

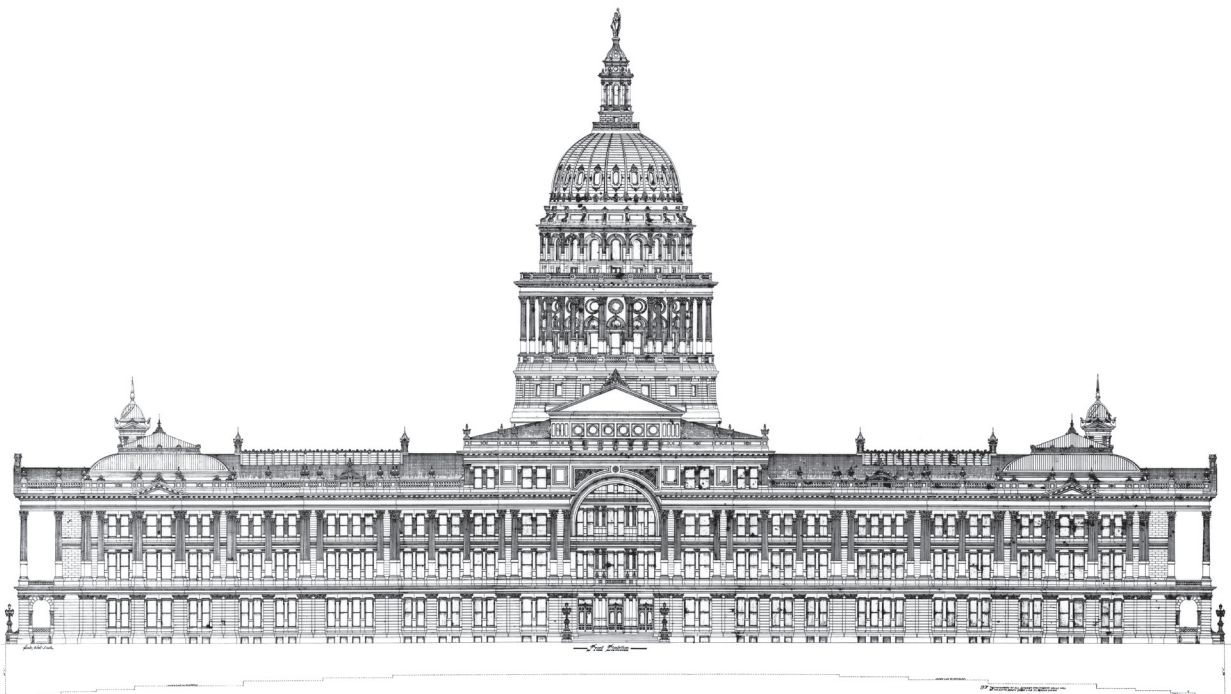


INTERIM REPORT

TO THE

82ND TEXAS LEGISLATURE

House Select Committee on
TRANSPORTATION FUNDING
January 2011



**HOUSE COMMITTEE ON TRANSPORTATION FUNDING, SELECT
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2010**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
82ND TEXAS LEGISLATURE**

**LARRY PHILLIPS
CHAIRMAN**

**COMMITTEE CLERK
SARA HAENES
COURTNEY REID**



Committee On
Transportation Funding, Select

January 10, 2011

Larry Phillips
Chairman

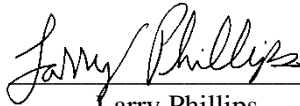
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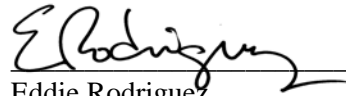
The Honorable Joe Straus
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

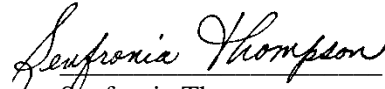
Dear Mr. Speaker and Fellow Members:

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

Respectfully submitted,

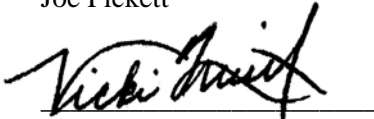

Larry Phillips

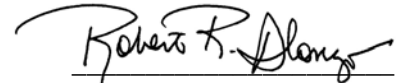

Eddie Rodriguez

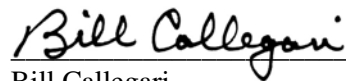

Senfronia Thompson

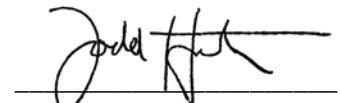

Joe Pickett

Ruth Jones McClendon


Vicki Truitt


Roberto Alonzo

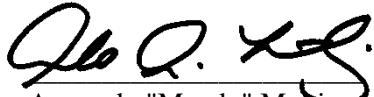

Bill Callegari

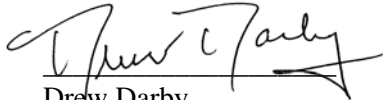

Todd Hunter


Eddie Rodriguez
Vice-Chairman

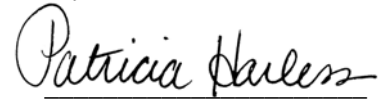
Members: Drew Darby, Chair, Subcommittee on Funding; Ryan Guillen, Chair, Subcommittee on Planning and Accountability; Roberto Alonzo; Bill Callegari; Patricia Harless; Todd Hunter; Edmund Kuempel; Armando "Mando" Martinez; Ruth Jones McClendon; Joe Pickett; Wayne Smith; Senfronia Thompson; Vicki Truitt


Ryan Guillen


Armando "Mando" Martinez


Drew Darby


Wayne Smith


Patricia Harless

Eddie Rodriguez
Vice-Chairman

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**HOUSE COMMITTEE ON TRANSPORTATION FUNDING, SELECT
INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS**

The Select Committee on Transportation Funding was appointed by Speaker Joe Straus in February 2010. Larry Phillips was named chair of the committee and Eddie Rodriguez was named vice-chair. The committee was also divided into two subcommittees: the Subcommittee on Funding and the Subcommittee on Planning & Accountability.

The members of the Subcommittee on Funding are Drew Darby, Chair; Patricia Harless; Todd Hunter; Ruth Jones McClendon; Joe Pickett; Eddie Rodriguez; and Vicki Truitt. The members of the Subcommittee on Planning & Accountability are Ryan Guillen, Chair; Roberto Alonzo; Bill Callegari; Edmund Kuempel; Armando "Mando" Martinez; Wayne Smith; and Senfronia Thompson. The Select Committee was charged with studying and making recommendations regarding transportation funding needs for the State of Texas. Specifically the committee was charged as follows:

- (1) focus on the need for increased transparency and accountability in all facets of transportation planning, development, and implementation;
 - (2) review the current funding options being utilized to determine their effectiveness at meeting future funding demands;
 - (3) analyze the amount of funding needed to meet future transportation infrastructure and maintenance needs;
 - (4) assess the dollars per mile spent in construction (considering the state's varying geographic, environmental, and climate conditions) to determine whether our state is making efficient use of current transportation funding resources;
 - (5) explore innovative approaches to encourage local government entities to participate in the development of critically needed transportation projects; and
 - (6) consider the feasibility of using alternative funding options at the state and local levels to meet the expected growth and demand for transportation infrastructure, rail relocation, and high speed rail.
-

ACCOUNTABILITY

Committee Action

The Subcommittee on Planning & Accountability met twice, on April 27, 2010, and on May 25, 2010. Additional testimony on the subcommittee's charges was also given at the meetings of the whole committee on April 7, 2010 and October 26, 2010. Testimony was given by the following people and/or entities: the Texas Department of Transportation (TxDOT); The Office of the Comptroller; the Texas Transportation Institute; the Texas State Data Center; the Center for Transportation Research (CTR); the Houston-Galveston Area Council; Gulf Coast Rail District; Michael Morris with the North Central Texas Council of Governments; Tom Johnson with AGC of Texas; Thomas Schmitt; and Steve Stagner with the Texas Council of Engineering Companies; the Texas High-Speed Rail and Transportation Corporation; the Texas Transit Association; the Dallas Area Rapid Transit (DART); Texoma Area Paratransit Services (TAPS); and Howard Wolf with the Restructuring Council.

The issue of accountability is one of the most crucial TxDOT faces. The public is wary of the department's planning processes and funding mechanisms. Without public trust, it will be difficult for legislators to justify increased funding to TxDOT. Taxpayers must be able to understand how transportation planning works, and know that TxDOT is a good steward of the taxpayers' money.

Sunset Recommendations

Many of the recommendations contained in the 2008 report on TxDOT by the Sunset Commission addressed the lack of confidence by both the public and the legislature and the need for greater accountability in all areas of TxDOT's operations. Recommendations adopted by the Sunset Commission include the following:

- Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.
- Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the state's transportation system; allow the Committee to contract with a third party to examine TxDOT's financial condition, business practices; administrative practices and overall performance.
- Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities.
- Establish a transparent, well-defined, and understandable system of project programming within TxDOT that integrates project milestones, forecasts, and priorities.
- Require TxDOT, with input from transportation partners and policymakers, to develop a system to measure and report on progress in meeting transportation goals and milestones.¹

The Sunset Commission recently adopted recommendations to the 82nd Legislature. These recommendations include all of the recommendations from the previous report, but added a recommendation that TxDOT apply the standard Sunset across-the-board requirement for the Department to develop a policy regarding negotiated rulemaking and alternative dispute resolution, and update other standard across-the-board provisions.²

TxDOT Restructure Council

After the 81st Legislative Session in 2009, the Texas Transportation Commission evaluated some of the recommendations in the Sunset Report and provisions of HB 300. The Commission had an independent audit firm, Grant Thornton, LLP, conduct a top-down management and organizational review of TxDOT. This detailed audit produced 191 recommendations to improve the management and organizational structure of TxDOT.

The Transportation Commission also formed the TxDOT Restructure Council (TRC), headed by Howard Wolf, Jay Kimbrough, and David Laney. The TRC was charged with reviewing and prioritizing the hundreds of recommendations from Grant Thornton and other audits of TxDOT.

The TRC has compiled approximately 600 recommendations into an online Recommendations Tracking Database, which is accessible through the TxDOT website. The database went online on October 1, 2010 and can be searched by category (organization structure, financial management, plan/design/build, etc.), or by report. There will be documentation available as to what actions have been taken on each recommendation, and the site also allows for public feedback. TxDOT is expected to update this database on a regular, frequent schedule. The Recommendations Tracking Database should provide for more accountability, as the public, stakeholders, and government officials can see what progress TxDOT is making in implementing a recommendation. TxDOT has also developed the TxDOT Tracker, which is an online performance reporting and management program for construction project. Projects can be located by county, state or federal legislative members, or by funding source.³

The TRC presented its final report on the areas of emphasis and implementation priorities at the January Transportation Commission meeting. The following recommendations are a summary of the full TRC report:

- Changing TxDOT's senior leadership to set the stage for objectiveness, which is needed to implement initiatives such as a new strategic vision, continuous change, organizational structure, accountability and transparency. The Council urged the Commission to address the need for new senior leadership at a pace and manner it considers to be in the best interest of TxDOT.
 - Recasting outdated views and beliefs due to TxDOT's inability to recognize the need for self-correction and redirection. Consideration should be given to developing additional values that encourage open-mindedness, innovation and behavior that supports the necessary changes within the department.
 - Creating a new organizational structure that is better aligned with the TxDOT's mission, thereby improving work performance and creating a more efficient work environment.
 - Increasing financial oversight and controls by consolidating all financial functions under the clearly defined authority of a chief financial officer. This and other related financial recommendations should ensure sound and responsible financial management of a multi-billion dollar budget, as well as increase the standards of accountability and transparency.
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- Investing in an enterprise-wide updated information technology system to replace the fragmented, independent systems that significantly limit flexibility and effectiveness of TxDOT operations.
 - Elevating human resources as a strategic partner in senior leadership so that it can develop a well-planned approach to human resources management, thereby supporting the department's mission.
 - Developing a comprehensive communication policy that is responsive and engages all stakeholders, which should result in repositioning TxDOT as an agency that is responsive, reliable and transparent.
 - Continuing with improvements to streamline the environmental review process, apply refined right of way acquisition practices to more projects, proceed with an in-depth study into the use of in-house engineering and outside engineering consultants, and implement a field operations staffing plan.
 - Centralizing oversight of procurement functions, including the Historically Underutilized Businesses/Disadvantaged Business Enterprise program areas, so that more consistent policies and procedures, program objectives and measurements are set; thereby improving monitoring and compliance.
 - The Council encouraged the Commission to promptly begin implementation of these recommendations in a comprehensive and coordinated manner with the assistance of an outside professional change management firm. The process of identifying and selecting such a firm should begin immediately, according to the report.

The full report and all recommendations by the Council and its final report are available at www.txdot.gov.

Efficiency

Lastly, the committee as a whole heard testimony pertaining to the efficient use of tax dollars by TxDOT in the construction of transportation projects. TxDOT was asked to provide information on the average cost per mile of construction projects. The Department stressed that there were many factors that affected the cost of a construction project, including current labor and materials cost, fuel prices, environmental clearances, utility relocation, land acquisition, location of the project, and the weather during construction. TxDOT did provide for a general cost per lane-mile for urban freeways, rural interstates, and new trunkline and farm-to-market roads. On average, the conversion of an urban non-freeway to a freeway costs \$8,300,000 per lane mile; widening an existing freeway, generally ranges from \$7,600,000 to \$11,000,000 per lane mile, depending on right-of-way costs. The cost for the construction of a new rural interstate is about \$2,000,000 per mile; for a new location trunk system facility is \$1,200,000 per lane mile; and for a new farm-to-market road is \$1,500,000 per lane mile.⁴

Because of the numerous factors affecting the cost of construction, these average costs do not necessarily provide any information regarding TxDOT's fiscal efficiency. Instead, the focus should be placed on non-fixed costs, such as engineering costs. There is an ongoing debate relating to the appropriate level of in-house operations versus contracting with private contractors to perform those same operations. For example, TxDOT does not perform any in-

house construction on new highways; however maintenance responsibilities on those highways is shared between TxDOT and private contractors. Engineering and design work is also shared between TxDOT and private-sector consulting engineers. According to testimony given by John Barton, Assistant Executive Director of Engineering Operations, TxDOT believes there is a necessity for both in-house and private-sector contracting work.

Rider 57 of the 81st Legislature's General Appropriations Act (SB 1) required the Comptroller of Public Accounts to examine engineering staffing patterns at TxDOT and to recommend a staffing and consultant usage plan. An independent cost accounting firm, the Reznick Group, was contracted to compare the cost of highway projects using consultants to the cost of projects using TxDOT employees. It was determined by the Resnick Group that there was not sufficient information available to determine whether TxDOT's consultant usage represented the most cost effective use of funds. However, the Comptroller and TxDOT have been working to develop and implement an Enterprise Resource Planning (ERP) system, which will replace TxDOT and other agencies' outdated information systems. Once the ERP, also known as ProjectONE, is implemented, more data will be available to determine best-use practices.

Recommendations

The recommendations by this committee for transportation accountability are as follows:

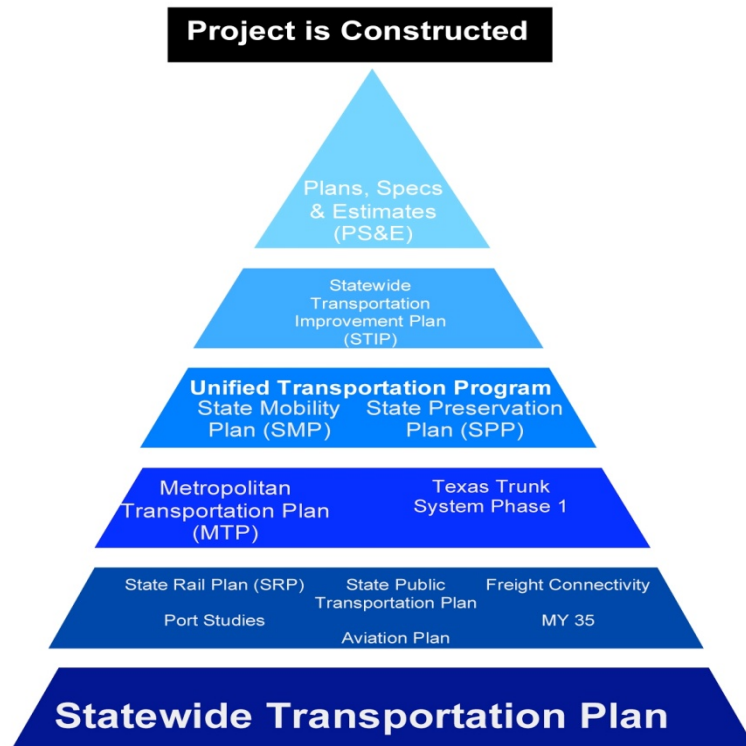
1. Given the anticipated changes at TxDOT, continue to monitor the implementation of the recommendations made by the Grant Thornton Report, the Transportation Restructure Council, the Enterprise Resource Planning system, and other audits. The committee recommends the legislature take no specific legislative action other than that which is necessary to implement these recommendations.
2. Once the Transportation Commission has an implementation plan in place, have the commission provide quarterly updates on these actions to the legislature.

PLANNING

Planning Process

The transportation planning processes are largely governed by federal statute, specifically the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This Act has expired, however Congress has extended SAFETEA-LU rather than passing new transportation authorization legislation. A new transportation funding bill is anticipated, and there is some uncertainty as to what the new requirements for planning and funding may be. Texas' rules and regulations regarding transportation Title 43 of the Texas Administrative Code provides most of the state rules as they relate to planning. State statutes governing transportation planning are found primarily in Chapter 201 of the Transportation Code.

The federal government requires states to develop a state-wide, ongoing, comprehensive, and intermodal transportation plans. There are primarily three types of plans: the Statewide Transportation Plan, or STP; the Unified Transportation Program (UTP); and the Transportation Improvement Plan (TIP).



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The STP is a list of the transportation needs over the next 24 years. The STP primarily consists of two components: Metropolitan Transportation Plans (MTP's) and statewide corridors that provide regional connectivity. The MTP's are developed by an urban area's Metropolitan Planning Organization and are based on a 20-plus year horizon and must be financially constrained according to revenue projections.

Per federal law, a metropolitan area with a population of 50,000 or more must have a

Metropolitan Planning Organization (MPO). For those areas that do not have an MPO, planning is generally conducted by the TxDOT district office. TxDOT districts are responsible for planning the corridors and the other transportation needs of their districts, which are primarily rural areas without an MPO.

The Unified Transportation Program (UTP) is an 11 year document. It contains the current year's planned lettings and a list of projects that are planned to be developed over the next 10 years. The Transportation Commission must approve the UTP and authorize projects for development. The UTP has two major components: increased mobility and maintenance. The mobility portion of the UTP includes new construction, while the preservation portion includes maintenance and rehabilitation projects of existing roads and other means of transportation.

Lastly, federal law requires that the first four years of the UTP make up the Statewide Transportation Improvement Plan. Each MPO or TxDOT district develops a local Transportation Improvement Plan (TIP) that best addresses the area's transportation needs. These TIP's are then combined to form the STIP.

Throughout the planning process, there are many opportunities for the public to provide input. In addition to the formal hearings required by law, TxDOT frequently holds informal meetings to gather public feedback. A list of all scheduled meetings is available through www.txdot.gov, and TxDOT has also developed a program called the "Project Tracker," which allows the public to search for projects and in their area.

Metropolitan Planning Organizations

The 25 Metropolitan Planning Organizations in Texas are an integral part of the planning process. In addition to the development of a MTP and TIP, the duties of an MPO can be greatly expanded given a variety of different factors, including encompassing a Transportation Management Area (TMA), which is an urbanized area with a population of 200,000 or more; a designation as a nonattainment or maintenance area under the Clean Air Act; or serving a multi-state area.

Funding for MPO's is provided by grants from the Federal Highway Administration (FHWA) and from the Federal Transit Administration (FTA) on a reimbursement basis. In order to receive funding, an MPO must submit a project request to the local TxDOT district for processing. If the expenditures are allowed, the state must reimburse the MPO within 30 business days. The state, in turn, seeks reimbursement from the appropriate federal agency. Because of the nature of the funding stream, cooperation must exist on many levels between the federal and state governments and the MPO's. MPO's have sought a more reliable revenue forecast from TxDOT in order to plan in accordance with the projected available funds.⁶

Permits and Clearances

Once a project is selected for construction, the plans must go through several state and federal approval processes, which are generally referred to as 43 TAC 2 and NEPA, respectively. There are 33 federal and 25 state laws and regulations to which a transportation project may be

subject. Clearances and any required permits must both be obtained before construction on a project can begin. Depending on the scope of the project, there are several levels of environmental documents mandated.

Some permits and clearances may take years to be approved, ultimately driving up the cost of the project. In order to speed up these processes, TxDOT has asked the EPA to employ another person to review the environmental clearance projects in Texas; in return, TxDOT would give the EPA funds in the amount of that employee's salary, therefore effectively paying for that employee. TxDOT is evaluating whether this practice could be utilized with other agencies through which a project must be permitted.⁷

Sunset Recommendations

The Department of Transportation came up for sunset review prior to the 81st Legislative Session. The Transportation Sunset bill, HB 300, ultimately failed to pass. The Sunset Commission made the following recommendations in regard to the transportation planning processes:

- Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.
- Establish a transparent, well-defined, and understandable system of project programming within TxDOT that integrates project milestones, forecasts, and priorities.
- Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects.⁸

The Sunset Commission recently issued its recommendations to the 82nd Legislature, which carried over all of the recommendations listed above.⁹

Planning Advisory Committee

In response to these recommendations and calls from the public and the Legislature, TxDOT formed an 11 member advisory committee which included members from the Texas Legislature, metropolitan planning organizations, local government, transit organizations, tolling authorities and the Federal Highway Administration. This advisory committee studied ways to improve the planning and project development process through the agency's rule-making authority. The new rules require that TxDOT's planning and project development program include: project selection criteria for the Department and each MPO/rural district to use in their transportation plans that are based on the Texas Transportation Commission's transportation goals and measurable targets; statewide connectivity project benchmarks and implementation guidelines; an extended cash forecast; funding formulas for various categories of transportation projects; allocation formulas for mobility projects located within MPO's and related performance measures; flexibility provisions that allow TxDOT and planning entities to accelerate or delay projects based on cash forecasting; and consistent, clear and understandable reporting requirements. These rules were adopted by the Transportation Commission and took effect January 1, 2011.

Transit

Another major issue addressed by the committee was transit services. Transit provides transportation to those who do not have other means of travel, allowing people to get to work or school, make medical appointments, and run other essential errands. Transit services include bus systems, para-transit services, and local passenger rail entities, such as DART. The federal Highway Trust Fund designates a portion of federal money for transit purposes, and that money is deposited in Fund 6 and then distributed to local transit authorities. Local dollars also provide funding for transit services. Effective transit services have the potential to reduce congestion and help an urban area comply with federal air quality standards by servicing commuters that would otherwise drive their personal vehicle. Transit is an integral part of the transportation puzzle, and will play an increasing role in our transportation needs as the state's population continues to grow. Among the options concerning transit services, high-speed rail, or the future thereof, has garnered the most attention. High speed rail differs from current local transit services in that it would provide long-distance travel between major urban areas. Questions remain as to the cost-effectiveness of high-speed rail, but the issue should continue to be examined.

Recommendations

The recommendations by this committee for transportation planning are as follows:

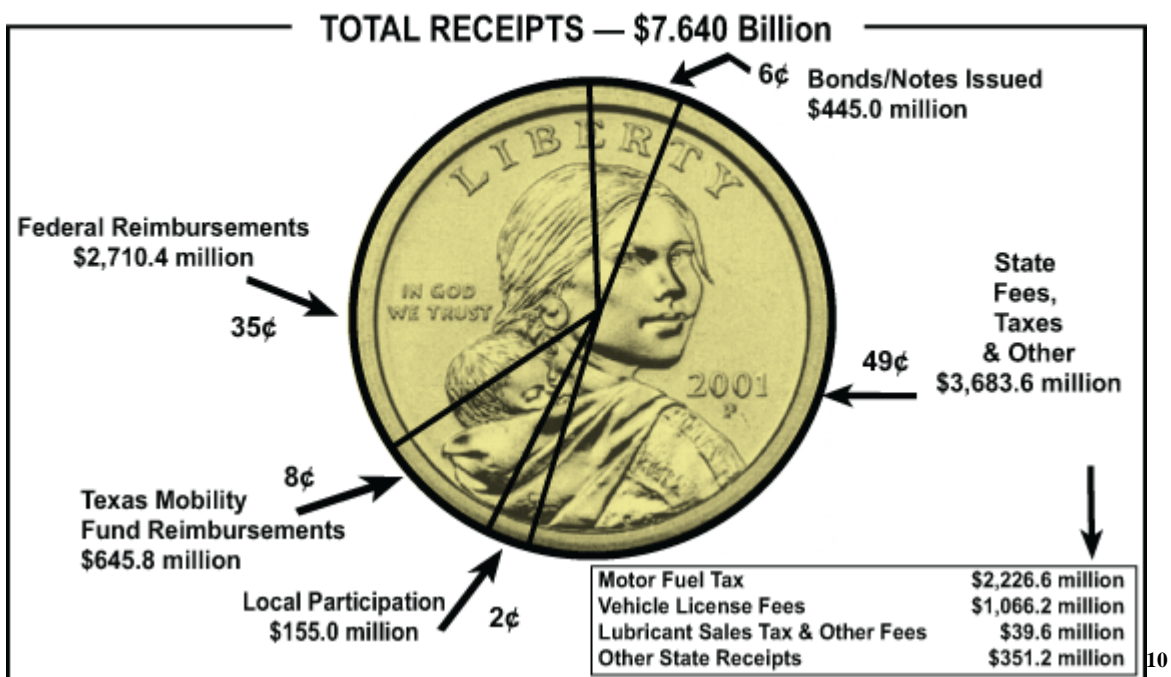
1. Monitor the implementation and effectiveness of the newly adopted TxDOT rules;
 2. Encourage TxDOT to continue public outreach efforts, and to respond to the input provided by individuals and communities;
 3. Encourage TxDOT to further cooperate and include its partners in transportation planning;
 4. Encourage TxDOT to continue to find ways to streamline and expedite environmental and other regulatory procedures.
 5. If necessary, pass legislation to implement recommendations.
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FUNDING

Fund 6/State Highway Fund

Currently, state transportation funding is segregated into two main accounts: the State Highway Fund (Fund 6) and the Texas Mobility Fund. The State Highway fund consists of dedicated revenue from the state gas tax, reimbursement from the federal gas tax; registration and vehicle fees; local participation; and reimbursements from the Texas Mobility Fund. The Mobility Fund is a revolving fund and consists of bonds and certain fees and fines collected by the Department of Public Safety.

Distribution of Total State Highway Fund Receipts Fiscal Year Ended August 31, 2009



The state motor fuels tax, which is more commonly referred to as the state gas tax, currently generates approximately 2.2 billion dollars to the State Highway Fund. The current tax, which was established in 1991, is \$.20 per gallon. The gas tax revenue comprised roughly 29% of the deposits to Fund 6 in FY 2009.

Vehicle license fees are collected by county tax assessor and collectors; the counties retain about 29% of the vehicle license fees, and the remainder is deposited to the State Highway Fund. Vehicle registration fees comprised about 14% of the deposits to Fund 6 in FY 2009.

Transportation expenditures ultimately funded by the Texas Mobility Fund are initially paid out of the State Highway Fund. The Mobility Fund then reimburses the Highway Fund for the project. The reimbursements from the Mobility fund and receipts from short-term borrowing comprised approximately 14% of the deposits to Fund 6 in FY 2009.

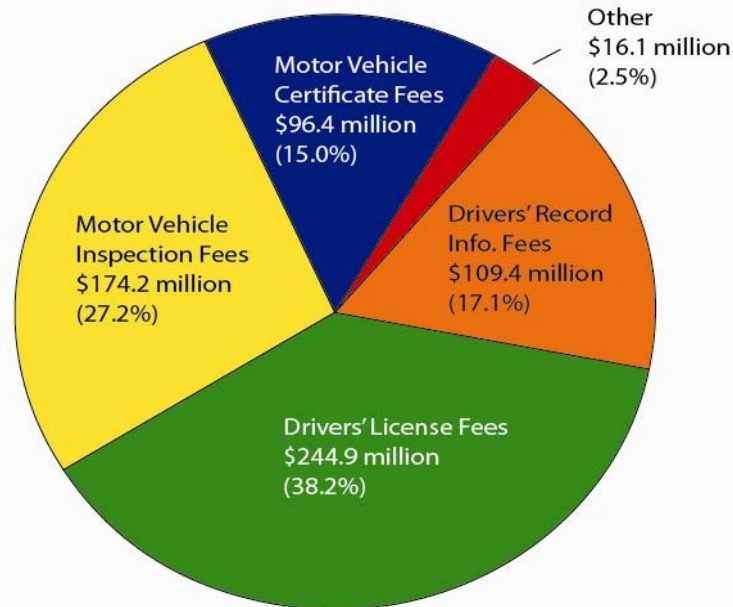
Local participation is money provided by local entities to assist in the funding of a local transportation project and accounted for 2% of the deposits to Fund 6 in FY 2009. Other revenues, such as the sales tax on lubricants, accounted for 5% of the deposits to the fund in FY 2009.

Federal reimbursements are funds received from the Highway Trust Fund (HTF) and other federal appropriations and are for federal-aid highway projects. The source of HTF is derived mainly from the federal gas tax of \$.182 per gallon. Federal reimbursements comprised 35% of the deposits to Fund 6 in FY 2009.

Mobility Fund

In 2001, voters passed Proposition 15, which created the Texas Mobility Fund. However, the fund was not activated until 2003, when Proposition 14 authorizing the issuance of short-term and long-term debt for transportation projects was passed by voters. The Mobility Fund is a separate fund than the State Highway Fund, and is a revolving fund used to finance the acquisition, construction, maintenance, reconstruction, and expansion of state highways. Money in the fund can also be obligated for the state's participation in the construction of public toll roads and other public transportation projects. The sources of revenue to the fund are bonds, certain fees and fines collected by the Department of Public Safety, and a percentage of surcharges assessed under the Driver Responsibility Program(DRP). There is a requirement that the revenue from DRP and other state fines reach must generate \$250 million per year in General Revenue, and the surplus then dedicated to the Mobility Fund. As of this date, the revenue generated by the combination of state fines and surcharges from the DRP has not exceeded \$250 million, thus no funds from this program have been deposited to the Mobility Fund. The Mobility Fund is required to maintain a balance that equals 110% of that year's debt service payments.

Texas Mobility Fund Revenue for the 2008-2009 Biennium



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Through constitutional amendments passed in 2003 (Proposition 14) and 2007 (Proposition 12), the Texas Transportation Commission was authorized to issue long-term bonds. Proposition 14 allowed the commission to issue \$3 billion in bonds, the debt service of which is funded through Fund 6. Proposition 12 authorized the issuance of \$5 billion in bonds, the debt service of which is funded through the state's general revenue. The entirety of the Prop 14 bonds has been issued; the Legislature has authorized the issuance of \$2 billion of Prop 12 bonds, leaving \$3 billion remaining to be issued. The Legislature has to authorize the issuance of the remaining bonds.

Stimulus Funds

Additional funds were made available to TxDOT through the American Recovery and Reinvestment (ARRA). This stimulus funding was temporary, however TxDOT was apportioned \$2,636,961,347. TxDOT has obligated all of the ARRA funds.

Comprehensive Development Agreements

In 2005, the legislature passed HB 2702, which authorized TxDOT, toll authorities, and Regional Mobility Authorities (RMA's) to enter into comprehensive development agreements, or CDA's. CDA's, sometimes referred to as "public-private partnerships," allow the public transportation entity to enter into an agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a toll project; a state highway improvement project that includes both tolled and non-tolled lanes and may include non-tolled auxiliary facilities; a

state highway improvement project in which the private entity has an interest in the project; or a state highway improvement project financed wholly or partly with the proceeds of private activity bonds. At a minimum, a CDA must provide for the design and construction of a project.¹²

A CDA may also include finance, operations, and maintenance functions. A crucial distinction in different CDA's is whether the CDA allows for a concession agreement. Concession agreements allow for the private entity to operate and maintain the toll road, and collect part or all of the toll revenue from that road for 30 years or more. Concession CDA's have been controversial, and a moratorium was placed on concession CDA's by 80(R) SB 792.

Design/Build CDA's contract with a private entity to design and build a project, however the public transportation entity administers and collects the toll revenue. These types of CDA's are frequently used by RMA's in developing their local projects. There is often confusion as to the differences in these types of CDA's, as there is no statute delineating the conditions of either.

Funding Challenges

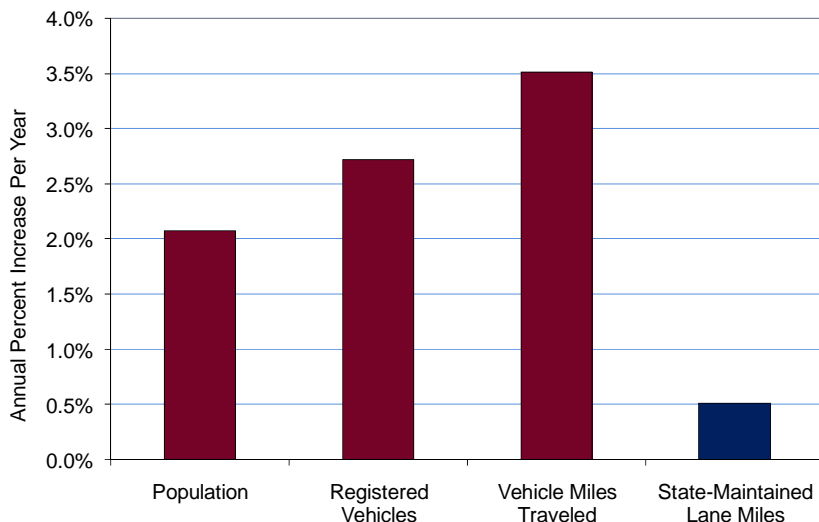
Texas relies heavily on federal dollars to fund transportation. There is justifiable concern about the solvency of the federal Highway Trust Fund (HTF) and Congress' unwillingness to address transportation at the federal level. The current transportation funding authorization bill, the Safe Accountable Flexible Efficient Act: A Legacy for Users (SAFTEA-LU) expired in September 2009. Congress decided to extend SAFTEA-LU until September, 2011, rather than taking up a new federal transportation bill. The anticipation of a new transportation bill makes funding and planning processes at the state level more uncertain, since a new bill could substantially change funding allocations or revise requirements. Furthermore, the federal government has issued several rescissions over the last several years. A rescission is legislation enacted by Congress that cancels the availability of budget authority previously enacted. While the concept of rescissions is not new, the frequency of rescissions since 2006 and the willingness of Congress to remove the flexibility with which states may handle rescissions have increased.¹³

The HTF is funded by the federal gas tax of \$.184 per gallon. The Trust Fund is divided into two accounts within the fund: the Highway Account, which funds highway and intermodal programs; and the Mass Transit Account, which funds transit projects. For FY 2008, Texas received \$3,120,314,000 in highway funding, and \$457,878,550 in transit funding. These funds are deposited into the State Transportation Fund, and can only be used for their dedicated purposes. For every \$1 that Texas taxpayers send to the HTF, the state receives only \$.70 in return.

Transportation at the federal and state levels is funded primarily with a flat gas tax. The state gas tax of \$.20 per gallon was established in 1991, and the federal rate of \$.184 in 1993. Since these current rates were enacted, vehicle fuel efficiency has increased dramatically. Although revenue from the gas tax has increased most years, mainly due to Texas' rapid population growth, in FY 2009 the revenues from the state gas tax declined 2.17% from FY2008. The average Texas driver pays about \$9.52 per month in state gas tax, which results in a deposit of \$7.14 to the State Highway Fund. The other \$2.38 is dedicated to schools.¹⁴

To put the issue in perspective, over the last 25 years, Texas' population increased by 53%; the use of our roads increased 103%; our road capacity has only increased by about 10.6%. Demographics indicate that over the next 25 years, our population and use of roads will continue to increase. With the advent of electric cars, other alternative fuel sources, and increasing fuel efficiency, the ability of the current gas tax to meet the future transportation needs of the state is insufficient. With a declining primary revenue source for transportation funding, Texas must explore other, more stable sources of funding. This problem is not unique to Texas; the federal government and other states are struggling with declining gas tax revenues.

Percent Annual Increase: 1970 to 2009



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In May of 2008, Texas Transportation Commission Chair Deirdre Delisi appointed a volunteer committee of 12 people to provide an independent, authoritative assessment of the state's infrastructure and mobility needs from 2009-2030. The members of this committee, known as the 2030 Committee, consisted of business leaders, prominent researchers, and respected members of the transportation community. The result of this committee was a comprehensive report on the future transportation needs of this state.

2030 Committee

The committee looked at the costs over 20 years if Texas maintains its current funding trend; the costs to prevent the worsening of the physical quality of our infrastructure and maintain congestion time; and the costs to improve our infrastructure and reduce congestion. The committee decided that the best scenario for Texas would be to:

- Preserve and enhance the value of the state's enormous investment in transportation and infrastructure.
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- Preserve and enhance urban and rural mobility and their value to the economic competitiveness of Texas.
 - Enhance the safety of Texas' traveling public.
 - Initiate a discussion on rebalancing transportation investments to anticipate future needs.

The committee estimated that the state would need to spend \$14.3 billion (2008) per year to achieve these goals, totaling \$315 billion over the next 20 years. The Committee's charge was constrained to only assessing the future transportation needs of the state, and the costs of those needs; sources of funding were not addressed by the committee.¹⁶

Costs to Commuters

While 2030 Committee's funding recommendations seem staggering, some research indicates that the cost of doing nothing will be even greater. Representative Eddie Rodriguez, vice-chair of the committee, submitted several questions to the Texas Transportation Institute (TTI) regarding the costs of congestion to the average person as well as the overall economic health of the state. The full TTI report, "Responses to Questions from the Texas House of Representatives Select Committee on Transportation Funding," can be found on TTI's website at: http://tti.tamu.edu/publications/catalog/record_detail.htm?id=36263. Representative Drew Darby as Chair of the Subcommittee on Funding also requested a study by TTI on alternate funding scenarios and the effect of traffic congestion on consumer costs and the general economy. TTI's full report is titled "Alternative Transportation Funding Scenarios and Their Impact on Delay" and can be found on the website at: http://tti.tamu.edu/publications/catalog/record_detail.htm?id=36262.

TTI estimates that if Texas does not maintain current mobility levels and continues spending at current levels, over 288,000 Texas jobs could be lost. Transportation is, and will increasingly be an important factor in companies' location decisions.

If the state does not maintain the current levels of mobility by allow our existing roads to deteriorate and increasing congestion by not developing new infrastructure, it is estimated that it will cost our state's economy over \$1.1 trillion over the next 25 years. Additionally, poor road quality, structurally deficient bridges, and increased congestion all contribute to dangerous driving conditions, and affects the safety of the public.

Currently, the cost of transportation for the average Texas household is estimated to be about \$9,500, which takes into account fuel, maintenance, depreciation, tires, and insurance costs. The average Texas commuter spends about 38 hours per year stuck in traffic, which translates into an annual delay cost per commuter of \$928. The total costs of traffic congestion to the state economy, in terms of delay and excess fuel, exceed \$10 billion per year currently. If we do not address our transportation needs, in 25 years the average commuter will spend 140 hours per year in traffic and the delay cost will rise to \$3,300 in today's dollars. In 2035, the cost of congestion to the state as a whole will exceed \$63 billion in today's dollars.

These figures do not include the increased costs to individuals for the transport of goods. TTI was asked to further break down the effect of congestion as it relates to common consumer commodities. For grocery manufacturers, the average logistics cost accounted for approximately 6.8% of sales. Of this 6.8%, transportation costs make up 63%. A more concrete example is that for a \$1.89 can of soup, \$.08 can be attributed directly to transportation costs. Should congestion increase and road quality deteriorate, it will cost manufacturers more to move their goods, the cost of which inevitably will inevitably be passed on to consumers.

The current method of funding transportation will not be sufficient to address the future needs of the state. In the report on alternate funding scenarios, TTI assessed the costs and benefits of the current funding trend; increasing vehicle registration fees; using Texas Emissions Reduction Plan (TERP) funds to offset bond and pass-through toll debt; and using the oil severance tax revenues to recapture bond and pass-through debt. The committee also heard testimony on generating transportation revenue by assessing a tax on vehicle miles traveled (VMT) versus the current gas tax, as well as testimony on ending diversions from the State Highway Fund.

Diversions

Diversions from Fund 6 are monies that are transferred from the fund to other agencies. For the 2008-2009 biennium, diversions from Fund 6 totaled \$1.57 billion. Some diversions have recently been eliminated or reduced; the diversions 2010-2011 biennium should total approximately \$1.15 billion. However, TxDOT's general revenue appropriation was also reduced from \$307 million in 2008-2009 to \$165 million in 2010-2011.

The largest diversion from Fund 6 is funding for the Department of Public Safety (DPS). Since 2006, diversions from DPS have totaled \$3,373,149,081. The following table lists the diversions from the Fund and the dollar amount per biennium:

Purpose	AY 2006-2007	% of TxDOT Appn	AY 2008-2009	% of TxDOT Appn	AY 2010-2011	% of TxDOT Appn
Attorney General - Mineral Rights Litigation	\$ 1,700,000	0.01%	\$ 1,700,000	0.01%	\$ 1,700,000	0.01%
Health and Human Services Commission	\$ 20,000,000	0.13%	\$ 20,000,000	0.12%		
Texas Education Agency - School Buses	\$ 100,000,000	0.66%	\$ 100,000,000	0.60%		
Texas Transportation Institute	\$ 13,045,764	0.09%	\$ 14,317,605	0.09%	\$ 14,937,767	0.08%
Department of Public Safety	\$ 985,104,602	6.50%	\$ 1,263,024,785	7.47%	\$ 1,125,019,694	6.01%
Texas Workforce Commission - Client Transportat	\$ 13,658,704	0.09%	\$ 13,658,704	0.08%		
Gross Weight Axle Fees	\$ 9,400,000	0.06%	\$ 10,800,000	0.06%		
Commission on the Arts	\$ 1,340,000	0.01%	\$ 1,340,000	0.01%	\$ 1,340,000	0.01%
Historical Commission	\$ 1,000,000	0.01%	\$ 1,000,000	0.01%	\$ 1,000,000	0.01%
State Office of Administrative Hearings	\$ 6,549,314	0.04%	\$ 6,736,395	0.04%	\$ 6,885,647	0.04%
Lufkin Tourist Information Center			\$ 150,000	0.00%	\$ 150,000	0.00%
Salary Increase for Schedule C	\$ 69,335,198	0.45%	\$ 22,291,710	0.13%		
Regulation of Controlled Substances			\$ 804,972	0.00%		
Silver Alert			\$ 224,990	0.00%		
Client Transportation Services	\$ 26,033,955	0.17%	\$ 22,363,606	0.13%		
Medical Trans - Medicaid Match	\$ 58,244,717	0.38%	\$ 85,381,725	0.51%		
Auto Theft Prevention	\$ 25,465,255	0.17%	\$ 27,558,755	0.17%		
Total	\$ 1,330,877,509		\$ 1,591,353,247		\$ 1,151,033,108	
TxDOT State Highway Fund Appropriation ¹	\$ 6,096,419,466	21.83%	\$ 5,643,425,735	28.20%	\$ 5,711,558,500	20.15%
Total TxDOT Appropriation ^{1,2}	\$ 15,162,095,408	8.78%	\$ 16,678,016,740	9.54%	\$ 18,720,448,879	6.15%

¹ DMV appropriations are included in AY 2010-2011

² AY 2010 - 2011 includes ARRA appropriations totaling \$1,637,800,000

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Additionally, 5 cents of the \$.20 gas tax is constitutionally dedicated to the Available School Fund. While not technically a diversion, the dedication of these funds has totaled approximately \$3,732,935,000 to the Available School Fund over the last 5 fiscal years.

Repeatedly TxDOT has been asked to provide a streamlined, understandable account of the revenues and expenditures from Fund 6. The taxpayers of this state expect their money to fund transportation as advertised, and to be able to understand how that money is used. Neither diversions from Fund 6 or the dedication of part of the state gas tax to the Available School Fund assist taxpayers in understanding how their money is used to fund transportation.

Recommendations

The recommendations by this committee for transportation funding are as follows:

1. End all diversions from the State Highway Fund.
2. Legislature should identify revenue to issue available Prop 12 bonds.
3. Work with our federal officials to obtain a greater return on the federal gas tax and to increase flexibility of project requirements.
4. Re-authorize the use of CDA's, taking into consideration concerns relating to non-compete provisions, toll escalation, length of concessions, and rights of first refusal, and benefits to the state. Specific projects should be identified.

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5. The Legislature should work to identify long-term solutions to address the declining revenue from the state gas tax.
 6. Until TxDOT achieves its accountability goals, and also in recognition of the current economy, this committee does not recommend any changes to the current transportation funding.
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ENDNOTES

- ¹ Sunset Commission, "Recommendations to the 81st Legislature," February 2009, Page 191.
 - ² Sunset Commission, "Commission Decisions: The Texas Department of Transportation," January 2011.
 - ³ Howard Wolf, TxDOT Restructure Council. Written testimony before the House Select Committee on Transportation Funding, 26 October 2010.
 - ⁴ John Barton, Assistant Executive Director for Engineering Operations, Texas Department of Transportation. Written testimony before the Select Committee, "Report on Highway Cost per Lane Mile," 26 October 2010.
 - ⁵ John Barton, Texas Department of Transportation. Written testimony before the Select Committee, "Transportation Planning and the Cash Forecast," Page 6, 27 April 2010.
 - ⁶ John Barton, Texas Department of Transportation. Written testimony before the Transportation Committee, 25 August 2010.
 - ⁷ John Barton, Texas Department of Transportation. "TxDOT Environmental Process Basics," 14 August 2010.
 - ⁸ Sunset Commission, "Recommendations to the 81st Legislature," February 2009, Page 191.
 - ⁹ Sunset Commission, "Commission Decisions: The Texas Department of Transportation," January 2011.
 - ¹⁰ James Bass, Chief Financial Officer, Texas Department of Transportation. Written testimony before the Select Committee, "Transportation Finance Challenges," Page 3, 7 April 2010.
 - ¹¹ House Research Organization, "Highway Funding in Texas: A Status Report," Page 5, 23 February 2009.
 - ¹² Brian Cassidy, Locke, Lord, Bissell & Liddell, LLP. Written testimony before the Select Committee, "Tolling Authorities," 25 May 2010.
 - ¹³ John Barton, Texas Department of Transportation. Written testimony before the Select Committee, "Federal Rescissions," 26 November 2010.
 - ¹⁴ Texas Department of Transportation, "Gas Tax Facts: Texas Transportation and Your Fuel Tax Dollars."
 - ¹⁵ Texas Transportation Institute, written testimony before the Select Committee, Page 2, 25 October 2010.
 - ¹⁶ Dr. C. Michael Walton, Chair, 2030 Committee. Written testimony before the Select Committee, 7 April 2010.
 - ¹⁷ James Bass, Chief Financial Officer, Texas Department of Transportation. Written testimony before the Select Committee, "Transportation Finance Challenges," Page 8, 7 April 2010.
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