Executive Summary

The Charges

1. Actively monitor the Texas Department of Transportation's update of the *Texas Transportation Plan*. The Committee shall assess the plan in terms of how it addresses relevant issues such as transportation funding, traffic congestion, multimodal transportation, rural transportation planning, NAFTA-related traffic, and establishment of acceptable levels of service for mobility.

   The Committee may make recommendations to improve upon planning procedures used by the Texas Department of Transportation as well as statutory changes necessary to facilitate implementation of the *Texas Transportation Plan*. The Committee may also recommend solutions to the state's transportation funding shortfall.

2. Monitor developments at the federal level relating to the re-authorization of TEA-21 and the creation of new innovative transportation financing techniques.

3. Evaluate developments related to the commercial trucking industry. This study should include, but not necessarily be limited to the following: an evaluation of the state's ongoing efforts to enforce truck safety regulations efficiently and fairly; developments at the state and federal levels related to opening our highways to Mexican truck traffic; and the effect of heavy truck traffic on our state and local roadways.

4. Review the recently proposed Texas Department of Transportation *Access Management Rules* and the associated *Draft Access Management Manual* dated May 30, 2002. In the course of the review, the Committee should examine the public input procedures followed by the Transportation Commission and assess, if possible, the overall effect the proposed policy changes will have on the constituents of the Texas Senate.

General Findings

State Transportation Funding:

- Public support for increased transportation spending can be best illustrated by the overwhelming approval of transportation-related bonding programs by Texas voters both at both the state and local levels:

    - In 2001, voters across the state were asked to vote for or against two Constitutional amendments, propositions 2 and 15, which if passed would allow the State of Texas to issue bonds for transportation projects. These amendments passed by 61.38 percent and 67.69 percent respectively.[1]

    - Further, since May of 2001, citizens have been offered at least 26 county and city transportation-related bond resolutions in Texas, with every proposal being approved by an average margin of 70 percent. [2]

      Please see page 24 of this report for more detailed information.

- According to the Federal Highway Administration, each state spends an average of 81.8 percent of "state highway user revenues" on transportation. When compared to Texas' average of 52.1 percent of state highway user revenues spent on transportation, it is not surprising that as a state, Texas ranks third in the amount of highway user revenues diverted to non-transportation programs.[3]

- Texas ranks 48 out of the 50 states in transportation spending per capita.[4]

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[1] Texas Secretary of State Web site: http://www.sos.state.tx.us.

[2] Information provided by the Texas Municipal Advisory Council.

[3] Federal Highway Administration, corroborated by written testimony submitted to the Committee in June, 2002.

[4] Federal Highway Administration.

- While the Committee has been asked to recommend the creation of a rail division at TxDOT and to increase the state's support of general aviation facilities, the fact remains that the Texas Department of Transportation is required by the Texas Constitution to spend approximately 95 percent of its dedicated revenue on highways and bridges.[5]

Planning, Policy Implementation:

As the Texas Department of Transportation (TxDOT) arguably has the most direct impact on the greatest number of citizens, it must perform above and beyond the norm for state agencies. The necessity for cooperation, partnerships and inclusion of local officials (whether elected or not) is vital. Outreach by the department, when planning or implementing new policies, is not simply for cursory purposes. Outreach efforts are meant to involve locals on issues which the locals are the most knowledgeable. TxDOT's involvement with local elected officials, planners and developers is critical for the long-term growth and efficiency of our state's transportation system. There is a legitimate reason that TxDOT is included within the Business and Economic Development chapter of the state's biennial budget:[6] the agency's actions, decisions and policies directly affect the state's economic growth.

Finally, TxDOT's impact on the state's economy and the nature of its relationship with its constituents provides even more support for local partnerships, beyond the fact that state law requires that the Commission must formally adopt new agency rules before they may be implemented by the Commission or TxDOT. [7]

Safety/Commercial Trucking:

The state, with the assistance of local law enforcement entities must ensure that every commercial vehicle in the State of Texas is subject to inspection.

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[5] Section 7-a, Article VIII, Texas Constitution.

[6] Article VII, General Appropriations Act: 2002-2003 Biennium.

[7] Chapter 2001, Government Code.

Obviously, the State of Texas can not inspect every truck, even if working in conjunction with the federal government. However, if every truck is subject to inspection, voluntary compliance with safety standards will become the norm, rather than today's environment which provides no incentive for commercial trucking companies to be proactive in the maintenance of their vehicles. When the "cost of doing business" includes citations for violations and increased inspection activity, the new "cost of doing business" will include compulsory maintenance.

In the eyes of the law, there is no difference between a commercial motor vehicle that is owned by a Texas resident or by a Mexican or Canadian national. Each and every unsafe truck, regardless of origin, poses a threat to the safety and well-being of all who travel on Texas highways and roadways. Because of this, each and every truck in operation anywhere in the State of Texas should be subject to inspection and should be required to be maintained according to law.

Need for Multimodalism:

By law, the State of Texas no longer has a State Highway Department. By perception, the State of Texas has only a state highway department. When the former entity was joined with several other existing entities and several new concepts to form the Texas Department of Transportation, it was assumed that the state would then take an active role in the promotion and creation of a multi-modal transportation system.[8] However, when the very statutes that fund TxDOT limit its operations by dedicating 95 percent of agency funding to the construction and maintenance of highways, the department is in fact 95 percent a highway department.[9] Until funding options are expanded, neither the Legislature nor its constituency should expect anything other than a state highway department.

[8] Section 201.601, Transportation Code.

[9] Section 7-a, Article VIII, Texas Constitution.

Findings and Recommendations
Senate State Affairs - Interim Charge #1

Findings - State Transportation Funding:

- TxDOT is only able to fund 33 percent of identified, "needed projects" out of its only revenue source, the State Highway Fund (Fund 006).[10]

- Inflation costs are higher than interest rates, (from 1995 through 1999 inflation increased the cost of construction by 5.7 percent per year); further, "inflation is eroding at those revenue increases (natural growth from state gas tax receipts)."[11]

- Texas currently ranks third out of the 50 states in the amount of highway user fees diverted to non-transportation purposes.[12]

- Texas currently ranks 48 out of the 50 states in the amount of highway spending per capita.[13]

- SJR 16, the legislation creating The Texas Mobility Fund, was passed by the 77th Texas Legislature with only three negative votes.

- Proposition 15, the Constitutional Amendment creating The Texas Mobility Fund, was approved by 67.69 percent of Texas voters.

Recommendation:

1A: Fund The Texas Mobility Fund (TMF) in order to provide the Texas

[10] John. W. Johnson, Commissioner, Texas Transportation Commission, testimony presented to the Committee on April 12, 2002.

[11] James Bass, Director, Finance Division, TxDOT, testimony presented to the Committee on October 29, 2001.

[12] Federal Highway Administration.

[13] Ibid.

Department of Transportation and the State of Texas with a supplemental transportation funding option. It is the intent of the Senate State Affairs Committee that TMF bond revenues be used first to help relieve the Unified Transportation Plan's backlog.

Findings - Levels of Service:

- With finite revenues available, and with public opinion strongly suggesting that the public is losing confidence in the state's ability to keep up with traffic and congestion growth and to mitigate traffic fatalities and accidents, the Texas Transportation Commission should adopt defined levels of service in order to provide for a coherent transportation vision that is measurable to the public.

- Such levels of service shall not be meant only to measure urban congestion, but to also include outputs such as system preservation, project delivery time, improved safety, reliable and improved mobility, and increased economic vitality.

- Once established, defined levels of service can be employed to measure the needs of the state's transportation system and can serve as a yardstick by which the public can measure the state's transportation efforts.

Recommendation:

1B: TxDOT and the Texas Transportation Commission should adopt "levels of service" in order to provide for a coherent transportation vision that is measurable to the public. Transportation Commissioner Johnson's "Texas Transportation Partnerships" report serves as a valuable starting point including the following potential levels of service:

- Reliable mobility: enhance urban mobility and work to ensure that congestion is less than peer U.S. cities;
- Improved mobility/safety: reduce fatality rate by x per year;

- Preservation: ensure that 90 percent of roads and 80 percent of bridges will be in good or better condition within x years;
- Project delivery: should improve from concept to concrete by 10 years, within x years; and
- Economic vitality: attract and retain business through the construction and maintenance of transportation infrastructure.

Findings - Aviation:

- Cities, counties and the state are lacking the necessary matching funds to obtain federal funds for airport improvements and routine maintenance.

- According to TxDOT, state funding for general aviation and reliever airports falls short by $55 million per year in meeting capital improvement needs.[14]

Recommendation:

1C: Contingent upon available revenue, the state should attempt to increase its funding for general aviation airport development.

Findings - Rail:

- In order to raise public awareness for rail service in Texas and to better coordinate a comprehensive and cohesive rail planning function across the state, the creation of a "rail division" of TxDOT may be warranted.

- "TxDOT is heavily involved in various aspects of passenger and freight rail transportation in Texas and how they interact with other modes. However, there is no clear authority for meaningful planning or appropriation to carry

[14] Dave S. Fulton, Director, Aviation Division, TxDOT, testimony presented to the Committee on, June 20, 2002.

out significant programming."[15]

- With the limited funding available to TxDOT, the Committee believes that the creation of a rail division at this point in time would not serve the public's best interest. The Committee recommends that this issue be reviewed again next biennium.

- In southern California, a public-private partnership recently completed "The Alameda Corridor," one of the largest public infrastructure projects in the United States which consolidates four port access rail lines into a single, 20 mile cargo expressway linking the ports to the transcontinental rail yards east of downtown Los Angeles.[16]

- The Alameda Corridor Transportation Authority brought together the public and private sectors in a unique funding partnership that reflects wide support for the $2.4 billion project. Funding sources include:
  - $1.165 billion in revenue bond proceeds;
  - $400 million loan from the U.S. Department of Transportation;
  - $394 million from the ports;
  - $347 million administered by the Los Angeles County Metropolitan Transportation Authority; and
  - $154 million in other state and federal sources and interest income.[17]

Recommendation:

1D: TxDOT, in conjunction with the Texas Transportation Institute at Texas A&M, should study the viability of an "Alameda-type Corridor" for increased freight rail service from ports (inland border and sea) to market places and/or intermodal hubs; the study should be submitted to the Texas

[15] Ibid.

[16] *"The Alameda Corridor - A Project of National Significance."* Alameda Corridor Transportation Authority, available at www.acta.org.

[17] Ibid.

Legislature and other state policy makers.

Please send appendix VI for a letter from Senator Shapleigh regarding the Alameda Corridor.

Findings and Recommendations
Senate State Affairs - Interim Charge #2

Findings:

- The next Congress of the United States is expected to re-authorize the Transportation Equity Act of the 21st Century (TEA-21), the federal transportation funding authorization act.

- The American Road and Transportation Builder Association has called for a minimum federal investment of $50 billion per year to maintain current conditions of our highways and bridges.

- The American Road and Transportation Builder Association has called for a minimum federal investment of $65 billion per year to improve the national highway system.

- TEA-21 authorized a program known as Revenue Aligned Budget Authority (RABA) which allowed for an increase to authorized federal funding of 11percent in Fiscal Year 2001 and is expected to cause an increase of 16 percent in Fiscal Year 2002.

- TEA-21 provided the states with a guaranteed rate of return of 90.5 cents per dollar submitted by the states to the Federal Highway Trust Fund. However, this rate of return only involves formula funding; Texas still only receive 52 cents per dollar in discretionary appropriations.

- TEA-21's current standard of equity (90.5%) should be applied to all funds, including formula and discretionary projects. Texas' share of contributions to the Highway Trust Fund in the past couple of years has been about 8.3 percent. If the 90.5 percent standard is applied, Texas should receive 7.5

percent of all federal transportation dollars.

- It is vital to all Texans and all who use the Texas highway system for the 78th Texas Legislature to present a united front when Congress re-authorizes TEA-21.[18]

Recommendation:

2: The Senate State Affairs Committee recommends that a resolution, signed by the entire 78th Texas Legislature, be sent to all of Texas' Congressional delegates as well as to all Congressional committees involved in the next transportation authorization act, containing the following provisions in an effort to increase and protect Texas' share of federal transportation dollars:

- **Balances in the Highway Trust Fund should be used to make up any funding shortfall.**
- **Highway Trust Fund dollars should be increased by returning the fund interest on trust fund balances that TEA-21 directed to General Revenue.**
- **Eliminate evasion of federal motor fuel taxes by increasing and more accurately collecting federal taxes on motor fuels.**
- **Leverage federal dollars for transportation capital projects through tax-exempt financing and new financing mechanisms such as the State Infrastructure Bank.**
- **Index the federal motor fuels tax to the Consumer Price Index.**
- **Increase the standard of equity from 90.5 cents per dollar submitted to 95 cents per dollar in order to lessen the burden on 'donor states' (those states that deposit more revenue to the federal highway trust than they receive from the federal highway trust).**

[18] Michael Behrens, P.E., Executive Director, and David Soileau, Manager, Federal Legislative Affairs, TxDOT, testimony presented to the Committee October 29, 2001.

Findings and Recommendations
Senate State Affairs - Interim Charge #3

Findings - Commercial Vehicles Generally:

- Overweight truck loads accelerate damage to roadways, causing premature failure of the roadways. Premature failure means that the pavement has to be shut down for repair, rehabilitation or reconstruction sooner than anticipated.[19]

- Premature failure increases construction and maintenance costs and impacts the traveling public due to construction delays.[20]

- It has been found that as truck weights increase, damage to roadways also increases, but not in a linear relationship. As loads increase, the damage caused increases exponentially.[21] For example, increasing a truck axle-load from 18,000 pounds to 36,000 pounds produces 16 times the amount of damage to a roadway.

Recommendation:

3A: The Legislature should consider raising fines for overweight vehicles and other safety violations in order to lessen the potential for commercial trucks to be operated in a manner and at weights that negatively affect our state and county roadways and bridges.

[19] Michael Behrens, P.E., Executive Director, TxDOT, testimony presented to the Committee on January 29, 2002.

[20] Ibid.

[21] Michael Behrens, P.E., Executive Director, TxDOT, testimony presented to the Committee on January 29, 2002.

Findings - Dedicated "No-Truck Lane:"

- The 75th Legislature passed legislation allowing for a 'no-truck lane' program. It works as follows:
  - Municipalities are authorized to restrict through traffic to two designated lanes[22] of a highway in the municipality. The highway on which the restriction is placed must:
    - be in the designed state highway system,
    - be a controlled access facility, and
    - have a minimum of three travel lanes.
  - The restriction can only be in effect during peak traffic hours of a workday.[23]
  - Trucks must be able to use any lane to pass another vehicle or to enter or exit the highway.
  - TxDOT must approve the restrictions and is responsible for signage.

Houston Pilot Program

- TTI states a pilot program conducted for 36 weeks beginning on September 25, 2002, on a portion of Houston's Interstate 10 (I-10) was a success.
  - 852 citations for violating the lane restriction were issued through May 2001.
  - TTI cites high profile enforcement as a necessary component of the program.
  - Crash records indicate a decline from 7.5 crashes per week to 2.9 crashes per week, a reduction of 68 percent.

[22] The Attorney General has ruled that the statute as drafted requires that a municipal ordinance restrict trucks to two lanes, not two or more. Op. Tex. Att'y Gen. No. JC-0551 (September 4, 2002).

[23] TTI's evaluation states there is a desire already to expand the law to a 24-hour restriction.

- There was little change in the proportion of crashes involving trucks. The percentage hovered around 22-23 percent for time periods during the project and before the project.

- The lane restriction produced no appreciable impact (positive or negative) upon travel times and freeway speeds.

Recommendations:

3B: TxDOT and cities across the state should actively explore the potential for designated no-truck lanes as is currently being employed in Houston.

3C: The Legislature should consider legislation expanding truck lane restrictions to allow for 24-hour restrictions.

Findings - Texas-Mexico Border Inspection Stations:

- As part of the North American Free Trade Agreement (NAFTA), commercial trucks from Mexico were to begin travel throughout the United States beginning in January 2000.

- "Because of concerns about the safety of these vehicles, the United States has limited Mexican truck operations to commercial zones near the border."[24]

- In February 2001, a NAFTA arbitrations panel ruled that the United States' refusal to process applications by Mexican trucking companies to provide cross-border services beyond the commercial zones violated its NAFTA obligations. The panel noted, however that the United States could require

[24] "*North American Free Trade Agreement: Coordinated Operational Plan Needed to Ensure Mexican Trucks' Compliance With U.S. Standards*." United States General Accounting Office, Report to Congressional Requesters, December, 2001.

Mexican motor carriers to meet U.S. safety requirements.[25]

- In February, 2001, the Bush Administration announced that it would give Mexican trucks access to all U.S. highways by January 2002.[26]

- In December, 2001, the United States Congress provided increased funding for safety activities related to Mexican motor carriers and set forth the following series of requirements that the U.S. Department of Transportation (USDOT) (in conjunction with TxDOT and the Texas Department of Public Safety) must meet before Mexican trucks can travel beyond the commercial zones:

    - Federal inspectors must audit Mexican motor carriers who wish to operate in the U.S.; the Federal Motor Carrier Safety Administration must hire and train these inspectors. Once a carrier is audited they will receive a temporary permit to at least cross the border.

    - The four Southern border states, with federal money, must equip weigh-in-motion (WIM) scales at five of the top 10 busiest crossings before the border is open; and must equip WIM at the remaining five busiest crossings within one year of enactment (scheduled for December 2002).
        - Texas is home to seven of the 10 busiest border crossings (in order of traffic):
          World Trade Bridge in Laredo;
          Pharr-Reynosa in Pharr;
          Bridge of the Americas in El Paso;
          Ysleta-Zaragosa in El Paso;
          Columbia in Laredo;
          Veterans/Los Tomates in Brownsville; and
          Camino Real in Eagle Pass.

[25] Ibid.

[26] Ibid. However, as of the printing date of this report, Mexican trucks were still not permitted to travel beyond the 'border commercial zone," awaiting the establishment of inspection facilities.

- The four Southern border states, with federal money, must equip all remaining commercial crossing with portable scales before the border can open.

- Once the border is open, no Mexican truck can enter the U.S. unless an inspector, at a facility with adequate space, is on duty.

- Once Mexican trucks have received the appropriate annual permit and have passed an inspection they will receive a Commercial Vehicle Safety Alliance decal which will permit them to travel beyond the current 21-mile commercial zone.[27]

- TxDOT, in coordination with the Texas Department of Public Safety and the USDOT, is currently establishing temporary inspection stations at the seven busiest crossings in Texas and is expected to acquire and build permanent inspection stations in the future.

- The Center for Transportation Research at the University of Texas and the Texas Transportation Institute at Texas A&M University were charged with developing a 'model border inspection facility."[28]

  - By combining the use of International Trade Data Systems (ITDS), a consolidated electronic database currently in development by the U.S. Department of the Treasury, and Intelligent Transportation Systems, which transmits data between trucks and border inspection facilities, the prototype provides an expedited border crossing process that will facilitate trade while permitting federal and state agencies to maintain their vehicle inspection responsibilities while enhancing security through improved automation and screening.

- All commercial trucks regardless of origin should be held to CVSA safety

[27] H.R. 2299 - The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002.

[28] Section 201.613, Transportation Code, as created by Senate Bill 913, 76th Regular Session.

standards and should be subject to inspections.

Recommendations:

3D: The Senate State Affairs Committee recommends that the 78th Legislature direct the Texas Department of Transportation and the Texas Department of Public Safety to implement the border inspection facility prototype developed by the Center for Transportation Research at the University of Texas at Austin and the Texas Transportation Institute at Texas A&M University.

- **After working with local border communities to establish the final location of permanent inspection stations, and pursuant to federal requirements, this prototype should be employed at Texas' seven busiest border crossings.**

- **Intelligent Transportation Systems (ITS) should be employed by DPS, including the ability for preclearance screenings to be performed away from the inspection station where congestion 'bottlenecks."**

- **Permanent inspection stations should be linked with their federal counterparts in order to better track vehicle safety compliance and to identify "good operators" for preclearance.**

3E: As was recommended by the Governor's Task Force on Homeland Security in its January 2002 report to the Governor, the Senate State Affairs Committee recommends that the State of Texas develop a "master plan" detailing, port by port, the infrastructure needs along the Texas-Mexico border, including number of lanes, scanners, FTEs, etc. It is recommended that the Governor, in conjunction with the other Mexico-border state Governors, lead the charge as is being done on the northern border by the Governors of Michigan and New York.

3F: TxDOT and the Texas Department of Public Safety (DPS) need to attempt to develop a Memorandum of Understanding with the Commissioner of the U.S. Customs Service to guarantee that all ports of entry are being operated uniformly regarding their coordination with state entities.

3G: The Legislature should consider legislation (currently authorized in California) allowing peace officers (DPS) to stop unauthorized Mexican vehicles from leaving the commercial zone.

Findings and Recommendations
Senate State Affairs - Interim Charge #4

Findings - Access Management:

- The Texas Transportation Commission is attempting to create a 'one-size fits all' policy for access management across the state.

- Many local communities have had rules governing curb-cuts and access issues for many years and have always worked with TxDOT and the Commission to maintain safety while maintaining local control.

Recommendation:

4: Recommendation for legislation: Local access management policies should prevail over any statewide policies. Local control should be maintained.

State Transportation Funding

At the core of all state government programs lies the funding mechanisms the state employs to support the programs. The mechanisms chosen affect the nature of the programs as well as their longevity. The transportation market is unique among most of the economic markets in which the government acts. Governments are the sole purchasers[29] of infrastructure construction.[30] As a consequence, the government's funding streams directly impact the service providers' market scheme since the government funding streams solely determine the amount of labor and construction providers the market is able to support.

The funding streams for Texas transportation infrastructure come from two sources: federal and state funding. Each funding source is subject to the vagaries of the respective governmental decision-making bodies - the U.S. Congress and the Texas Legislature. Texas though has a somewhat unique funding mechanism for its transportation infrastructure. In 1946, the Texas Legislature removed some of the political nature regarding infrastructure funding by establishing a constitutionally dedicated highway fund (The State Highway Fund - Fund 006).[31]

Highway Fund (Fund 006) Revenues

The highway fund is composed of "... all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways ... provided, however, that one-fourth (1/4) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retrained by each County and the percentage allowed to be retained by each County under the laws in effect on

[29] Occasionally other actors seek construction services for the building of infrastructure, but their impact remains marginal.

[30] "Highway building is the only industry in Texas that is 100 per cent dependent on government money." Smith, Griffen. "The Highway Establishment and How It Grew. And Grew and Grew." Texas Monthly April 1974.

[31] Section 7-a, Article VIII, Texas Constitution.

January 1, 1945."[32] The fund also incorporates "[a]ll revenues received from the federal government as reimbursement for state expenditures of funds that are themselves dedicated....."[33]

Summary Composition of Fund 006 Revenue Streams

- Distribution of Total State Highway Fund Receipts, Fiscal Year Ended August 31, 2001:
    - Total Receipts: $4.940 billion:
        - 41% from Motor Fuel Tax = 1,556.1 million;
        - 37 % from Federal Reimbursements (FHWA, FAA, FEMA, DOTS, NHTSA) = $1,805.6 million;
        - 15 % from Vehicle Registrations = $752 million;
        - 3 % from Sales Tax on Lubricants, Title Fees, Interest, Other = $162.4 million; and
        - 4 % from Other Reimbursements = $197.7 million.[34]

Fund 006 Revenue Restrictions

The Texas Constitution dedicates the highway fund to be used only for "acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the legislature

[32] Section 7-a, Article VIII, Texas Constitution.

[33] Ibid.

[34] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on April 12, 2002.

pertaining to the supervision of traffic and safety on such roads...."[35]

A state statutory codification of the Good Roads Amendment requires that revenue deposited in the state highway fund be used only:

- to improve the state highway system;
- to mitigate adverse environmental effects that result directly from construction or maintenance of a state highway by the department; or
- by the Department of Public Safety to police the state highway system and to administer state laws relating to traffic and safety on public roads.[36]

TxDOT is funded primarily from revenues appropriated by the legislature from the state highway fund (Fund 006).

Fund 006 Appropriations/Expenditures

Department of Transportation: funding is provided for building and maintaining the state transportation system.

Department of Public Safety: funding is provided for policing the highways and supporting highway troopers and support staff.

> DPS also receives highway funds for certain departmental strategies that are marginally or completely unrelated to transportation, such as Capitol security. The state highway fund pays 98 percent of DPS's annual appropriation, however only 73 percent of DPS duties relate to the state highway system.[37]

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[35] Section 7-a, Article VIII, Texas Constitution.

[36] Section 222.001, Transportation Code.

[37] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on April 12, 2002.

In addition, several programs are funded by the state highway fund and assigned to DPS to administer, yet the revenue generated by those programs is deposited in the state's general revenue fund. Such programs include:

- motor vehicle inspection fees, which generate approximately $67 million dollars per year;

- driver license issuance fees, which generate approximately $122 million dollars per year; and

- driver record information fees, which generate approximately $49 million dollars per year.[38]

Depositing these revenues to the state highway fund would increase the available transportation funding by over $238 million dollars per year.[39]

Office of the Attorney General: funding provides legal services on behalf of the Department of Transportation and the Department of Public Safety for right-of-way acquisition proceedings and lawsuits.

Employee Benefits: funding is provided for insurance, retirement, social security, and benefit replacement pay costs for employees and retirees from the Department of Transportation, the Department of Public Safety, and the Office of the Attorney General.

Public Integrity Unit: funding is provided to the Travis County District Attorney's office to investigate and prosecute motor fuels tax fraud.

Total Expenditures from Fund 006

[38] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on April 12, 2002.

[39] Ibid.

- Distribution of Total TxDOT Disbursements, Fiscal Year Ended August 31, 2001:
    - Total Disbursements: $5.131 billion:
        - 62 % for Highway Design, Research, Right-of-Way, Construction = $3,196.4 million;
        - 20 % for Highway Maintenance = $1,037.3 million;
        - 11 % Administration & Support, Traffic Safety, Aviation, Vehicle Registration, Public Transportation, State Infrastructure Bank Loans, Other = $540.8 million; and
        - 7 % Department of Public Safety = $356.8 million.[40]

While the legislature maintains some influence on the money deposited to the highway fund,[41] the money can not be diverted to non-highway related functions.[42] The legislature may refuse to fund TxDOT, but the money remains in the fund.[43] Due to the constitutional restrictions, the legislature must be very wary about authorizing the use of highway funds for activities only marginally related to the constitutional dedication.

State Motor Fuels Tax

TxDOT revenues are generated through taxes assessed on the sale of motor fuels including gasoline, diesel fuel, and liquified gas. The diesel fuel and gasoline tax

[40] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on April 12, 2002.

[41] Section 7-a, Article VIII, Texas Constitution reads, "Subject to legislative appropriation, allocation and direction...."

[42] Section 7-a, Article VIII, Texas Constitution reads, "...all taxes ... shall be used for the sole purpose of acquiring right-of-way, constructing, maintaining, and policing such public roads...."

[43] Smith, Griffen. "The Highway Establishment and How It Grew. And Grew and Grew." Texas Monthly April 1974.

rate is 20 cents per gallon, while the liquified gas tax rate is 15 cents per gallon.

- Distribution of Texas Motor Fuel Taxes, Fiscal Year Ended August 31, 2002:
    - Gross Tax Collected by the State Comptroller: $2.786 billion;
        - 73 % to State Highway Fund = $2,021.8 million;
        - 24 % to Public Schools = $676.4 million;
        - 3 % Refunds, Collection Expenses and Other = $87.8 million.[44]

[44] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on April 12, 2002.

Point of collection of the state motor fuels tax.
-From the Senate State Affairs Committee Report to the 77th Texas Legislature

Collection of the motor fuels tax has been the subject of vigorous debate the past few years and revolves around where in the distribution chain of motor fuels the government should collect the tax. Motor fuels start out as crude oil and are piped into the refineries. The fuel is then refined and agents are added. The refined fuel is then stored in mega-facilities owned by large oil companies. These are known as the terminal and serve as the site where fueling trucks are filled for delivery. The federal government collects taxes at this point, or 'at the rack.' Clear electronic records are kept at this point and the tax collecting agency deals with a relatively small number of companies. Taxes could also be collected at this point from the supplier (the owner of the truck being filled at the terminal), or at the 'point of first sale.' The electronic records are still very good at this point and the collection agency still deals with a relatively small number of companies. The current system that Texas operates under is the 'point of first use,' in other words, taxes are collected when the fuel is delivered to gas stations. Texas currently pays the motor fuels tax payer to comply with the tax collection. Collection of taxes at this point involves a large number of entities and backtracking paper work to the terminal.
Theft of motor fuel tax through a variety of fraudulent means has been thoroughly documented as a major loss of tax revenues at both the federal and state levels. Enforcement and prevention are two fundamental strategies to counter motor fuels tax fraud. Texas is generally recognized by tax administrators as having the best fuel tax field investigation and prosecution among all the states. The 76th Legislature enacted legislation that tightened the reporting provisions, improved fuel tracking, and increased penalties regarding motor fuel tax collection. The legislature did not change the point of collection. **While improved enforcement is expected to yield additional dollars in motor fuel tax revenues, TxDOT estimates that an additional $50-75 million could be obtained by changing the point of collection.**

Motor Vehicle Registration Fees

Motor vehicle registration fees are collected annually for the registration of motor vehicles, trailers, and semi-trailers.

- Distribution of Texas Motor Vehicle Registration Fees, Fiscal Year Ended Aug. 31, 2001:

- Gross Collections: $1.164 billion;
    - 65 % to State Highway Fund = $752 million; and
    - 35 % to counties = $412.4 million.[45]

"Registration Fee Switch"

Prior to 1992, counties submitted 95 percent of vehicle sales taxes collected in the previous year to the general revenue fund and retained the remaining five percent for their own transportation construction projects. Since 1992, counties have instead submitted 100 percent of their vehicle sales taxes collected to general revenue and retained an amount equal to five percent of those taxes from motor vehicle registration fees collected. Motor vehicle registration fees are deposited in the state highway fund. The amount of fees deposited in the state highway fund is now diminished due to the change in law. The amount of vehicle registration fees has increased from $53 million in 1992 to just over $100 million in 1999. A switch back to the method used prior to 1992 would increase the available funding for transportation projects by over $133 million each year.[46]

Other Fund 006 State Revenue Sources:
Several other sources supply the highway fund with revenue. Revenue is collected from sales taxes assessed on the sale, storage, or use of lubricating and motor oils for motor vehicles.[47] Other revenue sources include vehicle certificate fees, special vehicle registration fees, commercial transportation fees, the sale of publications, and fines levied from turnpike policing.

Public Support for Increased Transportation Funding

[45] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee, April 12, 2002.

[46] Ibid.

[47] Section 7-a, Article VIII, Texas Constitution.

In November, 2001, the citizens of Texas were presented with two constitutional amendments which would authorize bonding for road and transportation projects.

Amendment No. 2 (S.J.R. No. 37)

The constitutional amendment added Section 49-l to Article III of the Texas Constitution and permits the Legislature to authorize the Governor to authorize the Texas Public Finance Authority to issue state general obligation bonds or notes in an amount not to exceed $175 million to provide financial assistance to counties for projects to provide access roads to connect border colonias with public roads. The amendment authorized the bond proceeds to be used for the road projects, for acquiring materials to maintain the roads, for related projects such as road drainage projects, for costs of administering the projects, and for payments under a related credit agreement.[48]

The amendment passed by a margin of 61.28 percent to 38.63 percent.[49] More telling is the fact that this amendment created bonds for a specific region of the state, yet was approved by 120 of Texas' 154 counties; excluding those border counties (directly located on the Texas-Mexico border) which were directly affected, the amendment was approved by 105 of 139 non-border counties.

Amendment No. 15 (S.J.R. No. 16)

The constitutional amendment created the Texas Mobility Fund as a separate fund in the state treasury. Money in the fund may be used to finance the construction, reconstruction, acquisition, and expansion of state highways, including costs of design and right-of-way acquisition. Money in the fund may also be used for state participation in constructing and providing publicly owned toll roads. The legislature may dedicate a source or amount of state revenue to the fund, other than motor vehicle registration fees, taxes on motor fuels and lubricants, and other money otherwise dedicated by the constitution.

The amendment authorizes the Texas Transportation Commission to issue and sell

[48] "Analyses of Proposed Constitutional Amendments, Nov. 6, 2001, Election." Texas Legislative Council web site: http://www.tlc.state.tx.us.

[49] Texas Secretary of State web site: http://www.sos.state.tx.us.

bonds and to pledge the money in the Texas Mobility Fund to the payment of the bonds. The proceeds of sale of the bonds must be deposited in the fund and may be used for costs related to issuance and administration of the bonds, in addition to the purposes authorized for other money in the fund. The legislature may not change a dedication of revenue to the fund unless the legislature dedicates to the fund another source or amount of revenue of equal or greater value and the commission exercises this authority to guarantee the bonds.

The amendment also allows the Texas Department of Transportation to spend, grant, or loan state money for the acquisition, construction, maintenance, or operation of turnpikes, toll roads, and toll bridges and removes a requirement that money from the state highway fund used for the costs of these facilities be repaid to the state highway fund.[50]

Voters passed the amendment 67.69 percent to 32.31percent.[51]

The Texas Mobility Fund

In addition to the support provided by Texas voters, the following analysis from *The Impact of the Proposed Texas Mobility Fund on Business Activity - A Comprehensive Assessment*, prepared by The Perryman Group, establishes the positive economic impact that can be realized by funding the Texas Mobility Fund:

- Over the past 20 years, improvements to transportation infrastructure account for 5.6 percent of the state's total output growth - a contribution of $61.7 billion in total spending and $28.9 billion (constant 2001 US$) in gross state product.

- Texas can only build about 36percent of needed highways; the consequences include overcrowded urban regions, poorly accessed rural

[50] "Analyses of Proposed Constitutional Amendments, Nov. 6, 2001, Election." Texas Legislative Council Web site: http://www.tlc.state.tx.us.

[51] Texas Secretary of State Web site: http://www.sos.state.tx.us.

areas, and constraints on both quality-of-life and economic development potential.

New Revenue Sources

- To illustrate debt issuance supported by a new revenue source, The Perryman Group analyzed a scenario of $100 million in added annual funding. This sum will support about $1 billion in road construction; over the three-year project period, the aggregate benefits to the Texas economy include:
    - $3.761 billion in Total Expenditures;
    - $1.795 billion in Gross State Product;
    - $1.183 billion in Personal Income; and
    - $31,232 Person-Years of Employment.

- After completing the construction, the aggregate benefits (direct, indirect, and induced) in a typical year are estimated to be:
    - $478.9 million in Total Expenditures;
    - $246 million in Gross State Product;
    - $149.7 million in Personal Income; and
    - 4,988 Personal Jobs.

- To assess the overall net benefits of this scenario, a 20-year time horizon is employed. Over this time span, aggregate direct, indirect, and induced economic benefits (expenditures) are estimated at $9.596 billion on a net present value (discounted) basis. Total costs, including all foregone spending and governmental activity, are found to be $3.349 billion. Thus, net benefits are $6.147 billion, and the benefit cost ratio is 2.78. Relative to "hard" costs (debt service and retirement only), the ratio is 7.80. Clearly, a meaningful commitment of new resources results in notable economic stimulus to Texas.

- Reliable and efficient networks of transportation across Texas are not a matter of luxury; rather, they are essential to sustain the state's economic vitality. The findings from this analysis are unambiguous: even under conservative assumptions, the benefits of new infrastructure investments

exceed the costs many times over. Furthermore, the gains give Texas a relative advantage in the race to garner new business locations with valuable job creation.

- Given the rapid growth and increasing complexity of the Texas economy, it is readily apparent that an accelerated road building initiative is vital to overall economic prosperity. The enhanced efficiency will promote rural areas, urban centers, the Texas-Mexico border regions, and every other geographic segment of the state.[52]

Finding: Transportation fees subsidize other programs

Unlike healthcare, education, public safety and other state priorities, the State of Texas has adequate transportation funds – fees derived directly from transportation service users. So, what is the problem? The problem lies in the fact that a significant portion of our transportation user fees are used to subsidize non-transportation programs or to supplement general revenue. These fees are diverted while our transportation system falls further and further behind due to a lack of adequate funding. User fees are one of the least intrusive forms of taxation, as they are paid directly by the users of a government program or service and reinvested in the enhancement of the system from which they were derived.

In the last 10 years, Texas' guaranteed protections of highway user fees have been manipulated to such a degree that we now find ourselves falling further and further behind in needed highway and general transportation funding. This trend is extremely alarming when one considers that demand for transportation services is increasing while available funding is decreasing proportionately. Today, the State of Texas ranks 48th in the nation in per capita transportation spending and third in the amount of transportation user fees diverted to non-transportation purposes.

Texas Compared To Other States

[52] *The Impact of the Proposed Texas Mobility Fund on Business Activity - A Comprehensive Assessment*, prepared by The Perryman Group, October 2001. The full report may be found at www.perrymangroup.com.

In response to a request from the Senate State Affairs Committee, the Legislative Budget Board (LBB) recently compared the amount of Ahighway user fees@ appropriated for transportation purposes for the states of Texas, California, Florida, Ohio, New York, and Pennsylvania, as these states are most closely aligned in geographic and population size. The LBB used the Federal Highway Administration=s definition of "highway user fees," which include motor vehicle fuel taxes and motor vehicle/motor carrier revenues. The latter component of these user fees includes vehicle registrations, driver=s licenses, certificates of title, fines and penalties, and service charges. This category also includes levies paid by commercial motor carriers, such as gross receipts taxes, mileage and ton-mile taxes, special license and permits, and miscellaneous receipts.

As the following table shows, Texas falls far short of state and national averages.

Comparison of Percentages of Highway User Fees Allocated to Transportation[53]

State	St. Hwy. User Revenue Spent on Road Transportation	St. Fuel Tax Revenue Spent on Road Transportation	State Motor Vehicle/Motor Carrier Revenue Spent on Road Transportation
Delaware	100.0%	100.0%	100.0%
Arkansas	99.2%	99.0%	99.9%
North Dakota	98.8%	98.6%	99.2%
Iowa	97.8%	99.8%	95.8%
Michigan	97.2%	99.9%	93.8%
Mississippi	96.8%	97.4%	95.4%
Colorado	96.5%	99.6%	91.4%
Pennsylvania	**96.4%**	**99.2%**	**90.8%**
Minnesota	95.6%	99.4%	92.3%

[53] Federal Highway Administration - all figures based on Federal Fiscal Year 2001.

Utah	95.5%	99.1%	82.0%
Idaho	95.5%	97.6%	92.1%
Massachusetts	95.0%	99.8%	84.9%
West Virginia	94.6%	99.2%	89.3%
Louisiana	94.0%	99.9%	68.7%
Illinois	93.9%	97.4%	90.1%
Kentucky	93.5%	90.7%	95.5%
Tennessee	93.3%	93.2%	94.0%
Missouri	92.9%	97.2%	82.2%
New Jersey	92.3%	99.0%	86.8%
Ohio	**92.2%**	**95.3%**	**85.2%**
North Carolina	92.1%	95.8%	79.3%
Kansas	92.0%	98.8%	76.9%
Dist. of Col.	92.0%	100.0%	88.0%
Maine	91.8%	99.6%	74.8%
Arizona	91.8%	99.5%	75.6%
Montana	91.7%	99.2%	66.5%
New York	**91.4%**	**98.7%**	**77.3%**
Wisconsin	90.9%	96.4%	80.4%
Georgia	90.7%	98.8%	79.6%
Indiana	90.5%	99.2%	69.8%
Virginia	90.0%	98.5%	82.6%
Connecticut	89.6%	94.8%	79.8%
New Mexico	89.5%	89.1%	89.9%
Wyoming	88.8%	94.6%	78.1%
Alabama	88.5%	93.3%	74.0%
Nebraska	87.1%	92.0%	71.3%
Washington	85.8%	97.7%	73.8%
South Dakota	85.7%	97.9%	62.4%

Oregon	85.0%	96.8%	72.2%
Alaska	84.4%	99.0%	72.1%
South Carolina	82.4%	82.8%	80.8%
Florida	**81.8%**	**89.2%**	**70.0%**
Nevada	79.8%	93.7%	50.9%
Maryland	77.7%	97.0%	61.7%
New Hampshire	76.3%	81.9%	68.5%
Vermont	75.8%	80.4%	72.3%
Hawaii	73.7%	87.2%	64.0%
Oklahoma	71.9%	86.8%	59.8%
California	**60.2%**	**99.2%**	**35.1%**
Rhode Island	57.4%	56.8%	58.7%
Texas	**52.1%**	**77.1%**	**32.2%**
Total	**81.8%**	**94.6%**	**65.4%**

Appropriating revenues generated from driver license issuance and driver records requests to the State=s General Revenue Fund is inappropriate. The primary purpose of driver license issuance is to provide Texans access to the public road system. This is the nexus that allows the program to be funded with highway user fees. The same rationale applies to driver records. Driver=s license issuance and driver records programs require more than $62 million per year to administer, with approximately 95 percent coming from constitutionally dedicated highway funds. In turn, they generate $171 million in revenue deposited to the state=s general fund with not so much as a reimbursement of the constitutionally dedicated highway funds used to operate the programs!

Past efforts to safeguard

In the past, efforts have been made to safeguard transportation user fees. In 1998, in an attempt to devote transportation fees to transportation services, the U.S. Congress created budgetary Afirewalls,@ or protections in the Budget Enforcement Act for the soon-to-expire federal transportation financing legislation, the Transportation Equity Act for the 21st Century (TEA-21). Similarly, our

predecessors in the Texas Legislature attempted the same transportation funding protection in 1946 by adopting Section 7-a, Article 8, of the Texas Constitution. This provision requires that 75 percent of motor fuel taxes and 100 percent of vehicle registration fees Abe used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads. . .@[54] This Constitutional provision clearly dedicates transportation user fees for the purposes of creating, expanding, and maintaining our highways by the State Highway Department or modern-day Texas Department of Transportation, and for policing our highways by the Department of Public Safety.

As if this now well-established state system of subsidizing general revenue programs with transportation user fees were not enough, Texas= greater than 20 percent population growth in the 1990s far outpaced the national average of 13 percent. Texas continues to lose 11 to 13 cents of each dollar sent to the federal government from transportation fees and taxes. Since the inception of NAFTA, Texas= international ports of entry have had to bear the burden for 68 percent of the truck crossings from Mexico into the U.S., with Laredo accounting for 33 percent of the U.S. total. What's more, the federal government is discussing a $4.4 billion cut in federal highway aid to the states, which would create an estimated $600 million loss for Texas in fiscal year 2003 alone.

Additional Cutbacks Anticipated - FEDERAL *(see charge 2 detailing the reauthorization of TEA-21).*

Findings:

- TxDOT is only able to fund 33 percent of identified, "needed projects" out of its only revenue source, the State Highway Fund (Fund 006).[55]

[54] Section 7-a, Article VIII, Texas Constitution.

[55] John. W. Johnson, Commissioner, Texas Transportation Commission, testimony presented to the Committee on April 12, 2002.

- Inflation costs are higher than interest rates, (from 1995 through 1999 inflation increased the cost of construction by 5.7 percent per year); further, "inflation is eroding at those revenue increases (natural growth from state gas tax receipts)."[56]

- Texas currently ranks third out of the 50 states in the amount of highway user fees diverted to non-transportation purposes.[57]

- Texas currently ranks 48 out of the 50 states in the amount of highway spending per capita.[58]

- SJR 16, the legislation creating The Texas Mobility Fund, was passed by the 77th Texas Legislature with only three negative votes.

- Proposition 15, the Constitutional Amendment creating The Texas Mobility Fund, was approved by 67.69 percent of Texas voters.

Recommendation:

1A: Fund The Texas Mobility Fund (TMF) in order to provide the Texas Department of Transportation and the State of Texas with a supplemental transportation funding option. It is the intent of the Senate State Affairs Committee that TMF bond revenues be used first to help relieve the Unified Transportation Plan's backlog. Revenue options include:

- **Diverted Funds:** DPS Revenues (from Fund 006):
  - Driver License Issuance;
  - Driver Record Information; and
  - Vehicle Inspection Fees.

[56] James Bass, Director, Finance Division, TxDOT, testimony presented to the Committee on October 29, 2001.

[57] Federal Highway Administration.

[58] Ibid.

- **Highway user fees currently deposited to GR:**
  - Motor Vehicle Sales and Use Taxes;
  - Motor Vehicle Rental Taxes;
  - Motor Vehicle Certificates;
  - Personal License Plate Fees.

Congestion Management / Levels of Service

While the idea is still in the conceptional phase, the Senate State Affairs Committee believes that not only is there merit in establishing acceptable levels of service, there is also a compelling need to do so in order to measure the state's progress in advancing the transportation system's enhancements. Further, by establishing such levels of service, Texas state government can provide the citizens of this state with measurable and accountable goals and strategies.

There is some confusion regarding the concept: are acceptable levels of service performance measures as we use in the state budget, or more simply can they be considered a pledge or contract with the citizens? This committee believes that either usage may be employed if not both. This discussion should be furthered by the legislature, TxDOT and the public.

In its report to the 77th Texas Legislature, the State Affairs Committee recommended a task force be established to "review the (project) selection process by establishing acceptable minimum levels of transportation service and evaluating how well the commission's current selection process achieves those standards. The minimum levels of service should include such criteria as mobility, accessibility, safety, congestion mitigation, and air quality. "[59] In response to this recommendation, Texas Transportation Commissioner John W. Johnson established a Transportation Working Group (Working Group) made up of elected and appointed officials, business leaders and transportation professionals from across the state.

The findings and goals established by the Working Group serve as an excellent starting point in the discussion of acceptable levels of transportation service. The goals include:

- **Reliable Mobility -** Enhance Texas urban and metropolitan area mobility and ensure that congestion is less than in comparable peer U.S. cities.

[59] Senate Committee on State Affairs Report to the 77th Legislature. November 1, 2000.

- **Improved Safety** - Reduce the fatality rate on Texas roadways by five percent within ten years.

- **Responsible Systems Preservation** - Ensure that 90 percent of Texas' roads and 80 percent of bridges will be in good or better condition within 10 years.

- **Streamlined Project Delivery** - Improve project delivery from project conception to ribbon cutting, on average, by 15 percent within 5 years.

- **Economic Vitality** - Attract and retain businesses and industry with adequate transportation systems and services.[60]

When compared to the current performance measures employed in the state budget, the goals established by Commissioner Johnson's Working Group appear to serve as a much better measuring stick. For example, the current biennial budget establishes as a goal that TxDOT "provide the State of Texas with transportation services and systems that: work together, are safe, comfortable, durable and affordable; are environmentally sensitive; and support economic and social prosperity."[61] One measurable output to evaluate this goal includes "[n]umber of Construction Contracts Awarded . . ." This evaluation in no way allows state government, TxDOT, nor the driving public with any sense that the awarded construction contracts are worth while, assist in congestion mitigation, serve to clean the air, or make drivers safer.

TxDOT Executive Director, Michael Behrens, informed the Committee that the department uses levels of service, however only to measure speed, density and flow rates. He went on to state "[m]andating a level of service concept for the state highway system could be extremely costly. The majority of serious LOS issues occur in our major metropolitan areas. If TxDOT were mandated to design new facilities or bring existing facilities up to a minimum LOS, it is possible that a large amount of available and scarce transportation dollars would be directed to

[60] *Texas Transportation Partnerships . . . connecting you to the World.* A report to the Citizens of Texas, August 2001.

[61] General Appropriations Act: 2002-2003 Biennium.

metropolitan and large urban areas. Existing and planned rural projects could be delayed or canceled."[62]

Utilizing levels of service only to measure congestion and speed indicate that Director Behrens' statements regarding a negative impact to rural areas is correct. However, the Committee believes Commissioner Johnson's Working Group goals, such as increased safety, streamlined project delivery, system preservation and enhanced economic vitality, would prove beneficial to each region of the state, not just the highly urbanized areas.

Findings:

- With finite revenues available, and with public opinion strongly suggesting that the public is losing confidence in the state's ability to keep up with traffic and congestion growth or to mitigate traffic fatalities and accidents, the Texas Transportation Commission should adopt defined levels of service in order to provide for a coherent transportation vision that is measurable to the public.

- Such levels of service shall not be meant only to measure urban congestion, but to also include outputs such as system preservation, project delivery time, improved safety, reliable and improved mobility, and increased economic vitality.

- Once established, defined levels of service can be employed to measure the needs of the state's transportation system and can serve as a yardstick by which the public can measure the state's transportation efforts.

Recommendation:

1B: TxDOT and the Texas Transportation Commission should adopt "levels of service" in order to provide for a coherent transportation vision

[62] Michael Behrens, P.E., Executive Director, TxDOT, testimony presented to the Committee on April 12, 2002.

that is measurable to the public. Transportation Commissioner Johnson's "Texas Transportation Partnerships" report serves as a valuable starting point including the following potential levels of service:

- Reliable mobility: enhance urban mobility and work to ensure that congestion is less than peer U.S. cities;

- Improved mobility/safety: reduce fatality rate by x per year.

- Preservation: ensure that 90 percent of roads and 80 percent of bridges will be in good or better condition within x years;

- Project delivery: should improve from concept to concrete by 15 years, within x years;

- Economic vitality: attract and retain business through the construction and maintenance of transportation infrastructure.

Rural and Multimodal Transportation Planning

On June 20, 2002, the Committee held a public hearing in Austin to discuss the state's transportation planning efforts regarding rural infrastructure and multimodal efforts, specifically those related to rail and general aviation airports.

Rural Transportation:

The following was provided to the Committee by Transportation Commission Member Robert L. Nichols:

- State law requires that one of the three Texas Transportation Commission members must reside in a rural area.[63] (Commission Member Nichols serves in this capacity.)
- Approximately 35 percent of Texas' population and jobs are in "non-urban" areas.
- Approximately 98 percent of the land in Texas is "non-urban."
- Approximately 83 percent of all roads are rural.
- Texas has a total of 301,081miles of roads; approximately 26 percent are on the state system.
    - Of the total miles of "non-federal" roads (i.e. not Interstate highways or U.S. numbered highways):
        - 22 percent are State Highways;
        - 50 percent are county roads;
        - 27 percent are city streets; and
        - an additional 644 miles are off-system-non-county maintained roads and 146 miles are designated on the state-system, but are maintained locally.[64]

"**Rural transportation planning** is conducted through TxDOT districts (there are 25 districts across the state). The planning and programming system is decentralized for all projects except those on the National Highway System (NHS); these are prioritized statewide. The 25 district offices, along with rural counties and

[63] Section 201.051, Transportation Code.

[64] Senate State Affairs Hearing, Austin, Texas, June 20, 2002. Transcript provided by Texas Senate Staff Services DW:cn/240/SA062002.T3/073102 - Tape 3 pg. 1.

cities and transit providers, cover the full range of planning, including long-range planning, feasibility studies, TIP, and transit planning support. Preparing the 3-year (State Transportation Improvement Plan) STIP, the 10-year Unified Transportation Plan (UTP), and a 3-year financial plan are the basic processes in developing projects for the inter-modal transportation network in Texas."[65]

"**Rural transportation is funded** with federal, state and local funds. The district offices are responsible for balancing rural and metropolitan needs for the various categories of funding (see page ___ of this report for a brief discussion of TxDOT's funding categories). There is a state program for economically disadvantaged counties under which the state pays a portion of the required local match. The State Infrastructure Bank has funds available for those rural counties/cities that wish to apply."[66]

(See the next page for a brief discussion of the State Infrastructure Bank.)

[65] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee June 20, 2002.

[66] Ibid.

State Infrastructure Bank

-From the Senate State Affairs Committee Report to the 77th Texas Legislature

The NHS Designation Act of 1995 (NHS Act) authorized the U.S. Department of Transportation to establish the State Infrastructure Bank (SIB) pilot program and allowed the U.S. Secretary of Transportation to designate a maximum of 10 states as pilot projects for the State Infrastructure Bank program; Texas was designated as a pilot state. The NHS Act provides that each designated state may transfer up to 10 percent of certain federal dollars, match those dollars with state funds, and deposit them into a state infrastructure bank. The greatest benefit of the SIB program may well be the creation of a self-sustaining, growing, revolving loan fund.

A SIB is a state (or multi-state) revolving fund that can offer loans and non-grant forms of credit assistance to public and private sponsors of eligible surface transportation projects. The types of assistance which may be provided by SIBs include loans (which may be at or below market rates), guarantees, interest rate subsidies on other project debt, letters of credit, purchase and lease agreements and other forms of non-grant assistance. SIBs are intended to complement the traditional federal-aid highway and transit programs by supporting certain projects with revenue streams which can be financed in whole or in part with loans, or that can benefit from the provision of credit enhancement. As loans are repaid a SIB's initial capital is replenished and can be used to support a new cycle of projects.

In 1997, the 75th Legislature created the State Infrastructure Bank to be administered by the Texas Transportation Commission. In September 1997, the commission approved the administrative rules that govern the State Infrastructure Bank.

SIB loans are currently being requested by counties for various small projects, including off-system bridge projects, with a smaller required expenditure than might be necessary for projects typically funded with bond proceeds or other traditional statutory financing methods. The SIB may also be the only avenue for some counties to provide required cost participation.

The Transportation Equity Act of 1998 created a new SIB Pilot Program allowing the establishment of TEA-21 SIBs in four states, however, Texas was not included. Pre-existing SIBs continue to exist, but federal funds authorized for FY 1998 or later may not be used to capitalize them. The exclusion of Texas from the most recent SIB pilot program decreases the amount of money the state is authorized to deposit in the SIB, and therefore the availability of loans the commission can grant to disadvantaged counties.

Texas Trunk System

Created on November 29, 1990, The Texas Trunk System was established to provide a network of highways to facilitate travel within Texas (primarily in rural areas). Within the framework of this goal, the following objectives were formulated:

- Provide a rural four-lane divided or better highway network to improve mobility and safety;
- Connect major activity centers within Texas; and
- Provide access to major points of entry to Texas.

The system consists of approximately 10,500 miles of roadways, of which 5,100 miles need to be upgraded to four-lane divided highways. Beginning in Fiscal Year 1993, construction began on Trunk System projects and by the end of Fiscal Year 1997, 174 miles had been completed at a cost of $280,977,179. Since then, the Commission has doubled initial funding levels.

The Texas Trunk System is planned to be a four-lane divided rural highway system that provides direct access to every Texas city over 20,000 population as well as major ports, entry points into Mexico and adjacent states, recreational areas and military bases.[67]

Aviation:

The Texas airport system is the second largest state system in the nation, with 300 airports. Of these, 273 are reliever and general aviation airports for which TxDOT has oversight responsibility, distributing federal and state improvement grants.[68]

Planning/Needs

The airport development needs of Texas are identified in the Texas Airport Systems Plan (TASP). Current projects of the TASP identify a need for

[67] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee June 20, 2002.

[68] David S. Fulton, Director, Aviation Division, TxDOT, testimony presented to the Committee on June 20, 2002.

approximately $100 million per year for reliever and general aviation airport development in Texas.[69] Development needs include runways, taxiways, aircraft and parking aprons. One of the most frequent requests received by TxDOT's aviation division is for help in constructing additional aircraft hangars; without hanger capacity, it is extremely difficult to attract new aircraft, and aircraft maintenance and repair services.

During the 77th Session of the Texas Legislature, an unsuccessful attempt was made to provide for additional funding via loan financing to local governments for the purpose of constructing airport improvements ineligible for state or federal aid, such as hangar, or to match federal airport improvement grants.[70]

The Texas Airport Management Association, represented by Jose L. Flores, Vice-President, made the following requests of the Committee and ultimately the 78th Session of the Texas Legislature:

- Increase state funding for airport development for infrastructure development and Routine Airport Maintenance Program (RAMP).[71]

- Fund an Airport Loan Program and/or establish a State Bank for Airport Development.[72]

"According to the Texas Department of Transportation, Aviation Division, state funding for general aviation and reliever airports falls short by approximately $55.5 million per year in meeting capital improvement projects."[73]

One proposal submitted to the Committee is to appropriate the annual sum or a portion of revenue collected by the state from aviation sales taxes and franchise

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[69] Ibid.

[70] Ibid.

[71] For an analysis of the RAMP programs requirements, go to ftp://ftp.dot.state.tx.us/pub/txdot-info/avn/ramp_dsc.pdf

[72] Jose L. Flores, V.P., Texas Airport Management Association, testimony presented to the Committee on June 20, 2002.

[73] Ibid.

fees, which generate approximately $60 million per year.[74]

Funding an airport loan program or establishing a SIB-like fund for aviation development from general revenue is another option supported by the Texas Airport Management Association.[75]

Findings:

- Cities, counties and the state are lacking the necessary matching funds to obtain federal funds for airport improvements and routine maintenance.

- According to TxDOT, state funding for general aviation and reliever airports falls short by $55 million per year in meeting capital improvement needs.[76]

Recommendation:

1D: Contingent upon available revenue, the state should attempt to increase its funding for general aviation airport development.

Rail:

The Texas Transportation Code requires TxDOT to develop a statewide transportation plan that contains all modes of transportation, including highways and turnpikes; aviation; mass transportation; railroads and high-speed railroads; and water traffic.[77]

Historically, TxDOT's main rail responsibilities have included:

- "managing programs to improve railroad/highway crossings, . . . including managing programs to install railroad/highway crossing signals and gates;

[74] Ibid.

[75] Ibid.

[76] David S. Fulton, Director, Aviation Division, TxDOT, testimony presented to the Committee on June 20, 2002.

[77] Section 201.601, Transportation Code.

- improving crossing surfaces on state highways; and
- securing agreements with railroad companies where access is needed on railroad property. Duties include providing services related to the safety of crossings and acting as the state's liaison to railroad companies, the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and local governments."[78]

TxDOT has also sponsored many research and feasibility studies,[79] including:

- ***The Austin-San Antonio Commuter Rail Feasibility Study;***
- ***The Grain Transportation Study;***
- ***The Railroad System of Texas;*** and
- ***Mexican rail privatization.***

Recently, TxDOT, at the direction of the Legislature,[80] participated in rail assistance programs, such as the Texas Eagle loan of $5.6 million (General Revenue) to Amtrak.[81]

"TxDOT has also entered into conditional grant funding agreements with rural rail districts during the past few years in order to preserve rail service. In these cases, funds were specifically appropriated by the Legislature through appropriations bill riders to TxDOT for the purpose of funding rural rail transportation districts."[82]

- In 1991, following Commission approval,[83] a $3 million secured grant was provided to the South Orient Rural Rail District. In return, TxDOT received the existing right-of-way for the rail line from east of

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[78] Jim Randall, P.E., Director, Transportation Planning and Programming Division, TxDOT, testimony presented to the Committee on June 20, 2002.

[79] These studies can be found on TxDOT's website at: http://www.dot.state.tx.us/mis/mis.htm

[80] C.S.S.B. 1706, 75th Reg. Session.

[81] "The 75th Legislature directed TxDOT to loan funds to AMTRAK with the provision that AMTRAK maintain the Texas Eagle; the loan by repaid (prior to the deadline) in May of 1999." Jim Randall, P.E., Director, Transportation Planning and Programming, TxDOT, testimony presented to the Committee on June 20, 2002.

[82] Jim Randall, P.E., Director, Transportation Planning and Programming Division, TxDOT, testimony presented to the Committee on June 20, 2002.

[83] Minute Order 100061, Texas Transportation Commission.

San Angelo to Presidio fo $480,000 and a security interest in the installed rails and ties for the remaining $2,520,000. The grant has to be repaid only if rail service ceases under conditions outlined in the agreement.[84]

- "Since 1992, TxDOT has been involved in the purchase of railroad rights-of-way in five different corridors for use as highway rights-of-way. These purchases have usually occurred following abandonment of the railroad and have worked to keep the right-of-way intact for other transportation modes or for providing room for expansion of existing roadways. These projects are located in the following areas:
  - I.H. 10/Katy Freeway Corridor along I.H. 10 west of Houston;
  - U.S. 69 Corridor from east of Lufkin to Dolan;
  - S.H. Spur 93 Corridor along West Port Arthur Road between Beaumont and Port Arthur;
  - U.S. 181 Corridor from south of Kenedy to north of Normanna and north of Skidmore to north of Sinton; and
  - U.S. 277 right-of-way between and Holliday and Abilene."[85]

As stated previously in this report, TxDOT is tasked with formulating a statewide transportation plan, and is required to incorporate rail. "In order to develop a comprehensive plan which would address current and future rail needs in all areas of rail transportation, TxDOT initiated a research project with the Texas Transportation Institute at Texas A&M University. This project evaluated rail planning in other states, the rail system of Texas, and the continued importance of rail transportation to the movement of people and goods. The final outline of the study will be utilized in developing a statewide rail plan. In addition, TxDOT will establish a rail industry focus group to review and provide feedback on the development of the plan. Following the input from these stakeholders, the plan will be made available for public comment. It is anticipated that the plan will be complete when the legislature convenes for the next session."[86]

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[84] Jim Randall, P.E., Director, Transportation Planning and Programming Division, TxDOT, testimony presented to the Committee on June 20, 2002.

[85] Ibid.

[86] Ibid.

The Alameda Corridor, A Model for Texas?

The recent completion of "The Alameda Corridor" (the corridor) in southern California very well may serve as a model for Texas to follow. The following synopsis of the corridor was provided to the Committee by the Alameda Corridor Transportation Authority.[87]

"About one-quarter of all products arriving the United States moves through the ports of Long Beach and Los Angeles. Between them, the San Pedro Bay ports from the third-busiest container port complex in the world (behind only Hong Kong and Singapore).

"But relatively little has been done to improve the four branch rail lines that move cargo in and out of the ports, threatening Southern California's competitive edge. That is, until construction began on the Alameda Corridor.

"The Alameda Corridor consolidates the four port access rail lines into a single, 20-mile rail cargo expressway linking the ports to the transcontinental rail yards east of downtown Los Angeles. The project will create a more efficient way to distribute cargo throughout the United States and move U.S. exports to overseas markets.

How the Alameda Corridor Works:

"The Alameda Corridor, the first consolidated rail link of its kind, is among the largest public infrastructure projects in the United States. In the southern section, cargo-laden freight trains traveling north from the ports will travel at street-level through Wilmington, Rancho Dominguez and Carson. In the mid-corridor section north of State Route 91, trains will descend into a 10-mile-long, 33-foot-deep, 50-foot wide trench through the cities of Compton, Lynwood, South Gate, Hintington Park and Vernon. In the norther section, trains will emerge at Santa Fe Avenue in Los Angeles. Trains will cross the Los Angeles River near Washington Boulevard and diverge to their respective railroad mainlines.

"As a result of the Alameda Corridor, conflicts at more than 200 street-level railroad crossings will be eliminated, allowing freight trains and vehicle traffic to

[87] *"The Alameda Corridor - A Project of National Significance."* Alameda Corridor Transportation Authority, available at www.acta.org.

travel unimpeded. Average train speed will increase to approximately 30-40 mph from 5-20 mph.

Cost and Funding:

"The project's design, financing and construction are overseen by the Alameda Corridor Transportation Authority (ACTA), a joint-powers agency created in 1989. The seven-member ACTA Governing Board includes two representatives each from the ports of Long Beach and Los Angeles, one from each City Council, and one representative from the Los Angeles County Metropolitan Transportation Authority (MTA).

"The ACTA brought together the public and private sectors in a unique funding partnership that reflects wide support for the $2.4 billion project. Funding sources include:

- $1.165 billion in revenue bond proceeds;
  - $400 million loan from the U.S. Department of Transportation;
  - $394 million from the ports;
  - $347 million administered by the Los Angeles County Metropolitan Transportation Authority; and
  - $154 million in other state and federal sources and interest income.

"User fees paid by the railroads will generate revenue to pay off bond debt and the federal loan. Railroads will pay $30 per loaded 40-foot shipping container, $8 per empty container and $8 for other types of railroad cars, such as tank cars and coal carriers. Over a 30-year period, the fees will increase between 1.5 percent and 3 percent per year, depending on inflation."[88]

Findings:

- In order to raise public awareness for rail service in Texas, and to better coordinate a comprehensive and cohesive rail planning function across the state, the creation of a "rail division" of TxDOT may be warranted.[89]

[88] *"The Alameda Corridor - A Project of National Significance"* Alameda Corridor Transportation Authority, available at www.acta.org.

[89] Paul Mangelsdorf, Principal, Texas Rail Advocates, testimony presented to the Committee on June 20, 2002.

- "TxDOT is heavily involved in various aspects of passenger and freight rail transportation in Texas and how they interact with other modes. However, there is no clear authority for meaningful planning or appropriation to carry out significant programming."[90]

- With the limited funding available to TxDOT, the Committee believes that the creation of a rail division at this point in time would not serve the public's best interest.

- In southern California, a public-private partnership recently completed "The Alameda Corridor," one of the largest public infrastructure projects in the United States which consolidates four port access rail lines into a single, 20 mile cargo expressway linking the ports to the transcontinental rail yards east of downtown Los Angeles.[91]

Recommendation:

1E: TxDOT, in conjunction with the Texas Transportation Institute at Texas A&M, should study the viability of an "Alemeda-type Corridor" for increased freight rail service from ports (inland border and sea) to market places and/or intermodal hubs; the study should be submitted to the Texas Legislature and other state policy makers.

[90] Ibid.

[91] *"The Alameda Corridor - A Project of National Significance"* Alameda Corridor Transportation Authority, available at www.acta.org.

TEA-21 Reauthorization

The Transportation Equity Act for the 21st Century (TEA-21) was enacted by Congress on June 9, 1998 (with subsequent technical changes incorporated on July 22, 1998), providing states with federal dollars in the form of reimbursements for transportation improvements and expansion.[92] Reauthorization of TEA-21, which expires on September 30, 2003, is currently underway.[93] The objectives of the Texas Department of Transportation in the reauthorization of TEA-21 remain unchanged from the department's objectives in the initial passage of TEA-21 in 1998:

- Protect and enhance the federal investment in transportation infrastructure;
- Capture the largest possible share of federal transportation dollars; and
- Give state and local governments the broadest possible discretion over federal transportation funds distributed to Texas.[94]

A major concern of the Texas Department of Transportation in the reauthorization process is maintaining the progress that was made in the initial passage of TEA-21. Areas which deserve attention are "protecting the Highway Trust Fund "firewalls" created by TEA-21 and preserving TEA-21's Revenue Aligned Budget Authority mechanism (RABA) for highway programs" and extending other successes such as the Minimum Guarantee even further.[95]

TEA-21 guarantees states a level of funding backed by the Highway Trust Fund.[96] These firewalls make it difficult for funding levels to be altered in the annual appropriations process. Federal spending for highway and transit programs are no

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[92] Public Law 105-178.

[93] Surface Transportation Reauthorization - U.S. Department of Transportation. http://www.fhwa.dot.gov/reauthorization/index.htm.

[94] Michael Behrens, P.E., Executive Director , and David Soileau, Manager, Federal Legislative Affairs, TxDOT, testimony presented to the Committee on October 29, 2001.

[95] Ibid.

[96] "The TEA Generation." By Jonathan Walters. Governing May 2002.

longer in competition with other domestic spending programs. Furthermore, Congress no longer appropriates monies in the Highway Trust Fund to deficit reduction, as it had done since the enactment of the 4.3 cents per-gallon excise tax on motor fuels in the early 1990's.[97]

Revenue Aligned Budget Authority, or RABA as it is commonly known, provides a link between highway funding levels and revenues in the Highway Account of the Highway Trust Fund which allows Congress to annually adjust its funding obligation authority to reflect increases or decreases in federal gas tax receipts. This connection between revenues and funding allows Congress to allocate to the states increased funding received as gas tax receipts without further authorization. Also tied to revenues through RABA is the level of budgetary firewall protection, thereby increasing the overall protection of federal transportation dollars.[98]

The link between revenues and funding levels guaranteed by RABA can also impact states negatively. Future forecasts of lower than projected gas tax revenues could mean a first ever negative RABA adjustment, which would lead to a reduction in federal highway funding below the TEA-21 authorized level.[99] Such forecasts reinforce the need for Texas to protect its treatment under TEA-21.

Texas will also need to be aware of any changes proposed to the Minimum Guarantee contained in TEA-21. The Minimum Guarantee assures each state a portion of some federal highway fund distributions based on the state's contribution. TEA-21 requires that states receive 90.5 percent of their contribution. But the Minimum Guarantee applies to only some of the federal transportation spending programs; for example, it does not apply to highway discretionary programs administered by the FHWA.[100] Therefore, the 90.5 percent guaranteed return the does not translate to 90.5 percent of the state's entire contribution. During the reauthorization process, TxDOT proposes that the

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[97] Michael Behrens, P.E., Executive Director , and David Soileau, Manager, Federal Legislative Affairs, TxDOT, testimony presented to the Committee on October 29, 2001.

[98] Ibid.

[99] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on October 29, 2001.

[100] Michael Behrens, P.E., Executive Director , and David Soileau, Manager, Federal Legislative Affairs, TxDOT, testimony presented to the Committee on October 29, 2001.

guarantee cover all highway funding distributed to the states.[101]

Re-appropriation in Fiscal Year 2002

At the end of 2001, Congress passed and President Bush signed H.R. 2299, the Fiscal Year 2002 appropriations bill for the U.S. Department of Transportation and Related Agencies. Under that bill, which was criticized for its earmarking of millions of dollars of formula funding, it was estimated that Texas would receive about $2.14 billion in obligation authority through formula programs.[102] TxDOT also identified $62.6 million for 29 project earmarks for Texas in discretionary programs, though most of these dollars represent redirected RABA funds and not new transportation dollars. Texas' rate of return in discretionary funding under H.R. 2299 translated to only 54 cents on the dollar.[103]

Texas received much of its discretionary transportation funding for the establishment of permanent border inspection facilities. H.R. 2299 provided $54 million in Federal Highway Administration grants for Texas, New Mexico, Arizona, and California to build permanent commercial vehicle inspection stations. Over and above Texas' portion of the $54 million for border infrastructure improvements, Senator Kay Bailey Hutchison successfully earmarked $12 million to be allocated through FHWA grants for the same purpose.[104] The legislation also provided $18 million among the Southern U.S. border states for the hiring of truck inspection station personnel to be distributed through the Federal Motor Carrier Administration to DPS. The same states were slated to share another $10 million for border assistance program funding, which could also be used by states to hire inspectors. These funds have been granted each year of NAFTA and have traditionally been allocated one-third to Texas, one-third to California, and one-third to be split between Arizona and New Mexico. Approximately $40 million is included for installation of weigh-in-motion (WIM) scales at the ten busiest southern border crossings, which includes the following Texas locations: World

[101] Ibid.

[102] The Federal Flyer. Publication of the Texas Department of Transportation. December 21, 2001. Volume 7, Issue 13.

[103] Ibid.

[104] David Martin, Texas Division Administrator, Federal Motor Carrier Safety Administration, testimony presented to the Committee on January 29, 2002.

Trade Bridge in Laredo, Pharr-Reynosa in Pharr, Bridge fo the Americas and Ysletta-Zaragosa in El Paso, Columbia in Laredo, Veterans/Los Tomates in Brownsville, and Camino Real in Eagle Pass. Remaining funds will be used to establish portable scales at all other crossings in the four southern border states with the remainder, if any, going to personnel.

Also important to Texas transportation funding this year was the supplemental appropriations for Fiscal Year 2002. After conflicting bills passed each house, a conference committee made up of House and Senate members agreed to a supplemental spending package on July 3, 2002.[105] The agreed spending package totaled $28.9 billion and was approved by the House on July 23, 2002, and by the Senate on July 24, 2002.[106] The agreed package calls for an increase in Fiscal Year 2003 highway funding from $23.3 billion to $27.7 billion and requires the additional monies to be placed within the budgetary firewalls in TEA-21. Under this plan, the RABA calculation would be deemed zero, restoring to Texas an estimated $327 million in federal highway funds in Fiscal Year 2003.[107] President George W. Bush signed the conference committee report into law on August 2, 2002.[108]

At the same time as Congress was considering supplemental appropriations for Fiscal Year 2002, discussions began regarding appropriations for Fiscal Year 2003. Robert L. Nichols, Member of the Texas Transportation Commission, testified that the Fiscal Year 2003 budge may require the first ever negative RABA adjustment to highway funding based on the expectation that forecasts for Fiscal Year 2003 gas tax revenues will be lower than projected in TEA-21 and "because actual Fiscal Year 2001 revenues came in significantly lower than projected when Fiscal Year 2001 RABA funds were distributed...."[109]

Any possible decrease in federal transportation funding has the potential to negatively impact numerous local projects across the State.

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[105] HR 4775.

[106] News From Washington. Publication of The Texas Office of State-Federal Relations. July 29, 2002. Vol. XI, No. 16.

[107] Ibid.

[108] P.L. 107-206.

[109] Robert L. Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on October 29, 2001.

The Senate Appropriations Committee passed the Fiscal Year 2003 Department of Transportation Appropriations bill on July 25, 2002 and sent it to the full Senate for consideration. The bill passed 20-0 and would provide $64.6 billion for the U.S. Department of Transportation. The Senate committee bill contains $31.8 billion in highway funds. This amount is $8.6 billion over President Bush's request. The reason given for the increase is the "adverse effect on highway safety and possible loss of construction jobs" if funds were not appropriated.[110]

Innovative Finance - TIFIA loan of $917 million for Central Texas project

Limited transportation dollars have led to increased consideration of innovative finance methods which the Senate State Affairs Committee highlighted in its Report to the 77th Legislature.[111] One of the methods highlighted is the Transportation Infrastructure Finance and Innovation Act of 1998, otherwise known as TIFIA. TIFIA authorizes an innovative financing program under which the U.S. DOT provides credit assistance to sponsors of major surface transportation projects. In July of 2002, the Texas Transportation Commission was awarded a $916.17 million TIFIA loan to help fund design and construction costs for the first phase of the Central Texas Turnpike Project, the largest such loan to date through the TIFIA program.[112]

Findings - TEA-21 Re-authorization:

- Texas needs to protect and enhance the federal investment in transportation infrastructure.
- It is in Texas' best interest to maintain the budgetary firewalls and Revenue Aligned Budget Authority created in TEA-21.
- The TEA-21 standard of equity requires that all states are guaranteed 90.5 percent of their contribution to federal gas tax receipts. The State of Texas should work to increase Texas' share of the federal transportation dollars to 95 percent.
- While working to increase Texas' share to 95 percent, it is important to note

[110] News From Washington. Publication of The Texas Office of State-Federal Relations. July 29, 2002. Vol. XI, No. 16.

[111] Senate Committee on State Affairs Report to the 77th Legislature. November 1, 2000.

[112] FHWA press release July 29, 2002.

that percentage applies only to formula funding. The TEA-21 standard of equity should be applied to all federal transportation funds.

- Need to reduce the number of transportation funding programs in order to give State and local officials the broadest control over federal transportation dollars apportioned to Texas.
- More discretion in spending federal transportation dollars should be granted to state and local governments.
- Urge Congress to lift federal restrictions on the use of toll revenue. States could reimburse the federal government for all federal funds that have been invested in a highway segment that has been turned over.
- Would like to see real streamlining achieved in the environmental review processes to which transportation projects are subject.

Recommendation:

The Senate State Affairs Committee recommends that a resolution be sent to all of Texas' Congressional delegates containing the following provisions in an effort to increase federal transportation dollars:

- **Balances in the Highway Trust Fund should be used to make up any funding shortfall.**
- **Highway Trust Fund dollars should be increased by returning the fund interest on trust fund balances that TEA-21 directed to general revenue.**
- **Eliminate evasion of federal motor fuel taxes.**
- **Leverage federal dollars for transportation capital projects through tax-exempt financing and new financing mechanisms like the State Infrastructure Bank.**
- **Index the federal motor fuels tax to the Consumer price Index.**
- **Increase the standard of equity from 90.5 cents per dollar submitted to 95 cents per dollar in order to lessen the burden on 'donor states' (those states that deposit more revenue to the federal highway trust than they receive from the federal highway trust).**

Commercial Trucking

Throughout the course of the 77th Interim, the most critical commercial trucking issue has been the decision by the Bush Administration to open U.S. roads to Mexican-owned commercial vehicles. This has led the Committee to focus its interim studies on this issue. (Please see page 60 for a detailed discussion on this issue.)

Ongoing state enforcement efforts:
Over the past few years, many efforts have been made on the state level to increase enforcement of weight restrictions and commercial truck safety standards. These standards are referred to as Commercial Vehicle Safety Alliance or (CVSA) standards. Such efforts include:

- Increased truck inspection and weight enforcement authority for local law enforcement entities.

    - Prior to the 77th Session of the Texas Legislature, the following were the only law enforcement officers authorized to enforce the state's weight provisions:
        - license and weight inspectors of the DPS and DPS highway patrol officers;
        - a sheriff or sheriff's deputy;
        - a municipal police officer in a municipality with a population of 100,000 or more (74,000 or more if the city is within a county with a population of **1.4 million** or more);[113]
        - a municipal police officer in a municipality with a population of 25,000 or more if the city is within a county with a population of **2.4 million** or more;[114] and
        - municipal police officers in a municipality that is located within a county bordering Mexico.

[113] Section 621.401, Transportation Code, prior to Acts of the 77th Legislature.

[114] Section 644.101, Transportation Code, prior to Acts of the 77th Legislature.

- The 77th Legislature expanded these laws,[115] allowing for the following law enforcement officers to enforce commercial truck weight restrictions:
  - a municipal police officer in a municipality with a population of 100,000 or more (74,000 or more if the city is within a county with a population of **1.5 million** or more);

- Prior to the 77th Session of the Texas Legislature, sheriffs and their deputies were not authorized to enforce commercial truck standards (as noted above, they were authorized to enforce weight restriction). However, the 77th Legislature[116] authorized sheriffs in counties adjacent to the Mexico border and those in counties with populations of 2.2 million or more, and their deputies, to begin enforcing CVSA standards.

It must be noted that statutorily-authorized local law enforcement officers must be trained and certified by DPS. DPS "by rule shall establish reasonable fees sufficient to recover from a municipality or a county the cost of certifying its peace officers..."[117] Due to an inadequate number of trainers at DPS and the subsequent backlog, DPS has not been able to train and certify all of the local law enforcement entities currently authorized to enforce CVSA standards. Further, many entities that are statutorily authorized have yet to sign a Memorandum of Understanding with DPS that is necessary to send their officers for training.

Effect of heavy trucks:

While most of the roads in bridges that are being built using today's design standards are able to withstand current legal load limits (80,000 pounds), many roads and bridges were built under design standards based on lower legal limits in effect at the time those roads and bridges were built. For example, construction of the Farm-to-Market Road System, which began in the late 1940's and continued into the 1950's, used design standards based on the then legal limits of 48,000 pounds. While some of these roads and bridges have been upgraded to current

[115] Senate Bill 220, 77th Reg. Session.

[116] Ibid.

[117] Section 644.101, Transportation Code.

standards, a significant portion have not. TxDOT has estimated that there are over 17,000 miles of load-posted roadways in Texas and there are approximately 4,000 bridges on the state system that were built to standards less than 58,420 pounds,[118] or 21,580 pounds less than current weight limits.

Findings - Commercial Vehicles Generally:

- Overweight truck loads accelerate damage to roadways, causing premature failure of the roadways. Premature failure means that the pavement has to be shut down for repair, rehabilitation or reconstruction sooner than anticipated.[119]

- Premature failure increases construction and maintenance costs and impacts the traveling public due to construction delays.[120]

- It has been found that as truck weights increase, damage to roadways also increases, but not in a linear relationship. As loads increase, the damage caused increases exponentially.[121] For example, increasing a truck axle-load from 18,000 pounds to 36,000 pounds produces 16 times the amount of damage to a roadway.

- According to the University of Michigan's Transportation Research Institute (UMTRI) there is a strong statistical link between higher weights and a greater risk of fatalities. "As weights go up from 65,000 to 80,000 pounds, the risk of an accident involving a fatality increased by 50 percent.[122]

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[118] Robert Nichols, Member, Texas Transportation Commission, testimony presented to the Committee on April 12, 2000.

[119] Michael Behrens, P.E., Executive Director, TxDOT, testimony presented to the Committee on January 29, 2002.

[120] Ibid.

[121] American Association of State Highway Officials (AASHTO), presented by Michael Behrens, P.E., Executive Director, TxDOT, to the Committee on January 29, 2002.

[122] USDOT's "Comprehensive Truck Size and Weight Study, Phase 1, Working Paper 1 & 2," 1997, p. 37.

Recommendation:

3A: The Legislature should consider raising fines for overweight vehicles and other safety violations in order to lessen the potential for commercial trucks to be operated in a manner and at weights that negatively affect our state and county roadways and bridges.

Dedicated "no-truck" lanes:

The 75th Legislature passed legislation allowing for a 'no-truck lane' program which works as follows:

- Municipalities are authorized to restrict through traffic to two designated lanes[123] of a highway in the municipality. The highway on which the restriction is placed must:
    - be in the designed state highway system,
    - be a controlled access facility, and
    - have a minimum of three travel lanes.

- The restriction can only be in effect during peak traffic hours of a workday.[124]
- Trucks must be able to use any lane to pass another vehicle or to enter or exit the highway.
- TxDOT must approve the restrictions and is responsible for placing signs notifying travelers of the restriction along the roadway.

Houston Pilot Program

The City of Houston, with the assistance of TxDOT and TTI, conducted a pilot program implementing no-truck lane restrictions on an 8-mile section of the I-10

[123] Senator J.E. "Buster" Brown requested an Attorney General Opinion regarding the statute, Sec. 545.0651, Transportation Code, which reads in part, "restrict, by class of vehicle, through traffic to two designated lanes of highway..." due to the fact that a second chosen site for Houston's 'no-truck lane' program is a four-lane highway and TxDOT had traffic engineering concerns that trucks should nave the use of three of the four lanes rather than two. Tex. Att'y Gen. RQ-0524-JC (2002). The Attorney General ruled that the statute as drafted requires that a municipal ordinance restrict trucks to two lanes, not two or more. Op. Tex. Att'y Gen. No. JC-0551 (September 4, 2002).

[124] TTI states there is a desire already to expand the law to a 24-hour restriction. *"Evaluation of the I-10 East Freeway Truck Lane Restriction Demonstration Project."* Texas Transportation Institute, The Texas A&M University System, September 2001.

East Freeway. To date, Houston is the only municipality to have implemented a 'no-truck lane' program. TTI states the program was a success:

- 852 citations for violating the lane restriction were issued through May 2001.
- TTI cites high profile enforcement as a necessary component of the program.
- Crash records indicate a decline from 7.5 crashes per week to 2.9 crashes per week, a reduction of 68 percent.
- There was little change in the proportion of crashes involving trucks. The percentage hovered around 22-23 percent for time periods during the project and before the project.
- The lane restriction produced no appreciable impact (positive or negative) upon travel times and freeway speeds.[125]

Recommendation:

3B: TxDOT and cities across the state should actively explore the potential for designated no-truck lanes as is currently being employed in Houston.

3C: The Legislature should consider legislation expanding truck lane restrictions to allow for 24-hour restrictions.

Texas-Mexico Border Inspection Stations:

As part of the North American Free Trade Agreement (NAFTA), commercial trucks from Mexico were to be allowed to travel throughout the United States beginning in January 2000. "Because of concerns about the safety of these

[125] *"Evaluation of the I-10 East Freeway Truck Lane Restriction Demonstration Project."* Texas Transportation Institute, The Texas A&M University System, September 2001.

vehicles, the United States has limited Mexican truck operations to commercial zones near the border."[126]

In February 2001, a NAFTA arbitrations panel ruled that the United States' refusal to process applications by Mexican trucking companies to provide cross-border services beyond the commercial zones violated its NAFTA obligations. The panel noted, however that the United States could require Mexican motor carriers to meet U.S. safety requirements.[127] In February, 2001, the Bush Administration announced that it would give Mexican trucks access to all U.S. highway by January 2002.[128]

In December, 2001, the United States Congress provided increased funding for safety activities related to Mexican motor carriers and set forth the following series of requirements that the U.S. Department of Transportation (USDOT) (in conjunction with TxDOT and the Texas Department of Public Safety) must meet before Mexican trucks can travel beyond the commercial zones:

- Federal inspectors must audit Mexican motor carriers who wish to operate in the U.S.; the Federal Motor Carrier Safety Administration must hire and train these inspectors. Once a carrier is audited they will receive a temporary permit to at least cross the border.

- The four southern border states, with federal money, must equip weigh-in-motion (WIM) scales at five of the top 10 busiest crossings before the border is open; and must equip WIM at the remaining five busiest crossings within one year of enactment (scheduled for December 2002).
    - Texas is home to seven of the 10 busiest border crossings (in order of traffic):
      World Trade Bridge in Laredo;
      Pharr-Reynosa in Pharr;
      Bridge of the Americas in El Paso;

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[126] "*North American Free Trade Agreement: Coordinated Operational Plan Needed to Ensure Mexican Trucks' Compliance With U.S. Standards*." United States General Accounting Office, Report to Congressional Requesters, December, 2001.

[127] Ibid.

[128] Ibid. However, as of the printing date of this report, Mexican trucks were still not permitted to travel beyond the 'border commercial zone," awaiting the establishment of inspection facilities.

Ysleta-Zaragosa in El Paso;
Columbia in Laredo;
Veterans/Los Tomates in Brownsville; and
Camino Real in Eagle Pass.

- The four southern border states, with federal money, must equip all remaining commercial crossing with portable scales before the border can open.

- Once the border is open, no Mexican truck can enter the U.S. unless an inspector, at a facility with adequate space, is on duty.

- Once Mexican trucks have received the appropriate annual permit, and have passed an inspection they will receive a Commercial Vehicle Safety Alliance decal which will permit them to travel beyond the 21 mile commercial zone.[129]

Funding from the Fiscal Year 2002 USDOT and Related Agencies Act, passed in December 2001, included the following appropriations:

- $56.3 million in Federal-aid Highway funds for "border infrastructure improvements;"
- $18 million in National Motor Carrier Safety Program funds for "border State grants," reserved for Arizona, California, New Mexico and Texas to hire border truck safety inspectors;" and
- $12 million in National Corridor Planning and Development Program funds "earmarked for state border safety inspection facilities in Texas."[130]

TxDOT, in coordination with the Texas Department of Public Safety and the U.S. DOT, is currently establishing temporary inspection stations at the seven busiest crossings in Texas and is expected to acquire and build permanent inspection stations in the future. In 1999, the Center for Transportation Research (CTR), at the University of Texas, and the Texas Transportation Institute (TTI), at Texas A&M University, were charged with developing a 'model border inspection

[129] H.R. 2299 - The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002.

[130] *Land Transportation Standards Subcommittee Quarterly Report,* Texas Department of Transportation, January 2002.

facility."[131]

In their presentation of the prototype border inspection station to the Committee, CTR and TTI provided the following: by combining the use of International Trade Data Systems (ITDS), a consolidated electronic database currently in development by the U.S. Department of the Treasury, and Intelligent Transportation Systems, which transmits data between trucks and border inspection facilities, the prototype provides an expedited border crossing process that will facilitate trade while permitting federal and state agencies to maintain their vehicle inspection responsibilities while enhancing security through improved automation and screening.[132]

While a prototype inspection station has been developed and is ready for deployment, the State of Texas still needs to establish a coordinated border; and the USDOT needs to produce a "fully developed" and approved "operational plan in conjunction with border states to ensure that Mexican-domiciled carriers comply with U.S. safety standards."[133]

"The Department (USDOT) has not secured permanent space at any of the 25 southwest border ports of entry where commercial trucks enter the United States, and , at present, only the state of California has established permanent inspection facilities. The Department also has not completed agreements with border states on how 58 federal inspectors (projected to increase to 141 in fiscal year 2002) and 89 state inspectors (some of whom work part-time) will share inspection responsibilities along the border."

Recommendations:

[131] Section 201.613, Transportation Code, as created by Senate Bill 913, 76th Session.

[132] Rob Harrison, Deputy Director, Center for Transportation Research, The University of Texas, and Bill Stockton, Associate Director, Texas Transportation Institute, Texas A&M University, testimony presented to the Committee on January 29, 2002.

[133] United States General Accounting Office Report to Congressional Requesters: "*North American Free Trade Agreement - Coordinated Operational Plan Needed to Ensure Mexican Truck' Compliance With U.S. Standards.*" December 2001. GAO-02-238.

All commercial trucks regardless of origin should be held to CVSA safety standards and should be subject to inspections.

3D: The Senate State Affairs Committee recommends that the 78th Legislature direct the Texas Department of Transportation and the Texas Department of Public Safety to implement the border inspection facility prototype developed by the Center for Transportation Research at the University of Texas at Austin and the Texas Transportation Institute at Texas A&M University.

- **After working with local border communities to establish the final location of permanent inspection stations, and pursuant to federal requirements, this prototype should be employed at Texas' seven busiest border crossings.**

- **Intelligent Transportation Systems (ITS) should be employed by DPS, including the ability for preclearance screenings to be performed away from the inspection station where congestion 'bottlenecks."**

- **Permanent inspection stations should be linked with their federal counterparts in order to better track vehicle safety compliance and to identify "good operators" for preclearance.**

3F: The State of Texas needs to develop a "master plan" detailing, port by port, the infrastructure needs along the Texas-Mexico border, including number of lanes, scanners, FTEs, etc. It is recommended that the Governor, in conjunction with the other Mexico-border state Governors, lead the charge as is being done on the northern border by the Governors of Michigan and New York.

3G: TxDOT and DPS need to attempt to develop a Memorandum of Understanding with the Commissioner of the U.S. Customs Service to guarantee that all ports of entry are being operated uniformly regarding their coordination with state entities.

3H: The Legislature should consider legislation (currently authorized in California) allowing peace officers (DPS) to stop unauthorized Mexican vehicles from leaving the commercial zone.

Access Management

Background:
Up and until the spring of 2002, the Texas Department of Transportation and local communities employed 'access management' guidelines to determine project permit requests along city and state roads' right-of-way. These guidelines include the number of and spacing requirements of curb cuts, or access points.

In May of 2002, TxDOT staff presented proposed access management rules for Transportation Commission approval which would have drastically altered current requirements.

On June 14, 2002, the proposed rules were advertised in the Texas Register.[134] Conforming with state law, TxDOT then scheduled a series of public hearings on the new rules; in Austin, June 26; in Houston, July 1; and in Irving, July 3.

While this process conformed to state law,[135] several issues brought before this Committee are cause for concern. First, highly complicated and controversial state regulations such as access management require much more time for public review than that provided by the Commission. Second, the public hearings were scheduled during a typical holiday week for many, raising questions about the Commission's dedication to working and partnering with local communities. Lastly, and of greatest concern, was a memo from TxDOT to "Staff, Area and Project Engineers," dated April 23, 2002 - almost one full month prior to the

[134] 27 Tex. Reg. 5134 June 14, 2002.

[135] Chapter 2001, Government Code.

original submission of the rules, and two months prior to their inclusion in the Texas Register. This memo stated:

> "With *Access Management* now on the forefront of issues here at TxDOT, the following policies are effective immediately, pending formal enactment of rules by the TxDOT administration."[136]

The intent is clear: TxDOT and the Transportation Commission were fully intent on implementing these new rules with or without the involvement of their public partners. This in light of the fact that the Commission has been stating that they are more willing than ever to involve local elected and private partners in all aspects of transportation planning and policy implementation.[137]

Due to this alarming set of circumstances, this Committee included as a topic for discussion, the proposed access management rules at its June, 20, 2002 public hearing. At that time, the Committee received testimony from public leaders from North Texas, local land use consultants and developers as well as the Texas Transportation Commission.

During the hearing, in an attempt to resolve this issue or at the very least to discern the intent, the following dialogue occurred:

> **Chairman Shapiro** (questioning Transportation Commission Member Nichols): "Why change.? Why has this policy even been discussed, and what is it that you're trying to cure?".
> **Nichols**: "We have a major problem. We've got one fourth of the entire interstate system in urbanized area, 90 percent capacity." ... [i]n the State of Texas, I've got a list of 27 cities in the State of Texas that have adopted access management. Access management works . . . and it allows the economic development and access, plus improved safety."
> **Shapiro:** ". . . which means we've got a system and its working. Why are we changing it?"

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[136] Memo from TxDOT to "Staff, Area and Project Engineers," dated April 23, 2002.

[137] *"Texas Transportation Partnerships. . . connecting you to the World. A report for the citizens of Texas."* Texas Department of Transportation. August 2001.

> **Nichols:** "Because we don't have it everywhere else; . . . these (rules) are based on sound engineering principals."[138]

Despite this conversation, several key questions remain: Have we not been employing sound engineering principals to date, and if so why? Do currently employed access management guidelines lead to increased traffic fatalities or accidents thus reducing safety of motorists? While these questions were posed at the June 20, 2002 hearing, no relevant answers were provided. Further, if 27 Texas' cities have adopted and utilized access management guidelines that have been accepted by TxDOT and the Commission, why are the new proposed access management regulations applicable to these cities?

On July 18, 2002, the Committee received a letter from Lt. Governor Ratliff adding an additional charge on access management to its list of interim assignments.[139]

Since the June, 2002 hearing of the Senate State Affairs Committee, the Commission, at the request of Governor Perry, Lt. Governor Ratliff and Senator Shapiro, has agreed to postpone adoption of the proposed access management rules, and has scheduled three more public hearings across the state. While the Committee commends the Commission for doing so, until a reasonable explanation as to why current access management policies in effect in 27 cities across Texas do not suffice, they should prevail over what appears at best as a "one-size fits all policy."

Economist Ray Perryman expressed the following arguments in an opinion/editorial piece from the *Corpus Christi Caller-Times*: "The TxDOT proposal would significantly change accessability and could materially affect land-use patterns in every part of the state....It is not at all apparent, however, that a "one-size fits all" mechanism best meets the mobility needs of Texas. Rural areas may well have requirements and concerns that are quite different from those of urban and suburban regions."[140]

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[138] Senate State Affairs Hearing, Austin, Texas, June 20, 2002. Transcript provided by Texas Senate Staff Services DW:cn/240/SA062002.T3/073102 - Tape 3 pg. 1.

[139] See appendix II for a copy of the letter from Lt. Governor Ratliff.

[140] " Texas Should Go Slow on the Frontage Road Issue," by Dr. Ray Perryman, *Corpus Christie Caller-Times*, October 6, 2002.

Please see appendices III and IV for written communication from TxDOT to the public and written public comments respectively.

Findings:

- Currently in the State of Texas, at least 27 cities have adopted access management policies that have been used by the cities and the state to regulate ingress and egress points along state highways.
- No evidence has been established that the Texas Transportation Commission's proposed access management guidelines are better policy than those currently in currently in affect.

Recommendation:

4: Recommendation for legislation: local access management policies that are in effect shall prevail over any statewide policies adopted thereafter.[141]

[141] See Appendix V: Draft Legislation.