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**HOUSE COMMITTEE ON TRANSPORTATION  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2008**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
81ST TEXAS LEGISLATURE**

**MIKE KRUSEE  
CHAIRMAN**

**COMMITTEE CLERK  
CORY HENRICKSON**

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Committee On  
Transportation

December 11, 2008

Mike Krusee  
Chairman

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

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

Dear Mr. Speaker and Fellow Members:

The Committee on Transportation of the Eightieth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-first Legislature.

Respectfully submitted,

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Mike Krusee  
Chairman

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Larry Phillips  
Vice-Chairman

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Linda Harper-Brown\*

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Fred Hill

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Patricia Harless

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Pat Haggerty

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Joe Deshotel

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Nathan Macias

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Jim Murphy

\*Representative Linda Harper-Brown's signature on this report approves the entire report with the exception of charge 7 pertaining to the DRP program; Representative Harper-Brown defers to the Interim Report of the Committee on Public Health for this issue.

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## INTRODUCTION

Upon commencement of the 80th Legislature, the Honorable Tom Craddick, Speaker of the House Representatives, appointed nine members to the House Committee on Transportation. The committee membership was the following: Chairman Mike Krusee, Vice-Chairman Larry Phillips, Joe Deshotel, Pat Haggerty, Patricia Harless, Linda Harper-Brown, Fred Hill, Nathan Macias and Jim Murphy.

On November 30, 2007 the Honorable Tom Craddick, Speaker of the House Representatives, assigned the Committee interim charges (detailed on the next page). The Chairman of the Transportation Committee, Mike Krusee, assigned subcommittees and the respective subcommittees concerning the assigned interim charge held various public hearings. All interim charges and matters contained in this report are under the jurisdiction of the Transportation Committee and/or the jointly charged committee.

Pursuant to House Rule 3, Section 38, the Committee has jurisdiction over all matters pertaining to:

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

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## HOUSE COMMITTEE ON TRANSPORTATION

### INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

1. Research and make recommendations to the legislature on programs to improve safety for teen drivers.

*Subcommittee appointed: Larry Phillips, Chairman*

2. Study the concept of using corridor planning organizations to provide a mechanism for local involvement in the Trans-Texas Corridor.

*Subcommittee appointed: Jim Murphy, Chairman*

3. Study and make recommendations for funding mechanisms for the Rail Relocation Fund.

4. Study and make recommendations regarding the feasibility of a motor bus-only lane program for state highways in Texas that focuses on the use of improved shoulders as a low-speed bypass of congested highway lanes. Examine comparable laws from other states that allow transit buses to operate on state highway shoulders.

*Subcommittee appointed: Nathan Macias, Chairman*

5. Examine the role of metropolitan planning authorities in state law, as well as the creation of rural planning authorities to address the planning needs outside of metropolitan planning organizations but within council of government boundaries.

*Subcommittee appointed: Fred Hill, Chairman*

6. Study and make recommendations for changes to statutes regarding handicapped parking.

*Subcommittee appointed: Patricia Harless, Chairman*

7. Review the effectiveness of the Driver Responsibility Program and provide recommendations for increasing the collection rate of assessed penalties. Provide recommendations for amnesty and incentive programs established by the passage of SB 1723, 80th Legislature, Regular Session. Examine the status of Texas' current statewide trauma system infrastructure and how the system may be optimized to meet future trauma care needs in a rapidly growing state with overburdened emergency rooms. (Joint Interim Charge with the House Committee on Public Health)

*Subcommittee appointed: Linda Harper-Brown, Chairman*

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8. Review the current requirements for driver's license and identification card holders in Texas in order to recommend legislative measures to prevent these documents from being used to further criminal activities, and recommend ways to enhance homeland security. (Joint Interim Charge with House Committee on Defense Affairs and State-Federal Relations)

*Subcommittee appointed: Pat Hagerty, Chairman*

9. Monitor the continued implementation of the Texas Financial Responsibility Verification Program authorized by SB 1670, 79th Legislature, Regular Session, and determine whether any further statutory enhancements are needed to reduce the number of uninsured motorists in Texas. (Joint Interim Charge with the House Committee on Insurance)

10. Monitor the agencies and programs under the committee's jurisdiction.

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**Charge 1**

**Research and make recommendations to the legislature on programs to improve safety for teen drivers.**

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## Background

Car accidents are the number one cause of death for teenagers nationwide. Approximately 500 teenagers per year are killed as a result of a car accident in Texas, more than in any other state. Teens are involved in 22% of all car accidents in Texas, compared to 15% nationally.<sup>1</sup> Given these statistics, it is imperative that the state looks at ways to improve the safety of our teen drivers. The Transportation Subcommittee on Teen Driver Safety was charged with this purpose.

Texas first started requiring driver's education in 1967. Since that time, the program and the licensing of teenagers have undergone many changes. In 1992, the Department of Public Safety (DPS) stopped requiring on-road driving tests for teens that completed driver's education and made it optional for teens or their parents upon request. The reasoning behind this decision was that most of students who completed driver's education passed the driving test, and that eliminating this requirement was a timesaving and cost-effective measure. Currently, only 20% of new teen drivers choose to take the on-road test.<sup>2</sup>

In 1995, the legislature passed a bill, 74(R) SB 965, which allowed for parent-taught driver's education. Under this legislation, the parent is responsible for administering the required 32 hours of classroom instruction, the curriculum for which is available through the Texas Education Agency (TEA). The parent is also responsible for 7 hours of behind-the wheel instruction and 7 hours of in-car practice. The parents are not required to be licensed through the state as are private providers, but parents may be required to submit record-logs of both classroom and behind-the wheel instruction to DPS. Parents must also sign an affidavit stating that they have provided the required instruction. Approximately 35% of teens that take driver's education do so through a parent-taught program.<sup>3</sup>

Teens can also choose to take driver's education through a private provider. These driving schools are accredited by TEA and must follow the TEA curriculum for driver's education. TEA does not keep records indicating the effectiveness of individual driving school or programs.

Very few school districts provide a driver's education course to their students. The number of students who receive school-provided driver's education has been in decline since the parent-taught course was instituted.<sup>4</sup>

Another significant change came with the implementation of the graduated driver's license (GDL) program, which took effect in January 2002. The legislation put additional driving restrictions on young drivers, including driving curfews and limiting the number and age of passengers. Subsequently, the legislature passed legislation that also limited the use of cell phones. However, a study by the Texas Transportation Institute suggests that these restrictions have minimal effect in reducing the number of traffic accidents involving teens.<sup>5</sup>

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<sup>1</sup> Russell Henk, with the Texas Transportation Institute, Testimony, April 30.

<sup>2</sup> Texas Department of Transportation written Testimony, April 30.

<sup>3</sup> Department of Public Safety, Texas Driver Education Certificates, requested information.

<sup>4</sup> Department of Public Safety, Texas Driver Education Certificates, requested information.

<sup>5</sup> TTI, "Fatal Crashes Involving 16 Year-Old Texas Driver Pre- and Post-GDL" pub. December, 2005.

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Currently, Texas requires 14 hours of supervised behind-the wheel instruction and 32 hours of classroom instruction in order to complete driver's education. Teens must take driver's education to get a driver's license, or wait until they turn 18. Once 18, no instruction is required, and drivers must pass the standard written test given by DPS as well as an on-road test.

## **Recommendations**

Studies indicate that inexperience, driving at night, and distractions are three of the main causes of accidents by teen drivers.<sup>6</sup> In implementing the GDL program, Texas has sought to mitigate these factors with restrictions on new drivers. However, Texas teens' high accident rate indicates that further restrictions are warranted.

The Subcommittee recommends that provisions of the Graduated Driver's License be extended beyond the initial six months of licensure. In order to reduce distractions, the use of wireless communication devices by drivers under the age of 18 should be prohibited, and the restriction on the number of passengers allowed in the car of a new driver should be extended past the current six months.

Currently, the hours during which a teen driver can operate a vehicle are restricted only during the first six months, prohibiting them from driving between the hours of 12:00 a.m. and 5:00 a.m. The committee recommends further allowing the permissible hours of driving for first-year drivers to 5:00 a.m. to 10:00 p.m.; current exemptions relating to work, school functions, and medical emergencies should remain in effect.

The Subcommittee recommends requiring an additional 20 hours of supervised, behind the wheel experience, including mandatory hours after dark in order to be licensed.

TEA should keep statistics relating to the accident-rate of teen drivers that graduate from each form (commercial, public, or parent-taught) of driver's education; furthermore, statistics should be kept on individual commercial and public providers as it relates to the efficacy of these driver's education programs. TEA should develop a program a process to revoke a provider's ability to teach driver's education if it is determined that the provider is unable to meet appropriate safety standards.

A taskforce should be appointed in order to evaluate the efficacy of the curriculum and materials provided for public, commercial, and parent-taught driver's education.

Providers who have more than 6 points on their record under the Texas Driver Responsibility Program should be ineligible to administer a driver's education course.

The Legislature should consider the impact and viability of requiring driver's education courses to be offered by all public school districts.

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<sup>6</sup> Russell Henk, with the Texas Transportation Institute, Testimony, April 30.

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Lastly, we recommend that DPS be required to field-test all new drivers. Passing such a test would be required for licensure.

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**Appendix A & B (charge #1)**



**RESOLUTION NO. 5171**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ADOPTING AND PROMOTING THE "LESS TEARS...MORE YEARS"™ CAMPAIGN AND URGING REPRESENTATIVES OF THE TEXAS LEGISLATURE TO ADDRESS THE PROBLEM OF TEENAGE TRAFFIC FATALITIES IN TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, car accidents are now the leading cause of death for young people between the ages of fifteen and nineteen; and

**WHEREAS**, teenage drivers make up only seven percent (7%) of the driving population but fourteen percent (14%) of all persons killed in car accidents; and

**WHEREAS**, for years 2000 through 2006, between 3,500 and 6,000 young people per year between the ages of fifteen and twenty were killed in preventable car crashes; and

**WHEREAS**, in the last decade, over 68,000 teens have died in car crashes; and

**WHEREAS**, when driver fatality rates are calculated on the basis of estimated annual travel, teen drivers have a fatality rate that is about four times higher than the fatality rate among drivers 25 through 69 years old; and

**WHEREAS**, during 2005, nearly 400,000 motor vehicle occupants between the ages of fifteen and nineteen sustained nonfatal injuries severe enough to require treatment in an emergency department; and

**WHEREAS**, leaders of National Highway Traffic Safety Administration have characterized the problem of teenage traffic fatalities as an epidemic;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:**

**SECTION 1.** That the City of Sherman, Texas hereby commits itself and encourages its citizens to assist the efforts of the "Less Tears...More Years"™ Campaign in addressing the problem of teenage traffic fatalities in Texas and calls upon the Texas Legislature to (1) reinstate a public school based drivers education program; (2) reinstitute driving tests administered by the Texas Department of Public Safety as a prerequisite to obtaining a driver's license in Texas; and (3) take any other reasonable steps necessary to address this serious public safety issue that plagues Texas and her families.

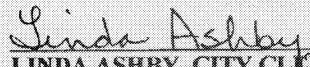
**SECTION 2.** That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the 3rd day of March, 2008.

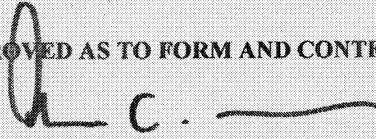
CITY OF SHERMAN, TEXAS

BY:   
BILL MAGERS, MAYOR

ATTEST:


BY:   
LINDA ASHBY, CITY CLERK

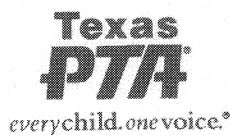
APPROVED AS TO FORM AND CONTENT:

BY:   
DOREEN E. MCGOOKEY,  
CITY ATTORNEY

CERTIFIED COPY - DOCUMENT  
THIS IS CERTIFIED TO BE A TRUE COPY  
OF THE INSTRUMENT RECORDED AS FOLLOWS IN  
THE OFFICE OF THE CITY CLERK.

  
CITY CLERK, SHERMAN, TEXAS

 3/7/08



Texas PTA • 408 West 11th Street • Austin, Texas 78701-2113  
800.TALK.PTA • 512.476.6769 • Fax 512.476.8152  
txpta@txpta.org • www.txpta.org

June 1, 2008

The Honorable Larry Phillips  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78768-2910

Dear Representative Phillips,

Texas PTA, the largest child advocacy organization in the state with over 630,000 members, is a grassroots organization made up of parents, teachers and others who have a special interest in children, youth, families and schools.

We have identified the issue of cell phone use by teens while driving, including texting, as an issue that must be addressed. Texting and driving at any age is dangerous; however, teenagers who text and drive create especially hazardous and unsafe driving conditions. While comprising only seven percent of the nation's motorists, teens account for 14 percent of all fatal accidents. Teen drivers are four times more likely to die on the road than older drivers.

Texas PTA strongly supports strengthening the current graduated drivers' license program to prohibit the use of cellular technology, including texting, by teens while driving until they reach the age of 18. Texas PTA further supports strengthening driver education programs so that teens are better prepared for the responsibility of driving on Texas roads.

We appreciated the opportunity to give testimony before the House Transportation Committee at its recent interim hearing, and we look forward to future collaboration with all parties who will work to strengthen Texas laws for the protection of young drivers.

Our members are ready to assist in educating legislators throughout the state on this critical safety issue. Please do not hesitate to call upon us as we partner to make the roads safer for everyone.

Sincerely,

Jan Wilkerson  
Texas PTA President

*Texas PTA is a statewide grassroots organization made up of parents, teachers and others who have a special interest in children, families and schools. PTA is the largest child-advocacy organization in the state with over 630,000 members.*

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**Charge 2**

**Study the concept of using corridor planning organizations to provide a mechanism for local involvement in the Trans-Texas Corridor.**

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## Background on Corridor Planning Organizations

The only reference to Corridor Planning Organizations (CPOs) is found in (SB 1929/ HB 3783), the transportation omnibus bill from the 80<sup>th</sup> session that did not pass. The following is the statutory language as proposed.

(a) Before the commission designates a route for a segment of the Trans-Texas Corridor, the commission shall create a corridor planning organization that is composed of representatives of metropolitan planning organizations and rural planning organizations that may be affected by the segment.

(b) The corridor planning organization consists of:

(1) two members appointed by each metropolitan planning organization with jurisdiction over an area in which the proposed segment of the corridor is located;

(2) two members appointed by each rural planning organization with jurisdiction over an area in which the proposed segment of the corridor is located;

(3) one additional member appointed by the metropolitan planning organization with jurisdiction over the longest portion of the proposed segment of the corridor;

(4) one additional member appointed by the rural planning organization with jurisdiction over the longest portion of the proposed segment of the corridor; and

(5) if necessary to create an odd number of members, one additional member appointed by the members of the corridor planning organization appointed in Subdivisions (1)-(4).

(c) The corridor planning organization shall assist the commission in the planning of the segment of the corridor for which the corridor planning organization was created. The commission shall consider the corridor planning organization's recommendations when selecting a route for the segment. The Corridor-planning organization must approve any facility proposed to be constructed as part of the segment of the corridor and must approve the method of contracting for the construction or operation of a facility, including whether the facility will be constructed or operated under a comprehensive development agreement.

(d) A corridor planning organization is subject to the open meetings law, Chapter 551, Government Code.

## Issues Related to the Creation of CPOs

There are growing concerns across Texas that citizens and local entities do not have enough decision-making authority regarding the development of transportation projects. While concerns over Trans Texas Corridor (TTC) have highlighted this issue, these concerns also pertain to other corridors. The public desires to have a say in whether a road will be tolled or non-tolled or developed through public/private partnerships. Local interests want some level of control -- specifically when, where and how corridors would be built. The creation of new CPOs might be undertaken to better accommodate this desire for local control and input.

Texas Department of Transportation (TxDOT) issued a self-evaluation report for the Sunset Advisory Commission in August 2007 for their agency Sunset review. In this report they highlight planning organizations; Metropolitan Planning Organizations, Rural Planning Organizations and Corridor Planning Organizations.

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Last spring, TxDOT created Corridor Advisory Committees to assist in the planning of large corridors in our state. The Corridor Advisory Committees represent a cross-section of community and business leaders, land owners, local transportation experts and other interested parties.

Each committee will advise the Texas Department of Transportation in the planning of two priority corridors, Interstate 35 and Interstate 69. The committees will study and prepare reports on the impacts of corridor development, including economic, political, societal, population trends; the use of existing, new and upgraded facilities; road and rail solutions; and financing options.<sup>7</sup>

Prior to the hearing on this charge, the Subcommittee conferred that in order to create rules or legislation, the issues below should, at a minimum, be reviewed and a consensus developed.

***Membership** – number, qualifications, term, selection, removal*

***Authority** – directive or advisory*

***Function** – route selection, construction method/financing*

***Scope**- segment determination, relation to other organizations*

## **Conclusion**

After consideration of testimony presented by various stakeholders to the Sub-Committee on Corridor Planning Organizations, the Sub-Committee finds that there is a need for a mechanism whereby there is "real citizen" input on future corridor planning. This is clearly the case with areas outside the jurisdiction of MPOs and transportation planning organizations. CPOs could be a useful tool to ensure proper representation of citizens who may not be able to participate in discussions regarding transportation policy in their respective areas due to the lack of a local Regional Mobility Authority (RMA) or Metropolitan Planning Organization (MPO). However, MPO members are elected and appointed government officials so direct citizen and landowner input is not, as a matter of design or practice, provided. Rather than adding another layer of bureaucracy, the Subcommittee recommends that MPOs and RMAs provide for this citizen and property owner input in their corridor planning work. For real transportation solutions to materialize, we must provide for these citizens a less bureaucratic, more open sounding board that invites all the invested stakeholders to share their concerns regarding transportation policy. This goal of expanded involvement and input can be accomplished by modifying the practices of MPOs and RMAs and the establishment of Rural Planning Organizations (RPOs to address areas outside the boundaries of the RMAs and MPOs. The Subcommittee suggests that there is not a need to create Corridor Planning Organizations in statute, as they would add an unnecessary layer of government. The subcommittee further recommends that the Transportation Committee adopt this report and forward it to MPOs and RMAs in Texas.

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<sup>7</sup> *Keep Texas Moving.Com*

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**Charge 3**

**Study and make recommendations for funding mechanisms for the Rail Relocation Fund.<sup>8</sup>**

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<sup>8</sup> Reprinted from the Interim Report to the 80<sup>th</sup> Texas Legislature with amendments.

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## **Rail Relocation**

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

-Leland Stanford, President, Central Pacific Railroad, May 10, 1869, Promontory Point.

*"China is in the midst of the world's biggest burst of railway construction, adding thousands of miles every year in an expansion that rivals the building of the railroads in the 19th century American West."*

-Joe McDonald, "China barrels toward major railway projects," Associated Press, March 13, 2006.

## **Background-We lost the vision, and fell behind.**

Somewhere between the striking of the golden spike in 1859 and the 21st century, Americans increased reliance on vehicles that travel on asphalt has pushed the railroad to the back of the transportation pack. The railroad became a quaint little sideshow for our amusement, and lost its prime reason for being--the movement freight. And now we need it more than ever.

## **Deregulation**

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

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

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



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## **Getting the Goods**

In the meantime, between 1980 and 2003, the population in Texas increased by eight million people, bringing our total to about 22 million. That number is expected to increase to 36 million in another twenty years. Additional people consume additional goods, and those goods must be delivered to them in a timely manner. Freight tonnage on Texas highways is projected to increase from just over 1 billion tons in 1998 to nearly 1.9 billion by the year 2020, or about 85 percent increase. No matter how quickly the Texas Department of Transportation lays asphalt, it will not be enough. It will never be enough. Texas must use every mode of transportation available, including rail. And rail is expected to be hit hard: freight tonnage on the Texas rail systems is expected to increase from 282 million tons in 1998 to 636 million tons in 2030, or about a 126 percent increase. And consider this: that projected increase is low, because rail has not kept up with the demand.

## **From Bust to Boom**

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

## **A Link in the Trade Chain**

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

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

An added problem with growing trade with China is that much of the freight moving through Texas is quickly shifting from east/west to north/south. Texas will soon be facing decisions of international magnitude as the ports in California become significantly more congested and new ports are established in Mexico, re-routing freight from the west coast to Texas' southern border. Projects such as the expansion of the Panama Canal, which is projected to increase trade from

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the Pacific Rim to Texas' Gulf Coast Ports, will add to the congestion on the transportation system. Texas must be ready to develop plans in a more comprehensive flexible way that will respond quickly to market changes.

### **Do the Math**

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

### **Major Cities**

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

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

Due to the fact that Texas has more miles of rail than any other state and the high volumes of freight moving over those tracks, Texas ranks first in the nation when it comes to injuries caused by train accidents. Texans suffer more than 400 vehicle-train collisions every year.

### **Growing Cities, Growing Problems**

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

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

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

TxDOT recently completed a study for the state legislature regarding the economic feasibility of relocating freight trains that carry hazardous materials away from residential areas of the state in the areas of Houston, San Antonio and Dallas/Fort Worth metroplex.

### **Port Problems**

Texas ports collectively handle more cargo than any other state in the nation, while providing about one million jobs for Texans, and more than \$30 billion in personal income. The 520 million tons of cargo that Texas ports handled in 2005 had an impact on local, regional, state, and national economics. Inbound and outbound rail freight handled by Texas Gulf Coast Ports is expected to increase from 106 million tons in 1998 to more than 763 million tons by 2030.

In Corpus Christi, there are twenty-six miles of port-owned rail lines that serve the public docks within the inner harbor, and three Class 1 railroad lines. Beaumont and Corpus Christi are strategic military ports, with 40% of the equipment headed to Iraq being processed through these ports. Currently, the port is working with TxDOT to build a road and rail around the port at a cost of about \$55 million. The port is in the process of developing a long-range master plan for rail to ensure adequate facilities and enhance economic opportunity.

A former Surface Transportation Board Chairman noted that Houston has the most serious railroad urban mobility issue in the nation. Unlike the Chicago area, where many trains just pass through on their way to somewhere else, Houston is a primary source of origination and destination points for rail shipments.

The Port of Houston has over 150 private terminals along a 25 mile portion of the Houston ship channel, and of the approximately 2,000 trains per week on the system, only seventy do not have business in the area. Commodities are shipped to and from the Port of Houston through a network of railroads linking the Class 1 railroads to each other. Houston links six rail lines through the region with the Louisiana Gulf Coast, the Midwest, the West Coast, and Mexico.

There are 752 at-grade crossings in Harris County, which do not include private crossings, causing 30,000 hours of vehicle delay per day. And freight tonnage is expected to double in Houston by 2025, with chemical and petrochemical products constituting the large majority of the cargo. The port authority moved 1.5 million TEU's (twenty foot equivalent units) of containers in 2005, more than 64 percent of the containers in the Gulf of Mexico, and 94 percent of the waterborne container market in Texas. The port opened the first phase of a container terminal in Bayport January of 2007, which, when fully built, will be able to handle up to 2.3 million TEU's, thus adding another hurdle for freight rail to overcome.

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## **Border Problems**

Due to safety and congestion issues, train operations are limited to between the hours of midnight to six a.m. for travel between El Paso and Juarez, causing serious problems for railroads trying to ship goods. Projects being considered include building a new rail bridge on the outskirts of the city in Mexico or a depressed rail channel in El Paso to allow freight and vehicular traffic to move freely over a 24-hour period.

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

Laredo has been heavily affected by NAFTA and its rail system contains many at-grade crossings and yards, resulting in accidents, congestion, delays, and negative environmental impacts. Projects under consideration include a new international rail bridge around Laredo to the west (proposed by Laredo and Webb County) or a new international rail bridge to the east (proposed by Kansas City Southern Railway) connecting to existing Rail Bridge to the east somewhere north of Laredo. Projects costs are estimated at \$751 million for the western alignment, and \$291 million for the eastern alignment.

## **The Short Lines: Keeping the Faith**

When the railroads were deregulated in 1980 by the federal government, the Texas legislature authorized local governments to form railroad districts to buy and try to operate the lines that were being scuttled by the major railroads. Counties form Rural Rail Transportation Districts in order to save an abandoned short line. Since RRTD's have no revenue sources from the state or federal government, they must rely on county appropriations or earmarks from Congress. There are currently thirty-eight RRTD's in the state of Texas, most of which do not own any infrastructure and do not have significant funding for project development. RRTD's are not held accountable to any state agency and have no oversight of their activities or expenditures.

Short line operators typically have lower labor, overhead and regulatory costs than Class 1 railroads, and are often able to operate profitable lines that lost money for their original owners. Despite these efforts, Texas has lost 39 percent of its total track miles since 1932, and the loss of these lines has had a negative impact on many rural communities. Meanwhile, what small systems that are left are being burdened by steadily increasing traffic.

## **Short lines generally fall into three categories:**

To link two industries requiring freight movement by rail; The Blacklands Railroad traverses

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four counties: Hunt, Hopkins, Franklin and Titus, totaling 66 miles. Companies wishing to send goods by rail through one of five cities from Greenville to Mount Pleasant can utilize this short line to interchange rail traffic with other larger railroads; the Port Terminal Railroad in Houston interchanges traffic from the Port and some shippers with the BNSF and UP. The Austin-Western Railroad interchanges some freight from shippers in the Austin area with UP or to operate a tourist passenger train service.

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

### **Trying to Keep Up**

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

Union Pacific is spending about \$400 million a year in capacity expansion projects. UP is currently working to double track their line of railroad on the Sunset Route from El Paso to Los Angeles. Currently, Union Pacific has three routes that meet at El Paso, one from Chicago, one from Dallas-Fort Worth, and one from Houston-San Antonio. All three of those lines feed into a single rail line that is currently handling about 45 trains a day. The railroad expects to have the entire routed from El Paso to Los Angeles double tracked by 2009.

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

### **Public-Private Partnerships**

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

It is important that a truly public source of funds be used to match with any private funds in order to develop a true public-private partnership.

### **The Rail Relocation and Improvement Fund**

Voters approved Proposition One, establishing a rail relocation and improvement fund, in November of 2005. The constitutional amendment authorizes grants of money and issuance of

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obligations for financing the relocation, rehabilitation and expansion of rail facilities. To build all of the projects identified in the Texas Rail System Plan would cost an estimated \$14.2 billion. Currently the fund is empty. The Texas Department of Transportation has researched many funding options directly related to freight movement. Five of them are outlined here.

### **Funding Options - Diesel Fuel Tax on Freight Rail**

One proposed funding option would be a statewide transportation-related sales tax on diesel fuel consumed by railroad users on tracks in Texas. Currently, Texas imposes a \$0.20 per gallon diesel fuel tax on suppliers, importers, exporters, distributors blenders, dyed diesel fuel bonded users, interstate truckers and International Fuels Tax Agreement (IFTA) licensees. Railroads are exempt from this tax. It should also be taken into consideration that the federal diesel tax, currently \$0.24 per gallon, will be reduced to \$0.01 December 31, 2006.

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

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

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

### **Tax on Ramping and De-ramping Containers at Multimodal Facilities**

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

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

This proposed fee is estimated to bring in \$21.8 million per year based on a \$10 fee, and thus

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would provide, after bonding, a onetime infusion of \$247-\$337 million.

### **Per Ton Mile Fee on Rail Operators**

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

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

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

### **Sales Tax on Freight Transportation**

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

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

If TxDOT charges a 1/2% tax on freight charges, it is estimated that \$19.7 million in revenues would be realized. After bonding, this would result in a one-time \$223-\$304 million.

In addition, the Legislature could dedicate revenue from other sources or general revenue to the Texas Rail Relocation and Improvement Fund as alternative methods not directly involving freight movements.

### **Legislative Priorities**

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

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

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

TxDOT needs the ability to operate their non-dedicated funding in the way the Governor's office runs the Enterprise Fund. When rail lines are abandoned or put up for sale, the department needs the flexibility to react immediately to acquire the asset for the state without waiting for an appropriation from the Legislature. TxDOT also needs a source of funds for railroad relocation or railroad improvement projects that have a public benefit.



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#### **Charge 4**

**Study and make recommendations regarding the feasibility of a motor bus-only lane program for state highways in Texas that focuses on the use of improved shoulders as a low-speed bypass of congested highway lanes. Examine comparable laws from other states that allow transit buses to operate on state highway shoulders.**

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## **Bus-Only Shoulder Lanes**

Metropolitan areas in Texas are experiencing severe traffic congestion. Congestion causes travel delay and fuel waste. Major transportation projects require significant planning, funding, and development. It can take years to go from an idea to a completed project. Local governments desire new solutions to traffic problems that use existing resources. Allowing buses to drive on improved shoulders during peak traffic times is a possible option to help alleviate traffic congestion.

### **Executive Summary**

In 2007, 80(R) SB132 was passed in the Senate and passed out of the House Transportation Committee; however, it failed to make it out of the House due to time constraints. If enacted into law, the legislation would have set up a pilot program to allow transit buses to use improved shoulders during peak traffic times to help alleviate congestion. When traffic in main lanes is moving at 35 mph or less, buses would be able to use the improved shoulders. Buses on the shoulders would be limited to a maximum speed of 35 mph.

During the public hearing on this interim charge, it was shown that the effected bus organizations were in support of the language of the bill as it was passed out of the House Transportation Committee. One modification was discussed by the Department of Public Safety to limit the speed of buses to no more than 15 mph over the speed of the traffic; thereby limiting the bus speed to 15 mph if the main lane traffic was stopped.

Testimony during the House Transportation Committee showed no opposition from bicyclists, who currently are allowed limited use of shoulders, as long as signage would be clearly posted to avoid confusion by non-bus drivers in such bus-only shoulder lane areas.

The Texas Department of Transportation (TxDOT) has identified 360 miles of shoulders on state highways in metropolitan areas that are currently wide enough for bus travel. TxDOT estimates the cost of a thorough pavement condition study and additional signage and striping would be approximately \$2,000 per mile.

The use of highway shoulders by transit buses has been in existence for more than a decade in several jurisdictions across the United States and in other countries. The rising emergence of “bus-only” shoulders is a way for local governments to meet increasing transit demands with existing resources and safety considerations.

### **Case study – Minneapolis/St. Paul**

The Transportation Research Board (TRB) reports that the Minneapolis/St. Paul area, home to 271 bus-only shoulder miles, is at the forefront of bus-only shoulder use in the United States. Minnesota transit planners have created a comprehensive bus-only shoulder lane network and currently have plans for ongoing expansion of the program. Currently, there are approximately 400 buses operating on fourteen routes using bus-only shoulders to bypass congestion.

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According to a study<sup>9</sup> on the use of bus-only shoulders, the University of Minnesota reports that growth of the system faces little opposition.

Three factors appeared to be key in the Minneapolis/St. Paul bus-only shoulder program's success:

- (1) buses only operate in the shoulders when main lane traffic speeds are 35 mph or less<sup>10</sup>, (2) bus drivers are given the discretion of how they respond to various traffic conditions; and
- (3) bus drivers yield to automobile drivers in all cases.

The Minnesota highway patrol played a small but critical role in implementing bus-only shoulder lanes and is continuously informed on the program's status. The Minnesota highway patrol was consulted early in the planning process to determine regulatory authority and enforcement jurisdiction over improved shoulders and to harmonize the use of shoulders by buses, emergency vehicles, law enforcement, and disabled vehicles. The highway patrol is kept up to date on the continuing use and growth of bus-only shoulders. Similarly, SB 132 required that TxDOT work in conjunction with the Texas Department of Public Safety (DPS) to maximize safety.

Disruptions in the use of the bus-only shoulders because of disabled vehicles, construction or traffic stops by law enforcement appear to have little impact on the effectiveness of bus-only shoulders. It was observed that if a disabled vehicle blocked the shoulder lane, or if the highway patrol had pulled a vehicle over to the shoulder, the bus driver simply merged back into the main lanes to bypass the obstruction, usually a relatively easy and safe maneuver. This is why factor number two above has been crucial to the success in the Minneapolis/St. Paul area. The responsibility to yield is easier to control when bus drivers are given the discretion of how they respond to various traffic conditions.

The use of bus-only shoulder lanes in Minneapolis/St. Paul has been a success from the standpoint of public safety, benefits to transit operations, and public relations. The key benefit cited is trip reliability – a benefit to both the customer and to the mass transit authority. According to two studies on the use of bus-only shoulder lanes in the region<sup>11</sup>, customer reaction has been very positive.

Other states that have followed Minnesota in implementing bus-only shoulder lanes at specific sites are Maryland, New Jersey, Delaware, Washington, Virginia, California, and Florida. While the planning, implementation, and operational experience for bus-only shoulder lane programs are unique for each jurisdiction, feedback from case study surveys has generally been positive.

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<sup>9</sup> University of Minnesota, *Bus-Only Shoulders in the Twin Cities Final Report*, Hubert H. Humphrey Institute of Public Affairs, June 2007.

<sup>10</sup> Minnesota Statutes, 2004, Section 169.306

<sup>11</sup> University of Minnesota, *Bus-Only Shoulders in the Twin Cities Final Report*; Transportation Research Board, *Transit Cooperative Research Program Synthesis 64, Bus Use of Shoulders*, 2006.

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***Issues to Consider for Bus-only shoulder lane Programs:***

**Shoulder Improvement: Width, Structural Integrity, Maintenance, Costs, Signage**

Widening many congested freeways and other roadways are a problematic and limited solution because of right-of-way constraints, environmental concerns, and high costs. The Transportation Research Board (TRB) report<sup>12</sup> shows that the bus-only shoulder concept is less disruptive than widening roads, is a relatively low cost alternative, and can be put into practice relatively quickly. When a highway shoulder is being considered for bus-only shoulder use, existing shoulder conditions need to be evaluated to determine what work is required to accommodate the additional dynamic load caused by the buses. The primary factors to be considered are shoulder width, shoulder roadway structural integrity, drainage basins, signage, and striping.

TxDOT has identified 360 miles of shoulders on state highways in metropolitan areas with sufficient width of 12 feet; however, structural integrity will need to be determined before a final number of identified miles will be known. An improved shoulder will be at least 12 feet wide and have the structural integrity to accommodate bus use. TxDOT estimates the cost of signage and striping would be approximately \$2,000 per mile, and they also estimate no cost to evaluate the structural integrity. It is estimated that any structural evaluations could be done within existing TxDOT resources. Any lanes failing to meet the structural requirements will be eliminated from the usable mileage, currently estimated at 360.

The costs associated with early bus-only shoulder lane projects in Minneapolis/St. Paul were slight compared to other highway projects. Minimal investments were made to install signs and stripe lanes for the initial segments of bus-only shoulders. Shoulders that would have required any sort of construction to increase the width were avoided. However, over time costs were shown to increase with the need to reinforce and construct shoulder facilities as the bus-only shoulder lane network expanded. Even then, Minnesota road planners incorporated bus-only shoulder lane projects into other highway construction projects, when possible, to optimize costs.

Capital costs for bus-only shoulders in the Twin Cities, according to figures from the University of Minnesota report, range from as little as \$1,500 per mile to \$100,000 per mile, depending on the condition of the shoulder. The cost per mile of even the most costly bus-only shoulder lane is far less than the average cost of building a new lane on an existing highway, which TxDOT estimates at \$8 million per mile. The current TxDOT estimate of \$2,000 includes only striping and signage improvements to make the shoulders safe and usable for buses, but it does not include cost estimates for structural integrity improvements that might be identified in the pavement evaluation study.

**Legal Issues**

State law currently limits the use of shoulders to bike riders, emergency vehicles responding to a call, and law enforcement vehicles. The Transportation Code will need to be amended to

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<sup>12</sup>Transportation Research Board, *Transit Cooperative Research Program Synthesis 64, Bus Use of Shoulders*. 2006.

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accommodate the use of highway shoulders by mass transit buses. 80R SB 132 contained language that would have authorized “a motor bus of a transportation entity...operating on a shoulder designated by the Texas Department of Transportation....”

### **Safety, Rules of the Road**

Where bus-only shoulder lanes have been implemented, formal training of bus drivers on the rules and regulations of operating a bus on the shoulder has been standard procedure for transit providers. In the 15 years since its inception, there have been few accidents associated with the bus-only shoulder lane network in the Minneapolis/St. Paul area. The Minnesota Department of Transportation found that between 1991 and 2001, there were only 20 accidents on the shoulder involving a bus, and most of these were minor scrapes or mirror clips. Proper bus driver training, standard operating protocols, and careful design appear to be essential aspects of keeping the operations of bus-only shoulder lanes at a high standard of safety. Accident information is still needed from between 2002 and 2007 to better understand the risk involved in bus-only shoulder lanes before endorsing their use.

### **Rider Benefits, Schedule Reliability, On-Time Performance**

Travel time and reliability are key factors that attract riders to mass transit. Buses that are allowed to bypass congestion on shoulder lanes can help make mass transit more attractive. The TRB found in its study that the concept is popular with bus passengers who enjoy the feeling of preference as their bus moves past stop-and-go traffic. It is not uncommon for passengers to suggest to bus drivers that they move onto the shoulder when traffic begins to slow. Their perceived travel time benefits are generally greater than actual, but perception is a key factor in increasing public transit ridership. The TRB report found that “customers view the use of the shoulders not only as time savings, but also as a way to minimize their stress resulting from sitting in traffic congestion.”<sup>13</sup> Commuters can rely on shorter, more predictable travel times and fewer missed transfers. Operational costs were shown to decrease since more reliable travel times resulted in less driver overtime.

A 1998 study completed by SRF Consulting Group, titled, *Study of Bus-only Shoulders*<sup>14</sup>, found a 9.2% increase in ridership over a 2-year period while the remainder of the system experienced a 6.0% decrease in ridership over the same time. More recent data is not available since the increased ridership has proven consistent over many years in Minneapolis/St. Paul; therefore, this data is no longer being reported.

### **Bus Driver Perceptions, Input, and Training**

The driver-training program of Metro Transit in Minneapolis/St Paul in Minnesota offers classroom training on state law, operating rules, and response procedures associated with bus-only shoulder lanes as well as with other operating matters. Drivers are given annual safety updates and briefings on the use of bus-only shoulders, and they are taught to use their discretion

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<sup>13</sup> Transportation Research Board, *Transit Cooperative Research Program Synthesis 64, Bus Use of Shoulders*. 2006.

<sup>14</sup> SRF Consulting Group, *Study of Bus-only Shoulders*, Minnesota Department of Transportation Report 1998-06U.

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in how or when to operate on shoulders. If they are not comfortable operating in the shoulders, then they do not have to do so. This promotes a safer driving environment that is crucial to maintaining safe operation.

Bus drivers are an important part of any successful bus-only shoulder lane program and can play a vital role in establishing and maintaining a safe and reliable system. In a study<sup>15</sup> on bus-only shoulders, the University of Minnesota found that a majority of bus drivers perceive significant savings in their travel time when using the bus-only shoulders. Bus drivers are a helpful resource for identifying areas of highway that could serve as bus-only shoulders, and they are good at calling attention to locations that require maintenance or should no longer be used as bus-only shoulders.

## **Conclusion**

The use of highway shoulders by mass transit buses has been successful for more than a decade in a number of jurisdictions. No matter where they are located, bus-only shoulder lanes have common traits of success. Bus-only shoulder lanes:

- decrease congestion and schedule reliability problems;
- improve the competitive travel times for buses over cars;
- do not compromise the safety of either transit bus passengers or others on the highways;
- are relatively low cost and easy to implement;
- do not require new rights-of-way; and
- are not visually obtrusive.

The Texas Legislature should consider adopting bus-only shoulder lane legislation for MTAs that would be interested in taking part in such a program.

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<sup>15</sup> University of Minnesota, *Bus-Only Shoulders in the Twin Cities Final Report*, Hubert H. Humphrey Institute of Public Affairs, June 2007.

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**Charge 5**

**Examine the role of metropolitan planning authorities in state law, as well as the creation of rural planning authorities to address the planning needs outside of metropolitan planning organizations but within council of government boundaries.**

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## Introduction

While metropolitan planning organizations (MPOs) have existed in federal law since the 1970's in order to foster regional agreements to balance highway, transit, and other transportation needs, most people do not have a good idea what these entities do.<sup>16</sup> TxDOT, on its website, notes that an MPO is “a local decision-making body responsible for overseeing the metropolitan transportation planning process” that “is required for each urban area with a population of more than 50,000 people.”<sup>17</sup> Texas will undoubtedly continue its rapid population growth over the coming decades, and the role of MPOs will gain more importance not only in the regions where they already exist but also in areas that have yet to reach that population threshold.

As federal and state funding continue to diminish as a proportion of transportation funding, local governments will come to rely on MPOs to plan and prioritize infrastructure needs for decades into the future as well as to develop innovative funding sources to implement those plans. Furthermore, rural areas outside of these urbanized regions have similar planning needs—though on a much smaller scale—but no system for planning for their transportation needs. While this subject could easily encompass the entirety of the transportation debate occurring today, we will limit the discussion to the major issues of the planning process and what changes the Legislature can enact to make this process more efficient.

The first major issue is funding. While funding sources is a touchy topic and best debated outside the scope of this charge, the committee will limit its discussion to planning funds that MPOs can employ to effectively carry out their duties and responsibilities. Additionally, we will look at how MPO boundaries are determined in order to see if any changes can be made there to improve planning efficiency. Similarly, the committee will look at the governance structure of the MPOs in order to see which ones are most beneficial. Largely the local governments in a respective region currently determine both of these areas. This system has worked well so far, and this report should serve more as a guide with suggestions for these regions rather than a mandate coming from the Legislature. We will also look at how rural areas can best plan for their transportation needs and what steps the Legislature can take in order to assist them in that endeavor. Finally, we will examine how MPOs can coordinate their planning efforts to create a seamless transportation system across Texas.

## Funding

While other issues varied in intensity from region to region, the general consensus was that the biggest problem in transportation planning now is the lack of funding. As one witness responded when asked about what the Legislature could do to help the MPOs across the state, “I don't know why most of the speakers are reluctant to say, ‘We need money!’”<sup>18</sup> Given recent rescissions by the federal government and declining gas tax revenues from the state, local governments have to shoulder more of the transportation burden than they have had to in the past. For example, In the

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<sup>16</sup> Mark Solof, *History of Metropolitan Planning Organizations* (Newark: North Jersey Transportation Planning Authority, Inc.), 18.

<sup>17</sup> MPOs solely act as a planning organization. They do not implement any of the transportation projects that they plan. The projects are implemented by regional mobility authorities (RMAs), transit agencies, TxDOT, or other agencies designated by statute to implement projects.



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Houston-Galveston area, federal funds paid for 70% of all transportation needs in that region 25 years ago; today those funds pay for 40%.<sup>19</sup> The amount of money coming into the region today is comparable to the amount of money that came in 25 years ago, yet increases in the cost of construction inputs and higher population growth have required local governments to come up with new funding alternatives.

Though those figures deal with the overall investment in transportation infrastructure rather than simply planning funds, these federal and state decisions impact the planning process as well. Federal planning funds constitute 0.5% of certain categories of federal funding with a matching ratio of 80% federal funds and 20% state funds. Additionally, the federal government can only fund projects that appear in an area's Transportation Improvement Program (TIP) and the Statewide Transportation Program (STIP).<sup>20</sup> If overall funding is reduced, MPOs will not be able to develop the TIP to include all necessary projects. This may result in needed projects being delayed, leading to higher planning and implementation costs.

### **How are MPOs funded**

MPOs receive their planning funds based on the same formula that is used to distribute federal transportation funding to Texas. This funding is distributed to the MPOs based upon the U.S. Census population figures within urbanized areas of 50,000 people or more. Beyond that, MPOs must look to TxDOT or the local governments within their boundaries to fund additional planning activities.

MPOs with more than 200,000 people living in them and meet other criteria such as air quality control are known as "Transportation Management Areas" (TMAs).<sup>21</sup> The federal government has made provisions to allocate specific funds for those areas. Areas with less than 200,000 people have no specific sub-allocation of funding from the federal government; they are totally reliant on TxDOT in order to let them know what resources they have available to them in order to undertake planning activities. Eight of Texas' 25 MPOs have been designated TMAs. Having seventeen MPOs that do not receive designated federal funding for their planning activities is a significant problem for Texas. Without a guarantee that this funding will be available to them on a consistent basis, the policy boards in these regions are left to work with the prospect of an uncertain future.

### **Soft Match Leveraging**

Due to statewide funding shortfalls, no regional planning authorities can afford to send their transportation planning funds out of their region to fix problems outside of their jurisdiction.

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<sup>18</sup> Roy Gilyard. Texas House of Representatives. Committee on Transportation. *Subcommittee on Planning Authorities* Hearing, 6 February 2008. Austin: House Audio/Video, 2008.

<sup>19</sup> Texas House of Representatives. Committee on Transportation. *Subcommittee on Planning Authorities* Hearing, 6 February 2008. Austin: House Audio/Video, 2008.

<sup>20</sup> "Short primer on the MPO process and its importance to the Federal aid highway and transit funding programs," Nashua Regional Planning Commission.

[http://www.nashuarpc.org/aboutnrpc/general\\_documents/MPOdescription.pdf](http://www.nashuarpc.org/aboutnrpc/general_documents/MPOdescription.pdf).

<sup>21</sup> "Texas MPOs," Bryan/College Station Metropolitan Planning Organization. [http://www.bcsmpo.org/texas\\_mpo's.htm](http://www.bcsmpo.org/texas_mpo's.htm).

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However, the federal government considers TxDOT employees that work within the boundaries of the various MPOs as part of the 20% requirement that the MPOs must put forward in order to gain an 80% match of federal planning funds. Since these administrative costs are not likely to be cut at some point in the future, larger areas with more administrative resources can allow other regions to obtain 80% matches from the federal government to at least start their projects while they raise the 20% that remains to be funded.

Due to the limited nature of planning resources, some regions may not be able to do all the planning they need to in their region, much less flex that funding to other regions. Other regions have more flexibility in the form of alternate sources of matching funds. For example, areas that have toll roads receive credit from the federal government for collecting these revenues. These credits are an additional soft match source for federal funds that can be used to address other problems the region may face. An MPO that works outside its boundary with a region that is not in an MPO can also use these soft match funds to provide cooperative planning resources for potential projects.

This type of funding partnership is beneficial for the regions that choose to cooperate as well as for Texas overall. Though regions, which have the ability to flex these funding sources for the benefit of the state, should use that ability to help alleviate the transportation woes felt across the state, other regions should not take that as an indication that they need not utilize all tools available to them to improve their transportation systems. In other words, all regions should do everything in their power to come up with revenue sources to fund their planning needs as well as cooperating with other regions to create, in the words of one speaker, a sense that we are “One Texas.”<sup>22</sup>

## **Recommendations**

The Legislature needs to ensure that planning authorities have the necessary resources in order to develop comprehensive transportation plans for their regions. As an old saying goes, “Prior planning prevents poor performance.” Adequate funding in the planning stages will go a long way toward ensuring that limited transportation funding can be used most efficiently across the state. Providing these resources can allow the local decision makers to assume greater ownership of their future while allowing TxDOT to utilize their resources in areas where they have a competitive advantage, namely implementation. Such a shift of responsibilities might require a legislative change, although it may only need a change in the way we think about transportation.

TxDOT can also work with local planners in order to identify creative sources of funding beyond the planning stage. Some MPOs have identified new revenue sources with much success. San Antonio, for example, worked on legislation to allow them to create and advanced transportation district, where certain cities that did not use the full one-cent of sales tax for transit could create such a district, which would impose a sales tax up to the 8.25% cap to be split between their transit authority, the City of San Antonio, and their TxDOT district.<sup>23</sup> This generates about \$34

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<sup>22</sup> Michael Morris. Texas House of Representatives. Committee on Transportation. *Subcommittee on Planning Authorities* Hearing, 6 February 2008. Austin: House Audio/Video, 2008.

<sup>23</sup> SB769, 76<sup>th</sup> Legislature, Regular Session.

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million annually. Additionally, El Paso is looking at the possibility of developing a new commuter bridge between Texas and Mexico that could raise between \$15 and \$20 million annually and alleviate congestion on their other international bridges. Other areas may have the potential to create such projects but do not have the resources or ability to know what their options may be. TxDOT can help these regions be aware of all their options and thereby aid them in the planning process.

### **Boundary Alignment**

Requirements for the boundary of a metropolitan planning area (MPA) are detailed in the *Federal Register*.<sup>24</sup> The MPO and the Governor must agree on the boundaries in for them to be set. At the very least, an MPA “shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.” Additionally, the boundaries can be expanded beyond that by a similar agreement to “encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget” as well as “reflect[ing] the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by model systems, and promotes efficient overall transportation investment strategies.”<sup>25</sup> The regulations also give consideration to areas outside of the urbanized area that fall within a nonattainment county.

### **Alignment with TxDOT Districts**

The configuration of TxDOT districts—whose boundaries were formed before the boundaries of COGs and MPOs—may not be optimal for long-term regional transportation planning in Texas today. Since the councils of governments (COGs) plan for a variety of issues on a regional level, transportation planning can be streamlined if the two boundaries encompass the same area. In many cases, the discrepancies affect only perimeter rural counties of an urban region; however, in a region like Dallas/Fort Worth, the two major cities are split into two separate districts that divide the North Central Texas COG roughly in half.

After this subcommittee’s hearing, TxDOT sent a survey that included a question regarding the beneficial nature of realignment of TxDOT district boundaries to all COGs and MPOs. The COGs and MPOs generally felt that these changes would be “preferable but not essential” since any inconveniences caused under the current alignment were minor in nature.

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<sup>24</sup> “MPA” refers to the geographic area within the boundary while “MPO” refers to the policy-making body that oversees planning in the MPA. For the purposes of this report, both the area and the policy-making body may be referred to by “MPO.”

<sup>25</sup> “Metropolitan Transportation Planning,” 72 *Federal Register* 30 (14 Feb 2007), p. 7272.

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## Recommendations

Since the federal government sets the guideline for MPO boundaries, there is no need for the Legislature to enact any further changes. The MPOs have functioned well under this framework and do not require any modifications from the Legislature.

Since TxDOT's district structure can overlap and divide some COGs, the boundaries of TxDOT districts should be realigned with the COG boundaries in order to facilitate planning and implementation of transportation projects. The MPOs and similar rural groups can then consult with one district engineer regardless of where the project may be constructed. Since this change is more of a convenience than a necessity, these changes should be made only if they are simple and don't divert already stretched resources from other more urgent activities.

## Governance Structure

The federal government does not specifically dictate the composition of the board of directors of an MPO but does stipulate that the board of directors of each MPO should be made up of "local elected officials, representatives of the transit authorit[ies] and representatives of the TxDOT districts."<sup>26</sup> Beyond this general framework, the regions adopt different structures based on local preferences. In some MPOs, the entire legislative delegation serves on the policy board while no legislators serve on other policy boards. There may also be some that have multiple transit authorities, toll road authorities, regional mobility authorities, or other particular regional concerns. Texarkana's MPO also encompasses another state, while El Paso's MPO has to work with another state and another country. Needless to say, there are many possible configurations to consider when looking at how to structure an MPO's policy board.

Local preferences also dictate the level of affiliation between the MPO and other local government structures. MPOs can be based out of a city office, a county office, or a COG. In these cases, transportation is generally viewed as one part of an overall planning process for the area that also includes air quality, economic development, homeland security, and other issue areas, though there may appear to be a bias since they depend on one entity to house them. An MPO can also be independent. In this case, the MPO works out of its own office not affiliated with another entity. While they may not have the same overall planning approach as an MPO affiliated with another entity, independent MPOs can be free to plan their transportation needs without feeling beholden to any one particular member of the organization.

## Recommendations

Like the boundary alignment, the federal government provides a generic set of minimum guidelines for the local governments to use. While there are bound to be conflicts within any diverse group of elected and appointed officials and professional planners, those officials closest to their communities should have the best idea about how to organize themselves so that they can work through any disagreements. The Legislature should not overextend itself into the makeup of any particular MPO or try to impose a uniform governance structure over the entire state, as

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<sup>26</sup> Sid Martinez. Texas House of Representatives. Committee on Transportation. *Subcommittee on Planning Authorities* Hearing, 6 February 2008. Austin: House Audio/Video, 2008.

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each region has its own unique needs.

### **Rural Planning Organizations**

While most of the testimony focused on issues with MPOs, similar issues affect citizens in rural areas. These issues are further complicated because there is no formal mechanism for public input or transportation planning and implementation for rural regions in federal law.

The 77<sup>th</sup> Legislature acknowledged that the counties not in a metropolitan area need to have more authority over their transportation planning and growth.<sup>27</sup> For those counties to have this expanded authority over certain larger roadway projects, however, they need to be included in the region's transportation plan. Rural counties outside of an MPO are not required by federal law to develop such a plan, nor are there any resources set aside to create one. This can create a problem in outlying counties that are experiencing rapid growth.

Despite the lack of well-defined rural planning organizations (RPOs), there have been a few areas that have developed a regional approach for transportation planning inside a COG yet outside of the MPO.

### **Regional Planning**

In Central Texas, the Capital Area Council of Governments (CAPCOG) created a regional planning authority in 1999 known as the Capital Area Regional Transportation Planning Authority (CARTPO). It covers not only the rural counties in the COG but also the urbanized areas covered by the Capital Area MPO (CAMPO). This has allowed them to take a regional approach to transportation planning rather than one focused exclusively on rural concerns.

This has worked for them for several reasons. First, CAMPO covers the three counties in the geographical center of the COG. Leaving out those counties would have two non-adjacent rural groups. These groups would then either compete among themselves or have to develop a transportation plan without the input of the central counties, leading to conflicting plans and a disjointed transportation system. Furthermore, the COG does not have the planning resources to dedicate solely to transportation. They have to use other development funds in order to come up with their transportation plans. Coordination with CAMPO allows CARTPO to supplement its already stretched planning funds. Finally, people and goods move back and forth across the rural areas and the urban areas. In this situation, it is not beneficial to take a piecemeal approach to planning and possibly wind up with an inefficient transportation system.

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<sup>27</sup> SB 873, 79<sup>th</sup> Legislature, Regular Session.

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## **Separate RPO**

Another option to consider is the existence of an RPO within the area of a COG that is not part of the MPO. This type of entity would function as separate and distinct from the MPO in the planning process. Rural leaders who have reservations about being intimidated or taken for granted by the urban policymakers will be able to have greater control over their transportation planning.

Such an arrangement would require cooperation between the RPO and the MPO. Since both would be situated within the same COG, that coordination should already be occurring in other policy areas. Allowing rural leaders to come together and speak with one single voice when working with urban leaders will help them come together despite seemingly disparate interests and feelings of isolation from each other.

## **Funding**

Like MPOs, RPOs require basic resources in order to fund their planning activities. Many of these regions do not have the population bases to support significant planning resources, yet there is no specific federal designation for planning funds to be used by RPOs or similar organizations. The state should be wary of that and try not to burden rural governments with exorbitant planning costs.

Fortunately, the federal government does have funds available through its Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The section entitled “State Planning and Research” (SPR) allows the state to designate certain planning functions as “necessary and reasonable expenditures” that qualify for federal funding. RPOs should designate as part of their annual transportation plans what they are using their resources for in order to make sure that those that are eligible can be accomplished through federal funds. Planning activities that are not covered by federal funds will need to be paid for through creative funding mechanisms. Funds at the state level are already inadequate for all the activities being carried out by the MPOs without the added weight of the RPO activities. It would also be overly burdensome to go to the local governments and tell them they need to provide large portions of the planning funds when the state is ultimately responsible for approving and carrying out the plans.

## **Recommendations**

The Legislature needs to codify RPOs. These entities should cover areas within a COG structure that are not inside the MPO boundaries. Local officials can determine whether to take a regional approach like CARTPO, create a separate entity within the COG, or possibly look at a different structure within the COG that might be more efficient for them. Rural leaders could also look to house their RPOs within their TxDOT district to allow state funding and resources to be used more efficiently.

The policy board of each RPO should be determined by each RPO but have the same characteristics of MPO policy boards. There should be elected officials as well as TxDOT

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district engineers and representatives of transit and other transportation agencies in the region.

RPOs should be charged with the same planning responsibilities as MPOs. They need to develop short-term and long-term transportation strategies and update them as situations change. They should seek public involvement to the fullest extent possible during this planning process so that the general public does not feel as if they are being excluded, and this should be a requirement for the approval of the plan. Additionally, the Transportation Commission should be allowed to delegate some of its powers regarding project selection to these RPOs in order to give them ownership of their transportation futures.

The Transportation Commission should be able to provide planning funds for RPOs from state highway funds, and to whatever extent possible, help them target federal SPR funds available to them under SAFETEA-LU. If necessary, the legislature should designate planning funding for those areas in the appropriations process. Finally, MPOs should work with their rural counterparts in order to leverage matching funds like the process that is currently going on now between some regions and was recommended earlier.

### **Coordination and Cooperation**

Regionalism benefits the transportation planning process by allowing people close to their communities to have the opportunity to make the important decisions regarding their development, but sometimes a problem occurs that affects multiple regions. It is, therefore, important to ensure that these regions cooperate with each other so that people and goods can move more efficiently within and between regions.

### **Cooperation Between Regions**

The Legislature has already acknowledged the need for cooperation between regions. In 2003, it called for transit operations to be seamless across the state.<sup>28</sup> This came from a desire for transit to be focused on the outcome for its customers. As a result, the state insists that any kind of transit operations that cross COG and MPO structures be focused first on the customer, not local politics.

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<sup>28</sup> HB 3588, 78<sup>th</sup> Legislature, Regular Session.

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Transit should not be the only area where regions work together in order to provide a positive outcome for the users of transportation systems in Texas. Some regions could benefit from transportation outside of their MPO or even their COG boundaries but could be vital to improving their transportation situation. For example, I-35 splits at Hillsboro, with one section going to Dallas and the other to Fort Worth before coming back together near Denton. Movement along this highway near Hillsboro could be improved by constructing dynamic message boards from D/FW to the split to inform drivers about incidents in that area in order to move traffic to alternate routes if necessary. Hillsboro is outside of the North Central Texas COG and not a part of any MPO, leaving it without sufficient resources to undertake this project by itself. Since both regions, as well as the state as a whole, benefit from better communication with drivers regarding traffic conditions on the highway, the two regions are currently working together to implement this project.

In this scenario as well as the transit situation, the MPOs would draft a Memorandum of Understanding (MOU) for the project. This agreement need be nothing more than a simple acknowledgement that the two sides have decided to come together to create projects that benefit the movement of people and goods. It would serve as a starting point for more specific arrangements regarding which parties would handle which aspects of the projects. There is no formal enforcement mechanism for an MOU, but it would allow the public to judge if the sides are abiding by the MOU as the planning process goes forward.

### **Cooperation Between MPOs & TxDOT**

Due to the structure of the MPO policy boards, they have a built-in system of cooperation with TxDOT. This allows the MPOs to know throughout the process how TxDOT thinks on certain issues in order to prevent a full plan from being created and then encountering resistance from TxDOT. Similarly, the district engineers that work for TxDOT can be close to the planning process in order to inform officials in Austin about what is happening.

Though this has been helpful for both the state and regional planners, there are still several small issues that can be worked on to improve the process. Currently, the Transportation Commission is charged with project selection. While the Commission considers and generally approves the project plans and implementation strategies that an MPO provides, situations could arise where the two bodies might be in conflict. The Commission also is functioning with a limited amount of funding to implement these projects. When all the MPOs come to the Commission for funding, commissioners face the difficult task of picking favorites and might upset various regions.

Another barrier is that MPOs do not have the distinction in state law of being either a grantee or contractor for TxDOT. This creates unnecessary hurdles in the planning process. The two groups have a more difficult time coming to formal agreements and may duplicate the efforts of one another. This slows down the planning process while delaying implementation of projects and increasing their costs.

### **Recommendations**

The Legislature should look at ways in which MOUs can be used and insist that they be used



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whenever possible. Some areas where these agreements would be beneficial include freight and passenger rail projects, interregional highways and bypasses, and county thoroughfare systems.

The Legislature should allow the Transportation Commission to delegate some of its powers to the MPOs, particularly in the area of project selection. Giving the MPOs more autonomy allows them to assume a more important role solving Texas' transportation problems. By prioritizing and deciding on these plans on their own, they can ensure the limited funding has the most impact on the region. Where they see projects that cannot be funded with traditional revenue stream, the MPOs can look for innovative funding solutions to implement them.

Finally, the Legislature should streamline the planning process by removing barriers between the MPOs and TxDOT. Allowing MPOs to be grantees and/or contractors for TxDOT will make this process much more efficient.

## **Conclusion**

It is vital that the Legislature continues to recognize the importance of regional planning agencies and allow them to maintain their control over their boundaries and governance structure. Metropolitan planning organizations have been working for some time in Texas and will continue to do so in the future. Rural areas do not have the benefit of this type of planning structure yet, but the Legislature can and should put this into statute. Though funding is scarce nationally, we can assure that our regional planners receive adequate planning resources, which may be the most crucial type of funding. The Legislature can also take the lead on cooperative planning efforts by urging regions to use memoranda of understanding when they work together. Perhaps the most important way in which the Legislature can emphasize the need for cooperation is by example. During the next session members need to look past the emotional arguments related to funding and come together to promote the best new funding sources not just for planning transportation projects, but for implementing them as well. While the passion and politics may tempt some legislators to restrict some effective funding mechanisms, members must realize that they have to come together to speak with the voice of "One Texas" so the nation can continue to look to this state's example in transportation planning and implementation.

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**Charge 6**

**Study and make recommendations for changes to statutes regarding handicapped parking.**

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## **Background**

With the passage of the Americans with Disabilities Act in 1990 businesses and governmental entities were required to make accommodations for persons with disabilities in order to provide them with an equal ability to access businesses, hospitals and educational and governmental institutions. One of the many provisions of the act required establishments, considered to be public places, to allocate a certain number of handicap parking and van unloading spaces and install curb cuts for wheelchair access. The Texas Legislature subsequently adopted provisions of the ADA that are contained in Section 681 of the Texas Transportation Code. This Section directed Department of Public Safety and local law enforcement officers to add handicap-parking enforcement to their other law enforcement duties.

Given that enforcing handicapped parking laws was not the highest priority to law enforcement, in 1995 the Texas Legislature authorized counties to commission "citizen volunteers" to write handicap parking tickets. Tickets issued by handicap parking volunteers are written to vehicles do not have handicap plates or placards ("hang-tags") and that are parked in handicap parking spaces, van accessible spaces or are blocking curb cuts for wheelchair access. Citizen volunteers are required by State law to attend a four-hour training session on state law and the policies of the program, they are not considered peace officers and are not authorized to take any other action other than writing tickets for a handicapped parking violation.

## **Unauthorized Use of Placards**

The misuse of handicap parking placards has led to widespread abuse of handicapped parking. In order to determine whether a person using a placard is actually the person to whom it is issued, law enforcement officials must verify that person's identity and match it to the placard. This is done when a driver using handicapped parking is observed to have no visible disability. People who are found to be using another person's placard for their own use, and who are not transporting the owner of the placard are ticketed and the placards are seized.

In 2006, a report<sup>29</sup> by Travis County Constable Office, Precinct 5, found that of the tickets issued by their handicap-parking deputy, a large number were written for the unauthorized use of placards. Many individuals ticketed for misuse possessed placards belonging to friends or family members, some of whom were deceased. Several individuals who had hang tags seized were able to obtain replacements from the Tax Assessor Collector's Office simply by stating that their grandmother or another family member lost his or her placard. One individual has been ticketed three times using 3 different placards that did not belong to her so that she could park in handicap spaces or at parking meters for free.

A significant number of the handicap parking tickets written in the downtown area was for people who were using other people's hang tags to avoid paying parking meters. Based on a survey of more than 2,000 occupied parking meters in the downtown Austin area, 20% of the vehicles observed parked at meters had handicap parking placards on the windshield. Of this

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<sup>29</sup> Constable Bruce Elfant, A Report on Enforcement of Handicap Parking Laws in Travis County, Travis County Constable Precinct Five, May 2006

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number, sixty-five percent were identified by the handicap-parking deputy were using placards issued to someone else. Misuse of placards was most common around the downtown office and government buildings. This misuse makes it more difficult for people with disabilities to gain access to downtown government offices and businesses. Further, given that most large cities like Austin allow free parking, **with no time limits**, at meters to those with handicapped placards, accessible parking placard abuse could be costing the City of Austin hundreds of thousands of dollars per year in lost meter revenue

Sec. 681.012 of the Texas Transportation Code provides that "a law enforcement officer" who believes someone is wrongfully using a handicap placard may seize the placard. However, it is not clear who is considered to fall within the definition of "law enforcement officer;" the phrase is not defined in Chapter 681. If the law were amended so that it clearly includes parking enforcement officers (who are employees designated to write parking citations by the political subdivision), this would enable parking enforcement employees to seize placards that are being used by unauthorized persons and provide much-needed resources to enforce the law. Most drivers who use other people's placards believe they incur a very low risk of getting caught because police officers do not have the resources to devote to enforcing handicap violations.

The punishment for using someone else's placard is currently a Class C misdemeanor. The penalty is just a couple of hundred dollars, which some downtown employees save in one month by using someone else's parking placard to illegally park at a meter for free. It is literally just a slap on the wrist for passing yourself off as someone else and fraudulently using state and county-issued government document, not to mention the huge burden it places on those who need to use the spaces legitimately when they have to find parking elsewhere.

### **Illegal Sale of Placards**

In Texas, it is a crime for anyone other than authorized county tax personnel to sell handicap-parking placards. Regardless, the sale of placards has been observed at flea markets, garage sales and on the Internet. Unfortunately, resources are not available to law enforcement to pursue criminal action in these cases.

### **"Red" and "Blue" Handicapped Parking**

Prior to 1999, people with permanent disabilities qualified for blue placards and people with temporary disabilities qualified for red placards. In 1999, the legislature passed HB 1032. This bill created new guidelines for the colored placards: **blue** placards would be issued for people that had substantial mobility problems, and **red** placards for people with other types of disabilities such as blindness, or severe vision impairment. The goal was to provide those with mobility disabilities access to handicapped parking that was closer to a given destination. This more convenient parking would be marked by blue & red parking signage. Unfortunately, private citizens do not understand the differences. Also, Texas counties are not implementing the law, as currently written, and no red handicapped parking spaces appear to exist in the State of Texas. Further, many people with other types of disabilities (e.g. blind) have legitimate safety concerns that necessitate the provision of a shorter and safer path of travel that is not recognized in the law as currently written.

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## **Handicap Placard Identification Number**

At the urging of law enforcement and disability organizations, the Legislature directed local tax offices to add the driver's license or personal identification number of the person on the placard when it was issued. This change made it possible for law enforcement officers to easily run placards and license plate numbers to determine if both came back to the same person, whether the placard owner was deceased or it was reported stolen.

In light of issues such as identity theft and personal privacy rights, in 2003 the legislature changed the law to re-direct tax assessors to record only the first 4 digits of driver's license numbers followed by the initials of the applicant. As a result, law enforcement officers are no longer able to run placards by their ID number. The effect is an officer has to verify an individual's identity when entering or exiting their vehicle in order to determine if a placard is being used legitimately.

In 2007 the legislature passed HB 1781. This bill allowed the County Code, for the county issuing the placard, to be added before the 4 digits of the driver's license and the applicant's initials. Adding the County Code allows law enforcement officers to contact the county's tax assessor to verify its legal use.

## **Presumption that Vehicle Owner is Driver**

Section 681.011(e), Transportation Code states, "in a prosecution under this section, it is presumed that the registered owner of the motor vehicle is the person who left the vehicle standing at the time and place the offense occurred." Many if not most handicap parking tickets are written to unoccupied vehicles, parked in handicap parking spaces, that do not have handicap parking plates or placards as required by the Texas Transportation Code. For these cases, tickets are written to the vehicle owner since Sec. 681.011(e) presumes that the owner is the driver.

A Travis County judge (and several other attorneys who have studied this issue) who hears handicap parking cases believes this section to be unconstitutional. In the absence of an eyewitness, photo of the violator or an individual who admits to a violation, it cannot be presumed that the owner is the driver. It is not possible to prove who the violator was beyond a reasonable doubt, which is the burden of proof for criminal cases. Many Travis County cases involving unoccupied vehicles parked in handicap parking spaces in clear violation of law have been dismissed because prosecutors cannot prove beyond reasonable doubt who committed the offense.

## **Recommendations**

Even with the Legislature's efforts to increase enforcement of state handicap parking statutes, the misuse and abuse of handicapped parking continues to grow. More drivers are resorting to using placards that do not belong to them in order to park in handicap parking spaces and parking meters, and some are even being altered and illegally sold. These violators are making it more difficult for people with disabilities to access public places. This leaves few choices for drivers with disabilities. They can use regular parking spaces and risk their safety navigating through parking lots or busy streets, or they can give up and try again at another time. Obviously neither

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of these options is preferable. Many persons who use wheelchairs are literally not able to park in a regular parking space, as they require additional room in order to enter or exit their vehicle.

Because the abuse of handicap parking spaces is widespread and enforcement (especially misuse of placards) is labor intensive, it is necessary to provide additional tools to law enforcement officers.

### **The Subcommittee makes the following recommendations**

- In order to curb the misuse of handicapped placards, the penalty for those using them in a fraudulent manner should be increased to a minimum fine of \$500 and a second offense should carry the addition of community service.
- Placards should only be used to park in a handicapped parking space if the person to whom it is issued is being transported to that location, or if the person who is issued the placard is actually driving the vehicle. To assist law enforcement personnel in catching offenders, uniformed parking enforcement officers (PEO's who are municipal employees - not volunteers) should be given the authority to verify that placards actually belong to the individuals who are using them. They would do this by **matching** the name and number on the Driver's License to the initials and number on the placard (the license would not be run through the TLES database). If they find that a placard is being used in a fraudulent manner, they should be allowed to ticket the offender and confiscate the placard, just as law enforcement officers do.
- To clear up the confusion concerning "red" and "blue" parking placards and parking spaces, especially given that red parking signs are rare, the prior system of issuing placards should be re-instated. Blue placards should be issued for permanent disabilities and red should be issued for temporary disabilities. Additionally handicapped parking signs and any other handicapped markings should only be blue. These changes would track with rules at the federal level.
- Authorize County prosecutors to pursue handicap-parking cases in civil court where the burden of proof is not as high. The failure to pay toll road fee and red light camera offenses currently are pursued in civil court precisely because cameras take pictures of license plates that identify vehicle owners but not the drivers. Some municipalities are currently authorized to file handicap-parking cases in civil court. County prosecutors do not currently have this authority.
- Based on testimony heard at the committee hearing, we would also like to recommend that physicians have additional information to assist them when prescribing handicapped placards for patients. For example, the Texas Medical Board could issue guidelines to physicians providing them with specifications for the correct issuance of placards and plates.

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**Charge 7**

**Review the effectiveness of the Driver Responsibility Program and provide recommendations for increasing the collection rate of assessed penalties. Provide recommendations for amnesty and incentive programs established by the passage of SB 1723, 80th Legislature, Regular Session. Examine the status of Texas' current statewide trauma system infrastructure and how the system may be optimized to meet future trauma care needs in a rapidly growing state with overburdened emergency rooms.**

(Joint Interim Charge with the House Committee on Public Health)

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## **Driver Responsibility Program & Trauma Care**

HB 3588 was a product of the House Committee on Transportation during the 78th regular legislative session. The bill set up a Driver Responsibility Program (DRP), designed to raise funds to improve trauma care and build roads in the state of Texas.

During fiscal years 2004 and 2005, the Texas Mobility Fund received 49.5% of all surcharges collected. Collection of the DRP resides with the Department of Public Safety, under the purview of the House Committee on Law Enforcement.

Beginning September 1, 2005, the 49.5% of funds that were deposited to the mobility fund were redirected to the State's General Revenue Fund. The mobility fund now only receives money from the Driver Responsibility Program and the State Traffic Fine (\$30 fine for all class C traffic offense convictions) if the money deposited into the General Revenue Fund exceeds \$250 million. There have been no excess revenues since that time, and in 2007, the Comptroller projected that no such excess revenues from the State Traffic Fund and the DRP would be available in 2007 or thereafter.

Thus, the Texas Department of Transportation does not estimate that there will ever be another deposit to the Texas Mobility Fund from the Driver Responsibility Program.

The House Committee on Transportation supports all efforts by the House Committee on Public Health to improve trauma care in this state, and legislation by members of the House Committee on Law Enforcement to improve the collection rate in this state. However, as TxDOT no longer receives road-building funds from the DRP, the transportation subcommittee declines to make recommendations to its fellow committees.<sup>30</sup>

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<sup>30</sup> For additional findings see the House Committee on Public Health Interim Report to the 81<sup>st</sup> Legislature.



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**Charge 8**

**Review the current requirements for driver's license and identification card holders in Texas in order to recommend legislative measures to prevent these documents from being used to further criminal activities, and recommend ways to enhance homeland security.**

(Joint Interim Charge with House Committee on Defense Affairs and State-Federal Relations)

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## **Background**

When the Texas Driver License Program was first implemented in 1935, its sole purpose was to ensure that an individual had been instructed on the traffic laws and regulations and thus had the capability to operate a motor vehicle safely. It was never intended to be used as a credentialing document, a primary identifier. Over the years it has taken on an ever-increasing role as a form of identification for the purposes of travel and economic transactions, thus making the necessity of a sound process for obtaining a license more crucial.

## **Interim Hearing**

On May 21st, 2008, the House Committee on Law Enforcement met with the House Committee on Transportation and the House Committee on Defense Affairs & State-Federal Relations met to study current licensing practices and create potential legislative remedies that could be implemented to strengthen and enhance homeland security. Chief Judy Brown of the Department of Public Safety Driver License Division and Director Steve McCraw of the Governor's Office of Homeland Security provided the following information to the committees:

## **Reexamination**

The investigation into the terrorist attacks on the United States in 2001 revealed that all but one of the hijackers acquired some form of identification document, through fraudulent means, and used these "legitimate" forms of ID to assist them in boarding commercial flights and other necessary activities which lead up to the attacks. In response to these findings, many states began to re-examine their policies for issuing driver licenses (DLs) and identification (ID) cards. Measures to strengthen homeland security and maintain highway safety were adopted including: fraudulent document recognition training, strengthening applicant identity requirements, and limiting the validity period of DLs and ID cards to the period of lawful presence for non-citizens.

## **REAL ID:**

### **Final Rule**

The REAL ID Act of 2005 Final Rule can be viewed online on the Federal Register site, which can be found at: <http://www.gpoaccess.gov/fr/>

The REAL ID Act of 2005 is a nationwide effort intended to prevent terrorism, reduce fraud, and improve the reliability and accuracy of identification documents that states issue. The Act requires that a REAL ID be used for official purposes, as defined by Congress, such as accessing a federal facility, boarding federally-regulated commercial aircraft, entering nuclear power plants, and such other purposes as established by the Secretary of Homeland Security.

Provisions contained in the REAL ID Act of 2005 require certain state standards and procedures for issuing DLs and ID cards if they are to be accepted as identification documents by the federal government.

The Final Rule provided the Secretary of Homeland Security with the authority to grant states an

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extension of the Act's May 11, 2008 compliance date. A state's failure to issue Real ID compliant DLs or ID cards by this date, or obtain an approved extension, will result in a state's DLs or ID cards not being accepted to access federal facilities, board federally-regulated commercial aircraft, enter into nuclear plants and for any other purpose that the Secretary of Homeland Security has determined.

Under the Final Rule, Texas requested, and has been granted, an extension for implementation of the Real ID Act to December 31, 2009. This extension allows the Texas Department of Public Safety (DPS) to adequately review the final Real ID regulations and assess its fiscal impact to the DL program. In addition, the extension would provide necessary time for the Texas Legislature to consider approval and funding for the Act in 2009.

The Final Rule takes into consideration the operational burdens on states. If the state can certify a certain level of compliance, DHS will extend the enrollment time period to replace all DLs or ID cards to December 1, 2017. After December 1, 2017, federal agencies will not accept any state-issued DL or ID card for official federal purposes unless such cards have been issued by states that have certified to DHS their full compliance with this rule.

### **Re-verification period**

A mandatory re-verification period will require all applicants for a renewal or duplicate DL or ID card to appear in-person at the DL office and to provide acceptable identification documents prior to issuance of a Real ID DL or ID card. States will be required to re-verify identification documents at each renewal period, resulting in continued costs to the state.

Current staffing levels and hours of operation will not be sufficient to process the increased number of applicants. In addition, wait-times in the DL office will be significantly impacted as a result of the increase in issuance requirements, specifically to review ID documents and perform online verification queries.

### **Lawful Presence Requirement**

All DL or ID card applicants will be required to provide evidence that they are either a citizen of the U.S. or lawfully residing in the U.S. Non-U.S. citizens legally residing in the U.S. may be issued a "Temporary DL or ID card" and the card must clearly indicate that it is "temporary" and include an expiration date that coincides with the authorized period of stay in the U.S., not to exceed one year.

### **Card Security Feature**

The Final Rule requires states to include a DHS-approved security marking on each Real ID driver license or identification card and non-conforming DL or ID card issued which reflects the card's level of compliance with the Rule.

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## **Operational Challenges**

Staffing and facilities will be challenged to manage Real ID, as the regulations will increase visits to DL offices during the initial re-verification period as alternate issuance methods (Internet, mail and telephone renewals) will be discontinued. Consequently, the Driver License Division will require additional staff, facilities, training and equipment to implement Real ID. This will include extended work hours and/or additional workdays to effectively manage the regulations without significantly inconveniencing the public. System enhancements will be necessary, including development, expansion and deployment of several online verification systems as well as modifications to numerous business processes to meet the requirements of the Act. Texas will see a significant impact to DL office operations and budget constraints due to higher volumes of online queries to verification systems.

Accordingly, costs associated with Real ID will be significant. DPS estimates that over \$129 million will be needed during the implementation biennium.

## **The *Banai* Case**

In 2006, the Texas Department of Public Safety discovered incidents of fraudulent activity that involved immigrants falsifying documentation to obtain a Texas DL in an attempt to avoid immigration laws. This particular incident has since been referred to as "The Banai Case."

A man by the name of Isaac Banai utilized the DPS' DL system to market a DL "vacation". He advertised in foreign newspapers to foreign residents of the United States, primarily in New York and New Jersey. For a small fee he would bring them to the state of Texas. Once in Texas, Banai would educate them on the necessary requirements to pass the Texas DL test and then take them to a DL office. These individuals would apply for a DL and exploiting a loophole in a DPS rule which did not require the applicant to show a valid I-94 with their visa. The applicants would remove the I-94 immigration document from their passport which indicated their visa was expired. This allowed them to present the now "valid" immigration document to DPS. The DPS rule only indicated that they had to have a valid immigration document; there was no mention of verifying the I-94 or any other supporting documentation.

The Driver License Division processed some 398 of those individuals. The foreign residents immediately returned to New York or New Jersey with a valid Texas DL to either use or exchange for their current state DL.

## **Current efforts by the Department of Public Safety**

In response to the *Banai* case, DPS has changed the DL process to close the exposed loophole. DPS has tightened the administrative rules, and processed an administrative rule change which requires an applicant to have had at least one year of immigration status, and also have at least six months remaining in order to obtain a DL.

The Department cancelled all of the licenses connected with the *Banai* case. The Department coordinated with Immigration and Customs Enforcement (ICE) to prohibit the utilization of these

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DLs as identification. ICE has taken measures that will cause notification when and if any of these individuals request a change to their immigration status.

The Department has tightened the rule to request a Texas residence address. In the *Banai* case, the applicants had given the address of a hotel as their residence address. The new rule eliminates the opportunity to use a hotel address and allows DPS to assign a more severe penalty to the applicant if they try to use a hotel as their residence.

Texas has a more stringent identification policy than other states. There have been incidents in the past where individuals were able to obtain a license from another state, bring the license to Texas and utilize the rule by using the out-of-state license as a secondary document to obtain a Texas form of ID. Therefore, in an effort to close all the loopholes administratively, DPS has taken the out-of-state license down a notch. Instead of using the out-of-state license as a secondary document when applying, DPS has moved it down to a supporting document. This puts a little more validity with regards to what an applicant has to provide to DPS in order to obtain a document in the state of Texas.

### **Drivers License Reengineering**

In late July 2008, there were several changes to the Driver License Division (DLD) and the DL itself. In addition to the addition/clarification of the I-94 requirement, DPS is considering hiring additional FTEs for the DLD to facilitate address searches and verifications as well as processing DL applications.

As of September 2008, the DLD believed that the new DL system would be ready near the beginning of 2009 and that the current technology and equipment, employed by the department for DL production, would be capable of printing the additional field containing the supplemental expiration date on the DL through a work-around. There was no word as to whether DPS has solved the issue of the new DL program being cost prohibitive. However, the reengineering project is being built so that the new architecture and application foundation will allow for a much quicker and easier transition to REAL ID specifications, if it is indeed passed.

To reduce the potential for fraudulent activity related to the DL issuance process, the Department has programmed the following safeguards into the New DL System (DLS), which is scheduled for implementation during the fall of 2008.

- User authentication (password) is required to log into the new DLS and includes role-based authorization based for specific functions. The protected password must be changed periodically.
- A log/audit trail of all system activity that occurs within the DLS will be stored and archived. The log will include user identification and date and time of the activity.
- Automatic DLS log-off after a specified period of time.
- Rules will systematically validate data prior to submission rather than allowing invalid entries that are found through manual edit verification after transaction is logged.
- DL employees will use one-to-one photo comparison feature at the time of issuance to compare the newly collected photograph to the previous photo on file.

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- Photographs of original applicants for a DL and ID will be compared each night against the entire file of 21 million photographs. Suspicious issuance activity will be reported for further investigation and cause licenses to be held until resolution.
  - The thumbprint collection procedure has been enhanced to include quality checking software that ensures a quality print is collected.
  - Imaging identification and application documents and the use of electronic forms will provide valuable documentation to identify and reduce potential fraud.
  - The DLS will update most data in near real-time. This provides within seconds of entering information, records will be updated and will prevent applicants from “office shopping” in an effort to commit fraud.
  - The DLS will be a Web-based system; therefore, computers will replace the current mainframe terminals (CRTs) and a new image capture system will be utilized in the Driver License Division. This state-of-the-art equipment will provide enhanced reliability and software to ensure quality images.
  - The DLS will display all information related to a person’s record. If a person has both a DL and ID, both numbers will be displayed under the person’s name, which will eliminate the possibility drivers having a license with a clear status and an identification card with adverse driver history and will prevent maintaining different addresses on DL and ID cards.
  - All DL and ID card issuances, including temporary receipts, will contain a photograph.
  - Supervisor reports will be generated based on transactions that may indicate suspicious activity.

In addition, facial recognition technology will be introduced to the issuance process with the development of the Image Verification System which will provide the ability to perform one-to-one comparisons of facial images collected at the time of issuance in the DL office to the most recent image on file in order to prevent identity theft.

Further, a new DL and ID card format which will include many new state-of-the-art card security features that will make alteration and counterfeiting of the card extremely difficult to successfully achieve will be introduced in the fall of 2008.

### **Sunset Advisory Commission Suggested Changes**

Currently, commissioned officers are performing business functions rather than law enforcement functions. A budgetary increase would allow DPS to hire individuals to fulfill the numerous business functions that the department has been assigned over the years. In addition, the Public Safety Commission wants to utilize the recommendation of the Sunset Advisory Commission staff, which is to civilianize the DLD and make it more consumer oriented. As a result, this would include removing commissioned officers from the administration side only, not from the various office locations for reasons of security.

### **Conclusions & Recommendations**

The committees have determined that the current requirements for receiving a Texas DL or ID card should be more stringent and loopholes of known issues should be closed using appropriate rule-making abilities through DPS, as well as suggested legislation during the upcoming 81<sup>st</sup>

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Legislative session.

The Department of Public Safety has developed, and the committees support, the following list of legislative initiatives for safeguarding DLs and ID cards in Texas:

### **Legislative Initiatives**

1. Require lawful presence in the United States to obtain a Texas Driver License (DL) or Identification Card (ID).
2. Limit the validity of the issuance to the period of lawful presence or for one year for those without a fixed term of stay.
3. Prohibit alternate renewal methods for licenses issued with an immigration status.
4. Define residency and amend the definition of domicile to enhance residency requirement. Utilize the residency and domicile definitions for all applicants for any type of issuance – DL, commercial driver license (CDL) or ID.
5. Amend Transportation Code to allow operation of a motor vehicle in this state for up to 90 days and create an affirmation by a new resident that the person has been in the state for a minimum period of 60 days and intends to remain a resident of this state.
6. Require that application for an original CDL, DL or ID must be made in the county of the applicant's residence. If there is no DL office in the county of residence, original application may be processed in a contiguous county.
7. Authorize denial of issuance for inability to verify address.
8. Delete requirement to accept an offender identification card or similar form of identification issued to an inmate by Texas Department of Criminal Justice (TDCJ) as satisfactory proof of identity.
9. Create a new section in the Texas Transportation Code that will enable the State to more easily prosecute individuals, under §7.02 of the Texas Penal Code, who aid and abet those who violate Chapters 521 and/or 522 of the Texas Transportation Code.
10. Enhance penalties for providing inaccurate address information on an application for a DL, CDL or ID and penalties for failure to update address information with the intent to fraudulently retain a Texas DL, CDL or ID.
11. Create an affirmative duty for operators and owners of mail box sites, motels, other temporary housing/lodging locations, and other businesses of a similar nature to report DLs and CDLs being mailed to their place of business to persons who do not actually reside at those locations.

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12. The committees recommend that the legislature and DPS examine the possibility of closing the gap with regards to citizens being able to hold a DL and an ID card. It would be more efficient from a law enforcement and security aspect to only allow one card to be issued.
  13. The Act and the Final Rule published by the Department of Homeland Security (DHS) on January 29, 2008 will have significant implementation challenges with legislative, operational, technological and fiscal limitations. It is recommended that the committee continue to closely monitor these challenges.



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**Charge 9**

**Monitor the continued implementation of the Texas Financial Responsibility Verification Program authorized by SB 1670, 79th Legislature, Regular Session, and determine whether any further statutory enhancements are needed to reduce the number of uninsured motorists in Texas.**

(Joint Interim Charge with the House Committee on Insurance)<sup>31</sup>

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<sup>31</sup> Both Committees have released separate reports on this respective charge.

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*“If you’re not covered, you will be discovered!”*

- Texas SURE program slogan

*“We believe drivers now will be far more likely **to get and keep** a liability policy when they realize we have a way to identify phony proof of insurance cards and catch those who cancel their policy as soon as they get their cars registered.”<sup>32</sup>*

- Lt. Louis Sanchez, *DPS Highway Patrol Officer*

## **Background**

The framework for the Texas Financial Responsibility Verification Program (FRVP) was created during the 79<sup>th</sup> Legislative Regular Session with the passage and signing into law of Senate Bill 1670. The bill was codified and added to the Texas Transportation Code adding Chapter 601.452. The primary goal of the FRVP was to reduce the number of insured motorist in the State.

At the time of the Bill’s passage, “according to the Department of Public Safety, approximately 20 percent of Texas drivers [did] not have automobile liability insurance. In the past year, DPS issued over 195,000 tickets to drivers in Texas for lack of insurance.”<sup>33</sup>

Since 1981, Texas motorist have been required by law to have a mandatory minimum liability insurance coverage on their vehicle. Currently the law requires a minimum of \$25,000 in liability per injured person, up to \$50,000 for everyone injured in an accident and \$25,000 for property damage.<sup>34</sup> Despite the State’s effort to require insurance of all Texas motorists many manage to skirt the law and continued to drive without the required mandatory minimum insurance coverage.

Non-compliance was a common trend throughout the United States so many States sought a solution to the problem. In 2005, when SB 1670 was passed, of the 47 other states that had enacted similar mandatory liability insurance statutes, 27 of those have attempted to increase compliance by creating and implementing insurance verification programs.<sup>35</sup> SB 1670 was an attempt to improve motorist compliance with Texas law, and create a system that does not allow motorists to easily skirt the law, and keep Texas roadways safe.

Not wanting to ‘tie the hands’ of the State Agencies and private industry whom would be responsible for creating and implementing a FRVP program in Texas, SB 1670 was more of a delegation of rule making power to the Texas Department of Insurance (TDI), the Texas Department of Public Safety (DPS), the Texas Department of Transportation (TXDot), and the Texas Department of Information Resources. Despite this delegation of authority, the

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<sup>32</sup> R.A. Dyer, *Insurance Verifier to Begin Filed Test*, Fort Worth Star Telegram June 4, 2008.

<sup>33</sup> Bill Analyses SB 1670, by: Staples. Committee on Transportation & Homeland Security, Enrolled Version. July 8, 2005.

<sup>34</sup> Texas Transportation Code, Sec. 601.072.

<sup>35</sup> *Supra* note 33.

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Legislature clearly put forth a set of guidelines, goals and requirements of what the State wanted from the state agencies, the insurance companies and the private vendors(s) when creating and implementing the FRVP program.

The bill stated that the program established must be the program most likely to:

- (A) reduce the number of uninsured motorists in this state;
- (B) operate reliably;
- (C) be cost-effective;
- (D) sufficiently protect the privacy of the motor vehicle owners;
- (E) sufficiently safeguard the security and integrity of information provided by insurance companies;
- (F) identify and employ a method of compliance that improves public convenience; and
- (G) provide information that is accurate and current; and
- (H) be capable of being audited by an independent auditor.<sup>36</sup>

## **Funding**

The FRVP program had an estimated \$7 million start up cost which was paid by the state using funds from part of a \$1 fee which is required when all Texas motorist have their state mandated yearly vehicle inspection.<sup>37</sup> This fee was created to help fund certain Department programs such as the FRVP and therefore the program has not placed a financial burden on the state.

## **Implementation**

Under SB 1670, the TDI was charged as lead agency in the implementation of the FRVP. Their duties included acting as the project and program manager, and overseeing the development of the program. The TDI started this process by looking into the other 33 states that have some type of financial responsibility program currently operating in their state. The TDI did an investigative analysis of several other states' programs and created a program design and system requirements for a necessary program in Texas under the goals and requirements set out in SB 1670.

Following this, the TDI issued a very extensive bid document<sup>38</sup>, which resulted in two rounds of bidding. The second round resulted in a competitive bidding process of seven different vendors who were asked to give presentations of their bids and proposals' to the implementing agencies.

"In November 2006 the contract was awarded to HDI Solutions Inc. (HDI)<sup>39</sup>, which currently operates a verification program in Alabama. HDI is partnering on the project with TransCore

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<sup>36</sup> Enrolled Version, SB 1670. July 8, 2005.

<sup>37</sup> Texas Transportation Code, Sec. 502.1715.

<sup>38</sup> *Law Enforcement to be First Users of Texas' Financial Responsibility System*, Stephanie K. Jones, May 29, 2007. Quoting Melissa Mallet of the Texas Department of Insurance, "[the] bid document, which was the biggest bid document the TDI ever produced, and most complicated..."

<http://www.insurancejournal.com/news/southcentral/2007/05/29/80129.htm>

<sup>39</sup> From this point on HDI will be referred to as 'the vendor'.

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L.P., Insure-Rite Inc., and Verification Solutions (also called Verisolve), which have also developed similar database programs in other parts of the country, according to TDI."<sup>40</sup>

HDI in cooperation with the implementing state agencies developed the FRVP for the state of Texas based on their previous projects in other states, their specialized expertise and skills of similar programs, the goals and requirements set out in SB 1670 by the Texas Legislature, and the continued feedback from the coordination of the TDI and other implementing agencies. Once the system was created they began testing.

According to a FRVP Legislative update by the TDI in April 2008, "the database matching program [was] complete and performing better than expected in the test environment:"<sup>41</sup>

- 100% of insures who were required to submit data were in compliance
- Over 99% of all insurance policies submitted were successfully matched to a registered vehicle
- Approximately 80% of all current vehicle registrations were matched to an insurance policy
- Approximately 3.6 million registered vehicles remained unmatched, meaning that those vehicles are uninsured or are insured under commercial policies

While the FRVP programs and system has continually been tested since the April update previously referred to, the DPS participated in the first actual live pilot program this summer.<sup>42</sup>

### **Roll-out Plan**

On June 2, 2008 a 60-day pilot program rolled out in the Austin Area covering parts of Hays and Travis County. During the pilot program, once an officer makes a traffic stop, he/she will then proceed to run the vehicle and/or driver information into the system and then determine if the vehicle and/or driver is properly insured.<sup>43</sup> The DPS has stated that they will not use verifying auto insurance as the reason to commence a traffic stop. However, this is only the DPS interpretation of State law; each law enforcement agency will set its own policies on this issue when the program is rolled out statewide.

The program was in process during the writing of this report, however all communications of its workability appear to be positive thus far.

Officers from the DPS and members of the implementing agencies were in contact throughout the pilot program. Implementing agencies and law enforcement officials are expected to continue to work together and make recommendations to the vendor and the legislature if needed. Upon successful completion it will be phased in on a statewide basis to other law enforcement agencies.

This summer the system is currently being used by TxDOT to verify insurance as part of the

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<sup>40</sup> *Supra* note 38.

<sup>41</sup> See appendix A (charge #9).

<sup>42</sup> During the writing of this report, DPS TxDOT, and the TDI continue to thoroughly test the system to ensure that queries on a vehicle or driver will produce accurate, reliable, and timely responses.

<sup>43</sup> The driver data is not expected to be included into the FRVP system until later in the year.

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vehicle registration process in county tax offices. The goal is to have the FRVP system completely integrated into all registration and title system stations across the state. The future plans of the FRVP include extending its use to “vehicle inspection stations driver licenses offices, and internet registration renewals; sending letters to owners of registered vehicles that appear to be uninsured; and establishing a customer call center.”<sup>44</sup>

## **Recommendation**

Due to the timing of the writing of this report occurring during the beginning rollout and test phases of the FRVP systems, full recommendations and status reports are not able to be given at this time. It is off the recommendation of the committee that this Interim Charge be off consideration during the next interim report as well. At that time a more comprehensive look at the program and its statewide implementation will be more readily available. Also, the implementing agencies have expressed that they plan on making legislative recommendations regarding enforcement, workability, and use of the program during the next (81<sup>st</sup>) legislative session.

## **How the FRVP System Currently Works**

The FRVP system is a combination of an information gathering system and a complex series of information matching algorithms. In simple terms, information is provided to the vendor via state agencies and private insurance vendors, then the vendor uses its proprietary information matching software to sift the information and make the necessary matches.

Every week the vendor will receive the following information from the following sources:

- **TxDOT** - updates of all registered vehicles in the state
- **DPS** - updates of the state driver license database and information of all self insured vehicles
- **Private Insurers** - full book of business for private passenger automobile liability insurance policies from *every* insurer actively writing such insurance policies in the state of Texas

The vendor then uses this information, uploads it into the FRVP matching system. The system then is able to link/match registered vehicles, driver license information, and insurance policies together. This allows the end user; whether it is law enforcement officials at a traffic stop, or county tax collectors during vehicle registration, to quickly and accurately determine if a vehicle or driver is properly insured under state law.

Some unique aspects of the FRVP system that officials feel will be very important in the ease of its implementation are, “it’s designed to work seamlessly with the current practices that a law enforcement officer” performs during a traffic stop.<sup>45</sup> Also, the system has a unique flexibility to

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<sup>44</sup> *Supra* note 41. (FVRP Legislative Update, April 2008)

<sup>45</sup> Stephanie K. Jones, *Law Enforcement to be First Users of Texas’ Financial Responsibility System*, Insurance Journal, May 29 2007. (Quoting Mellissa Mallet of TDI)  
<http://www.insurancejournal.com/news/southcentral/2007/05/29/80129.htm>

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it; the system is able to make matches even if the information is not a 100% exact information match.<sup>46</sup> Therefore such things as small data entry errors or address changes in one data system and not another will not prevent officers or tax assessors from making the necessary match.

### **Public Awareness – TexasSure (TexasSeguro)**

To inform the public and create awareness of the new FRVP program in Texas the State selected ThinkStreet and Sherry Matthews Advocacy Agency to develop a public awareness campaign. TexasSure was selected as the name of the program, and “Vehicle Insurance Verification” was deemed the tag line of the program. The program name TexasSure was selected because of its simplicity and it is easy to remember, it works well in Spanish (TexasSeguro), the phrase ‘sure’ leverages insurance serving as a memory device, and the tag line (descriptor) immediately identifies what the program does.

The public awareness campaign included the launching of a webpage in April 2008<sup>47</sup> and a radio outdoor advertising and media tour that were launched in June 2008. The highlights of the campaign were:

- To inform vehicle owners that auto insurance is now subject to a new electronic verification system which can be accessed at anytime by law enforcement officials and county tax collectors;
- Build public support and awareness for the program by demonstrating its benefits for responsible drivers;
- Increase the number of insured vehicle owners (decrease the number of uninsured); and
- Create awareness that the program will increase the likeness of uninsured motorist being caught, fined, and possibly face other punitive measures.

### **Practical Issues for Texas Motorist**

First and foremost, **TexasSure requires nothing new of Texas motorist** then what was required before the implementation of the program. Texas drivers must simply carry the state minimum liability insurance on their vehicles. The program is set up so that the motorist’s insurance company, the vendor and the state agencies do the work. When a motorist buys insurance it is the responsibility of the insurance company to provide the information to the vendor to be entered into the FRVP system. In some instances insurance customers may receive additional requests by their insurance company to provide more information if they are unable to make a match due to discrepancies in the information caused from such things as data entry errors.

#### *Security of Personal Information*

All personal information provided by Texas motorist to any participants of the TexasSure program is protected by the Driver Privacy Protection Act and other Texas regulations, and can be used for no other reason except to verify financial responsibility of that motorist. Insurers take extra precautions to protect your personal information by encrypting the information before

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<sup>46</sup> *Id.*

<sup>47</sup> [Texassure.com](http://Texassure.com)

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sending it to the vendor/operator of the TexasSure system.

*The Internet Vehicle Registration Renewal System*

Vehicle owners will still be able to renew their vehicles registration on-line. The system will first attempt to make a match while you are registering using non-insurance information such as, VIN number, and name of vehicle owner. If this is not successful the vehicle owner will be required to give their insurance information and the system will attempt to make a match.

*Carrying Proof of Insurance in your Vehicle*

Texas law still states you must carry proof of insurance in your vehicle while you are driving, however each law enforcement agency will set its own policies.<sup>48</sup> Drivers will be able to register their vehicle at the county tax offices if they forget their insurance card if, the tax office can verify your insurance through the FRVP system. However, as previously noted state law still requires you to carry proof of insurance at all times in the vehicle so this is what the committee recommends to all Texas motorists.

**Other Legislative Considerations**

Amend Chapter 601 *Motor Vehicle Responsibility Act* to further define what is considered acceptable proof of financial responsibility. By adding a provision that information received by law enforcement agencies from the FRVP system will be sufficient evidence of financial responsibility, it will allow law enforcement additional support for the issuance of a citation based on the results from the database.

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<sup>48</sup>Texas Transportation Code 601.053.

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**Appendix A (charge #9)**



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## **Financial Responsibility Verification Program (FRVP) Legislative Update, April 2008**

### **About the FRVP**

The "Financial Responsibility Verification Program" (FRVP) was created by the 79<sup>th</sup> Texas Legislature, Regular Session, in Senate Bill 1670, which added Subchapter N, Chapter 601 Transportation Code. The bill provides that the Texas Department of Insurance (TDI), in consultation with the Texas Department of Public Safety (DPS), the Texas Department of Transportation (TxDOT) and the Texas Department of Information Resources (DIR) "shall establish a program for verification of whether owners of motor vehicles have established financial responsibility."

The primary goal of the program is to reduce the number of uninsured motorists in this State.

### **How the FRVP Works**

On a weekly basis, the contracted data vendor receives the following:

- Updates to the database of registered vehicles maintained by TxDOT
- Updates to the driver license database maintained by DPS
- Spreadsheet detailing self-insured vehicles from DPS
- Full book of business for private passenger auto liability policies from each insurer actively writing private passenger auto in Texas
- Full book of business for commercial auto liability policies (optional at this time)

The vendor uses a proprietary matching program to link the registered vehicles, driver license information, and insurance policies together. DPS, sheriffs, local police, and county tax assessor-collectors can obtain accurate and timely insurance information on a given vehicle and/or driver promptly upon request.

### **Current Status**

The database matching program is complete and performing better than expected in a test environment.

- 100% of insurers required to submit data are in compliance
- Over 99% of all insurance policies submitted are successfully matched to a registered vehicle
- Approximately 80% of all current vehicle registrations are matched to an insurance policy
- Approximately 3.6 million registered vehicles remain unmatched. These vehicles are either uninsured or insured on a commercial auto policy.

DPS, TxDOT, and TDI continue to thoroughly test the system to ensure that queries on a vehicle or driver will produce accurate, reliable, and timely responses.

### **Implementation Plans**

Upon successful completion of testing, DPS Highway Patrol will pilot the program in two areas within Travis and Hays Counties. The FRVP will be used to provide verification of insurance coverage at the time of a traffic stop. Once the pilot program has been completed, the system will become available to all law enforcement.

Beginning in late Spring or early Summer TxDOT will use the system to verify insurance as part of the vehicle registration process in county tax offices. The FRVP will be integrated into the Registration and Title System workstations to provide an automatic check of a vehicle's insurance status.

### **Future Plans**

Future plans for the FRVP include extending use to vehicle inspection stations, driver license offices, and internet registration renewals; sending letters to owners of registered vehicles that appear to be uninsured; and establishing a customer call center. Mailing letters to those who are uninsured may start on a trial basis as early as this Fall.

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### **Public Awareness Campaign**

ThinkStreet and Sherry Matthews Advocacy Agency were selected to develop a public awareness campaign. TexasSure has been selected as the program name, with "Vehicle Insurance Verification" as the tagline. The campaign will include radio, outdoor advertising, and a media tour with a launch date of June 3, 2008. The TexasSure.com website ([www.TexasSure.com](http://www.TexasSure.com)) is expected to be available by April 3, to be enhanced and expanded over the next two months.

### **Agency Contacts**

For additional information on:

- Insurer requirements and performance, program design, contract issues, and notices to the uninsured, please contact:  
Melissa Burkhart, FRVP Coordinator  
Property & Casualty Program  
Texas Department of Insurance  
(512) 305-7201  
[melissa.burkhart@tdi.state.tx.us](mailto:melissa.burkhart@tdi.state.tx.us)  
  
[www.tdi.state.tx.us/auto/frvp.html](http://www.tdi.state.tx.us/auto/frvp.html)
- Law enforcement use of the program, please contact:  
Lt. Louis Sanchez  
Texas Department of Public Safety  
(512) 997-4103  
[louis.sanchez@txdps.state.tx.us](mailto:louis.sanchez@txdps.state.tx.us)
- TxDOT use of the program, please contact:  
Denise Pittard  
State Legislative Affairs Section  
Government and Public Affairs Division  
Texas Department of Transportation  
(512) 463-8746  
[dpittard@dot.state.tx.us](mailto:dpittard@dot.state.tx.us)
- DIR's role in the process, please contact:  
David Duncan  
Office of Communications & Strategic Partnerships  
Texas Department of Information Resources  
512-936-9851  
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## ENDNOTES