



# Interim Report

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to the 84th Legislature

House Select Committee on  
Transportation Funding,  
Expenditures & Finance



December 2014

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**HOUSE SELECT COMMITTEE ON TRANSPORTATION FUNDING,  
EXPENDITURES & FINANCE  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2014**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
84TH TEXAS LEGISLATURE**

**JOE C. PICKETT  
CHAIRMAN**

**COMMITTEE CLERK  
MARIANN H. MORELOCK**

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Select Committee On  
Transportation Funding, Expenditures & Finance

December 1, 2014

Joe C. Pickett  
Chairman

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

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 Select Committee on Transportation Funding, Expenditures & Finance of the Eighty-third Legislature hereby submits its interim report including recommendations for consideration by the Eighty-fourth Legislature.

Respectfully submitted,

  
Joe C. Pickett

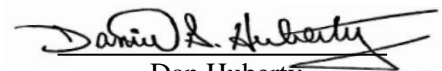
  
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## INTRODUCTION

With the strong message heard by the passage of Proposition 1 (2014), transportation funding and financing deserves the sincere attention of the 84<sup>th</sup> Legislature. Special session debates, several legislators prioritizing transportation, and the transportation advocacy groups helping to educate the public on how the state funds its infrastructure made a big difference in the outcome.

The success of Proposition 1 will be extremely helpful, but maybe not in the way many expect. Since 2005 we have borrowed, on average, \$1.65 billion a year. We are at capacity, for the most part; the Texas Mobility Fund (TMF) is the only revolving fund. The transfer from the oil and gas severance tax for FY2014 is now estimated to be \$1.75 billion to the State Highway Fund (SHF). This will just replace the amount we have been borrowing year to year. So even though some believe this is a net increase to transportation funding, we will be lucky to see the same annual lettings. *The difference--a very important one--is that it is a cash infusion and not additional debt.*

The public has learned that the orange barrels and barricades surrounding all the transportation infrastructure construction have come with a price. The state's pay-as-you-go program began to diminish in 2001, which was the year we asked the public's permission to begin borrowing money for road construction. It took a few years to begin issuing debt, 2005, but in less than one decade, we have amassed \$18.2 billion in debt at a cost to pay back of \$32 billion.

Before Proposition 1, we did have a one-time benefit of a cash infusion. U.S. Congress passed the American Recovery and Reinvestment Act (ARRA) in February 2009. Under ARRA, Texas was allocated \$2.25 billion in federal highway and bridge construction funds for "ready to go" projects.

The fact is that both the state and federal gas tax, neither of which has been adjusted in more than 20 years, has had a negative effect on funding due to today's more fuel efficient vehicles. Less gas, less tax collected. This, along with the lack of indexing the tax rate for inflation, have rendered the current federal and state gas tax system a somewhat ineffective way for revenues to keep up with road repair and construction costs. The development of tolled roads has grown tremendously as well as local debt, which is not even reflected in the previous numbers. We have not seen an adjustment of any significance in vehicle registration fees since the late 1980s, yet some people still think all we have to do is end diversions.

And what are diversions? The Texas Constitution essentially states that "...revenues...from motor vehicle registration fees, and all taxes...on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature..."<sup>1</sup> The funds currently appropriated for functions other than rights-of-way, construction, and maintenance is approximately \$1.2 billion for FY2014-15.



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The House Select Committee on Transportation Funding, Expenditures and Finance ("the Committee") recommends ending *transfers from the State Highway Fund*, a concept more commonly known as *diversions*. The reality of ending diversions is that it necessitates the need to find General Revenue (GR) funds or cut the budget in other places to secure a like amount for those functions now without funding, like the Department of Public Safety (DPS). These transfers (diversions) are not immoral, unethical or illegal uses of taxpayer dollars; they are an appropriation for functions allowed by the Texas Constitution. A commitment to end diversions without addressing the counter reaction is not realistic or fiscally responsible.

Do you end all diversions? Where do you think or where should the fee for a driver license go? Most assume it goes to DPS, the agency that administers driver licenses. But surprisingly, all driver license fees go to TMF for the Texas Department of Transportation (TxDOT).

Remember that out of the \$0.20 a gallon gas tax, \$0.05 goes to the Available School Fund (ASF). This amounted to \$805 million in FY2014 and \$819 million in FY2015. So in addition to \$1.2 billion, another \$1.6 billion could be considered if we were to truly end diversions.

As has been proven in the past, it would be politically difficult to suggest raising the gas tax, even though some believe this to be one of the most conservative approaches to an instant cash infusion. There is not a recommendation to increase the gas tax in this report as some members of the Committee do not believe that increasing the state gas tax is the most efficient way of increasing revenues for road repair and construction. Nevertheless, it should be discussed to make the point that fuel tax revenues will likely decrease over time. With more people in the state, more people are traveling and consuming more fuel; however, automobiles are more fuel efficient and pay lower fuel tax per mile than in 1991. The average Texan who drives an automobile getting 21 miles per gallon is spending \$9.52 a month, today, versus \$10.78 a month back in 1991. And as previously stated, the gas tax has not kept pace with rising highway construction costs--road construction and maintenance costs have almost doubled since 1991 with no increase to the gas tax.<sup>2</sup> (See Appendix D.)

The Committee also looked at transparency. Don't allow up to 1% of the gas tax collected be appropriated for the Comptroller of Public Accounts to use for administration and enforcement of motor fuels. Leave that amount for the State Highway Fund (and Available School Fund) and appropriate the funds needed by the Comptroller to perform all required functions.

Should motor fuels suppliers, distributors, and importers retain 2% of the tax they collect for us? If we require so much regulation, as they state to us, then let's cut some regulations, give them the same amount we do retailers collecting sales tax, 0.5%, and put another \$38 million in the State Highway Fund and \$13 million in the Available School Fund each year.

Proposition 1 was the low-hanging fruit. It was the way to go, but what do we do next? Not everyone believes that the oil and gas severance tax will produce a comparable dollar amount next year. In down years, TxDOT has the ability to delay a road project; however, if the concept of Proposition 1 was applied to other agencies, they might have to reduce their workforce or terminate services. TxDOT can keep important projects alive, even if that means extending the environmental process or design phase. Later is better than never.

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The Legislature could simply appropriate more General Revenue to transportation. The current TxDOT budget has only about 2% from General Revenue and that is for debt service on Proposition 12 (2007) bonds. (See Appendix C.)

The Committee identified about \$200 million more a year by halting the issuance of TMF debt as well as the transfer of funds out of SHF to the Texas Emissions Reduction Plan (TERP) Account. \$200 million could easily be used to pay down debt or directly for more pay-as-you-go transportation project funding.

A note on governance...the Committee had several discussions about the governance of TxDOT and the Texas Transportation Commission ("Commission"). Criticisms dominated much of our early hearings: the need for (the Commission's) transparency in project selection, little public input on projects, the lack of prioritization of projects by the Commission, and deficient communications with the Legislature and local transportation planning organizations. When the agency and Commission were asked to explain the process for producing the ten-year plan, known as the Unified Transportation Program (UTP), little to no explanation was given. When the Committee asked about policies initiated in direct conflict with legislative direction, no solution or reason was offered. When the Committee asked why the more than \$1.15 billion in additional funds that became available since the last legislative session were not used for one or more of the many priorities stated by the agency, the response was unacceptable. At this time it is difficult for the Committee, as a whole, to make specific recommendations that would improve the governance of the agency. However, there are members on the Committee that feel very strongly about the governance issue and will likely propose legislation to help create a more transparent, process-driven methodology of determining the funding priority for projects.

The Committee also examined the structure, funding and distribution of the Economic Stabilization Fund (ESF or fund), also known as the Rainy Day Fund. Clearly defining the type of expenses for which the fund could be utilized will undoubtedly produce a robust discussion by the 84<sup>th</sup> Legislature. No specific recommendations for additional transportation funding were made; however, discussions of reducing existing debt should be included, front and center, in the debate.

The public is looking for the Legislature to take the next step...80% of the voters said transportation is important to them!



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## RECOMMENDATIONS

### **Bonds issued for transportation**

The state's main funding sources for transportation are a federal gas tax, a state gas tax and a state vehicle registration fee. We were a pay-as-you-go financing system in which roads were built as funding became available. But, the state gas tax has not been adjusted since 1991, the federal gas tax has not been adjusted since 1993, and vehicle registration fees have not significantly changed since 1987. Gasoline is currently taxed at \$0.20 per gallon. Because gasoline is taxed according to volume rather than price, inflation and improved vehicle fuel economy has eroded the purchasing power of gasoline tax revenue over time. Adjusting for inflation using the Consumer Price Index, the tax rate would need to be \$0.34 per gallon to have the same purchasing power it did in 1991. This is compounded by the fact that the cost of constructing and maintaining transportation corridors has increased over 150 percent. The capacity of the traditional pay-as-you-go system has been reduced.

As a result, the Legislature has authorized the issuance of debt and provided limited use of public-private partnerships to generate additional revenue to fund the construction and maintenance of highways. Three sources of bond debt have been created since 2001, two of which are at capacity and one is still being used, the Texas Mobility Fund (TMF).

**The Texas Mobility Fund**, a revolving fund, was established in 2001 when voters approved Proposition 15. The TMF may be used to finance the acquisition, construction, maintenance, reconstruction, and expansion of state highways, including costs of design and rights-of-way acquisition. The constitutional amendment authorized the Legislature to dedicate a source of revenue to the fund. Bonds secured by the TMF are prohibited from having a maturity exceeding 30 years, and during each year the obligations are scheduled to be outstanding, estimated available revenue (as determined by the Comptroller) must be at least 110% of the requirements to pay debt service on the proposed obligations for the year. *TMF bonds are self-supporting General Obligation bonds; therefore, they are not considered in calculating the state's constitutional debt limit.* As of the end of FY2013, the Bond Review Board (BRB) had authorized the issuance of \$7.2 billion in TMF bonds. Eight series of obligations secured by the TMF have been issued totaling approximately \$6.3 billion. The first issuance was June 2005. *There is no specific cap; capacity is calculated based on revenues into the TMF. As this report is being filed, an additional \$900 million is in the process of being issued.*

**Proposition 14 Bonding Authority** was enacted by the 78th Legislature, Regular Session, 2003, and voter approval of an amendment to the Texas Constitution came under Proposition 14 (2003). The Texas Transportation Commission then became authorized to issue highway tax and revenue anticipation notes in the event of a cash-flow shortfall in the State Highway Fund (SHF) and to issue bonds secured by a pledge of and payable from revenue deposited to the credit of the SHF. Under current law, the Commission is authorized to issue State Highway Fund Revenue Bonds (Proposition 14 Bonds) and other public securities with aggregate principal amount not to exceed \$6 billion. To date, all of the capacity has been issued or dedicated.

**Proposition 12 General Obligation Bonds** were a result of voter approval of Senate Joint Resolution 64, Eightieth Legislature, 2007, under Proposition 12 in November 2007, and the enactment of House Bill 1, Eighty-first Legislature First Called Session, 2009. Under this legislation the TTC is authorized to issue Proposition 12 GO bonds in an aggregate amount not to exceed \$5 billion to provide funding for highway improvement projects, including the acquisition of a highway, construction, reconstruction, major maintenance, design, and the acquisition of rights-of-way. To date, all of the capacity has been issued or dedicated.

The total of issued and dedicated bonds is currently \$18.2 billion with an estimated pay back of \$32 billion.

***Recommendation: Discontinue the issuance of bonds secured by the TMF***

If the Commission discontinued issuing additional debt from TMF, it is estimated that approximately \$248 million in excess revenues would be available in the next biennium. The approximately \$125 million a year could be used to pay down additional debt or used for all of the stated purposes allowed by the constitutional amendment. If no additional debt is issued, the existing balance would be paid off by the year 2040, at which time the revenue is estimated to be approximately \$700 million a year. (Figure 1)

**Figure 1. Potential Revenue from Texas Mobility Fund Bonds.**

Fiscal Year	Existing Debt Service <sup>(1)(2)</sup>	Comptroller's Revenue Estimate <sup>(3)</sup>	Excess TMF Revenues
2015	309,791,767	397,666,000	87,874,233
2016	304,170,614	426,364,000	122,193,386
2017	314,493,455	438,861,000	124,367,545
2018	317,804,590	442,500,000	124,695,410
2019	330,788,531	456,784,000	125,995,469
2020	338,103,975	464,832,000	126,728,025
2021	345,549,837	473,024,000	127,474,163
2022	353,135,068	481,364,000	128,228,932
2023	360,848,605	489,853,000	129,004,395
2024	368,706,630	498,495,000	129,788,370
2025	376,701,845	507,293,000	130,591,155
2026	384,847,435	516,249,000	131,401,565
2027	393,132,663	525,367,000	132,234,337
2028	401,571,831	534,648,000	133,076,169
2029	410,159,575	544,097,000	133,937,425
2030	418,305,225	553,716,000	135,410,775
2031	425,872,938	563,509,000	137,636,062
2032	433,549,127	573,478,000	139,928,873
2033	441,360,433	583,627,000	142,266,567
2034	449,316,929	593,959,000	144,642,071
2035	456,931,810	604,478,000	147,546,190
2036	464,149,672	615,187,000	151,037,328
2037	465,111,246	626,089,000	160,977,754
2038	495,537,071	637,189,000	141,651,929
2039	504,391,553	648,489,000	144,097,447
2040		659,993,000	659,993,000
2041		671,705,000	671,705,000
2042		683,630,000	683,630,000
2043		695,770,000	695,770,000
2044		708,130,000	708,130,000

(1) The debt service is net of Build America Bond 35% direct subsidy payments anticipated to be received from the federal government in connection with the Series 2009A Bonds.

(2) Debt service on variable rate bonds is calculated using an assumed 3.5% all-in interest rate.

(3) Revenues as projected by the Texas Comptroller dated January 21, 2014.

Source: TxDOT, August 5th Committee Hearing Submission

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The Legislature has an opportunity to show citizens that we prudently want to stop incurring more debt. This action would result in an immediate positive increase in transportation funding.

**Considerations for paying down existing debt**

**Question:** Would paying debt service on constitutionally approved bonds, such as Proposition 12 or Proposition 14, count against the spending limit?

**Answer:** The spending limit is established in Article VIII, Section 22, of the Texas Constitution. The limit prohibits appropriations funded with state tax revenues not dedicated by the Constitution from growing faster than the estimated rate of growth of the state's economy.

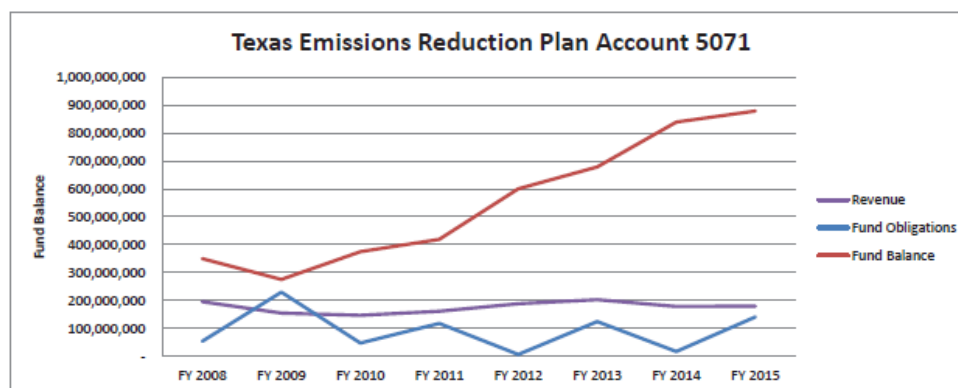
The revenue source funding appropriations determines if the appropriations are restricted by the spending limit. If the bond debt service appropriations were funded with tax revenue not dedicated by the Texas Constitution for a specific purpose, the appropriations **would** count against the spending limit. For example, appropriations funded with sales taxes, motor vehicle sales taxes, franchise taxes, and cigarette taxes **would** count against the spending limit. Conversely, appropriations funded with non-tax revenues such as licenses, fees, fines, penalties, interest, and investment income **would not** count against the spending limit.

**Texas Emissions Reduction Plan Account**

The Texas Emissions Reduction Plan (TERP) is a General Revenue-dedicated account that provides grants to reduce emissions. Revenues for this fund come from motor vehicle sales and use tax fees, certificates of title, vehicle registration, vehicle inspection and diesel equipment surcharges. Future revenues are expected to be no less than \$180 million annually.<sup>3</sup> The Texas Commission on Environmental Quality (TCEQ) is appropriated \$77.6 million each fiscal year for the FY2014-15 biennium. TCEQ, however, has not requested additional funds for FY2016-17. Also, the account balance for the TERP fund at the end of FY2015 is expected to be \$878 million. (Figure 2)

Currently, a portion of the motor vehicle certificate of title fees is deposited to the Texas Mobility Fund. An amount equal to the revenue deposited to the Texas Mobility Fund is allocated from the SHF and deposited to the Texas Emissions Reduction Plan Account. These transfers equate to \$91.1 million in FY2014 and \$93.3 million in FY2015.<sup>4</sup>

Figure 2. History of Texas Emissions Reduction Plan Account Balance.



Texas Emissions Reduction Account 5071								
	Actual FY 2008	Actual FY 2009	Actual FY 2010	Actual FY 2011	Actual FY 2012	Actual FY 2013	Estimated FY 2014	Budget FY 2015
Revenue	195,916,882	155,480,046	147,555,036	162,180,702	188,797,265	203,215,957	178,787,000	180,537,000
Fund Obligations	54,756,241	230,305,553	47,864,134	118,275,739	7,319,908	125,336,065	17,892,334	141,256,545
Fund Balance	350,338,118	275,512,611	375,203,513	419,108,476	600,585,833	678,465,725	839,360,391	878,640,846

Source: TCEQ, August 5<sup>th</sup> Committee Hearing Submission

### ***Recommendation: Discontinue transfer from SHF to TERP Account***

The Committee recommends discontinuing the transfer of funds from SHF to the TERP account, allowing almost \$100 million annually to remain in the SHF. This \$100 million a year would be available immediately for transportation infrastructure funding or early payment of accumulated debt. This change will not impact TCEQ’s operations or any programs funded by TERP. This transfer is scheduled to be discontinued in 2019. If there is no action to discontinue the transfer during the 84<sup>th</sup> Legislature, then the Committee recommends no extension of the expiration date that would contemplate renewing the transfer in the future.

### **Collection of motor fuels taxes**

Texas allows licensed suppliers, distributors, and importers to retain 2% of the revenue generated by the motor fuels tax for administrative expenses. This allowance is split unevenly with 1.75% to distributors and importers and 0.25% to suppliers. These percentages are based on timely payments of the collections to the state on a monthly basis.

The 2% allowance has not changed since 1971; however, several factors warrant a close look at reducing the percentage:

- Texas’ tax rate on gasoline has quadrupled in the last 30 years
- Motor fuels consumption has increased by 63.4% in the last 30 years
- Technological advancements and agency applications have greatly increased the use of computers for accounting, thereby reducing administration costs to businesses

Over the past 25 years or so, the Comptroller, through varied reports, has recommended both eliminating the allowance and reducing the allowance. The most recent report recommended reducing the total timely filer allowance to 1% for suppliers, importers and distributors, with three-fourths of the allowance provided to distributors.<sup>5</sup>

***Recommendation: Consider reducing the total timely filer allowance to 0.5% and split the allowance evenly between distributors/importers and suppliers***

The Committee discussed a 0.5% total allowance split evenly (0.25% each) between all licensed parties. (The 0.5% is equal to the timely filer discount for businesses collecting sales tax.) Such a reduction could result in \$38.3 million in additional revenue to the State Highway Fund (and \$12.8 million to the ASF) in FY2016 alone. (Figure 3)

**Figure 3. Potential Revenue Impact - Gain to ASF and SHF.**

(in millions)	2014	2015	2016	2017	2018
Available School Fund (25%)	\$12.5	\$12.5	\$12.8	\$12.9	\$13.1
State Highway Fund (75%)	\$37.4	\$37.5	\$38.3	\$38.8	\$39.3
<b>Total SHF/ASF Gain</b>	<b>\$49.9</b>	<b>\$50.0</b>	<b>\$51.0</b>	<b>\$51.7</b>	<b>\$52.4</b>

*Source: Comptroller of Public Accounts; presented by LBB at August 5<sup>th</sup> Committee hearing*

As evident in the lack of changes made to this law, there is little to no support for change by the industries impacted by the allowance. Bills have been filed over the years, but none have been effective in making a significant change since 1971.

**Comptroller's allowance for motor fuels tax administration and enforcement**

Currently, subject to appropriation, 1% of the gross amount of motor fuels tax revenue is retained in the General Revenue fund for the administration and enforcement of motor fuels tax laws by the Comptroller. *The estimated amount for FY2014 was \$32.4 million.*

The Comptroller reports that a portion of the 1% administrative allowance is transferred from General Revenue to the Available School Fund (ASF) and State Highway Fund (SHF) at the end of the fiscal year based on its calculation of the amount of funds used for administration in that fiscal year. The Comptroller reported that approximately 40% of the allowance has been allocated to the ASF and SHF after the completion of fiscal years 2011-2013.

***Recommendation: Eliminate the 1% allowance***

In an effort to increase transparency, the Legislature should eliminate the 1% allowance, thereby requiring the Comptroller to request funds through the appropriations process to perform these functions. Moreover, the motor fuels tax revenue previously authorized for the Comptroller would go directly to the SHF to be distributed accordingly.



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### **Overweight/Oversize permits**

Oversize/overweight permits generated \$43.9 million in FY2012, all of which was deposited in General Revenue.

#### ***Recommendation: Redirect receipts from oversize/overweight permits***

Legislative leadership and the Committee have discussed various ways to ensure transportation-related revenues are in funds that allow for the construction and maintenance of the state highway system. This option would redirect funds currently deposited to the General Revenue Fund to the State Highway Fund.

Legislating this option to return money to transportation funds will require appropriators to find an equal or similar amount in General Revenue or other sources. This is a challenging task, but one that would provide greater transparency to the public that taxes and fees related to the use of the state highway system are directed to the state transportation agency.

### **Commercial carrier registration**

The registration of commercial carriers generated \$14.4 million in FY2012, all of which was deposited in General Revenue.

#### ***Recommendation: Redirect receipts from commercial carrier registration***

The Committee recommends transparency by redirecting funds that have a direct impact on roads and the maintenance of those roads to the State Highway Fund.

### **State Highway Fund appropriations to agencies other than TxDOT**

For more than a few legislative sessions there have been statements made and bills filed to end appropriations to agencies other than TxDOT, commonly referred to as diversions. As stated previously, these diversions are allowed under the Texas Constitution. Moreover, the attention brought to these appropriations as not being transportation related or fulfilling the desire for transparency to the public has encouraged appropriators to reduce amounts from the SHF. In fact, there was a reduction of approximately \$400 million last session in transfers out of the SHF.

The question remains whether to continue the trend by appropriators or change the Texas Constitution to require appropriators to use other sources of revenue. With additional revenue available, either option is viable. However, if there is no statutory change to limit SHF dollars to rights-of-way acquisition, construction, and maintenance, future sessions and the unique changes in revenue projections could cancel out an appropriation trend of reducing the dependency on the State Highway Fund. It might be better to end diversions through a constitutional amendment to be passed by the voters.

***Recommendation: Discontinue transfers from SHF that are not rights-of-way acquisition, construction, or maintenance***

The Committee supports ending transfers from the SHF to a purpose other than acquiring rights-of-way, constructing or maintain public roadways. (See Appendix A for a detailed list.)

As indicated in Figure 4, approximately \$1.2 billion in the current biennium (FY2014-15) is being used for policing public roadways and for the administration of laws as prescribed by the Legislature. The agencies and programs in gray indicate previous appropriations from the SHF that have been reduced to zero by previous legislatures.

**Figure 4. Current Appropriation of State Highway Funds to Agencies Other than TxDOT.**

Purpose	AY 2014-15 HB (as of 05/28/13)
Attorney General - Mineral Rights Litigation	
Health and Human Services Commission	
Texas Education Agency - School Buses	
Texas Transportation Institute	\$ 18,893,038
Department of Public Safety	\$ 1,029,627,593
Texas Workforce Commission - Client Transportation	
Gross Weight Axle Fees	
Commission on the Arts	
Historical Commission	
State Office of Administrative Hearings	\$ 6,892,563
Lufkin Tourist Information Center	
Texas Dept of Insurance - TexasSure Motor Vehicle Financial Responsibility Verification	\$ 10,147,505
Salary Increase for Schedule C	\$ 85,600,209
Regulation of Controlled Substances	
Silver Alert	
Client Transportation Services	
Medical Trans - Medicaid Match	
Auto Theft Prevention	
Total	\$ 1,151,160,908

Updated - May 30, 2013

Source: General Appropriations Act for FY2014-2015

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## OTHER FUNDING CONSIDERATIONS

### Motor vehicle sales and use taxes

Motor vehicle sales tax collections totaled \$3.487 billion in FY2013. A portion is dedicated to the Property Tax Relief Fund (PTRF) and the Texas Emissions Reduction Plan (TERP) account, but all other motor vehicles sales tax collections are deposited to General Revenue.

One of the ideas that had some support in the 83rd Legislature and being discussed with incoming leadership is directing motor vehicle sales tax to transportation. This seems logical--cars use roads and roads need money to be built and maintained--so taxes on cars should be used for roads. However, many view this as problematic since the sales tax revenues have been spoken for as General Revenue for multiple uses in the current appropriations process. Some have said that dedicating this GR source limits the appropriators even further in their ability to use GR for the many other functions of state government.

**The Committee does not have a specific recommendation, but discussed various proposals to direct net revenue collections to the SHF:**

- Redirect all net revenue from GR to SHF (\$3.3 billion estimate).
- Phased-in approach as outlined in Figure 5(a)—deposit 10% of collections to SHF in year one; then increase allocation by 10% each fiscal year until 100% of collections are deposited to SHF.<sup>6</sup>

**Figure 5. Options for directing motor vehicle sales tax collections to SHF.**

**(a) Phased-in approach.**

Revenue Impact (in millions)	2016 (Year 1)	2017	2018	2019	2020
State Highway Fund	\$379.4	\$789.7	\$1,232.6	\$1,709.9	\$2,223.7
General Revenue Fund	(\$379.4)	(\$789.7)	(\$1,232.6)	(\$1,709.9)	(\$2,223.7)

*Source: Comptroller of Public Accounts; presented by LBB at August 5<sup>th</sup> Committee hearing*

- Based on growth as outlined in Figure 5(b)--deposit collections in excess of FY2015 (or previous year) to SHF.

**(b) Based on growth.**

Revenue Impact (in millions)	2016 (Year 1)	2017	2018	2019	2020
State Highway Fund	\$149.9	\$304.3	\$384.9	\$586.4	\$757.4
General Revenue Fund	(\$149.9)	(\$304.3)	(\$384.9)	(\$586.4)	(\$757.4)

*Source: Comptroller of Public Accounts; presented by LBB at August 5<sup>th</sup> Committee hearing*

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### Considerations for utilizing motor vehicle sales tax for transportation

**Question:** If motor vehicle sales taxes were statutorily dedicated to the SHF, would those appropriations count against the spending limit?

**Answer:** Yes, appropriations funded with motor vehicle sales taxes count against the spending limit. However, if the motor vehicle sales taxes were constitutionally dedicated to the SHF, the appropriations would not count against the spending limit.

The Committee realizes that all of these options would negatively impact General Revenue and therefore increase the appropriators' need to find other revenue in the same amount. However, if the goal is to be transparent, then the Committee recommends exploring a variety of scenarios that ultimately allocate certain motor vehicle sales tax revenue to the SHF.

### Weight-distance fee for trucks

Rider 36 of the FY2012–2013 General Appropriations Act directed TxDOT to conduct a study on road damage caused by oversized and overweight (OS/OW) vehicles and to provide recommendations for permit fee and fee structure adjustments. TxDOT commissioned the Center for Transportation Research (CTR) and the University of Texas at San Antonio who produced a report in October 2012.<sup>7</sup>

The report proposed a new fee structure that uses vehicle miles traveled and vehicle characteristics that exceed legal weight, width, height, or length to determine the permit fees. Using FY2011 permit sales and revenue to compare to the report's new permit fee calculation methods, there would be an increase of **\$410 million** (for non-exempt vehicles) and **\$150 million** (for currently exempt vehicles). Although not comfortable yet submitting the idea as a recommendation, members thought the concept was worthy of additional study.

### \$50M statutory floor for design-build projects

Design-build involves executing a single contract for both the design and construction of a project. TxDOT may use the design-build method for highway projects with certain limitations:

- construction cost estimate must be \$50 million or more to TxDOT and
- TxDOT may not enter into more than three design-build contracts in a fiscal year. The latter requirement expires on August 31, 2015.<sup>8</sup>

Design-build is not suitable for every project, but could generally be used on most projects with a construction cost in excess of **\$30 million**.<sup>9</sup> Overall, actual cost savings are difficult to assess because each project is unique and the savings vary widely according to size, complexity, construction time and the procurement landscape. In terms of time, TxDOT does experience significant savings from the overlapping of design and construction activities, which translates to project cost savings due to the value of time and money. On average, TxDOT expects that the use of design-build delivery should save approximately three years over more traditional delivery methods. Using an average 4% inflation factor, this translates to roughly a **12% savings**.<sup>10</sup>

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Current statute only allows TxDOT to use design-build for contracts over \$50 million; however, most projects with a construction cost in excess of **\$30 million** are a fit for design-build. The **cumulative total for a year**, on average, of traditional construction letting amounts for contracts over \$50 million is \$885 million. For contracts in the \$30-\$50 million range, the **cumulative annual total** is \$289 million.

Conservatively, if **12%-15%** in savings were obtained from that entire sample using design-build delivery, the state would realize an approximate **annual savings of \$141-\$176 million**.<sup>11</sup> With the requirement of three projects per year ending in 2015, **the Committee suggests not reinstating a limit and encourages further discussion on reducing the \$50 million floor.**

### **TERP appropriations**

In addition to the Committee's recommendation to discontinue transfers from the SHF to TERP account, there have been several changes in previous legislative sessions regarding the use of TERP funds. It would not be inconsistent to see additional statutory changes. One change could be to mimic federal dollars known as Congestion Mitigation and Air Quality (CMAQ) funds and use TERP dollars for those same types of projects being let in the transportation world. A portion of the approximately **\$77.6 million** appropriated a year to TERP could be prioritized for such projects.

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## ADDITIONAL NOTES

### **Low-Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program**

During the discussions about TERP, the Committee was briefed on the Clean Air Account, specifically the current status of the Low-Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The program, created in 2001, was to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. The AirCheckTexas/Drive a Clean Machine Program was created in 2007 as part of the LIRAP to remove older, polluting vehicles from Texas roads and replace them with newer, cleaner-running vehicles. The authority to regulate the program was directed to TCEQ, which adopted rules providing the minimum guidelines for counties to implement the program.

In the state's air quality non-attainment areas, vehicle owners pay a fee (the Motor Vehicle Emissions Inspection/Maintenance Fee (I/M)), depending on which county the vehicle is licensed in, to test emissions. Counties that have established an I/M program are eligible for participation in the LIRAP. County commissioners' courts vote to opt-in to the LIRAP. TCEQ, by rule, established the fee for each area based on the need when the county joined the program. In counties that have opted into the LIRAP, \$6.00 (in the Dallas/Fort Worth and Houston-Galveston-Brazoria areas) or \$2.00 (in Travis and Williamson counties) is added to the base auto emissions inspection fee. For the DFW and HGB areas, the fee is added to all on-board diagnostic (OBD) auto emissions inspections; in Travis and Williamson counties the fee is added to all auto emissions inspections. This fee provides funding for the LIRAP program.

#### Participating counties

- Houston-Galveston-Brazoria (HGB) ozone nonattainment area - Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties (\$6 fee)
- Dallas-Fort Worth (DFW) ozone nonattainment area - Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties (\$6 fee)
- Austin-Round Rock (ARR) area - Travis and Williamson Counties (\$2 fee)

#### Appropriations to AirCheckTexas/Drive a Clean Machine Program

- FY2008 – FY2011, the program was appropriated \$45 million annually
- FY2012 – FY2013, funding reduced to \$5,625,000 annually
- FY2014 – FY2015, funding is \$7,039,640 annually

At the present time more dollars are collected from local communities than are returned to them for all the applicable programs. Clean Air Account revenues that are not appropriated remain in the fund balance of the account and can be used for certification of the General Appropriations Act. For the FY2014–2015 biennium, the Comptroller used \$209.2 million in balances in the Clean Air Account towards certification.

One county, Collin County, has petitioned TCEQ to be able to withdraw from the program. The issue has not been resolved at the time of this report.



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## **Economic Stabilization Fund**

### *Structure*

The Economic Stabilization Fund (ESF or fund) was created by the passage of an amendment to the Texas Constitution in November 1988.<sup>12</sup> The constitution defines the revenue sources that are deposited to the fund. The fund retains its depository interest and receives transfers from:

- Three-fourths of the amount by which the oil production tax and the natural gas production tax exceed the amounts collected in 1987,
- 50% of any unencumbered General Revenue surplus at the end of a biennium, and
- Additional amounts appropriated by the Legislature.

The constitution also caps the fund balance at an amount not to exceed 10% of certain General Revenue deposited during the previous biennium. The state has never reached the cap.

The constitution also establishes the requirements for making appropriations from the fund:

- *At any time and for any purpose requires a 2/3 vote of the Legislature,*
- To make up a revenue shortfall in the current biennium (with a required 3/5 vote),
- If the estimated available revenue in the succeeding biennium is less than in the current biennium (with a required 3/5 vote), and
- Interfund borrowing.<sup>13</sup>

Once the transfer is made to the fund due to the passage of Proposition 1, the balance will be \$8.45 billion. The current cap is \$14.1 billion for the FY2014-15 biennium. To date, the Legislature has appropriated money from the ESF seven times, all by a 2/3 vote, for a total of \$10.6 billion.

### *Management*

The fund is managed by the Texas Treasury Safekeeping Trust Company. The Trust Company is incorporated and established as a separate, stand-alone organization with the Comptroller as its sole shareholder and director. The Comptroller appoints a Trust Company chief executive officer (CEO) and delegates authority to the CEO and Trust Company staff to manage the organization.

The fund is designed to be accessible at a moment's notice, earning a rate of return that is commensurate with the need for liquidity, not a rate associated with a long-term investment. Any changes in investment strategies or authority would require changes in statute.

### *Future*

As required by HB 1, the enabling legislation for the constitutional amendment (Proposition 1), a select committee will meet each even-numbered year to determine and adopt for the next fiscal biennium a sufficient balance in the fund.<sup>14</sup> The fact that the fund can be used for any purpose with a 2/3 vote means defining the type of expenses for which the fund could be utilized will undoubtedly produce more discussion and debate.

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## **Toll roads**

The Committee took testimony in several hearings regarding toll roads. There are still a lot of differing opinions on how tolled projects are being supported and financed by the state. For example, a major portion--and in many cases the entire amount--of the initial construction dollars is funding all upfront costs, which encourages development of a project that is not self-sufficient. If the intent is to toll for future revenue and not for construction, then this must be disclosed more clearly and debated. And it's perplexing to have governmental entities assert that tolled and managed lanes are necessary to relieve congestion when a significant number of drivers choose not to use tolled facilities. There's also a concern that there is too much emphasis on tolling, which leaves fewer choices for local communities. A recent poll conducted by the Texas A&M Transportation Institute (TTI) indicated a strong desire to discontinue the development of new toll roads by many in Texas.<sup>15</sup> The Committee recognizes there may be some political subdivisions within the state whose citizens are in favor of toll roads as a financing source for needed new construction.

The Committee briefly discussed looking at those tolled roadways that have little or no debt as candidates to be converted to non-tolled facilities. There does not seem to be information developed, at this point, to indicate whether certain toll projects reduce congestion, are safer, or were developed simply because there was not the funding available to build them any other way.

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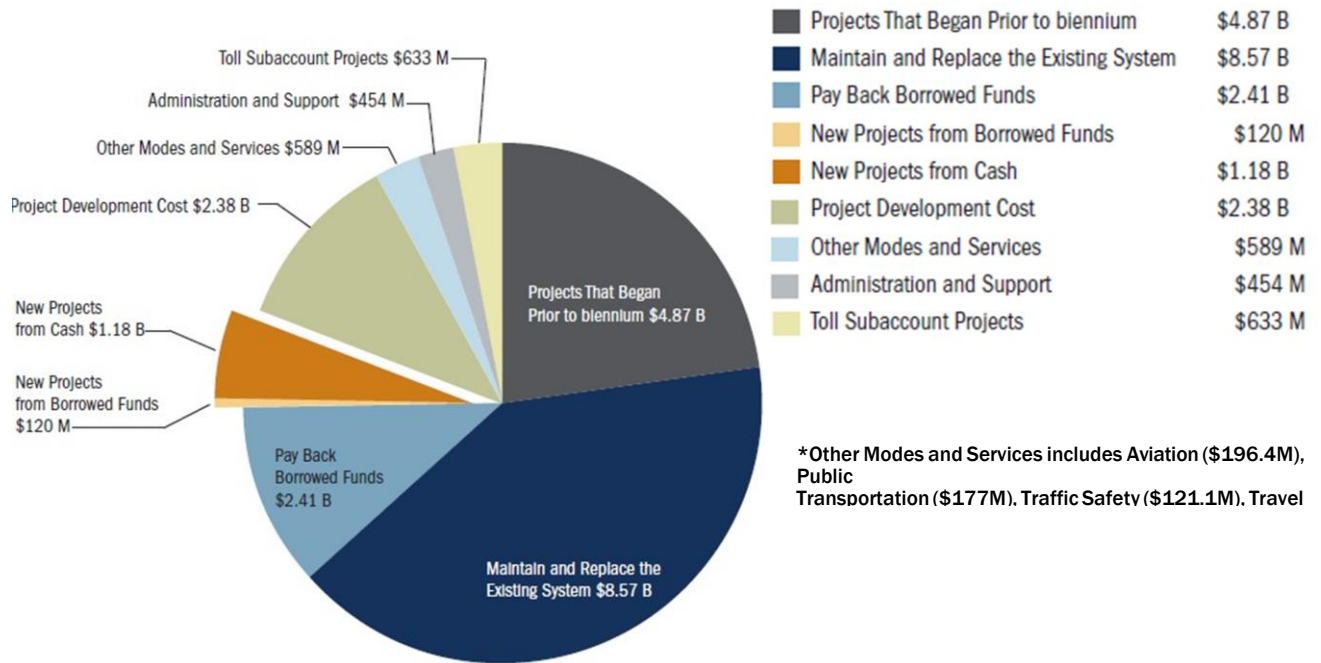
## APPENDIX A

Figure 6. Recommended/Considered Transportation Funding Sources.

<u>Recommendations</u>	<u>Savings/Increased or New Revenue</u>
Discontinue the issuance of bonds secured by TMF	\$87.9M in FY15; up to \$708M in FY44
Discontinue transfer from SHF to TERP Account.	approx. \$100M annually
Consider reducing total timely filer allowance to 0.5% and split allowance evenly between distributors/importer and suppliers	\$38.3M est. in FY16
Eliminate 1% statutory allowance for Comptroller's motor fuels tax administration and enforcement	\$24.4M est. in FY15
Redirect receipts from Oversize/Overweight permits	\$43.9M annually
Redirect receipts from commercial carrier registration	\$14.4M annually
<b>SHF Appropriations to Agencies Other than TxDOT</b>	<b>\$1.28B</b>
SHF appropriations to DPS for policing the state highway system and administering state traffic and safety laws on public roads	\$812.6M in FY14-15
SHF appropriations for Schedule C salary increase: a proportionate amount of SHF is appropriated to pay for a pay increase for troopers at DPS	\$85.6M in FY14-15
SHF appropriations for employee benefits: employee benefits are paid proportionately by fund so a proportionate amount of SHF is provided for insurance, retirement, Social Security, and benefit replacement pay costs for employees and retirees from agencies receiving SHF appropriations (excluding TDI)	\$221.7M in FY14-15 (does NOT include TxDOT)
SHF appropriations to DMV to support motor vehicle registration & titling, vehicle dealer registration & regulation, motor carrier registration & regulation, and agency administration	\$71.4M in FY14-15
SHF appropriations to Texas A&M Transportation Institute for supporting highway safety and other transportation-related research	\$16.9M in FY14-15
SHF appropriations to the OAG for providing legal services on behalf of TxDOT and DPS (includes rights-of-way acquisition proceedings and representation in lawsuits)	\$11.9M in FY14-15
SHF appropriations to TDI to support TexasSure, the state's vehicle insurance verification system. \$1 fee collected during vehicle registration and deposited to SHF. Annual revenue is approx. \$21M but only approx. \$5M is appropriated (to TDI).	\$10.1M in FY14-15 (approx. \$16M unappropriated annually)
SHF appropriations for general state employee salary increase: a proportionate amount of SHF is appropriated to pay for salary increases for general state employees with salaries paid from SHF (including TxDOT)	\$46.2M in FY14-15
SHF appropriations to State Office of Administrative Hearings to provide for hearings for DPS Administrative License Revocation Program	\$6.5M in FY14-15

# APPENDIX B

Figure 7. TxDOT Uses of Appropriations (FY2014–2015).

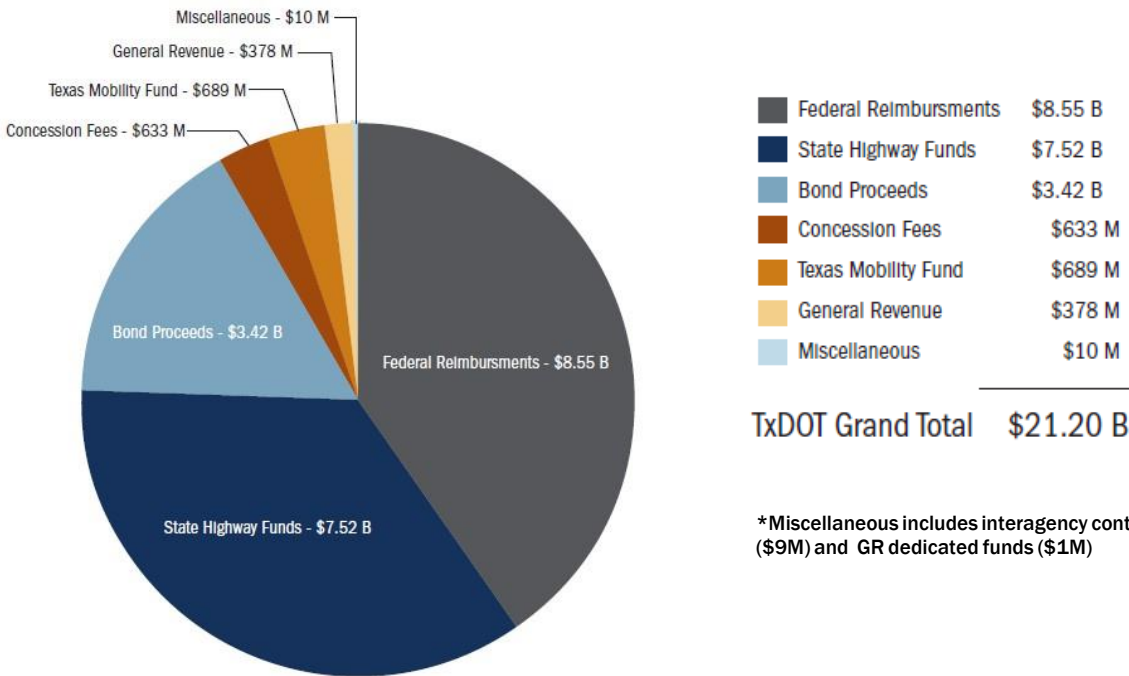


\*Other Modes and Services includes Aviation (\$196.4M), Public Transportation (\$177M), Traffic Safety (\$121.1M), Travel

Source: TxDOT, May 6<sup>th</sup> Committee Hearing Submission

# APPENDIX C

Figure 8. TxDOT Method of Finance (FY2014–2015).



TxDOT Grand Total \$21.20 B

\*Miscellaneous includes interagency contracts (\$9M) and GR dedicated funds (\$1M)

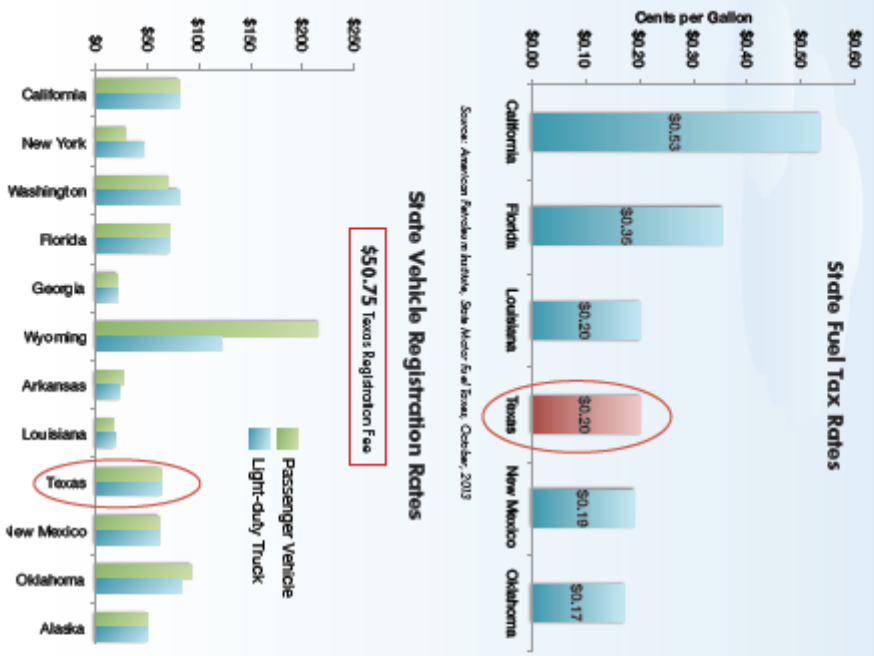
Source: TxDOT, May 6<sup>th</sup> Committee Hearing Submission

# APPENDIX D

Figure 9. Gas Tax Facts aka Placemat.



## How does Texas compare to other states?



## Where does the state get funding for roads?

**Sources of State Highway Fund Revenue**  
Estimate for 2014

Motor Fuel Lubricants Tax	\$43,275,000
Motor Vehicle Certificates of Title Fees	\$29,385,000
Motor Vehicle Registration Fees	\$1,390,378,000
Special Vehicle Permit Fees	\$105,927,000
Sale of Publications/Advertising	\$6,570,000
Supplies/Equipment/Services-Federal/Other	\$160,000,000
Interest on State Deposits/Investments, General Non Program	\$10,000,000
Motor Fuel Taxes	\$2,372,742,000*
Other Revenue	\$96,707,000
Federal Sources	\$4,310,198,000
<b>TOTAL</b>	<b>\$8,525,182,000*</b>

Source: Texas Comptroller of Public Accounts, Biennial Finance Estimate, 2014 - 2015  
\*Amount adjusted due to action by the 85th Legislature, Regular Session

## How does the gas tax compare to other monthly expenses?



## What does it cost to build?



Information compiled by the Texas A&M Transportation Institute — 5/8/14

Source: Texas A&M Transportation Institute, May 6<sup>th</sup> Committee Hearing Submission



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## ENDNOTES

<sup>1</sup> Texas Constitution, Article VIII, Section 7-a.

<sup>2</sup> Texas A&M Transportation Institute (TTI), *Establishing Mobility Investment Priorities Under TxDOT Rider 42: Final Report. Funding Strategies: Statewide Motor Fuels Tax*, December 2013, available at <http://mobility.tamu.edu/mip/strategies.php>.

<sup>3</sup> Written Testimony provided by Texas Commission on Environmental Quality to Texas House Select Committee on Transportation Funding, Expenditures & Finance, August 5, 2014, *TERP Estimated Revenue Collections*, p. 12, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4762014080513001/f8b34dc6-edcc-4cc2-9f11-2f9cc37e7f1f.PDF>.

<sup>4</sup> Written Testimony provided by Legislative Budget Board to Texas House Select Committee on Transportation Funding, Expenditures & Finance, August 5, 2014, *Sources And Uses Of The Clean Air Account And Texas Emissions Reduction Plan Account*, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4762014090409001/8fe74177-9c5b-4239-bc6f-6cf0524d7340.PDF>.

<sup>5</sup> Legislative Budget Board, *Staff Performance Report to the 79th Legislature: Decrease Administrative Allowance for Collection of Gasoline Tax*, p. 99-102, available at [http://lbb.state.tx.us/State\\_Employees/Staff%20Performance%20Report%2079th%20Legislature.pdf](http://lbb.state.tx.us/State_Employees/Staff%20Performance%20Report%2079th%20Legislature.pdf) (last visited 11/10/14).

<sup>6</sup> Similar to SB 287, 83<sup>rd</sup> Texas Legislature, Regular Session.

<sup>7</sup> Center for Transportation Research and the University of Texas San Antonio, *Oversize/Overweight Vehicle Permit Fee Study*, December 2012, available at [http://www.utexas.edu/research/ctr/pdf\\_reports/0\\_6736\\_2.pdf](http://www.utexas.edu/research/ctr/pdf_reports/0_6736_2.pdf).

<sup>8</sup> Transportation Code, Section 223.242.

<sup>9</sup> Written Testimony provided by John Barton, Assistant Executive Director, TxDOT, to Texas House Select Committee on Transportation Funding, Expenditures & Finance, August 5, 2014, *August 5<sup>th</sup> Hearing Submission*, p.3-4, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4762014080513001/1b1c04df-ae4f-40dd-a060-600694ce35d2.PDF>.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Texas Constitution, Section 49-g, Article III.

<sup>13</sup> Written testimony provided by Phillip Ashley, Director of Fiscal Management Division, Comptroller of Public Accounts, to Texas House Select Committee on Transportation Funding, Expenditures & Finance, October 8, 2014, *ESF Testimony 10-8-14*, p. 7, available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C4762014100809001/C4762014100809001.pdf>.

<sup>14</sup> HB 1, 83<sup>rd</sup> Texas Legislature, 3rd Special Session.

<sup>15</sup> Texas A&M Transportation Institute (TTI), *Texas Transportation Poll*, September 2014, available at <http://d2dtl5nnlpfr0r.cloudfront.net/tti.tamu.edu/documents/PRC-14-16-F.pdf>.