



TESTIMONY

Implementation of HB 3588

**Testimony Before the
Texas Senate Committee on Infrastructure Development and Security**

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Introduction

The Texas Department of Transportation (TxDOT) has been asked to provide the committee with an update on the implementation of numerous new tools authorized by the passage of HB 3588. The testimony covers all the major project development and financing sections of the bill, beginning with an examination of the various aspects of tolling. As per the committee's charge, some sections include recommendations to enhance the effectiveness of HB 3588.

Turnpikes

Legislation approved by the 78th Legislature revised the statute governing the Texas Turnpike Authority (TTA) to more fully incorporate TTA into TxDOT and to streamline and enhance the development of turnpike projects.

Toll Policy

The Texas Transportation Commission (commission) recognizes that tolling will not work everywhere. But TxDOT will thoroughly evaluate all controlled-access highway projects as possible candidates for tolling in order to ensure that the state's limited transportation dollars are used to their fullest potential. This includes new projects as well as projects involving new lane construction.

According to the Governor's Business Council, over a ten-year period vehicles increased more than 26 percent, population increased 23 percent, and workers have increased more than 20 percent. Vehicle Miles Traveled increased more than 40 percent, while new lane miles increased by less than 4 percent. Traditional pay-as-you-go financing simply cannot keep up with the increased demand.

Because they generate revenue to build projects now, toll roads are the fastest way to improve mobility in Texas. Toll roads are one of the ways to bridge the gap between what we have today and what we must have to meet tomorrow's transportation needs.

It should be emphasized that toll roads will add to our overall transportation program, they will not take away from it. This commitment is emphasized in several ways:

Motorists will have a choice. Generally, tolled and non-tolled alternatives will be developed where feasible so motorists can use the option that works best for them.

Local officials are involved in decisions. The local county commissioner's court must approve the conversion of a non-toll highway into a toll road, whether the conversion is done by TxDOT or the county.

Tolling won't work everywhere and is not for every project. Toll roads supplement, but do not replace the traditional pay-as-you-go method of transportation funding. Developing projects as toll roads reduces the strain on limited highway funds because they stimulate private funding to help finance the improvements. Approved in December, TxDOT's toll policy is to evaluate any controlled-access mobility project for toll viability. This includes what TxDOT engineers call "new location facilities" (a roadway where one had not existed before) and increased capacity projects such as constructing additional main lanes or constructing new main lanes. The intent is to identify projects that make sense for tolling. Projects that are not capable of supporting tolls will proceed through the traditional funding process.

The money stays local. Toll revenue not needed for debt service, operation, or maintenance, is put back into that facility or used to finance other projects in the area. This will further improve safety and mobility in the local area.

Public input is important. The department will consult with local officials and the public to identify how to develop and build priority projects faster. Tolls are an option the department hopes the public will consider, because they generate revenue to build projects much sooner rather than waiting to pay for a project, sometimes decades, using traditional funding methods.

Comprehensive Development Agreements

It is the policy of the department to promote and obtain private participation in department turnpike projects. The legislation authorizes the use of Comprehensive Development Agreements (CDAs). A CDA is an agreement with a private entity that, at a minimum, provides for the design and construction of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.

The commission adopted rules detailing the process that is undertaken to solicit, evaluate and implement a CDA at its August 2003 meeting. The rules prescribe a detailed process for entering into CDAs. Paramount during the commission's consideration of this matter was the goal of establishing a competitive process for selecting the proposal for a turnpike project that offers the best value to the state.

Please refer to the department's testimony concerning implementation of the Trans-Texas Corridor provisions of HB 3588 for a more detailed examination of the process for entering into a Comprehensive Development Agreement.

Toll Equity

Current law authorizes the department to use funds from the State Highway Fund for toll equity. Toll equity helps stretch limited state dollars by allowing state highway funds to be combined with other funds to build toll roads. This combination of funds makes toll roads more feasible since the entire cost of the project does not have to be repaid with tolls.

Ways to Enhance the Effectiveness of These Provisions

There are additional opportunities to improve the use of toll equity. HB 3588 currently limits toll equity to \$800 million a year. The commission contributed \$700 million in toll equity to the Central Texas Turnpike project alone. This \$3.6 billion project was made substantially more feasible with the use of toll equity. An increase in the level of toll equity that the department can use toward toll projects would free state highway funds for other highway improvements around the state, especially in areas that cannot support tolls.

Additionally, it should be clarified in statute that the conversion of a non-toll highway to a turnpike does not result in the prior expenditures being considered toll equity and applied to the cap.

With regard to ensuring that toll revenue can be used for transportation-related projects, it should be clarified in statute that toll revenue from a department turnpike, whether funded with bond proceeds or not, is deposited into Fund 6 and may be spent by the department.

Toll Conversion

HB 3588 amended provisions in the Transportation Code concerning the conversion of non-toll segments of the state highway system to department turnpike projects and the transfer of department turnpike projects to certain governmental entities.

At its February 2004 meeting, the commission adopted new rules concerning the conversion of non-toll state highways to toll roads. Depending on to whom the road is conveyed, the following outlines the process contained in the rules.

TxDOT Projects

As per HB 3588, the rules provide that if the commission finds that the conversion of a non-toll segment of the state highway system to a turnpike project is the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to that segment of the state highway system, and that such conversion is in the best interest of the State of Texas, that segment may be converted to a turnpike project by order of the commission.

As part of the information that will be used by the commission in determining whether to convert a non-toll segment of the state highway system to a department turnpike project, the department will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed conversion.

The commission may, after considering public input concerning the proposed conversion, convert a non-toll highway to a department turnpike project provided that:

- (1) the commissioners court of each county in which the highway is located has approved the proposed conversion;
- (2) the commission concludes that based on existing and/or forecasted traffic volumes the project is projected to be capable of generating revenue from tolls at rates to be set by the commission sufficient to satisfy project-related debt and maintenance and operating expenses allocable to the project;
- (3) the conversion will improve regional mobility; and
- (4) construction of the necessary expansion, improvements, or extension can be accomplished efficiently and expeditiously.

Toll revenue collected from the operation of a converted segment of highway may only be used to finance the improvement, extension, expansion, or operation of the converted segment of highway.

County Toll Projects

The rules provide that the commission may convey a non-toll state highway or a segment of a non-toll state highway to certain counties¹ for operation and maintenance as a toll road project if the commissioners court of each county in which the highway is located approves the proposed conveyance; and the commission determines that the proposed conveyance will improve overall mobility in the region or is the most feasible and economic means of accomplishing necessary improvements to the highway.

¹ Counties that are eligible to receive a highway that has been converted to a toll project are those counties that meet the criteria outlined in Transportation Code Chapter 284.

As part of the information that will be used by the commission in determining whether to transfer a segment of the state highway system to a county, the department will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer.

The county will reimburse the department for the construction, maintenance, and operation of the transferred highway; unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the traveling public. The commission may waive reimbursement if the benefits equal or exceed the amount of the reimbursement waived. Costs anticipated to be expended by the department, as evidenced by inclusion in the current three-year Statewide Transportation Improvement Program, to expand, improve, or extend the highway shall be deducted from the costs to be reimbursed to the department.

The commission may transfer a highway to the county if:

- (1) the county agrees to assume all liability and responsibility for the safe and effective maintenance and operation of the highway;
- (2) the county agrees to assume all liability and responsibility for compliance with all federal laws, regulations, and policies applicable to the highway;
- (3) the county agrees to assume all liability and responsibility for existing and future Environmental Permits, Issues, and Commitments (EPIC);
- (4) the transfer will not adversely affect regional mobility;
- (5) construction of the necessary improvements can be accomplished efficiently, expeditiously, and with minimum public investment;
- (6) the commissioners court of each county in which the highway is located has approved the transfer;
- (7) the county agrees to comply with the design and construction standards prescribed in this subchapter when developing projects on the transferred highway; and
- (8) the county agrees that tolls collected from the conveyed segment of highway will not be used for any purpose other than to finance the expansion, extension, operation, and maintenance of that highway segment.

By statute, a governmental or private entity must obtain the commission's approval before beginning construction of a toll road, toll bridge, or turnpike that is to be part of the state highway system. The rules outline the process for securing such approval. The North Texas Tollway Authority and Harris County are exempt from this provision requiring commission approval.

Regional Mobility Authority Projects

A Regional Mobility Authority (RMA) may request the commission to convert a non-toll

segment of the state highway system to a turnpike project and transfer that segment to the RMA; transfer an existing turnpike project that is part of the state highway system to the RMA; or transfer a department owned and operated ferry to the RMA.

If the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region, the department will hold one or more public hearings in the region.

The commission may, after considering public input concerning the proposed transfer, approve a proposed transfer under this subchapter if:

- (1) the RMA agrees to assume all liability and responsibility for the safe and effective maintenance and operation of the highway or ferry upon its transfer;
- (2) the RMA agrees to assume all liability and responsibility for compliance with all federal laws, regulations, and policies applicable to the highway or ferry;
- (3) the commission determines that the transfer is in the public interest;
- (4) the RMA agrees to assume all liability and responsibility for EPIC;
- (5) the commission determines that the public has a reasonable alternative route on non-toll roads;
- (6) the RMA has adopted rules providing criteria and guidelines for approval of the transfer of a ferry or highway; and
- (7) the governor approves the transfer.

An authority shall reimburse the commission for the cost of a transferred highway or ferry unless the commission determines that the transfer will result in a substantial net benefit to the state, the department, and the traveling public, that equals or exceeds the cost. The commission may waive reimbursement if the benefits equal or exceed the amount of the reimbursement waived.

In computing the cost of the highway or ferry, the commission will include the total amount spent by the department for the original construction of the highway or ferry. The commission shall consider the anticipated future costs of expanding, improving, maintaining, operating, or extending the highway or ferry to be incurred by the RMA and not by the department if the highway or ferry is transferred.

The commission may, as a condition to the transfer, require that expenditures of surplus revenue derived from a transferred highway or ferry be made to implement projects included in the Metropolitan Transportation Plan or the department's Unified Transportation Program.

Ways to Enhance the Effectiveness of These Provisions

Current law requires that toll revenue from non-toll highways that have been converted to turnpike projects only be used to finance the improvement, extension, expansion, or operation of the converted highway. This prevents the department from including those projects in a “toll system,” which generally is the most efficient means of financing a regional system of turnpike projects and expeditiously improving mobility in the region. The Legislature could enhance the effectiveness of toll conversion by eliminating this limitation.

Table 1: Summary of Conversion/Transfer Statutory Requirements

	<u>RMA</u>	<u>TxDOT</u>	<u>County</u>	<u>RTA*</u>
County Resolution	No	Yes	Yes	No
Public Hearing	Yes	Yes	Yes	Yes
Governor Approval	Yes	No	No	No
Limitation On Revenue	No	Yes**	Yes**	No

* HB 3588 did not revise the procedures for transferring a converted segment of a highway to Regional Tollway Authorities.

** Limitation: Toll revenues from a converted segment may only be used to finance the improvement, extension, expansion or operation of the converted segment of highway.

Regional Mobility Authorities

Article 2 of HB 3588 repealed the former statute governing Regional Mobility Authorities and enacted a new, more comprehensive statute. The commission adopted rules on the creation and operation of Regional Mobility Authorities at its February 2004 meeting to reflect the changes encompassed in current law.

The commission appointed an advisory committee to advise the department on the development of the rules.² The advisory committee was composed of seven members representing diverse regions of the state that had formed an RMA or demonstrated an interest in doing so. The advisory committee provided various suggestions that were included in the proposed rules. The advisory committee recommended that the commission propose the rules.

The prior statute primarily limited RMAs to developing turnpikes. The new statute authorizes RMAs to develop tolled and non-toll highways, rail, airports, and public utility facilities.³

The former statute granted the Texas Transportation Commission broad rulemaking powers that enabled the commission to regulate all facets of an RMA's operations. The new statute itemizes the rulemaking powers of the Transportation Commission. The new comprehensive statute and the limit on the commission's regulatory powers required a comprehensive revision to the current rules. The new rules include a subchapter governing the transfer and conversion of a non-tolled state highway to an RMA turnpike.

Specifically, the commission's rulemaking powers are primarily limited to: governing the creation of an authority; governing the commission's approval of a project that will connect to the state highway system or a department rail facility; establishing design and construction standards for those projects; establishing minimum audit and reporting requirements and standards; establishing minimum ethical standards for authority directors and employees; governing the authority of an RMA to contract with Mexico; and governing other commission approval required by the RMA statute, such as the transfer of a department highway to an RMA.

Approved RMAs

The commission approved the creation of the state's first RMA in October 2002. The Central Texas Regional Mobility Authority proposes to develop a new 12-mile turnpike in Williamson County. US 183-A is a reliever route to US 183 in the area of Cedar Park and Leander. The department is currently conducting an investment grade Traffic and Revenue study for the RMA.

² The members of the advisory committee were Tom Griebel, San Antonio Mobility Coalition; Bill Summers, Rio Grande Valley Partnership; Jeff Austin, Tyler Area Banker; Mark Watson, Temple City Manager; Judy Hawley, Laredo to Corpus Christi RMA; Bob Geyer, El Paso County Planning Department; and Bob Tesch, Central Texas Regional Mobility Authority.

³ For more information about how to form an RMA, eligible projects, and miscellaneous operating provisions, please refer to the handouts following this testimony.

Additionally, the commission approved the creation of the Bexar County Regional Mobility Authority at its December 2003 meeting. Bexar County's petition identifies an approximate 50-mile toll road network as the initial project for development by the RMA.

The network includes new capacity on Loop 1604 from FM 471 (Culebra Road) to I-35 (north), new capacity on US 281 from Loop 1604 (north) to the Comal County line, and new capacity in the Northeast (IH 35) Corridor from Loop 1604 (north) to the Central Business District. The RMA will implement additional capacity on the network and improve interchange operations on Loop 1604 at I-10 and at US 281 with the inclusion of new, direct connection ramps.

Most recently, the commission approved the creation of the Grayson County Regional Mobility Authority. Grayson County proposes a twelve-mile extension of SH 289 as its initial project for development. The project would begin at SH 56 in Sherman and end at FM 120 in Pottsborro, generally paralleling US 377 to the west.

Counties and Metropolitan Planning Organizations in most areas of the state have expressed interest in learning more about RMAs. Department personnel have been traveling the state making numerous presentations.

Advanced Acquisition

Article 3 of HB 3588 authorizes the commission to purchase an option to acquire property for possible use in or in connection with a transportation facility, including Trans-Texas Corridor facilities, before a final decision has been made on an alignment location. The commission may not purchase an option by condemnation.

The department acquires property for transportation purposes under a wide array of circumstances unique to the project and the properties involved. With this in mind, department staff is assisting the commission in identifying certain principles that will ensure that the application of its advanced acquisition authority will generate a benefit for the state.

Advanced acquisition offers the following enhancements to the right of way acquisition process:

- An advanced acquisition should speed the process of acquisition, therefore the condemnation process will not be necessary and negotiation will already be complete by the time TxDOT is ready for the property.

- There should be an increase in predictability for the cost of required right of way.
- When possible, it establishes the purchase price at current value as of the date of the option agreement in order to prevent later unlimited appreciation, whether due to market conditions or project influence.
- Where the option period is long term and the property owner will not agree in advance to a fixed purchase price (the purchase price to be determined by appraisal at the time the option is exercised), an option to purchase can still provide a speedier acquisition and limit the ultimate cost of the property by purchase of development rights, placing restrictions on development and improvement during the term of the option contract.

Among its objectives, the commission also recognizes the necessity for property owners to have a thorough understanding of the process involved and how they may benefit.

Rail Facilities

Rail service is important to Texas. The amount of freight currently carried by railroads in Texas is the equivalent of some 13 million annual truckloads. Over \$1 billion in wages are paid to Texas railroad employees annually. However, between 1981 and 1995, more than 2,270 miles of tracks were abandoned in Texas.

Article 4 of HB 3588 authorizes TxDOT to plan, construct, maintain and operate rail facilities or systems, including the acquisition and development of existing facilities. If rail service is to be provided on state-owned facilities, TxDOT must contract with an operator.

Utilities enjoy the same right to occupy rail right of way as they currently do with respect to highway right of way. The department is strongly encouraged in the legislation to plan and construct rail adjacent to SH-130.

The department may use any available funds to implement the new chapter including funds from the State Infrastructure Bank. However, the Legislation places a \$12.5 million cap on the level of funding for rail infrastructure. This restriction does not apply to:

- the acquisition of abandoned rail lines;
- funding derived from the issuance of bonds, private investment, and donations;
- federal funds from the Federal Railroad Administration, from the Federal Transit

Administration or funds authorized and appropriated by the United States Congress for a specific project;

- grants awarded by the governor from the Texas Enterprise Fund; and
- funds spent on grading and bed preparation.

The statute further required the commission to adopt rules governing the disbursement of funds for the acquisition of abandoned rail facilities that consider the local and regional economic benefit realized from the disbursement of funds in comparison to the amount of the disbursement.

Rule Making Process

Rulemaking is required in five areas: acquisition of abandoned rail, acquisition of real property, relocation of utilities, environmental review and public involvement, and contracting procedures.

Proposed rules for the first of these, acquisition of abandoned rail, were adopted by the commission at its January 2004 meeting. The rules define an abandoned rail facility as one that has either had federal Surface Transportation Board authorization to abandon or discontinue service, or notice or an application has been filed with that board by the railroad requesting abandonment.

The department will seek information from local governments to evaluate the regional economic benefit of acquiring the facility and conduct at least one public hearing on the proposed acquisition. The commission in its considerations will take into account service on the rail line in the previous two years, comments received, alternate sources of transportation services available, impact of the abandonment on the state transportation system, local and regional economic impacts, viability of the rail line for continued service, and the economic benefits compared to the amount spent to acquire the facility.

The commission adopted rules regarding the construction, operations and maintenance (contract procedures) of rail facilities at its April 2004 meeting. A public hearing regarding these rules was conducted on March 16, 2004 and no comments were received. In order to obtain the contractual relationship that is in the best interest of the state, and to comply with the intent of the statute, the rules provide that the department will use a competitive process to obtain private rail operators for rail facilities acquired or constructed by the department.

The rules also provide that in evaluating proposals submitted by private rail operators, the department will consider, among other criteria, the qualifications, experience, and

capability of the proposer to operate the rail facility. In order to ensure that rail service is provided where needed and to provide for the development of transportation and commerce, the rules provide that the department will consider, when evaluating proposals submitted by private rail operators: a proposer's plans for servicing markets, improving service and adding additional markets, and maintaining and improving rail facilities that are the subject of a lease agreement.

Rules for implementing the remainder of Article 4 will be drafted for each major section over the following months, with completion expected by the end of this year.

Application

The first application of the rules concerning abandonment was for a line from Paris to Bonham in Fannin and Lamar Counties. The Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service, for UP to abandon and Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER) to discontinue service over a 33.5-mile portion of the Bonham Subdivision between milepost 94.0, near Paris, and milepost 127.5, east of Bonham, in Lamar and Fannin Counties. Notice of the exemption was served and published in the Federal Register on May 19, 2003 (68 FR 27142).

The Fannin Rural Rail Transportation District is a single-county district formed at the end of 1999 to address the potential loss of rail service over a 60-mile line between Bells and Paris. The board consists of five members: three agriculture shippers and two local government representatives. The Fannin Rural Rail Transportation District approached TxDOT about preservation assistance.

At the February 2004 commission meeting, the proposed acquisition of the abandon rail was considered by the Commission. In accordance with the new rules and the evaluation criteria for the acquisition of abandoned rail, the commission authorized the purchase of the 33.5 mile portion of the Bonham Subdivision for an amount of \$601,995. TxDOT is awaiting UP's draft purchase agreement to finalize the acquisition.

Other Examples of Programs and Projects under Consideration

- development of commuter rail services in urban areas of the state;
- rehabilitation of the South Orient rail line; a state-owned facility in west Texas that includes 1 of the 7 (total) rail crossings between the U.S. and Mexico;
- preservation of potentially viable rail facilities under consideration for abandonment by private railroad owner/operators; and

- improvement of rail facilities on existing routes to increase safety, service, train speeds, and reliability.

Rail Activity in Central Texas

The development of SH 130 in Central Texas presents an opportunity to improve passenger and freight rail service, and by doing so, improve traffic flow on I-35.

The department has been working with the Austin-San Antonio Commuter Rail District to look for ways to enhance rail service. TxDOT has authorized a consultant to determine the feasibility of including a rail line in or adjacent to the SH 130 corridor (Segment 6 – Lockhart to Seguin). No determination has been made at this time as to whether sufficient funds will be made available from the proceeds of obligations issued to finance the Central Texas Turnpike System 2002 Project or the Texas Mobility Fund for the inclusion of rail in the SH 130 corridor.

TxDOT is also investigating other alignments for relocating Union Pacific (UP) freight services, including the possible double tracking of UP lines from San Marcos east to Red Rock and north to Taylor. The department is in the very early stages of examining this issue. Once the alignment, the associated costs, and the department's share of the funding is determined, it will be clearer whether or not the \$12.5 million annual cap on rail expenditures is an impediment.

Issuance of Bonds and Other Public Securities

Article 5 of HB 3588 authorizes the commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the State Highway Fund. The aggregate principal amount of the bonds and other public securities issued may not exceed \$3 billion (and may not exceed \$1 billion per year). Revenues must be used to fund highway improvement projects, with at least \$600 million of the proceeds being used to fund highway safety improvement projects that correct or improve hazardous locations on the State Highway System.

As per the provisions of HJR 28, the authority to issue bonds under this article was subject to voter approval of Proposition 14 on September 13, 2003. Proposition 14 was adopted by a vote of 61% to 39%.

These bond proceeds may not be used for projects on the Trans Texas Corridor. The bill provides that bonds and other public securities must mature not later than 20 years after their dates of issuance, subject to any refunds or renewals. And annual expenditures may not exceed 10% of the amount deposited to the credit of the State Highway Fund in the immediately preceding year.

The commission adopted rules prescribing criteria for eligible projects at its March 2004 meeting. Two categories are created – State Highway Improvement Projects and Safety Projects.

Eligible projects are those contained in the Unified Transportation Program which would be accelerated if proceeds are made available. One or more of these criteria must be used in selecting projects: the project's potential to improve mobility; the project's potential to maintain and preserve the existing transportation system; the time needed to complete the project; and adherence to design standards, feasibility, and traffic volume.

Safety projects include those designed to reduce the number and severity of traffic accidents, widen narrow two-lane highways, expand undivided Texas Highway Trunk System roads, construct highway and railroad grade separations, install median barriers, improve rail/highway grade crossings, install sidewalks and intersection improvements for pedestrian safety, treat or remove roadside fixed objects, improve intersections through such techniques as signal timing and turn lanes, install traffic control devices and safety appurtenances, and converting two-way frontage roads to one-way. Selection criteria include accident data, traffic volume, pavement geometry and other conditions; and one or more of the following: the potential of the project to correct identified safety problems, the time needed to complete the project, adherence to design standards, and project feasibility.

Although the new bonding authority does not provide “new” money, bond proceeds make it possible for the Texas Transportation Commission to afford more transportation projects by offering the commission the option of accelerating some construction through the issuance of debt which is then retired by existing revenues to the State Highway Fund.

Recognizing that the annual debt service on \$3 billion over 20 years would be substantial, the commission will balance the benefits of constructing projects now, with the prospect that fewer funds will be available for projects in the future.

The department is now in the process of identifying projects that can be accelerated, the associated costs, and the proper funding pieces.

The Texas Mobility Fund

Voter approval in 2001 of Proposition 15 and enactment of enabling legislation by the 77th Legislature in 2001 created the Texas Mobility Fund. The Texas Transportation Commission can issue bonds that are secured by the Texas Mobility Fund. Funds can be used to finance road

construction on the state-maintained highway system, publicly owned toll roads, or other public transportation projects.

HB 3588 redirects certain transportation-related fees that had been going to the General Revenue Fund to the Texas Mobility Fund. Deposits to the fund are expected to leverage highway bonds to produce up to \$3 billion in new funding, which in combination with other tools will enable projects to begin sooner.

The Texas Transportation Commission administers this fund to finance acquisition of right of way, along with design, construction, reconstruction, and expansion of state highways. Further, the commission administers the fund to provide participation in the costs of publicly owned toll roads and other public transportation projects.

A detailed graph of the funding sources for the Texas Mobility Fund follows in Table 2.

**Table 2: Revenues Dedicated to the Texas Mobility Fund.
from HB 3588, HB 1365, and HB 2971 from the 78th Regular Session
and HB 2 from the 78th 3rd Called Session**

SOURCES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Driver Responsibility ¹	Blue	Blue	Diagonal	Diagonal	Light Pink	Light Pink	Light Pink	Light Pink
Traffic Fine ²	Blue	Blue	Diagonal	Diagonal	Diagonal	Diagonal	Diagonal	Diagonal
United We Stand LP	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue
DPS Fees	White	White	Blue	Blue	Blue	Blue	Blue	Blue
TERP Fees	White	White	White	White	White	Blue	Blue	Blue

¹ 49.5% of program collections.

² 67.0% of program collections.



Any amounts from these sources over \$250M in a FY.

Program has a sunset provision as of August 31, 2007.

Estimated Amounts (in millions)

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Driver Responsibility	59.3	112.6	0.0	0.0	0.0	0.0	0.0	0.0
Traffic Fine	79.4	99.2	0.0	0.0	0.0	0.0	0.0	0.0
United We Stand Special License Plate	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DPS Fees	0.0	0.0	232.7	236.9	238.9	241.3	243.7	246.1
Texas Emission Reduction Plan Fees	0.0	0.0	0.0	0.0	0.0	78.0	78.5	79.0
	138.7	211.8	232.7	236.9	238.9	319.3	322.2	325.1

Table 3: Comparison of Fund 6 Bonds and Texas Mobility Fund Bonds

Description	Mobility Fund Bonds	Fund 6 Bonds
Maximum Amount	3 billion (estimated)	3 billion
Maximum Annual Amount	None	1 billion
Maximum Maturity	30 years	20 years
Maximum Annual Debt Service	None	10 % of the amount deposited in preceding year
Minimum Debt Coverage	110%	None
Security for the Bonds	Revenues Deposited to the Fund	Revenues Deposited to the Fund
Back Stop or Secondary Pledge	Full Faith and Credit of the State	None
Bond Proceeds will be Held in	Fund 365 in the State Treasury	Fund 6 of the State Treasury

Plans for Use of the Funds

Given the significant nature of the funds and the expectations surrounding their use, the Texas Transportation Commission has committed to establishing a strategic plan that takes into account public input and is created in the public view. Toward that objective, the commission at its February 26 hearing posted as an official discussion item the "Texas Mobility Fund Strategic Plan." The commission has solicited public input and plans to develop the plan in the near term, with formal adoption as soon as practicable.

Pass-Through Tolls

Article 6 of HB 3588 authorizes the department to enter into an agreement with a public or private entity to provide for the payment of pass-through tolls as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by a public or private entity. A pass-through toll is defined by the statute as a per vehicle fee or a per vehicle-mile fee that is determined by the number of vehicles using a facility.

The department adopted rules at its March 2004 meeting implementing this new authority. This program offers the department a new method of financing needed highway projects. It also offers local interests an opportunity to expedite the development of a highway that they desire, but that the department is currently unable to fund. The developer of the project is responsible for building the facility with its own funds, and has the assurance from the department that the state will repay the developer through a payment based on the number of vehicles using the facility or the vehicle miles traveled. If use of that facility is high, typically as believed by the developer, then the developer will be paid back at a quicker rate. If traffic is lower than projected, repayment will occur over a longer period.

To help ensure that a proposal is beneficial to the State of Texas, the commission will consider the financial benefits of the proposal. Consistent with the department's historical practices, the commission will consider local support for the project. To help ensure that the project will benefit the state's transportation system, the commission will consider whether the project is in the department's Unified Transportation Program, the extent to which the project will relieve congestion on the state highway system, and the compatibility of the proposed project with existing and planned transportation facilities. To help promote public health, and consistent with state policy, the commission will consider potential benefits to regional air quality that may be derived from the project. To help ensure that a private developer will deliver a quality facility, the commission will consider the qualifications and experience of the proposer to accomplish the work.

The rules provide that the payment schedule will be based on the department's traffic projections and a contract period to be negotiated between the department and the developer. The payment schedule may include a maximum and minimum annual amount.

A guaranteed minimum will assist a developer in arranging financing and help ensure that it gets reasonable compensation for delivering a needed asset. A maximum payment will ensure that the department is not required to expend an amount of funds in a way that could jeopardize funding for higher priority projects.

Ways to Enhance the Effectiveness of These Provisions

It should be noted that greater efficiencies may be derived by legislation authorizing the reverse of the process outlined above. The department, using its own resources and expertise, may be better suited to develop the project and be reimbursed by the local interest. This authority would be beneficial under certain circumstances when the local entity does not have the experience in road construction or the resources to develop the project.

Public Transportation

Article 13 of HB 3588 provides the state with an opportunity to consolidate and coordinate public transportation services. The intent of the legislation is significant in scope and impact; it is to eliminate waste in the provision of public transportation services, generate efficiencies to permit increased levels of service, and further the state's efforts to reduce air pollution. To effect these changes, the following actions have been taken:

On September 1, 2003, TxDOT began contracting with the Health and Human Services Commission and the Texas Workforce Commission for payment of the General Revenue portion of all health and human services transportation.

In March, TxDOT officially began management of the day-to-day operations of the Medical Transportation Program. All 169 Full Time Equivalent positions, contracts, and call center operations from the program transferred to TxDOT. The transition was transparent; and without the loss of clients, service, or employees.

The department is also working with the State Auditor's Office to issue a Request for Proposals to develop a comprehensive business plan for the coordination of all transportation services throughout the state. This business plan will provide a "road map" for the legislature and TxDOT to achieve internal and external operational efficiencies and improved performance; integration of public transportation planning and other processes; cost effective use of local, state, and federal resources; and improved services and communications to all customers and stakeholders. This activity will help TxDOT identify overlaps and gaps in services, and underused equipment.

To further the effort to reduce air pollution, the commission committed over \$5,000,000 for a public transportation vehicle replacement program and required that all vehicles purchased with commission-approved funds be alternatively-fueled.

Future activities include the ongoing coordination and transfer of the various client-based transportation services to TxDOT's responsibility.

It is the department's objective to ensure a seamless transfer of services among the various agencies responsible for transportation of Texans. The department will work to ensure that those who are in need – whether they are disabled, sick, or elderly – receive the necessary service to live full and productive lives.

Conclusion

The Texas Department of Transportation and the Texas Transportation Commission appreciate the opportunity to address these issues before the committee. For more information and to view copies of proposed rules and recently adopted rules, please refer to the TxDOT web site at this location: <http://www.dot.state.tx.us/ogc/rules.htm> .

For all other rules that have been adopted, please refer to the Texas Secretary of State web site at this location: <http://www.sos.state.tx.us/tac/index.html> .