging Texas ports.

More emphasis and investment further inland, where land is cheaper and more available, will be the key to relieve the trade stress of the ports. These hubs can serve as a focal point for many different ports and/or truck and rail corridors. These inland intermodal hubs will create more space for essential storage and transfer zones.

Short Sea Shipping

Short sea shipping is “commercial waterborne transportation that does not transit an ocean.”⁵⁷ Short sea shipping is viewed as an efficient, cost-effective alternative to trucking transport. These short sea shippers transport throughout the gulf region in areas that the large, deep-sea carriers cannot navigate. They can more easily get to inland ports or directly to waterfront hubs and/or storage facilities.

This newly formed industry allows for shipping containers that would usually be offloaded at a major port and loaded one at a time on trucks for short hauls to other hubs or inland ports to be taken off the roads and kept in the waterways. This reduces traffic congestion at port entries and on the highways, increases efficiency because the containers may be loaded to capacity weight (27 tons) on the ship (compared to the legal limit of 20 tons a truck may carry), reduces diesel emissions, and increases turnaround time because the containers do not have to be loaded and unloaded as many times.⁵⁸

While this industry is proving itself to be a viable alternative to short haul rail and trucking, there are some infrastructure and legislative problems that are impeding the industry.

Legislative issues that stand in the way of this industries development are the 1920’s Jones Act, “that mandates the use of U.S. built, owned and crewed vessels for operators in U.S. Domestic waters.”⁵⁹ Currently United States shipyards charge three to four times more for comparably built European or Asian ships.

Also the 1986 HMT (Harbor Maintenance Tax) has acted as a double taxation that only applies to freight shipped on the water. When a short sea vessel is loaded with its containers at a large domestic port and then travels to an inland port, it must pay the HMT that was already paid for by the original carrier of the goods. When a truck or train does the same process on land it is not subject to a freight value tax such as the short sea shipper is.⁶⁰

These are issues that can only be dealt with through legislative changes at the federal level.

Therefore the Texas Legislature must look at this industry, and decide if it is willing to support such changes. If so, the legislature must work with its colleagues in D.C. to implement such changes.

There are also infrastructural needs that need to be addressed to help promote short sea shipping. With more than 26,000 mile of navigable waterways in the United States, infrastructural issues such as dredging of shallow waterways, and the repair and maintenance of dams and locks that make such waterways useful must be addressed by the state and federal legislature.⁶¹

Trans-Pacific Trade

The emergence of trade with China and the East has led to bottlenecks at the major ports on the west coast. There are only a couple of ports on the west coast that are deep enough to handle the largest of the Far East trade ships, which carrier 6,000 plus containers. The lack of capacity on the west coast is creating different opportunities and challenges for Texas ports and/or rail.

Increase Capacity Capabilities and Channel Depths of Major Texas Ports

Currently cargo is unloaded on the west coast and shipped by train across the country. However, because capacity is so limited on the West Coast, new options are needed. One such option is to attract the trade to Texas ports via the Panama Canal by the use of feeder ships. These feeder ships can take cargo from the west coast via the Panama Canal and into the Gulf of Mexico. However, to attract these ships and trade from the east, the Texas ports will have to be able to support the high volume of shipments and be structurally capable of taking in such vessels. Therefore, Texas ports must look at infrastructural needs, such as channel depths and capacity issues, to attract trade from the east.

The increased depths of channels and ports paired with increasing capacity capabilities will also allow some of the larger European ships direct access to the Southern United States, bypassing crowded east coast ports.

Texas Pacifico Rail Line and Mexican West Coast Container Ports

Another option to bypass the West Coast ports involves the use of Mexican ports and then the use of rail into the United States. This option calls for the continued push of private and public funding to continue the infrastructural improvements of the acquired Texas Pacifico Rail Line (former South Orient). Also, needed is the continued partnership of Texas and Mexico to make infrastructure upgrades to Mexican West Coast Container ports such as Lazaro Cardenas and Manzanillo.⁶²

This option will help relieve congestion on the West Coast as well as traffic at the U.S.-Mexican border. The rail line is considered an alternative route to Union Pacific's Laredo trade corridor that will avoid the "choke point" in San Antonio, allowing goods to enter the market much more rapidly on a more direct route to the north.⁶³

Conclusion

The Texas-Mexico trade corridors and ports are extremely central to the economies of Texas and the United States. For Texas to continue to play a vital role in international trade and attract new trade partners, we must continue to find new innovative processes and technologies and seek proper funding of infrastructure improvements. It will be both a challenge and a necessity for the legislature to provide the proper funding to increase trade capacity and commerce movement through our state's ports and trade corridors. Regional planning and formation of regional mobility authorities will be a key to finding the proper avenues of funding for the necessary projects. Innovative financing strategies such as toll roads and private investment of infrastructure projects will also be necessary due to state budgetary constraints.

Not only is it important to fund the proper infrastructural projects that will keep trade flowing efficiently and economically through our state, but it will be crucial for Texas to lead the way in innovative technological advancements that facilitate efficient trade. Information systems will need to be one of the major areas of focus for the state. The proper collection and access of necessary information by state agencies will greatly improve our ability to compete with other states for trade opportunities. Strategies such as streamlining all agencies' management information systems into a central data base, embracing new technologies such as RFID and agile port systems will greatly increase efficiency. The more efficient our trade corridors allow commerce to flow back and forth with other nations, the more attractive we will be as a trade partner. This will boost our economy by creating employment opportunities for Texas, and thus increasing taxable revenue.

Infrastructural improvements are the necessary and more obvious means of achieving some of the goals of Texas as a major player in international trade. However, the proper use and implementation of new technologies to facilitate efficient and economical trade will prove to be the key to the success of Texas as a trade partner.

Afterword

Finagling the Funding

Afterword: Finagling the Funding

Joseph Giglio calls it “intellectual dishonesty.” It is human nature to be more likely to enjoy an adequate supply of the public goods and services that are so vital to our national welfare if we can convince ourselves that “someone else” is paying for them. Because when we admit that WE are paying, we try to cut services that we really need. Governments employ this technique, also. By cleverly manipulating tax rates and deductions, budget outlays and inflows, and distribution formulas, government has made it easy for us to persuade ourselves that “the other guy” is paying the bill for the things we need.⁶⁴

Here are solid facts about transportation financing: the federal government collects gas tax from every state, and allocates it back to the states in varying amounts every six years. The gas taxes that our citizens pay eventually make it back to Texas in a lesser amount, a fact that has been widely reported. Money goes out. Less comes back. This simple truism doesn't seem to sink in to those who complain that TxDOT has plenty of money to do the job without resorting to toll roads and public-private partnerships.

To make matters even more complicated, Texas has a hard time receiving its diminished federal funding in a timely manner. Federal allocation was late this year, and the process was fractious. For some reason, transportation doesn't seem to be an attractive assignment for our congressmen and women. Texas is one of the largest states in the nation, one that relies heavily on adequate transportation, yet very few of our elected officials have a seat on the federal transportation committee. Our federal representatives' input is mostly relegated to earmarks.

Earmarks are not extra money for the state of Texas. When a congressman requests an earmark for the state, he or she is removing that money from the lump sum that would have been allocated to our state. And if a congressman earmarks \$16 million for a bridge that will cost \$30 million, he has left TxDOT with a terrible dilemma: come up with \$14 million to finish completing a bridge that may not be a high priority for the state, or lose the \$16 million earmark? If an earmark is refused, it does not go back into Texas' lump sum. It is lost forever.

And money given is not money kept. The federal government has asked Texas for some of its road building money back three times thus far in 2006 to spend on the war effort and Katrina relief. The total amount rescinded by the federal government at the time of the printing of this report is \$305 million.

State officials are equally culpable. The bleeding caused by nickel-and-diming TxDOT for items such as free specialty license plates and signage for road naming has finally been stanching, but the pilfering continues on a larger scale. Hike-and-bike trails, transportation museums, and county courthouse reconstruction are considered an “enhancement to the traveling public.” TxDOT is often ordered to absorb the cost for these pieces of legislation.

The State Highway Fund has been raided on a larger scale, as TxDOT has assisted state lawmakers with budget-balancing many times. A few recent examples:

The Auto Theft Prevention Authority has historically been funded by one dollar per auto

insurance policy issued in the State of Texas. The dollar was once deposited to General Revenue, and was then utilized to fund the administration of the Auto Theft Prevention Program. Beginning in 2004, the funding of this program, approximately \$25.5 million, came out of the State Highway Fund. General Revenue continues to receive the \$1 generated per auto insurance policy, resulting in about \$30 million to general revenue.

In 1996, commercial carrier operations were transferred from the Railroad Commission to TxDOT, bringing along \$2.5 million per biennium from GR. In 2004, the program lost the general revenue, and TxDOT was forced to fund from the State Highway Fund.

General Revenue also once funded \$17.5 million per biennium for Public Transportation. However, in 2004, the general revenue was replaced with appropriations out of the State Highway Fund.⁶⁵

Asking TxDOT to make due with the monies they have been given is akin to the husband who gives his wife \$25 to feed a family of four and then wonders why the hell there isn't steak on the table. TxDOT has clipped coupons and fed cornflakes to road-hungry Texas for years now. TxDOT's main mission is to build roads. State officials are not naive enough to ask federal or state officials for more money to get the job done. Our only hope is to use innovative financing practices such as tolls and public-private partnerships. The tools that road-builders have been given must remain in place for Texas to remain strong economically.

It's time to put intellectual dishonesty aside and face these facts: We need roads. Someone must pay for them. That someone has always been us.

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