

The Senate Transportation Committee



Interim Report to the 84th Legislature

January 2015

SENATE TRANSPORTATION COMMITTEE

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January 2015

The Honorable Dan Patrick
Lieutenant Governor
State of Texas
Capitol Building, Room 2E.13
Austin, Texas 78701

Dear Governor Patrick:

The Senate Transportation Committee of the Eighty-Third Legislature hereby submits its interim report for consideration by the Eighty-Fourth Legislature. We thank you for providing us the opportunity to address these important issues.

Respectfully submitted,

Handwritten signature of Robert Nichols in cursive.

Senator Robert Nichols, Chair

Senator Ken Paxton, Vice Chair

Handwritten signature of Donna Campbell in cursive.

Senator Donna Campbell

Senator Wendy Davis

Handwritten signature of Rodney Ellis in cursive.

Senator Rodney Ellis

Handwritten signature of Kelly Hancock in cursive.

Senator Kelly Hancock

Senator Dan Patrick

Handwritten signature of Carlos Uresti in cursive.

Senator Carlos Uresti

Handwritten signature of Kirk Watson in cursive.

Senator Kirk Watson

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Interim Charges

1. Examine the anticipated impact increased oil and gas production will continue to have on roadways and bridges. Make recommendations to enhance the safety and infrastructure damaged by truck activity related to oil and gas exploration and production.
2. Evaluate the Texas Department of Transportation and Metropolitan Planning Organization's progress on reducing congestion on the 100 Most Congested Roadway segments and make recommendations to advance the development of the remaining congestion relief projects.
3. Evaluate Comprehensive Development Agreements (CDA) and Design/Build project delivery methods and make recommendations for their future role in reducing congestion and continuing the state's economic growth.
4. Examine the implementation of SB 1792 (83R), which provides remedies for habitual violators of nonpayment of tolls and make recommendations for any legislation needed to improve, enhance, and/or complete implementation.
5. Study and monitor the state's efforts to protect taxpayers from uninsured motorists. Make recommendations to improve compliance of maintaining motor vehicle liability insurance and registration.

Senate Committee on Transportation Interim Hearings

June 23, 2014, Room E1.016

The Committee received invited and public testimony on Charge Nos. 2 and 3.

September 17, 2014, Room E1.016

The Committee received invited and public testimony on Charge Nos. 1, 4 and 5.

The audio/video recordings, minutes, and witness lists for the above referenced hearings may be found online at: <http://www.senate.state.tx.us/75r/senate/commit/c640/c640.htm>

*Senate Committee on Transportation
Interim Report to the 84th Legislature
Interim Hearings*

Energy Sector

Examine the anticipated impact increased oil and gas production will continue to have on roadways and bridges. Make recommendations to enhance the safety and infrastructure damaged by truck activity related to oil and gas exploration and production.

INTRODUCTION

Technological advances in crude oil and natural gas exploration through the combination of horizontal drilling and hydraulic fracturing (“fracking”), as well as development of large-scale wind energy farms and other technologies, have resulted in explosive growth in domestic energy development activity.¹ Provided the energy market maintains sufficient pricing to support exploration and development, this activity is expected to continue for years, if not decades.² While gas exploration is having economic benefits to all parties involved, it is also having significant impacts on state and local transportation systems. Some of that is due to the sheer volume and size of the equipment that is required to execute fracking processes.

The trucking industry is a valuable and integral part of the economic stability and development of the state. While the state economy clearly benefits from heavier, more productive trucks, energy related, or other cargo, the cost to maintain state highways and county roads has increased all while the state and local transportation systems buckle due to constraints. Maintaining and improving Texas roads is a vital part of keeping this industry strong and meeting the safety needs of the citizens of this state.

Enforcement Activities

Texas Department of Public Safety

The Texas Department of Public Safety (DPS) Highway Patrol Commercial Vehicle Enforcement (CVE) section has primary responsibility across the state for the enforcement of commercial vehicle laws and regulations, including restrictions on size and weight. Size and weight restrictions can be found in Texas Transportation Code Chapter 622, and the commercial vehicle regulations and enforcement procedures can be found in Title 37, Part 1, Chapter 4 of the Texas Administrative Code.³

DPS Resources for Commercial Vehicle Enforcement

To enforce commercial vehicle laws and regulations, DPS is equipped with the following resources: 481 Highway Patrol Troopers with additional CVE training and inspection authority, 149 non-commissioned inspectors, and 47 commercial vehicle inspection stations.⁴

¹ Texas A&M Transportation Institute, *Energy Development Impacts on State Roadways: A Review of DOT Policies, Programs and Practices across Eight State*, PRC 14-29F, November 2014.

² *Id.*

³ Email between Jonathan Sierra-Ortega and Candace Nolte at Texas Department of Public Safety on Dec. 19, 2012.

⁴ *Id.*

Impacts on Roadway Infrastructure

States with very intensive energy development often experience similar transportation impacts, which stem primarily from traffic increases, especially traffic from heavy trucks. Truck traffic volumes can be especially intensive during oil and gas fracking operations because hundreds or thousands of trucks are used to transport freshwater, sand, and chemicals to the wells in only a few days' time, and then transport wastewater from them. Other activities include moving massive drilling rig components and construction equipment.⁵ Wind energy also has transportation impacts, but these tend to be much less intensive and more short-lived than for oil and gas well drilling, fracking, and resource extraction.

While some oversize and/or overweight (OS/OW) trucks may have permits to operate in that condition, those that are not permitted can be especially problematic and challenging to address and enforce.⁶ The sheer numbers of trucks along with permitted and unpermitted OS/OW truck traffic can result in substantial road damage. In addition to heavy trucks, oil field/service company light-duty trucks and personal vehicles also contribute to higher traffic volumes. Oil and gas production in this state has increased dramatically, causing damage to many roadways that were not built to accommodate high volumes of heavy truck traffic.⁷

Increased traffic volumes affect all types of roads but especially rural roads and bridges that experience the most severe impacts first. Many of these were not designed and engineered for heavy traffic but instead were built up and maintained over decades when traffic levels were low.⁸ These roads often lack sufficient base and pavement structures to withstand the heavy and repeated loadings of large trucks. Texas Department of Transportation (TxDOT) officials cited cases of such roads being virtually pulverized over a few days.⁹ These types of roads also generally lack sufficient widths to accommodate wider vehicles and increased traffic volumes, quickly damaging the edges of roads and right of way (drainage and signs), which in turn can accelerate road degradation or cause safety issues. Local (e.g., city, township, county) infrastructures are often affected as much as or more than state-maintained infrastructures.¹⁰

Damage to roads and bridges can quickly result in lower levels of service (poor condition or total destruction), unsafe driving conditions, and an increase in both short- and long-term costs for pavement maintenance, rehabilitation, or reconstruction.¹¹ Increased traffic volumes can also negatively impact public safety and convenience, and the environment. Roads with limited right of way and narrow widths lack capacity to support higher traffic levels, causing severe

⁵ Texas A&M Transportation Institute, *Energy Development Impacts on State Roadways: A Review of DOT Policies, Programs and Practices across Eight State*, PRC 14-29F, November 2014.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

congestion and straining driver patience, which can lead to aggressive or unsafe driving behaviors and increased accidents.¹²

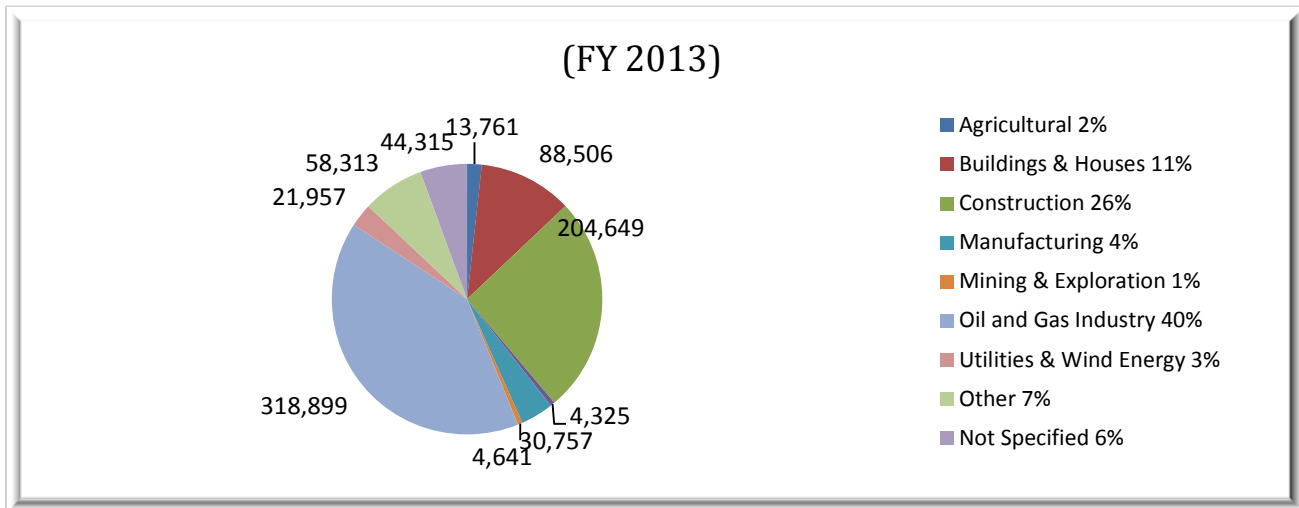
Oversize/Overweight Permitting in Texas

The Texas Department of Motor Vehicles (TxDMV) issues oversize/overweight (OS/OW) permits to motor carriers to protect the traveling public and carriers, as well as maintain the structural integrity of Texas’ highways.¹³ OS/OW permitting has increased over the years. In fiscal year (FY) 2013, 790,123 permits were issued, which was a 6.6% increase from the previous year. The TxDMV is on track to have issued a total of 830,000 plus permits in FY 2014. Permit fees generated \$162 million in FY 2013 which can be used to improve and maintain Texas’ roadways.

Vehicles with loads that exceed Texas’ legal size and weight limits are required to obtain an OS/OW permit. Commonly permitted loads include construction and oil field equipment, bridge beams, generators and transformers, buildings, wind tower components, and other high value products.¹⁴ TxDMV’s Motor Carrier Division issues temporary registration permits and 29 oversize/overweight permit types, including a variety of single-trip (point A to B) and time-based permits, such as 30-, 60-, or 90-day Width Permits, Annual Implements of Husbandry Permits and weight tolerance permits.¹⁵

In FY 2013, the oil and gas industry accounted for 40 percent of OS/OW permits issued by the TxDMV. This was by far the most common industry group to purchase permits.¹⁶

Permits Issued by Industry



¹² *Id.*

¹³ Senate Committee on Transportation hearing, Sept. 17, 2014 (written testimony of Jimmy Archer, Texas Department of Motor Vehicles)

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

OS/OW Permitting and the Oil & Gas Industry

The following chart lists the types of OS/OW permits available and the number and percentage of permits directly used in the oil and gas industry based on information reported in TxPROS (2014 numbers are through July 2014):¹⁷

Permit Type	FY 2012			FY 2013			FY 2014		
	OS/OW Permits	#Oil & Gas Permits	%forOil & Gas Industry	OS/OW Permits	#Oil & Gas Permits	%forOil & Gas Industry	OS/OW Permits	#Oil & Gas Permits	%forOil & Gas Industry
30/60/90-day Length	9489	2664	28%	9845	2546	26%	9746	2720	28%
30/60/90-day Width	24259	5887	24%	25387	6753	27%	24273	6167	25%
Crane (Annual)	531	217	41%	639	300	47%	597	209	35%
Crane (S/P Mileage)	2386	724	30%	3264	1254	38%	3167	1249	39%
Cylindrical Bales of Hay (Annual)	890	0	0%	607	1	0%	420	6	1%
Envelope - (Annual)	6635	3443	52%	7194	3751	52%	7118	4000	56%
Fracing Trailer (Annual)	109	105	96%	90	90	100%	23	23	100%
General	513247	218672	43%	516857	244124	47%	484722	236069	49%
Hubometer (Quarterly)	28309	7932	28%	31360	20054	64%	32167	23183	72%
Implement of Husbandry (Annual)	679	2	0%	759	2	0%	740	0	0%
Manufactured Housing	78085	20567	26%	83185	23613	28%	81266	24766	30%
Weight Tolerance	42026	9296	22%	46977	9136	19%	49732	11292	23%
Portable Building	18001	304	2%	18659	33	0%	16177	18	0%
Ready-Mixed Concrete Truck (Annual)	n/a			n/a			5427	6	0%
Rig-Up Truck / Unladen Lift (Annual)	418	404	97%	467	432	93%	391	390	100%
Self-Propelled Off-Road Equipment	39	4	10%	48	1	2%	77	0	0%
Super Heavy	676	300	44%	740	345	47%	892	386	43%
Timber (Annual)	n/a			n/a			42	0	0%
Utility Pole (Annual)	125	1	1%	194	12	6%	179	0	0%
Water Well Drilling Machinery & Related Equipment	91	7	8%	109	12	11%	116	3	3%
Well Servicing Unit (Annual)	85	78	92%	85	81	95%	87	87	100%
Well Servicing Unit (S/P mileage)	5106	4758	93%	6343	6183	97%	6626	6397	97%
Western Regional	2362	378	16%	2237	175	8%	2459	237	10%
Totals:	733548	275743	38%	755046	318898	42%	726444	317208	44%

*This table only contains information on permit types for which at least one permit was listed as being for the "Oil and Gas Industry."

¹⁷ *Id.*

Weight Tolerance Permits

A significant oversize/overweight permit type used by the oil and gas sector are known as Weight Tolerance Permits. A Weight Tolerance permit allows for the movement of divisible commodities. Vehicles may exceed allowable axle weights by a tolerance of 10% (*Section 623.011, Transportation Code*).

The Weight Tolerance Permit allows travel on county roads and state-maintained roadways, including load-posted roads (posted weight allowed on the road is based on structural integrity of the road; weight amounts are to limit gross weight or axle weights), in those counties selected on the permit. The permit excludes travel on the Interstate Highway System. Vehicles may not operate on a load-posted bridge if the gross weight of the vehicle and load, or the axles and wheel loads, are greater than the established and posted limits, unless the bridge provides the only access to or from an origin or destination.

A Weight Tolerance Permit is often used in oil field and drilling related operations. The three regions of oil and gas production with the most Weight Tolerance Permits issued are the EagleFord Shale, the Permian Basin, and the Barnett Shale.

PERMITS BY SHALE REGION

Eagle Ford Shale County Selections Weight Tolerance Permits For Fiscal 2013			Eagle Ford Shale County Selections Weight Tolerance Permits For Fiscal 2014 to date		
County	Permit Selection Count	Revenue to County	County	Permit Selection Count	Revenue to County
Atascosa	11580	\$157,177	Atascosa	14786	\$98,323
Austin	6420	\$58,294	Austin	8728	\$32,421
Bastrop	7181	\$108,655	Bastrop	9141	\$61,388
Bee	11312	\$97,757	Bee	14961	\$56,977
Brazos	6568	\$41,478	Brazos	8147	\$25,262
Burleson	5856	\$49,295	Burleson	7300	\$29,817
Colorado	7671	\$95,977	Colorado	10693	\$51,437
DeWitt	10298	\$134,533	DeWitt	13697	\$74,314
Dimmit	10220	\$37,951	Dimmit	13171	\$23,082
Duval	10013	\$86,090	Duval	13616	\$45,729
Fayette	8270	\$112,429	Fayette	10367	\$69,650
Frio	10759	\$81,760	Frio	13621	\$51,062
Goliad	10618	\$66,240	Goliad	14379	\$36,591
Gonzales	10802	\$136,211	Gonzales	13837	\$80,138
Grimes	6080	\$56,422	Grimes	8110	\$29,617
Karnes	11233	\$121,934	Karnes	14976	\$68,931
LaSalle	11026	\$51,617	LaSalle	14348	\$31,068
Lavaca	9047	\$144,208	Lavaca	11861	\$80,062

Lee	6200	\$44,137
Leon	6049	\$54,489
Live Oak	11962	\$120,909
Madison	5768	\$22,444
Maverick	6996	\$24,636
McMullen	11615	\$44,851
Milam	5450	\$63,896
Robertson	5704	\$45,585
Webb	11018	\$101,706
Wilson	10461	\$150,093
Zavala	9040	\$32,380

Lee	7776	\$27,431
Leon	8072	\$32,105
Live Oak	15952	\$67,709
Madison	7500	\$13,476
Maverick	9275	\$14,513
McMullen	15101	\$26,498
Milam	7072	\$34,840
Robertson	7392	\$24,502
Webb	15063	\$59,328
Wilson	13251	\$87,977
Zavala	11490	\$20,025

Permian Basin County Selections Weight Tolerance Permits For Fiscal 2013		
County	Permit Selection Count	Revenue to County
Andrews	6852	\$28,669
Borden	5923	\$18,668
Cochran	5005	\$30,293
Coke	5537	\$20,810
Crane	6639	\$8,500
Crosby	5254	\$44,482
Dawson	6476	\$50,524
Dickens	4663	\$23,248
Ector	7032	\$61,572
Gaines	6421	\$94,049
Garza	5426	\$17,195
Glasscock	7000	\$22,848
Hale	5563	\$85,049
Hockley	5780	\$78,839
Howard	7109	\$55,141
Irion	6518	\$13,648
Jeff Davis	4295	\$2,714
Kent	4556	\$12,439
Kimble	4411	\$18,032
Lamb	5675	\$79,097
Loving	5306	\$3,342
Lubbock	6395	\$94,418
Lynn	5764	\$66,141
Martin	6888	\$46,672
Midland	7396	\$41,418
Mitchell	6237	\$41,006
Nolan	5297	\$33,189
Pecos	6558	\$53,859
Reagan	7300	\$25,422
Reeves	5635	\$49,158
Scurry	5915	\$50,664
Sterling	6383	\$4,767
Terry	5657	\$68,463

Permian Basin County Selections Weight Tolerance Permits For Fiscal 2014 to date		
County	Permit Selection Count	Revenue to County
Andrews	5338	\$16,648
Borden	4802	\$11,320
Cochran	4201	\$18,771
Coke	4704	\$13,346
Crane	5210	\$4,906
Crosby	4224	\$25,319
Dawson	4948	\$45,366
Dickens	3811	\$12,894
Ector	5604	\$37,164
Gaines	4982	\$52,787
Garza	4317	\$9,920
Glasscock	5591	\$14,045
Hale	4470	\$50,228
Hockley	4542	\$45,321
Howard	5458	\$31,731
Irion	5411	\$8,037
Jeff Davis	3640	\$1,644
Kent	3744	\$7,013
Kimble	3808	\$10,866
Lamb	4487	\$44,961
Loving	4273	\$1,856
Lubbock	4939	\$53,439
Lynn	4521	\$37,518
Martin	5341	\$27,317
Midland	5842	\$24,973
Mitchell	4987	\$24,582
Nolan	4375	\$20,049
Pecos	5230	\$31,164
Reagan	5766	\$14,810
Reeves	4664	\$28,990
Scurry	4764	\$30,652
Sterling	5278	\$3,086
Terry	4532	\$40,071

Tom Green	6271	\$58,796
Upton	6833	\$13,888
Ward	6000	\$20,864
Winkler	5791	\$11,637
Yoakum	6094	\$38,888

Tom Green	5174	\$37,616
Upton	5468	\$8,036
Ward	4824	\$12,351
Winkler	4775	\$6,997
Yoakum	4620	\$20,838

Barnett Shale County Selections Weight Tolerance Permits For Fiscal 2013		
County	Permit Selection Count	Revenue to County
Archer	6386	\$32,017
Bosque	8065	\$60,346
Clay	7685	\$64,570
Comanche	5662	\$49,946
Cooke	9526	\$88,115
Coryell	5659	\$40,979
Dallas	10993	\$15,763
Denton	11777	\$85,437
Eastland	5802	\$48,388
Ellis	11309	\$128,047
Erath	8153	\$79,202
Hamilton	5690	\$36,644
Hill	9965	\$118,990
Hood	10264	\$55,359
Jack	9408	\$45,630
Johnson	12223	\$137,184
Montague	9636	\$89,118
Palo Pinto	8909	\$41,617
Parker	11573	\$165,746
Shackelford	4641	\$13,985
Somervell	8290	\$14,635
Stephens	6054	\$25,756
Tarrant	12897	\$64,356
Wise	12220	\$133,993

Barnett Shale County Selections Weight Tolerance Permits For Fiscal 2014 to date		
County	Permit Selection Count	Revenue to County
Archer	4503	\$16,568
Bosque	5575	\$31,472
Clay	5134	\$32,601
Comanche	4188	\$25,297
Cooke	6354	\$43,968
Coryell	4325	\$21,714
Dallas	7134	\$9,263
Denton	7453	\$40,805
Eastland	4329	\$25,575
Ellis	7463	\$63,046
Erath	5299	\$37,313
Hamilton	4082	\$18,419
Hill	6691	\$59,794
Hood	6810	\$27,084
Jack	5994	\$22,151
Johnson	7804	\$65,084
Montague	6170	\$44,826
Palo Pinto	5917	\$21,142
Parker	7486	\$79,443
Shackelford	3920	\$8,504
Somervell	5753	\$7,413
Stephens	4568	\$14,469
Tarrant	8173	\$30,163
Wise	7763	\$64,002

Issues/Constraints

There are also consistent constraints that limit abilities to deal with energy development impacts on state roadways. First, there are drastically different development timeframes between public sector transportation and private energy sectors.¹⁸ TxDOT has indicated that obtaining information months or years in advance of energy developments would greatly enhance their

¹⁸ *Id.*

ability to plan for and implement roadway preservation measures and strengthen roads before they are impacted, although it is practically impossible under current regulatory and reporting frameworks and the highly competitive, rapidly changing, and frantic-paced nature of petroleum energy developments.¹⁹ When the energy sector moves into a new area, the impacts on infrastructure are extremely rapid; years of damage can occur in a few weeks.²⁰

DOTs including TxDOT have limited direct authority over various oil and gas energy sector actors, which may be numerous even for a single well.²¹ Planning for ancillary (e.g., pipeline) petroleum or wind developments and communicating with these entities are less problematic.²²

Roadway maintenance funding is often tied to fuel taxes and registration fees, which remain stagnant, and buying power decreases over time. In addition, while many states have severance or resource taxes and fees on energy development, the amounts that are reinvested from such sources for transportation preservation/development and transportation safety programs are often limited and compete with other applications.²³ Officials noted very high inflation in energy development-intensive areas. Even in locations where increased funding has been allocated for transportation infrastructure, cost increases and availability decreases for critical materials, equipment, and personnel persist.²⁴

Possible Roles and Needs

Balancing the protection of public infrastructure and accommodating and facilitating business development is vital for TxDOT. While there are substantial economic benefits that energy development industries provide, they fail to ensure that the general public and private business interests have roadway infrastructures that are adequately constructed and maintained. The primary needs of DOTs to address the roadway impacts of intensive energy development are resources for preserving and upgrading infrastructure, mechanisms for engaging with industry, and information and tools. These needs are closely linked.

Resources for Preserving and Upgrading Infrastructure

Resources can come in a variety of formats. Obvious funding sources are legislative appropriations and/or industry bonding and maintenance agreements, yet these may not cover all costs. Some help could come in the form of hiring or contracting additional help to increase road projects, or simply getting a break from the fast pace of natural gas and oil development. Qualified personnel are important, but wage structures for public employees often fail to compete with those of energy-sector positions, limiting the pool of employees and increasing turnover.

¹⁹ Senate Committee on Transportation hearing, Sept. 17, 2014 (testimony of John Barton, Texas Department of Transportation)

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Mechanisms for Engaging with Industry

Many of the DOTs indicated a need to engage with the energy sector. Their primary motivations for doing so are working together with the energy industry to solve problems and learning about development practices and plans. Communication needs to be open, honest, frequent, and promoted and participated in at the highest levels. Engagement can be obtained through collaborative relationships with industry or through regulatory frameworks.

Information and Tools

Information about energy developments can help DOTs better plan for protecting public infrastructure, safety, and the environment, and for facilitating economic growth. Using this information also requires tools for planning and forecasting growth, predicting infrastructure impacts and needs, and evaluating and selecting alternatives. Such needs are not only at the state level; local communities are especially hard hit by energy development impacts. Local needs mentioned by DOT officials include effective planning processes to protect communities and structure growth and development, and local technical assistance programs (LTAPs), which engage transportation experts at state agencies with transportation officials in local communities.

Legislative Action to Date

The 83rd Legislature passed Senate Bill (SB) 1747 during its regular session. The bill created a new program to provide state money to help repair and maintain county roads in those areas of the state heavily impacted by oil and gas development.

SB 1747 directed the Texas Department of Transportation to distribute \$225 million provided through the appropriations process to counties through a grant program. Of the state's 254 counties, 191 applied for a portion of the funding, identifying more than \$1 billion in needed road improvements.

The bill established a formula that prioritizes funding to counties that are seeing high levels of oil and gas production, but also considers other factors, including whether counties see more overweight trucks on their roads even if those trucks are not involved in oil and gas development.

RECOMMENDATIONS

It is difficult to connect the benefits and address the costs of energy development at the same time. A systematic approach to balancing the economic, social, and environmental benefits and costs of energy development requires careful consideration and evaluation. Other state DOTs that were not using such measures were more reactive and were limited in their abilities to deal with the impacts of energy development on their roadway systems. While Texas has done a reasonably fair job of trying to maintain the safety of energy sector roadways, more needs to be done. Texas needs to be a little more proactive in implementing some additional tools to help TxDOT address the additional strain put on energy sector roadway infrastructure.

Congestion Relief

Evaluate the Texas Department of Transportation and Metropolitan Planning Organization's progress on reducing congestion on the 100 Most Congested Roadway segments and make recommendations to advance the development of the remaining congestion relief projects.

Population growth, GDP growth, decline in fuel prices, and an increase in car ownership are the main factors that will lead, in the next sixteen years, to a 50 percent rise in gridlock costs in the U.S. In short, this means that if in 2013 traffic congestion cost Americans \$124 billion in direct and indirect losses, this number will rise to \$186 billion in 2030.²⁵

The Centre for Economic and Business Research (CEBR) utilized data based on collecting GPS information, Bluetooth information, as well as several other technological advances to establish the burden imposed on households by peak traffic congestion, considering three main sources of direct cost: time wasted while delayed in congested traffic; fuel wasted and the effect of traffic congestion on the environment. It also considered indirect costs, given that it is more expensive and time-consuming to transport goods or attend meetings in traffic congested cities.²⁶

Evaluating both direct and indirect costs, the study found that in 2013, \$78 billion resulted from time and fuel wasted in traffic (direct costs) and \$45 billion was the sum of indirect costs businesses passed onto American consumers.²⁷

In Texas, the most congested metropolitan highways are becoming even more crowded, resulting in lost time and wasted fuel topping \$9 billion per year, totaling approximately \$1,150 for the average commuter in large- and medium-sized Texas metropolitan areas.²⁸ Two-thirds of Texas residents live in urban areas that are ranked in the 30 most congested U.S. metropolitan areas: Dallas-Fort Worth, Houston, San Antonio and Austin.²⁹ Perhaps more concerning, however, is the fact that not only is congestion high, but Texas traffic problems are also increasing faster than in similar U.S. areas. Six of the 25 fastest congestion growth metropolitan regions with more than 500,000 population are in Texas, including the four previously mentioned cities plus El Paso and McAllen. These congested regions and corridors also cause problems in the movement of goods and services through the metro areas to the rest of Texas and to markets outside of the state.³⁰

²⁵ Centre for Economics and Business Research, *50% RISE IN GRIDLOCK COSTS BY 2030*, <http://www.cebr.com/reports/the-future-economic-and-environmental-costs-of-gridlock/> (October 14, 2014).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Senate Committee on Transportation hearing, June. 23, 2014 (written testimony of Tim Lomax, Texas A&M Transportation Institute)

²⁹ *Id.*

³⁰ *Id.*

Legislative Background

In the 81st Legislative Session, the Lieutenant Governor of Texas by budget rider instructed the Texas Department of Transportation (TxDOT) to develop information identifying the 100 most congested roadway sections in the state and post that information on the TxDOT website.³¹ TxDOT was also instructed to provide the following information:

- 1) the annual hours of travel delays and the economic value of the delays for each segment;
- 2) a congestion mitigation plan drafted in coordination with the local Metropolitan Planning Organization which shall include, when appropriate, alternatives to highway construction; and
- 3) at least a quarterly update of the current status in completing the mitigation plan for each road segment.³²

Additionally, the rider stipulated that no TxDOT District in which the congested road sections are located could receive any transportation money from the state until the information was posted. The information is posted to TxDOT's website and has been updated and will continue to be updated as new information and analysis becomes available.³³

Recognizing the growing urgency of the traffic congestion problem, the 82nd Texas Legislature set aside \$300 million in Proposition 12 funds to get the state's highest-priority roadway projects moving, beginning with those segments identified as the 50 most congested Texas roads in 2010. In order to accomplish this task, as a part of the General Appropriations Act (H.B. 1, TxDOT Rider 42), the Legislature directed the Texas A&M Transportation Institute (TTI) to provide assistance to the metropolitan planning organizations, the TxDOT District offices and other project partners in their development of projects and programs to address mobility concerns and to report to the Texas Legislature and the Transportation Commission.³⁴

Specifically, TTI served as facilitator and coordinator of studies to provide assurance that:

- Projects had the greatest impact considering factors including congestion, economic benefits, user costs, safety and pavement quality.
- The best traffic and demand management principles were applied to the projects.
- Public participation in the concept development represented the most inclusive planning process possible.
- The funding scenarios used all feasible options so that public funds provide the greatest “bang for the buck.”

³¹ Rider 56, 2010 - 2011 General Appropriations Act, Article VIII, Texas Department of Transportation Budget

³² Rider 14, 2014 - 2015 General Appropriations Act, Article VIII, Texas Department of Transportation Budget

³³ Texas Department of Transportation, *100 Congested Roadway*, <http://www.txdot.gov/inside-txdot/projects/100-congested-roadways.html>

³⁴ Senate Committee on Transportation hearing, June. 23, 2014 (written testimony of Tim Lomax, Texas A&M Transportation Institute)

- Recommendations were made to the Department of Transportation at each major decision point for the projects.³⁵

Currently under Rider 14, TxDOT is still required to expend necessary funds to prominently post the top 100 congested road segments on its website. All roads in the state are included in the analysis. The most heavily traveled roads (freeways, toll roads, expressways, frontage roads, major arterial streets and minor arterial streets) are included and the ones with the most comprehensive sources to collect data. The sections identified are reviewed by transportation staff from each of the associated TxDOT districts and by local Metropolitan Planning Organizations (MPOs) familiar with the local road network.

Of the 100 Most Congested Roadways, TxDOT has identified projects that will have congestion relieving impacts on about half of those roadway segments. These projects include congestion relief measures such as 1)Building, improving or widening frontage roads; 2)Building or improving high occupancy vehicle or managed lanes; 3)Building or improving an interchange or direct connector; 4)Adding main lanes; and 5)Other improvements to smooth the flow of traffic such as reversing on-ramps, building dedicated turn lanes, or widening shoulders.³⁶

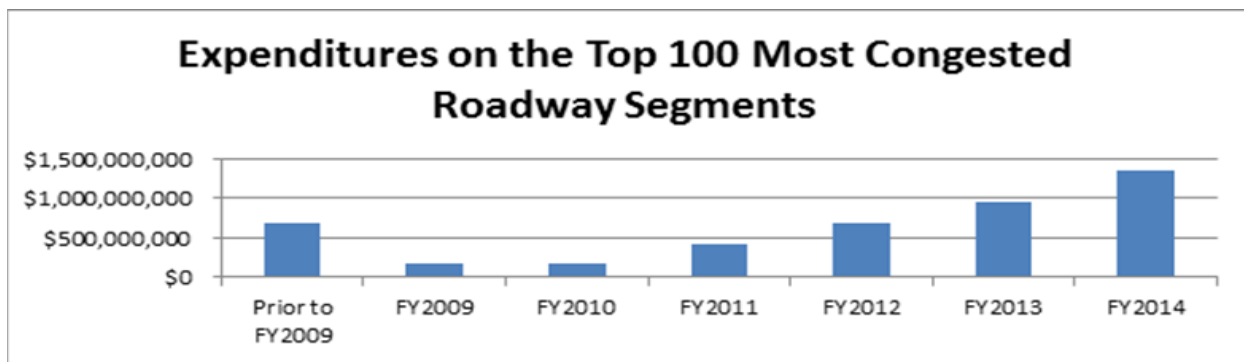
Projects that will impact congestion levels but do not include adding capacity to the roadway include managing access points to better reflect road use and the installation of intelligent transportation systems to help the department manage traffic levels and inform motorists of situations that impact their travel speeds and roadway congestion levels. Working with the Texas A&M Transportation Institute (TTI), TxDOT has developed an annual list of the 100 Most Congested Roadways since 2009, and both work with the MPOs and stakeholders to evaluate what can be done.

The following chart shows TxDOT's expenditures to date on the top 100 most congested roadways. These costs include preliminary engineering, right of way acquisition and construction for projects on the top 100 congested roadways, as well as those projects on adjacent roadways that will positively affect congestion.³⁷

³⁵ *Id.*

³⁶ Senate Transportation & Homeland Security Committee hearing, May 3, 2010. (testimony of John Barton, Texas Department of Transportation). 82nd Interim report.

³⁷ Senate Committee on Transportation hearing, June. 23, 2014 (written testimony of Marc Williams, P.E., Texas Transportation Department)



To date, TxDOT has obligated over \$9 billion in funding to projects related to improving the top 100 most congested roadways. These obligations include commitments for preliminary engineering work, environmental, right of way acquisition and utility adjustments and construction. Out of that \$9 billion in obligations, TxDOT has expended \$4.3 billion to date on these projects. This means that expenditures along the 100 most congested roadways are expected to continue rising over the next several years in line with the \$9 billion in previously committed funding.³⁸

Funding

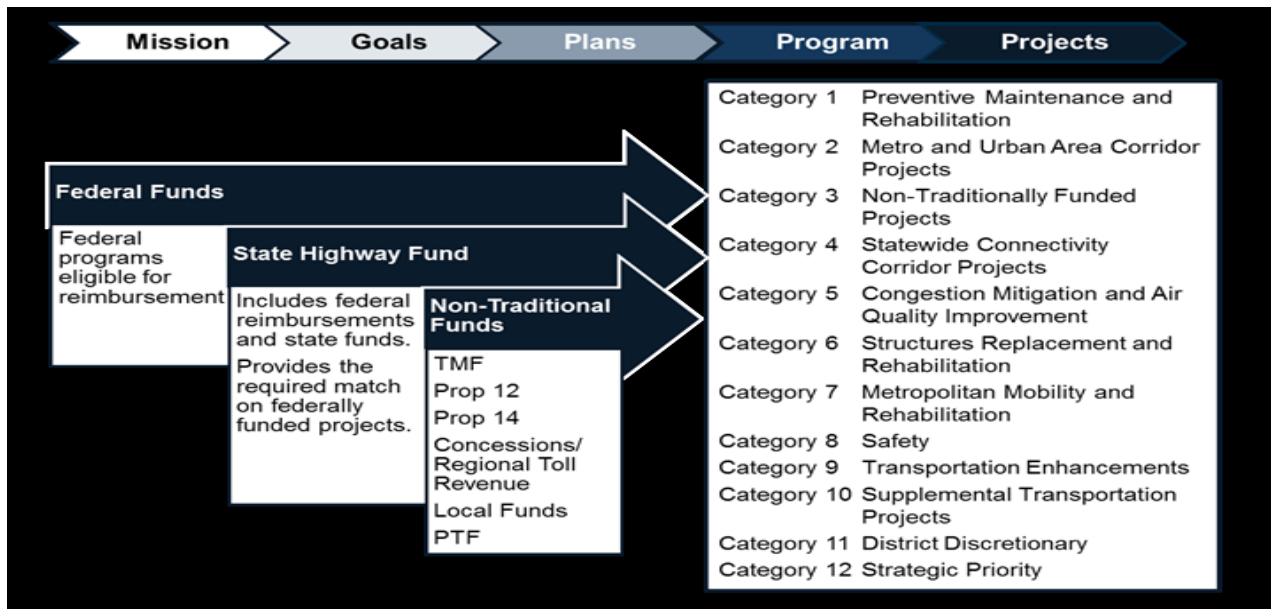
Looking forward from 2014, it's anticipated the Texas Transportation Commission (TTC) will allocate an estimated \$6.5 billion toward projects listed in the ten-year Unified Transportation Program (UTP) that are intended to reduce congestion on the current 100 most congested roadway segments. This \$6.5 billion in estimated contracts is in addition to the \$9 billion in projects and development work already obligated.³⁹

In addition to those planned projects already listed in the UTP, TxDOT has identified and is currently developing approximately \$24.6 billion in currently unfunded projects that would address other segments among the 100 most congested. If a stable and sufficient source of additional funding was identified, the Transportation Commission could authorize TxDOT to implement and deliver this latter group of projects over the next several years.⁴⁰

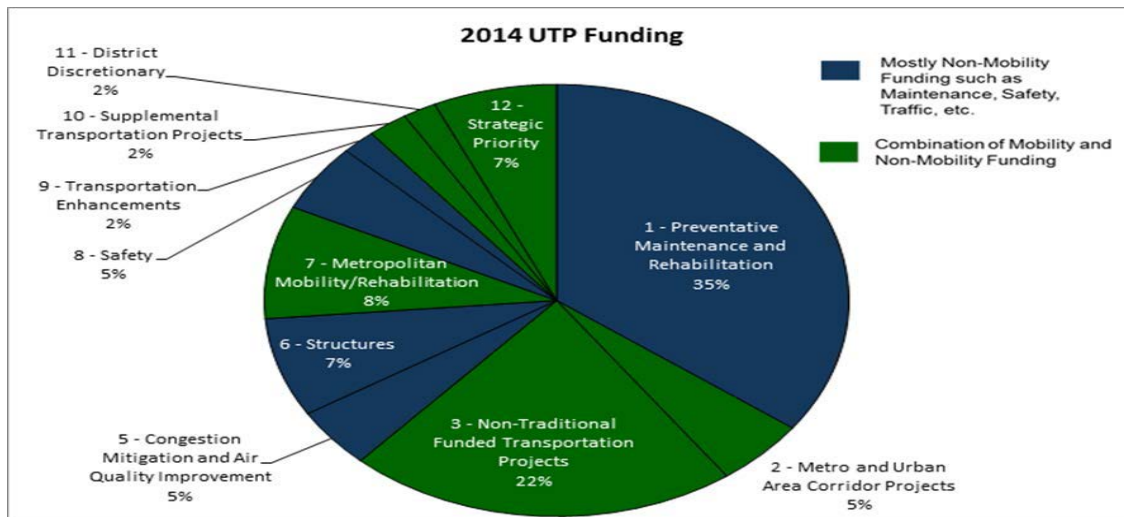
³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*



Over the ten-year duration of the UTP, TxDOT anticipates awarding an average of \$3 billion to \$4 billion for new projects each year. TxDOT currently uses approximately two-thirds of its funding for preservation and maintenance of the existing system and one third to address congestion, mobility and connectivity needs.⁴¹



In keeping with a provision in TxDOT’s Sunset bill (Section 201.995, Transportation Code), and beginning with its development of the 2014 UTP, TxDOT works with its districts around the state to rank projects based upon criteria that address the department’s strategic goals, funding availability and project readiness. Currently, TxDOT has allocated nearly all of the funding available over the next 10 years to existing projects or programs, leaving very little capacity to add new projects.

⁴¹ *Id.*

Regional Findings

The Rider 42 funds were used to support engineering, feasibility studies, right-of-way acquisition, and utility relocation in the state’s 50 most congested corridors as of the end of 2010. The recommendations moved several large congestion reducing projects closer to implementation and, in a few significant cases, provided the last key element of funding necessary to build an important project. All of the recommendations were approved by local working groups drawn from the transportation agencies and other organizations.⁴²

Thirty-eight of the 50 most congested corridors in 2010 continue to be in the top 50 in 2013 and 47 of them are in the 2013 top 100, suggesting an enduring quality among the worst of the worst. Several of the 2010 corridors both *had more congestion* and *improved in the ranking*; these corridors, in essence, “got worse slower” than other corridors. Exhibit 1 summarizes the funding allocated by the local Rider 42 working groups.⁴³

The largest category of funding was allocated to projects that involved right-of-way purchases and utility relocations, along with engineering work for very large construction projects in Dallas-Fort Worth and Houston. Almost \$75 million in funding was provided to a variety of other design and environmental studies. The total exceeds \$300 million due to agreements in the TxDOT Districts in Houston and San Antonio to use local planning funds to complete the originally intended studies.⁴⁴

Exhibit 1

Metro Area	Preliminary Engineering, Right-of-Way, Utility Relocation	Design & Feasibility Studies	Environmental & Other Studies	Total
Austin	-0-	\$30.48	\$0.80	\$31.28
Dallas-Ft Worth	\$118.75	-0-	-0-	\$118.75
Houston	\$109.22	\$7.00	\$1.35	\$117.57
San Antonio	-0-	\$15.74	\$18.60	\$34.34
Total	\$227.97	\$53.22	\$20.75	\$301.94

* Project Development Funding (in millions of dollars)

Almost all of the 50 most congested sections in 2010 remain in the top 100 list; three sections are outside of the top 100, and only nine are between 51 and 100. Ranking changes in many other sections belie the estimated congestion levels; as noted in the delay per mile values, many sections are ranked better, but have worse delay values. The effect of construction is particularly evident in two ways. As construction begins, there is more congestion in and around the work

⁴² Senate Committee on Transportation hearing, June. 23, 2014 (written testimony of Tim Lomax, Texas A&M Transportation Institute)

⁴³ *Id.*

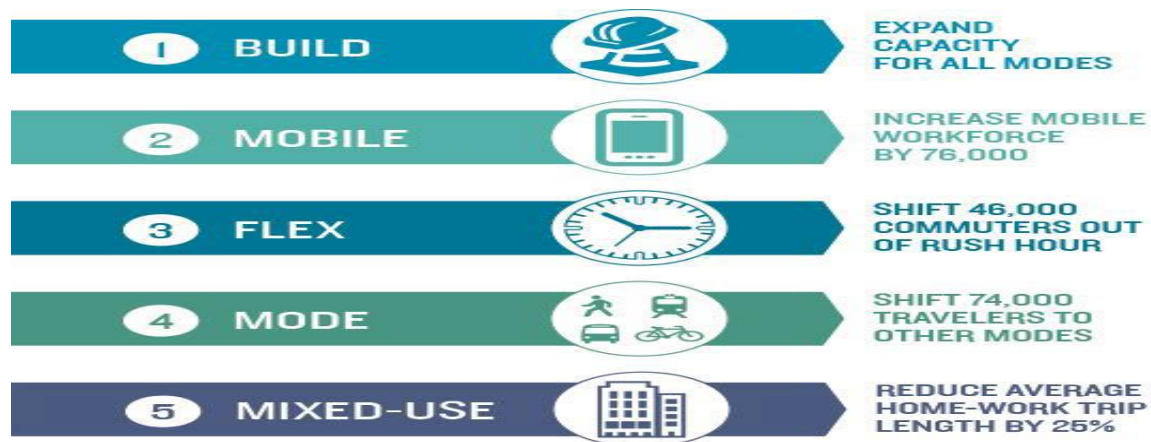
⁴⁴ *Id.*

zone.⁴⁵ A list of the projects can be viewed at, <http://www.txdot.gov/inside-txdot/projects/100-congested-roadways.html>.

CAMPO

Capital Area Metropolitan Planning Organization(CAMPO) is one of the fastest growing areas in the country. The region has been doubling in population every 20 to 25 years, and that trend is expected to continue through 2040. This increase in population, among other things, is increasing congestion and the demand for additional transportation facilities and services.⁴⁶ It is also the reason why Central Texas continues to appear on many “most congested” lists. Given the continued rapid growth and a robust economy, the region is employing a multi-pronged approach to managing congestion. A recent study by the Texas A&M Transportation Institute affirms the need for a multi-pronged approach. The study found multiple strategies are needed to maintain 2010 congestion levels in 2035, which is displayed in Exhibit 2.⁴⁷

Exhibit 2



Source: Greater Austin Chamber of Commerce and TTI

Both the public and private sectors are implementing these strategies to varying degrees. Local jurisdictions, along with regional and state agencies, are partnering to develop and implement improvements more efficiently.⁴⁸ Much of the focus is on reducing congestion on IH 35 and other roadways listed on the Texas 100 Most Congested Road Segments. Thanks in large part to Rider 42, significant progress has been made on projects designed to reduce congestion on IH 35.⁴⁹

⁴⁵ *Id.*

⁴⁶ Senate Committee on Transportation hearing, June. 23, 2014 (written testimony of Cathy Stephens, Capital Area Metropolitan Planning Organization CAMPO)

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

Houston-Galveston Area Council

The Houston-Galveston Area Council(H-GAC) supports the Metropolitan Planning Organization for transportation planning in an eight county region which includes Harris, Montgomery, Liberty, Chambers, Galveston, Brazoria, Fort Bend and Waller Counties. Its Council is responsible for approval of the use of federal and state funds on roadways and for transit services within the metropolitan area.

The continued economic expansion in Texas and the Houston-Galveston region has far outpaced the ability to accommodate growing and changing travel demands. The levels of congestion experienced along these “most congested” corridors are likely to be replicated on many principal arterials in the Houston-Galveston region beyond the City of Houston and Harris County.⁵⁰

The annual cost of congestion on the 36 “Top 100” corridors located in the Houston-Galveston region are in excess of \$1.3 billion per year; these costs include direct costs to travelers such as the additional travel time on our congested roadways, additional fuel use, higher crash rates and insurance costs, etc. Additionally there are congestion costs to freight moving through these highly congested corridors.⁵¹ The congestion costs imposed on commuters and freight results in the loss of economic competitiveness in our state, region and country. This, in turn, translates into increased costs to all consumers and diminished future economic opportunities.⁵²

In the H-GAC area only 21 of the 36 most congested corridors have identified investments. Through an active process of public engagement, TxDOT is striving to find solutions that will increase safety and reduce congestion, air and noise pollution while preserving inner city neighborhoods and enhancing the redevelopment of older industrial land uses.⁵³

H-GAC response to traffic mitigation is done by trying to get the most out of existing infrastructure through operational strategies. These are being aggressively pursued both on and off freeway corridors. These strategies may be broadly grouped into four categories: traveler information, traffic incident detection and response, access management and intersection operations, and demand management.⁵⁴

North Central Texas Council of Governments

The North Central Texas Council of Governments (NCTCOG) is a voluntary association of, by and for local governments. NCTCOG serves a 16-county region of North Central Texas, which is centered around the two urban centers of Dallas and Fort Worth.

⁵⁰ Senate Committee on Transportation hearing, June. 23, 2014 (written testimony of Alan Clark, Houston-Galveston Area Council H-GAC)

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Of the 41 roadway segments in the Dallas-Fort Worth region that were included in the TxDOT Top 100 Most Congested Roadway listing, efforts to reduce congestion on 34 segments are underway. Of the remaining seven, no improvements are planned on four segments; and three of the segments are not included due to lack of funding.⁵⁵

CONCLUSION

With the expected growth in Texas' population and funding challenges for many of the traditional solutions in Texas' large metropolitan regions, congestion will worsen. There is a generally accepted path toward improvement. State and local transportation agencies must do a good job with the funding, policies and priorities they have.

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

⁵⁵ Senate Committee on Transportation hearing, June. 23, 2014 (written testimony of Michael Morris, North Central Texas Council of Governments NCTCOG)

Comprehensive Development Agreements

Evaluate Comprehensive Development Agreements (CDA) and Design/Build project delivery methods and make recommendations for their future role in reducing congestion and continuing the state's economic growth.

BACKGROUND

First authorized in 2003 by HB 3588(78R) TxDOT and Regional Mobility Authorities (RMAs) were given the authority to enter into Comprehensive Development Agreements (CDAs), commonly referred to as Public Private Partnerships (P3s). A CDA is a project delivery method which allows TxDOT to utilize private capital by sharing risks of the design, construction, and sometimes financing of transportation projects.

In Texas, CDAs use a procurement process that allows TxDOT and RMAs to select the proposal that provides the “*best value*” to the state. Unlike low-bid projects, this procurement process considers factors such as team experience, safety of the traveling public, expedited design and construction schedules, innovations, long-term maintenance requirements and price when determining the best value to the state.⁵⁶

There are different ways to structure a CDA agreement. The terms of these agreements vary based on the level of private sector participation. The CDA statute provides the broadest range of structuring, which may include design-build, design-build-operate, design-build-operate-maintain, or design-build-finance-operate-maintain.⁵⁷

In 2011 the Legislature also gave TxDOT the authority to enter into a limited amount of design build contracts for non-tolled projects under a different set of statutes specifically written for design build projects. This process can be found in Texas Transportation Code 203.241.

Between 2003 and 2007 there was little limitation as to how many CDAs TxDOT and RMAs could award. After the signing of the concession CDA on SH 130 sections 5&6 (running south from Austin Bergstrom International Airport to Seguin) in 2007, the Legislature enacted a moratorium against future CDAs. Some exceptions were made to the moratorium; however, the majority of CDAs were put on hold for two years. During that time several restrictions on future CDAs were put in place including mandatory review by the Attorney General for legal sufficiency, approval by the Legislative Budget Board, and a verification of the traffic and revenue studies by the State Auditor’s Office (this provision was later removed). Since that time the Legislature mandated that certain restrictions be present in all CDA contracts. These restrictions include a defined buy back clause with a stated price for early termination of the contract and limitations on non-compete clauses.

⁵⁶ Senate Committee on Transportation hearing. June 23,2014 (written testimony of the Texas Department of Transportation)

⁵⁷ *Id.*

TxDOT and RMAs no longer have the authority to enter into a CDA unless expressly authorized to do so by the Legislature on a specific project. It should be noted, however, that Regional Toll Authorities (RTA) and County Toll Authorities (CTA) do not have the same restrictions on their ability to execute CDAs. Generally speaking an RTA or CTA can enter into a CDA with the consent of its board of directors.

TxDOT currently has underway or in development approximately \$22 billion in active strategic P3 projects, with 14 projects valued at \$11 billion underway and projects worth approximately \$4 billion in the procurement stage. These projects were expressly authorized by the Legislature.⁵⁸

FINDINGS

Types of CDAs:

It is important to understand the different types of CDAs available to TxDOT and RMAs. It should also be noted that a design build project can be delivered using the procurement method laid out in Transportation Code 223.203 (CDA statute) or Transportation Code 223.242 (non CDA design build statute)

CDA design-build (Transportation Code 223.203) or non CDA design-build (Transportation Code 223.241)

A design build contract allows for right-of-way acquisition, design, construction and maintenance to occur simultaneously under one contract, but does not include financial participation from the private sector or a long-term lease or operations of the facility. These agreements offer the following:⁵⁹

- A single point of responsibility for design and construction and concerted collaboration and goal between the design and construction to deliver a project;
- Fixed-priced contracting allowing for cost certainty;
- Expedited project delivery by overlapping portions of design, construction, utility relocations and right-of-way (ROW) acquisition;
- Developer innovation through close coordination between the construction contractor and designer;
- Transference of the responsibility of many of the inherent risks associated with design and construction to the private sector. Examples can include cost overruns due to design errors, schedule delays, inclement weather, etc.;
- Projects developed under 223.242 may not allow for the private partner to have a lease hold or retain toll revenue from the project;

⁵⁸ Senate Committee on Transportation hearing. June 23, 2014 (written testimony of the Texas Department of Transportation)

⁵⁹ *Id.*

- TxDOT is limited to 3 projects a year under this provision and each project must have a construction cost estimate of \$50 million;
- RMAs are limited to 2 design build projects a year by Transportation Code 370.401.

CDA Concession Projects

A concession agreement gives the developer responsibility to perform some or all of the development, financing, operation and maintenance of a facility for up to 52 years. While TxDOT or the RMA retains ownership of the project and rights-of-way, TxDOT, or an RMA, through the concession agreement “leases” the project to the developer for up to 52 years. In exchange, the developer is provided a right to a portion of the revenue generated by the project. The maximum toll rates established for the project remain under the control of TxDOT. Additionally, these projects typically provide for revenue sharing over the duration of the contract.⁶⁰

The elements of a concession agreement may include:

- Similar contractor responsibilities found in a design-build contract.
- The developer’s assumption of the risks for traffic and revenue, and financing; and
- Removal of the financial and operational burden of operating and maintaining the facility from TxDOT or an RMA.

Benefits of using a CDA or design build for project delivery

According to the testimony of Regional Mobility Authorities and TxDOT, some of the benefits of procuring a project using a CDA or design build can include:

Accelerated Delivery of Projects

Use of the design-build delivery method can accelerate the development of needed transportation improvements by shortening project delivery times. This is possible because the design and construction activities occur in a more integrated (and somewhat concurrent) fashion, instead of the more structured (and sequenced) design-bid-build approach.⁶¹

⁶⁰ Senate Committee on Transportation hearing. June 23,2014 (written testimony of the Texas Department of Transportation)

⁶¹ Senate Committee on Transportation hearing. June 23,2014 (written testimony of William Chapman, Central Texas Regional Mobility Authority)

Risk Transfer

The design-build process allows TxDOT and RMAs to transfer certain risks to project developers while receiving commitments for a guaranteed project delivery date at a guaranteed price.⁶²

Competitive Procurement of Financing Terms

The design-build-finance delivery method (essentially a design-build agreement in which the developer also provides some form of debt funding as part of the agreement) creates a means of acquiring “gap funding” to supplement toll revenue bonds issued by TxDOT and RMAs. By incorporating the finance element into the procurement process, design-build teams are encouraged to present competitive terms for the financing since those terms will ultimately be considered in the evaluation of the proposals submitted.⁶³

RECOMMENDATIONS

While this committee understands the need to utilize innovative project delivery due to the current funding shortfall for congestion relief and maintenance, the future use of Comprehensive Development Agreements should be limited to those projects authorized by the Legislature.

Impacts of contract provisions required by the Legislature in 2013 (SB 1730 83R) relating to mandatory buy back prices should be reported to the Senate Committee on Transportation after a suitable time has passed in which the provisions have been included in contracts.

Current provisions requiring the Office of the Attorney General to review CDAs for legal sufficiency and approval of the Legislative Budget Board should be continued.

The existing limitations on non CDA design build projects should be continued to ensure TxDOT is able to deliver projects using this method while protecting the public’s interest at the same time.

⁶² Senate Committee on Transportation hearing. June 23,2014 (written testimony of William Chapman, Central Texas Regional Mobility Authority)

⁶³ *Id.*

Toll Enforcement

Examine the implementation of SB 1792 (83R), which provides remedies for habitual violators of nonpayment of tolls and make recommendations for any legislation needed to improve, enhance, and/or complete implementation.

BACKGROUND

For the purposes of this report a local tolling project entity (LTPE) refers only to the Texas Department of Transportation (TxDOT), North Texas Tollway Authority (NTTA) or a Regional Mobility Authority (RMA). County Toll Road Authorities (CTAs) are intentionally omitted as they have their own statutes governing toll collection.

Prior to 2013 a LTPE's only recourse to collect unpaid tolls and fees was to contract collection efforts and to file Class C criminal misdemeanor complaints in justice of the peace (JP) courts in counties where the entity operates toll facilities.

Toll scofflaws who have refused to pay their tolls are costing the state of Texas millions in unpaid tolls. The majority of the repeat violators are not toll tag users and cheat the system and shortchange the public by continually using toll roads knowing they have not paid what is owed.

As a result of an interim study conducted by this committee on the issue of unpaid tolls, the 83rd Legislature approved SB 1792 by Senator Kirk Watson. This legislation created tools for LTPEs to utilize in their toll collections efforts.

SB 1792 by Watson

The legislation passed during the 83rd Legislative Session helped to augment a LTPE's ability to recoup tolls and fees resulting from drivers that repeatedly and knowingly travel on Texas' toll roads without paying. The bill created a new subchapter in Chapter 372, Transportation Code, related to remedies for nonpayment of tolls.

The bill authorizes a LTPE , under certain circumstances, to determine that a registered owner of a vehicle is a "habitual violator" (HV) for the non-payment of tolls and administrative fees. The bill establishes procedures by which the LTPE may make such a determination and provides for notice to the registered owner. The bill also creates an administrative hearing process carried out by a local justice of the peace court (JP) and authorizes the person to seek an appeal of the decision in the applicable county court. Additionally, a LTPE may seek HV remedies against vehicles and owners of vehicles not registered in Texas.⁶⁴

The bill authorizes a LTPE to report the HV determination to a county assessor-collector or the Texas Department of Motor Vehicles (TxDMV) and authorizes a county assessor-collector to refuse to register or renew the registration of a motor vehicle owned by the HV. The LTPE's

⁶⁴ Senate Committee on Transportation hearing. September 17, 2014 (written testimony of the Texas Department of Transportation)

governing body is also able to issue an order prohibiting the operation of the HV's vehicle on a toll project and provides that violation of the order is a Class C misdemeanor and law enforcement may ticket the HV for violating the ban. A second violation of the prohibition order and second moving violation could result in impoundment of the vehicle, subject to certain personal notice requirements.⁶⁵

Additionally a LTPE can publish online certain information regarding HVs who at the time of publication have unpaid tolls and fees.

This legislation went into effect 6/14/2013.

FINDINGS

According to testimony provided to the Senate Committee on Transportation, NTTA and TxDOT have implemented SB 1792 while no Regional Mobility Authorities have done so. Implementation is voluntary and intended to be an additional tool for toll collection but not a mandate.

NTTA Implementation

NTTA has thus far been the most aggressive in implementing the tools afforded in SB 1792. It seems deterrence has been a driving factor in their success. During a legislatively mandated grace period in the summer and early fall of 2013, \$9.1 million was paid from NTTA customers, including \$7.8 million from those who would be identified as habitual violators. Additionally as of mid-summer 2013, 73,000 customers settled their accounts in full or through payment plans, including 9,000 with at least 100 unpaid toll violations.⁶⁶

Following the grace period, NTTA launched the implementation process for vehicle registration blocks in coordination with the Texas Department of Motor Vehicles and NTTA member county tax assessor-collectors. The implementation continued through July of 2014. Over 3,000 registration blocks were in place during phased implementation. By year end of 2014, NTTA will have submitted 17,000 registration blocks to the TxDMV and their seven participating counties.⁶⁷

NTTA has also sent ban notice to certain individuals prohibiting them from using NTTA facilities. Of those who received notice a large number of motorists have come forward and settled their accounts with NTTA.

TxDOT Implementation

⁶⁵ *Id.*

⁶⁶ Senate Committee on Transportation hearing. September 17,2014 (written testimony of Gerry Carrigan, North Texas Tollway Authority)

⁶⁷ Senate Committee on Transportation hearing. September 17,2014 (written testimony of Gerry Carrigan, North Texas Tollway Authority)

In early October 2013, TxDOT sent letters to the top habitual toll violators. The letters notified them of a 14 day grace period to settle their outstanding tolls with TxDOT before their names were shared publicly. Then, on Oct. 17, 2013 TxDOT published its first list of names and has updated this list periodically since then.

TxDOT is currently in the process of adopting its procedures to implement the enforcement sections of SB 1792, but the tentative plan is outlined in the paragraphs below.

If the account remains unresolved, TxDOT mails a notice to potential HVs on the toll violator list. The notice contains a list of toll violations that occurred within a 12 month period, along with the amounts owed from all violation accounts and a warning that failure to pay may result in the exercise of habitual violator remedies. The violator then has 30 days from the mailing date of the notice to resolve their account(s).⁶⁸

If the violator resolves the account, TxDOT discontinues the HV process. If there is no resolution after the notice, TxDOT mails a final notice to the violator. The violator then has 30 days from the date the mailing date of the final notice to resolve their account(s). If the customer account is resolved, the HV process is discontinued.

If there is no resolution after the final HV notice, TxDOT determines that the violator is a HV. The HV is mailed a letter from TxDOT notifying them of the “Notice of Determination” as a HV. The HV then has 35 days from the date of the notice to notify TxDOT if they request a hearing with a JP court. TxDOT’s HV determination becomes final if no hearing is requested within the allotted time or if a hearing is requested and the HV fails to appear. The Texas Transportation Commission will then issue a Prohibition Order for that HV. TxDOT then mails a “Notice of Prohibition” to the HV and also informs the county tax assessor-collector and law enforcement of this action.⁶⁹

Upon receiving notification from TxDOT, law enforcement and the county tax assessor/collectors may add the HV information to their prohibition list. While the HV is on a Prohibition list, law enforcement may enforce the prohibition on TxDOT-operated toll facilities until the account is resolved. While the HV is on a Prohibition list, the county tax assessor/ collector may also deny registration renewal for the vehicle used to incur the violations until the account is resolved.⁷⁰

⁶⁸ Senate Committee on Transportation hearing. September 17, 2014 (written testimony of the Texas Department of Transportation)

⁶⁹ *Id.*

⁷⁰ Senate Committee on Transportation hearing. September 17, 2014 (written testimony of the Texas Department of Transportation)

RECOMMENDATIONS

While still in its infancy the toll enforcement measures authorized by SB 1792, specifically the vehicle registration block and vehicle ban on toll roads, are showing encouraging signs for collecting payment. These tools are beginning to change behavior and encourage equitable payment by all toll road users.

The Committee recommends continuing to monitor the implementation of SB 1792 by all LTPEs. The Committee further requests periodic updates on the success of the program or areas where improvement can be made.

Lastly the Committee restates a recommendation made during the 82nd interim. LTPEs should assess if there is a better way to administer toll collection than "pay by mail". While the Committee agrees that utilizing an electronic toll collection system decreases travel time and increases safety on toll roads, this system is inherently flawed in that it offers little deterrence to would be violators.

Insurance

Study and monitor the state's efforts to protect taxpayers from uninsured motorists. Make recommendations to improve compliance of maintaining motor vehicle liability insurance and registration.

BACKGROUND

TexasSure Vehicle Insurance Verification (TexasSure) is the financial responsibility verification program created as a result of Senate Bill 1670 passed by the 79th Texas Legislature which required the implementing agencies Texas Department of Insurance (TDI), Texas Department of Motor Vehicles (TxDMV), Texas Department of Public Safety (DPS), and Texas Department of Information Resources (DIR) to establish a program for verification of whether owners of motor vehicles have established financial responsibility. The implementing agencies are required, under a competitive bidding procedure, to select a vendor to develop, implement, operate, and maintain the program.

TDI is the lead administrator of the program; however, TDI does not have enforcement authority over uninsured drivers. The TexasSure database was fully implemented in October 2008.⁷¹ TexasSure sent notices to insured drivers not matched to a registered vehicle beginning in November 2009 and to registered owners of vehicles not matched to an insurance policy beginning in June 2010.⁷² Project funding is from a portion of a \$1 fee collected during both initial and renewal vehicle registration (Texas Transportation Code, Section 502.357(c)).

Program Design and Use

On a weekly basis, the vendor matches the TxDMV database of registered vehicles to insurance companies' full book of personal auto business and self-insureds reported by DPS. Reporting of commercial policies is optional. TexasSure is a tool for authorized users to confirm whether a Texas registered passenger vehicle has valid auto liability insurance.⁷³ The system is used by all county tax assessor-collectors and DPS Texas Highway Patrol, and is available to all Texas local law enforcement agencies. On average the system responds to 4.9 million queries monthly.⁷⁴ TexasSure sends customer notices and has a call center to collect responses. A maximum of 25,000 notices are sent weekly. There is no enforcement authority connected to the notices. As of June 2014, TexasSure mailed 4.7 million uninsured notices.⁷⁵

⁷¹ Senate Committee on Transportation hearing, Sept. 17, 2014 (written testimony of Commissioner Julia Rathgeber, Texas Department of Insurance)

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

Program Funding

Prior to FY 2012 funds were maintained by DMV. Since 2012, TDI has administered the funding of the program. Beginning in Fiscal Years 2012-13, TDI was appropriated directly out of the State Highway Fund (Fund 6) for the TexasSure program. Amounts appropriated pay for the development, maintenance, and operation costs paid to TDI; postage costs paid to USPS; and data center and telecom services paid to DIR.⁷⁶

Methods to Reduce Uninsured Motorist Rate

No-Fault System

- Accident victims collect benefits from their own insurance company, regardless of fault or whether the other party has insurance coverage.
- State laws limit accident victims' abilities to file lawsuits by enacting certain conditions, or thresholds, for which the victim may file suit. This type of system is intended to lower the cost of auto insurance by taking small claims out of the courts.
- Most no-fault systems allow motorists to sue for severe injuries while limiting the recovery of certain damages, such as pain and suffering, by requiring conditions, or thresholds, based on the severity of the injury. Thresholds may be expressed by states in verbal (descriptive) or monetary terms. An example of a verbal threshold is serious injury, which may include a permanent loss of use of a body organ, member, function, and symptom, etc.
- Verbal thresholds may remove the risks of inflated claims by limiting the medical expenses. However, the thresholds may diminish over time by judicial interpretations and subsequent rulings.
- Monetary thresholds are based on the amount of medical bills, and various states manage costs by limiting benefits and applying fee schedules.
- No-fault insurance typically does not include coverage for property damage.
- Kentucky, New Jersey, and Pennsylvania operate under a "choice" no-fault system. These states allow the policyholder to choose a policy based on the no-fault or traditional tort liability system.

Pros: May restrict litigation, and reduce costs and delays in paying claims. A reduction in costs may reduce the number of uninsured motorists. In addition, third-party claim processing issues may be reduced.⁷⁷

Cons: May experience an increase in fraud and abuse of auto claims by physicians and clinics. Severely injured motorists may not receive the amount needed to pay medical claims, which may shift costs to health insurance or to the motorists themselves.⁷⁸

⁷⁶ *Id.*

⁷⁷ Email between Jonathan Sierra-Ortega and Mellissa Hamilton at Texas Department of Insurance on Dec. 19, 2014.

⁷⁸ *Id.*

Feasibility for Texas

If a state's thresholds are too limiting, this may shift the accident costs more to the motorists and health insurance companies. States with generous thresholds, or unlimited benefits, may not see a cost reduction for no-fault claims in auto premiums because the limits are too broad and allow for high-cost court cases.⁷⁹

Texas insurance holders may already buy personal injury protection, which allows the policyholder to recover financial losses for minor injuries from their own insurance company, regardless of fault; however, Texas does not impose restrictions on auto liability lawsuits.⁸⁰

Implementing a no-fault system in Texas would require significant statutory changes to not only the Insurance Code but also other laws, including the Civil Practice and Remedies Code and the Transportation Code. Such changes would involve numerous public policy considerations. For example, limiting an injured third party's recovery for certain damages may result in uncompensated damages.⁸¹

Currently, the following states have some variation of a no-fault auto insurance system:

State	Threshold Type	Threshold	No-Fault Coverage (PIP)	2012 ACS Median Household Income	Uninsured Motorist Rate ⁸²
Massachusetts	Monetary	\$2,000	\$8,000	\$65,339	3.90%
New York	Verbal	Refer to: NY CLS Ins § 5101	\$50,000	\$56,448	5.30%
Utah	Monetary	\$3,000	\$3,000	\$57,049	5.80%
North Dakota	Monetary	\$2,500	\$30,000	\$53,585	5.90%
Pennsylvania	Verbal – Choice**	Refer to: N.J.S.A. 39:6A-8.	\$5,000	\$51,320	6.50%
Hawaii	Monetary	\$5,000	\$10,000	\$66,259	8.90%
Kansas	Monetary	\$2,000	\$4,500 medical/ \$900 loss of income	\$50,241	9.40%
New Jersey	Verbal – Choice**	Refer to: 75 Pa.C.S. § 1705	\$250,000*	\$69,667	10.30%
Minnesota	Monetary	\$4,000	\$40,000	\$58,906	10.80%
Kentucky	Monetary – Choice**	\$1,000	\$10,000	\$41,724	15.80%
Michigan	Verbal	Refer to: MCLS § 500.3135	\$1 million	\$46,859	21.00%
Florida	Verbal	Refer to: Fla. Stat. § 627.736	\$10,000	\$45,040	23.80%

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Source: *Uninsured Motorists, 2014 Edition*, Insurance Research Council

No Pay, No Play

- No pay, no play systems restrict uninsured motorists from suing for damages and subject uninsured motorists to a large deductible. Eleven states have enacted no pay, no play laws.
- The Insurance Research Council's, *The Potential Effects of No Pay, No Play Laws*, published November 2012, examined states that had no pay, no play laws at the time. The results concluded no pay, no play laws may result in a reduction of up to 1.6 percent in the state's percentage of uninsured drivers, after allowing for changes in unemployment and insurance affordability.

Pros: May alleviate public policy concerns that law-abiding citizens who obey compulsory laws subsidize motorists who do not establish the required financial responsibility to operate a motor vehicle and reduce the uninsured motorist rate.⁸³

Cons: Could negatively affect individuals who cannot afford insurance coverage, and may potentially shift costs to health insurance or the motorists themselves.⁸⁴

Feasibility for Texas

In order to be effective, a public service communication informing residents of the implementation may be required. Additionally, a provision for a low-cost auto insurance program option may address the affordability issue.⁸⁵

Like the no-fault system, implementing a no pay, no play system would also require significant statutory changes and public policy considerations.

Currently, the following states have a variation of the no-pay, no play auto insurance system:

State	Prohibition	Uninsured Motorist Rate ⁸⁶
North Dakota	Recovery of noneconomic damages for uninsured drivers who have been convicted two or more previous times for driving uninsured.	5.9%
Oregon	Recovery of noneconomic damages for injuries sustained while: <ul style="list-style-type: none">• committing a felony• driving under the influence, and• driving uninsured. Restrictions do not apply if the uninsured driver was insured under an auto liability policy within the past 180 days and has not driven an uninsured vehicle within the year preceding the coverage lapse.	9.0%
Kansas	Recovery of noneconomic damages for injuries sustained if: <ul style="list-style-type: none">• the person is convicted of, or pleading guilty to, an alcohol or	9.4%

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Source: *Uninsured Motorists, 2014 Edition*, Insurance Research Council

State	Prohibition	Uninsured Motorist Rate ⁸⁶
	<p>drug-related violation in connection with an auto accident driving uninsured.</p> <p>Exceptions include a court finding, by clear and convincing evidence, that a person bringing a cause of action did not knowingly drive a motor vehicle without mandatory PIP coverage at the time of the accident, or if the motorist failed to maintain coverage for a period of 45 days or less at the time of an accident but had maintained continuous coverage for at least one year prior to the failure to maintain coverage.</p>	
Iowa	Recovery of noneconomic damages for injuries resulting from an accident if the motorist was using the vehicle while committing a felony.	9.7%
New Jersey	<p>Recovery for personal injuries, for injuries sustained while</p> <ul style="list-style-type: none"> • under the influence of drugs or alcohol • the driver intended to injure others while driving, and • driving uninsured. 	10.3%
Alaska	Recovery of noneconomic damages for individuals who do not comply with existing motor vehicle liability laws.	13.2%
Missouri	Recovery of noneconomic damages for injuries sustained by uninsured drivers, unless the defendant in the lawsuit operated a vehicle under the influence of alcohol or drugs, was convicted of involuntary manslaughter, or a second-degree assault.	13.5%
Louisiana	<p>Limits uninsured motorists' right to sue for recovery of damages for the:</p> <ul style="list-style-type: none"> • first \$15,000 of bodily injury damages • first \$25,000 in property damages <p>This ban doesn't apply if the at-fault party is driving while intoxicated, flees from the scene, is taking part in a felony, or intentionally causes the accident.</p>	13.9%
California	<p>Recovery of noneconomic damages for injuries sustained while:</p> <ul style="list-style-type: none"> • committing a felony • driving under the influence, and • driving uninsured. <p>Courts have not extended the limitation of damages to survivors.</p>	14.7%
Michigan	Uninsured drivers 50 percent or more at-fault cannot collect noneconomic damages for injuries sustained from an auto accident.	21.0%
Oklahoma	<p>Recovery of noneconomic damages for injuries sustained while driving uninsured. Restrictions do not apply when:</p> <ul style="list-style-type: none"> • plaintiff is injured by a motorist who was driving under the influence of drugs or alcohol • plaintiff is a passenger in a vehicle he/she does not own • plaintiff was not in either vehicle involved in the accident • there is a wrongful death claim, or 	25.9%

State	Prohibition	Uninsured Motorist Rate ⁸⁶
	<ul style="list-style-type: none"> the motorist who caused the accident left the scene. 	

Verification Program and Penalties

- Many states implemented systems requiring insurers to work with state agencies or a private vendor to provide information to verify insurance coverage.
- Notices are generally sent to owners of registered vehicles identified by the program as not meeting the insurance requirements. Many states have implemented fines and penalties for registered owners' failure to respond.
- Texas currently has a verification program named TexasSure that matches insurance information submitted by insurers to motor vehicle registration information. Additionally the program sends notices to the owners of unmatched registration records, however, there are no penalties for failure to respond to the notices.

Pros: Allows the state to identify registered vehicles that do not have insurance. Penalties may encourage uninsured motorists to purchase insurance to avoid revocation, suspension, or fines.⁸⁷

Cons: Penalties do not always encourage citizens to comply with statutory requirements. Additionally, individuals who cannot afford auto insurance may be further burdened with revocations, suspensions, or fines. Program errors may make the assessment of fines and penalties difficult and may create an inconvenience for law-abiding citizens.⁸⁸

Feasibility for Texas

A possible enhancement to the verification program would be for the implementing agency to have the authority to impose fines and penalties. Similar programs are generally administered by the state's transportation or motor vehicle department.⁸⁹

Providing a low-cost auto insurance program may encourage motorists to buy insurance to avoid the additional financial burden of fines and penalties.⁹⁰

The following includes a listing of some of the penalties in use by states:

State	Verification Program	Penalty	2012 ACS Median Household Income	Uninsured Motorist Rate ⁹¹
Massachusetts	Database	After policy cancellation, if a motorist fails to obtain and provide evidence of new insurance, either by submitting a	\$65,339	3.9%

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Source: *Uninsured Motorists, 2014 Edition*, Insurance Research Council

State	Verification Program	Penalty	2012 ACS Median Household Income	Uninsured Motorist Rate ⁹¹
		form or the insurance company reports it to the state, the motorist's registration is revoked, and the local police department in the motorist's community is notified of their name, address, and registration information. Fine for driving without insurance: \$500 for first time offenders, and \$500 to \$5,000 and/or up to one year in jail for repeat offenders.		
Utah	Database/Web Services	Notice is sent to vehicle's registered owner for records not matched to insurance. If no response is received within 15 days, a follow-up is sent providing an additional 15 days to respond. If the registered owner fails to provide proof of insurance after receiving the second notice, their information is provided to the Utah DMV and state local law enforcement.	\$57,049	5.8%
West Virginia	Random	Vehicle registration revocation and suspension of driver's license for failure to respond to the insurance verification notice. Reinstatement fee: \$100 (registration), \$50 (driver's license), and an additional \$50 if DMV sends state police to retrieve license plates.	\$40,196	8.4%
Nevada	Database/Random	Suspension notice sent by certified mail after no response is received from the registered owner or last insurer of record in approximately 35 days. As a result of the revocation, reinstatement fee, and fines, additional penalties vary based on the length of the lapse and the number of offenses: <ul style="list-style-type: none"> • Reinstatement fee: \$250 - \$750 • Fine: \$250-\$1,000 • SR-22 required: length of lapse over 90 days or third offense driving uninsured • Driver license suspension: for third offense driving uninsured. 	\$49,760	12.2%
California	Database	Vehicle registration suspension if:	\$58,328	14.7%

State	Verification Program	Penalty	2012 ACS Median Household Income	Uninsured Motorist Rate ⁹¹
		<ul style="list-style-type: none"> registered owner fails to provide evidence of insurance within 30 days after the issuance of the initial vehicle registration or transfer of ownership DMV is notified of a policy cancellation or a replacement policy has not been filed within 45 days false evidence of insurance at the time of registration. Reinstatement fee: \$14		
Alabama	Random/Database	Vehicle registration suspension if no response is received after 30 calendar days of request for verification. Reinstatement fee: \$200	\$41,574	19.6%
New Mexico	Random	Vehicle registration is suspended if the registered owner's insurance company does not provide insurance policy information to the Motor Vehicle Division within 30 days from the date of the notice. Reinstatement fee: \$30	\$42,558	21.6%

Low-Cost Auto Insurance Program

- Some states have implemented low-cost auto programs for drivers who cannot afford regularly priced auto policies or have limited income to buy insurance.
- These programs generally provide lower liability limits in an effort to reduce costs.

Pros: Low-cost auto insurance programs are designed to provide low income or income eligible persons with liability insurance protection at affordable rates as a way to meet states' financial responsibility laws. Additionally, such programs provide some coverage for motorists who would otherwise be uninsured.⁹²

⁹² *Id.*

Cons: Severely injured motorists may not receive the amount needed to pay medical claims, which may shift costs to health insurance or to the motorists themselves. The effectiveness of these programs is not clear.⁹³

Feasibility for Texas

A low-cost auto insurance program may be more effective in reducing the uninsured motorist rate when used in combination with other programs. The current liability limits required are \$30,000 for each injured person, up to a total of \$60,000 per accident, and \$25,000 for property damage per accident, otherwise known as 30/60/25 coverage. The 2012 liability average premium for Texas was \$485.05.⁹⁴

To implement this type of program in Texas, a statutory change would be required to create a low-cost auto program offering liability limits below the current required limits in order to provide an affordable option.

The Legislative Budget Board, Texas State Government Effectiveness and Efficiency Report submitted to the 83rd Texas Legislature included a recommendation to establish a Low-Income Automobile Insurance Program. HB 1111 and SB 491 were filed during the 83rd session in an attempt to establish the program.⁹⁵

The following includes a listing of the states that have implemented a low-cost auto insurance program:

State	Low-cost Policy	2012 Liability Average Premium	Uninsured Motorist Rate ⁹⁶
New Jersey	<ul style="list-style-type: none"> • The New Jersey Automobile Insurance Cost Reduction Act mandated that a Basic Policy be available to all drivers for whom: <ul style="list-style-type: none"> a. standard coverage may be cost prohibitive, b. standard coverage limits may be excessive given personal circumstances; or c. alternative to standard coverage. • Insurers and producers in the voluntary market are required to offer coverage, including the Basic Policy, unless exempt by the department. <ul style="list-style-type: none"> a. The Basic Policy provides \$15,000 in personal injury protection, up to \$250,000 in medical benefits for catastrophic injuries, and \$5,000 property damage liability. 	\$860.54	10.3%

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Source: *Uninsured Motorists, 2014 Edition*, Insurance Research Council

State	Low-cost Policy	2012 Liability Average Premium	Uninsured Motorist Rate ⁹⁶
	<p>b. The Standard Policy provides at least \$15,000 per person, \$30,000 per accident, and \$5,000 for property damage.</p> <ul style="list-style-type: none"> • Policyholders have the option to purchase \$10,000 bodily injury liability coverage but cannot purchase uninsured, underinsured, or collision and comprehensive coverage with the Basic Policy. • New Jersey also implemented a Special Automobile Insurance Policy as an initiative to help make limited auto insurance coverage available to drivers who are eligible for Federal Medicaid with hospitalization. These drivers can purchase medical care coverage-only, at a cost of \$365 a year. The policy provides emergency treatment immediately after an accident and treatment of serious brain and spinal cord injuries up to \$250,000 and \$10,000 in death benefits. The policy does not provide liability coverage. 		
California	<ul style="list-style-type: none"> • Only for drivers over age 19 with good driving records and low incomes (up to 250 percent of the poverty level). • Motor vehicle must be valued at \$20,000 or less. • The Low Cost Auto Policy provides up to \$10,000 in liability coverage per injured person involved in an accident, up to \$20,000 per accident, and \$3,000 in property damage. <ul style="list-style-type: none"> a. Minimum liability required for standard auto policies is \$15,000 per injured person, and up to \$30,000 per accident, and \$5,000 for property damage. • Drivers may optionally purchase \$10,000/\$20,000 uninsured motorist bodily injury coverage and \$1,000 medical payments coverage with a Low-Cost Auto Policy. • The program had fewer than 10,000 policies in effect as of year-end 2011. 	\$442.17	14.7%

RECOMMENDATIONS

The issue of uninsured motorists should continue to be studied by the Legislature. In addition, it is recommended that the Legislature look at enforcement measures with a focus on creating some form of penalty for drivers who fail to maintain the minimum insurance. There is a tendency by some drivers to calculate the risk of driving without insurance, and while there is a

fine for failing to have insurance while operating a vehicle, there is no penalty or incentive to force an individual to purchase an insurance policy.

The Texas Department of Insurance sends out notices weekly to uninsured motorists, however, there is no enforcement authority connected to the notices. A recommendation would be to allow the Texas Department of Public Safety to send out letters to uninsured motorists, as a letter from the state policing agency may encourage more motorists to comply with the law.