

SUNSET ADVISORY COMMISSION

FINAL REPORT



*Texas Department of
Transportation*

July 2011

Sunset Advisory Commission



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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

Texas Department of Transportation

SUNSET FINAL REPORT
JULY 2011

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, November 2010* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
 - *Hearing Material, December 2010* – Summarizes all responses from agency staff and the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission at its public hearing.
 - *Decision Material, January 2011* – Includes additional responses, testimony, or new policy issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Commission Decisions, January 2011* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency's Sunset bill.
 - *Final Report, July 2011* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency's Sunset bill.
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Summary

Summary

The special purpose review of the Texas Department of Transportation (TxDOT) is a follow up on the full Sunset review of the Department conducted in 2008. At that time, the Sunset Commission adopted and forwarded recommendations on TxDOT to the 81st Legislature. However, the Legislature did not pass the Department's Sunset bill. Instead, the Legislature continued the Department for two years in separate legislation and focused the current Sunset staff review on the appropriateness of the recommendations voted on and adopted by the Sunset Commission in 2008.

At the time of its 2008 Sunset review, TxDOT did not enjoy a high level of confidence among the public and members of the Legislature. The Sunset Commission adopted a series of recommendations aimed at changing the culture of the agency and imposing high-level oversight to help ensure real change. While TxDOT has worked diligently to address many of the Sunset Commission's recommendations, more time is needed to judge the depth and effect of the changes before trust and confidence in the agency can be restored. Several of the Sunset Commission's 2008 recommendations need legislative action to authorize their implementation and to ensure TxDOT's progress is lasting. Of the 60 recommendations on TxDOT from 2008, Sunset staff recommends 25 for consideration again in 2010.

*More time is needed to ensure
TxDOT's progress is lasting.*

Staff is not proposing the 10 recommendations concerning motor vehicle functions because separate legislation transferred most motor vehicle functions from TxDOT to a newly created Texas Department of Motor Vehicles. These statutory and management recommendations will be re-evaluated as part of the Sunset review of the Department of Motor Vehicles in 2015. Also no longer recommended is the requirement for the Department to establish a Rail Transportation Division, as the Department established this Division in November 2009. The recommendation related to Comprehensive Development Agreements is not included because TxDOT's authority for these agreements expires August 31, 2011 and will likely be discussed more fully during the upcoming legislative session. Finally, staff is not proposing the previous management recommendations, most of which have been implemented, and two recommendations to legislative committees that have been fulfilled. The chart, *Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation*, on page 7 shows the current status of each of the Sunset Commission's previous TxDOT-related recommendations.

The following material summarizes the 2008 recommendations on TxDOT that continue to be appropriate for consideration in 2010. For additional information on the Sunset Commission's 2008 decisions see the Sunset Advisory Commission's Report to the 81st Legislature, published in February 2009, and for more detailed information on the original Sunset staff recommendations see the Sunset Advisory Commission's Final Report on the Texas Department of Transportation, published in July 2009. Both reports are available on the Sunset Commission's website.

Issues and Recommendations

Issue 1

Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.

Key Recommendations

- Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.
- Request that the Senate Committee on Transportation and Homeland Security and the House Committee on Transportation continue providing necessary oversight of the Department and the State's transportation system.
- Continue TxDOT for four years.

Issue 2

TxDOT's Internal Controls Are Not Adequate to Ensure the Transparency and Accountability Necessary to Maintain Public Trust and Confidence.

Key Recommendations

- Require TxDOT's Chief Financial Officer to report directly to the Commissioner of Transportation.
- Require TxDOT and its employees to develop, adopt, and adhere to a Code of Ethics, and to establish an ethics hotline for reporting violations.

Issue 3

The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made.

Key Recommendations

- 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.
- Require TxDOT to establish a transparent, well-defined, and understandable system of project approval and programming within TxDOT that integrates project benchmarks, timelines, priorities, and cash forecasts.
- Require TxDOT to develop online reporting systems for providing project specific information in a regularly updated dashboard, judging the effects of spending on specific transportation problems, and assessing progress in meeting overall transportation goals.

Issue 4

TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Unbiased, and Meaningful Public Involvement.

Key Recommendations

- Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agencywide.
- Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.
- Strengthen lobbying prohibitions for TxDOT.

Issue 5

State Statute Unnecessarily Restricts Contracting Practices Available to TxDOT.

Key Recommendations

- Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.
- Remove provisions in statute requiring TxDOT to advertise certain contract notifications in local or statewide newspapers.

Issue 6

TxDOT's Motor Vehicle Functions Do Not Fit Within Its Core Mission to Plan, Build, and Maintain the State's Transportation System.

Issue 6 is not included in this report because a statutory alternative was implemented by the 81st Legislature, as discussed in the Status Chart on page 7.

Issue 7

More Information Is Needed to Improve Regulation of Oversize and Overweight Vehicles to Prevent Damage to Roads and Bridges.

Key Recommendation

- Require TxDOT to review and report on improving the regulation of oversize and overweight vehicles.

Issue 8

Key Elements of TxDOT's Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices.

Issue 8 is not included in this report because a statutory alternative was implemented by the 81st Legislature, as discussed in the Status Chart on page 7.

Issue 9

The State's Overall Approach to Outdoor Advertising Does Not Follow Common Licensing Practices, Reducing the Effectiveness of Regulation.

Key Recommendations

- Standardize administration of outdoor advertising regulation by requiring an outdoor advertising license for rural roads and by depositing all fees to the General Revenue-Dedicated Texas Highway Beautification Account.
- Authorize the Department to deny license renewal if a licensee's permits are in poor standing.
- Update enforcement practices by requiring the Department to develop complaints procedures, authorizing the use of standard administrative penalties, and depositing all fines into the General Revenue-Dedicated Texas Highway Beautification Account.
- Require cities to pay the costs of condemnation if they do not allow relocation of billboards affected by state roadway projects within their jurisdictions.

Issue 10

TxDOT Does Not Provide Adequate Attention to Rail Transportation Issues.

Issue 10 is not included in this report because TxDOT established a Rail Division in November 2009, as discussed in the Status Chart on page 7.

Issue 11

Unmanaged Dynamic Message Signs May Affect TxDOT's Ability to Ease Traffic Flows.

Key Recommendation

- Require all electronic signage to be actively managed to mitigate congestion, including suggesting alternative routes when applicable.

Issue 12

Statutory Direction Is Necessary to Ensure Continued Implementation of the Green Ribbon Project.

Key Recommendation

- Require 0.5 percent of highway or toll road projects be spent on landscaping projects in non-attainment and near non-attainment areas.

Issue 13

Lack of Comprehensive Information About TxDOT's Use of Propane May Affect Decisions Regarding Its Alternative Fuel Vehicle Fleet.

Issue 13 is not included in this report since it was a management action and did not require a statutory change, as discussed in the Status Chart on page 7.

Fiscal Implication Summary

- **Issue 1** – Eliminating the five-member Texas Transportation Commission would result in an overall savings of \$628,671 to the State Highway Fund. Annual savings of about \$79,570 would come from eliminating the part-time salaries members receive. Eliminating the five commissioner assistant positions would result in a savings of \$510,078 for these salaries and fringe benefits. An additional savings of \$39,023 would result from elimination of the travel and operating expenses of both the Commission members and their assistants. With a full-time Commissioner, the Department would not need both an Executive Director and a Deputy Executive Director. The savings from eliminating one of these positions, and reorganizing staffing and salaries accordingly, would provide the necessary funding for the Commissioner's salary as determined by the Legislature.
- **Issue 5** – The recommendation to eliminate required newspaper advertising for construction and maintenance contract notifications, at TxDOT's discretion, would result in savings to the State Highway Fund. TxDOT could reduce annual expenditures from the State Highway Fund by an estimated \$1 million, assuming TxDOT would eliminate newspaper notice for larger projects.
- **Issue 9** – The statutory recommendations to deposit all program fees and fines into the General Revenue-Dedicated Texas Highway Beautification Account would result in an approximate \$27,440 annual gain to this account, and a loss of the same amount to the State Highway Fund.

Texas Department of Transportation

| Fiscal Year | Gain to the General Revenue-Dedicated Texas Highway Beautification Account | Loss to the State Highway Fund | Savings to the State Highway Fund | Change in FTEs From FY 2011 |
|--------------------|---|---------------------------------------|--|------------------------------------|
| 2012 | \$27,440 | \$27,440 | \$1,628,671 | -6 |
| 2013 | \$27,440 | \$27,440 | \$1,628,671 | -6 |
| 2014 | \$27,440 | \$27,440 | \$1,628,671 | -6 |
| 2015 | \$27,440 | \$27,440 | \$1,628,671 | -6 |
| 2016 | \$27,440 | \$27,440 | \$1,628,671 | -6 |

Summary of Legislative Action ***S.B. 1420 Hinojosa (Harper-Brown)***

Senate Bill 1420 continues TxDOT for four years to keep the agency under closer legislative scrutiny and includes several changes to improve the transparency, accountability, and reliability of the Department. The Legislature adopted most of the Sunset Commission's recommendations and added several other statutory modifications to the bill. The list below summarizes the major provisions of S.B. 1420, and more detailed discussion is located in each issue.

Sunset Provisions

1. Maintain TxDOT's current Commission structure, but continue TxDOT for only four years to ensure needed changes have occurred.
2. Improve TxDOT's internal controls to ensure transparency and accountability necessary to maintain public trust and confidence.
3. Establish an integrated and understandable transportation planning and project development process within TxDOT.
4. Improve TxDOT's public involvement efforts to better ensure consistent, unbiased, and meaningful public involvement.
5. Remove unnecessary restrictions on TxDOT's contracting practices.
6. Improve regulation of oversize and overweight vehicles.
7. Standardize the Department's regulation of outdoor advertising on federal-aid and rural roads.
8. Direct TxDOT to actively manage Dynamic Message Signs to ease traffic flows.

Provisions Added by Legislature

1. Authorize comprehensive development agreements for select transportation projects.
2. Authorize Regional Mobility Authorities to enter into certain design-build contracts.
3. Establish procedures to expedite the environmental review process for certain highway projects.
4. Clarify funds in regional subaccounts may only be allocated for Department-approved projects.
5. Establish a committee to help determine financial aspects of certain toll projects.
6. Allow transfers of real property to governmental entities for public road purposes.
7. Clarify municipal and county use of transportation reinvestment zone revenues.
8. Designate the Edmund P. Kuempel Rest Areas in Guadalupe County.
9. Authorize TxDOT to designate wildfire emergency evacuation routes.

Fiscal Implication Summary

Senate Bill 1420 will not have a significant fiscal impact to the State. However, eliminating the requirement that TxDOT publish notice of bid openings in local newspapers will result in an estimated annual savings of \$1 million to the State Highway Fund. Any savings realized will be reallocated by TxDOT for other transportation planning purposes and to implement other provisions in the bill. In addition, transferring TxDOT's oversize and overweight vehicle programs to DMV will result in the transfer of an estimated 116 employees and approximately \$8 million in funding each year from TxDOT to DMV. Any unobligated and unexpended TxDOT appropriations from the 2010–11 biennium relating to the transferred programs will be re-appropriated to DMV to cover any additional transition costs, and any further costs associated with the transfer will be absorbed within existing resources.

*Status of 2008 Sunset Commission
Recommendations*

Texas Department of Transportation

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|---|--|
| Issue 1 – Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs. | |
| Change in Statute | |
| 1.1 Abolish the Texas Transportation Commission and replace it with a Governor-appointed Commissioner of Transportation. | Not Implemented – See Issue 1 of this report. This recommendation requires a change in statute. |
| 1.2 Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the State's transportation system. | Not Implemented – See Issue 1 of this report. Legislative direction and oversight continues to be needed to implement an alternative recommendation. |
| 1.3 Authorize the Transportation Legislative Oversight Committee to contract with a management consulting firm to assess and recommend organizational and process improvements at the Department. | Alternative Partially Implemented – See Issue 1 of this report. Legislative direction and oversight continues to be needed to fully implement this as part of the alternative recommendation to 1.2 above. |
| 1.4 Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities. | Not Implemented – See Issue 1 of this report. Legislative direction and oversight continues to be needed to implement this as part of the alternative recommendation to 1.2 above. |
| 1.5 Clarify that the Transportation Legislative Oversight Committee could work with all Texas university transportation research programs to obtain transportation research independent of TxDOT. | Not Implemented – See Issue 1 of this report. This recommendation is no longer appropriate or necessary. |
| 1.6 Continue TxDOT for four years. | Not Implemented – See Issue 1 of this report. This recommendation requires a change in statute to continue the agency. A separate recommendation is needed to apply or update standard Sunset across-the-board recommendations as appropriate. |
| Issue 2 – TxDOT's Internal Controls Are Not Adequate to Ensure the Transparency and Accountability Necessary to Maintain Public Trust and Confidence. | |
| Change in Statute | |
| 2.1 Require TxDOT's Chief Financial Officer to report directly to the Commissioner of Transportation. | Not Implemented – See Issue 2 of this report. This recommendation requires a change in statute. |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|--|---|
| <p>2.2 Require TxDOT to evaluate the performance of its administrative and decision-making staff to determine whether employees should retain their positions within the Department.</p> | <p>Alternative Partially Implemented – See Issue 2 of this report.</p> <p>Legislative direction and oversight continues to be needed to fully implement this recommendation.</p> |
| <p>2.3 Require the Commissioner of Transportation and TxDOT’s Chief Financial Officer to certify the establishment of, adherence to, and effectiveness of internal controls at the Department.</p> | <p>Implemented – The Department has adopted several requirements consistent with the provisions of Sarbanes-Oxley (Minute Order 111785, passed April 30, 2009) as they relate to public agencies. The Department instituted a policy in which the Chief Financial Officer (CFO) and Office of General Counsel certify certain high-risk orders and agreements.</p> <p>The Department’s Internal Compliance Program provides for the Executive Director and CFO to certify certain internal controls. The Department also worked with the accounting firm Deloitte LLP to document the Department’s internal control structure for financial reporting and develop a process for management’s annual assessment and certification of internal controls. Beginning in fiscal year 2011, TxDOT’s Finance Division Internal Audit will independently evaluate management’s assessment process.</p> <p>Also, the Department’s CFO and General Counsel must certify financial and legal sufficiency for minute orders and agreements with outside entities that are likely to create a significant financial obligation on behalf of the Department. This certification will ensure that the Department has or will have at the required time for payment, sufficient funds allocated to the specific type of expenditure/category that will be available to satisfy the financial obligations of the Department, and that the obligations are authorized by and in compliance with applicable state and federal laws and regulations.</p> <p>Because of these actions and the implementation of the Department’s Internal Compliance Program, this recommendation is not included in this report.</p> |
| <p>2.4 Require TxDOT and its employees to develop, adopt, and adhere to a Code of Ethics, and to establish an ethics hotline for reporting violations.</p> | <p>Alternative Partially Implemented – See Issue 2 of this report.</p> <p>The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation.</p> |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|---|---|
| 2.5 Require TxDOT staff to present the agency's Legislative Appropriations Request (LAR) to the Commissioner of Transportation in a timely manner. | Implemented – This recommendation was brought forth through the 2008 public hearing process. In June 2010, TxDOT staff presented the first draft of the LAR to the Commission. The LAR was also discussed in the Commission's monthly workshops in May and July of 2010. The Commission adopted the LAR at its August 2010 meeting. This recommendation is no longer appropriate since the Commission(er) has the ability to hold staff accountable for continuing to present this information in a timely manner in the future. |
| Issue 3 – The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made. | |
| Change in Statute | |
| 3.1 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. | Partially Implemented – See Issue 3 of this report. The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation. |
| 3.2 Require TxDOT to establish a transparent, well-defined, and understandable system of project approval and programming within TxDOT that integrates project milestones, timelines, priorities, and cash forecasts. | Alternative Partially Implemented – See Issue 3 of this report. The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation. |
| 3.3 Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects. | Alternative Partially Implemented – See Issue 3 of this report. The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation. |
| 3.4 Require TxDOT to develop online reporting systems for providing project specific information in a real-time dashboard, judging the effects of spending on specific transportation problems, and assessing progress in meeting overall transportation goals. | Alternative Partially Implemented – See Issue 3 of this report. The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation. |
| 3.5 Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state. | Alternative Partially Implemented – See Issue 3 of this report. The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation. |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|--|---|
| Issue 4 – TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Unbiased, and Meaningful Public Involvement. | |
| Change in Statute | |
| 4.1 Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agencywide. | Partially Implemented – See Issue 4 of this report. The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation. |
| 4.2 Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data. | Partially Implemented – See Issue 4 of this report. The Department continues to need statutory and legislative direction to ensure continued implementation of this recommendation. |
| 4.3 Strengthen lobbying prohibitions for TxDOT. | Not Implemented – See Issue 4 of this report. This recommendation would require a change in statute. |
| Management Action | |
| 4.4 TxDOT should provide a formal process for staff with similar responsibilities to share best practices information. | Implemented – The Department has established several methods for employees to share best practices information, including SharePoint and team rooms on TxDOT’s internal online learning center, I-Way. In Fall 2010, the Department plans to launch an internal, centralized training and information sharing video archive available to all staff. |
| 4.5 TxDOT should provide central coordination of the Department’s major marketing campaigns. | Partially Implemented – Following an outside consultant’s assessment of TxDOT’s marketing functions and campaigns, the Department is preparing a plan to centrally coordinate marketing efforts. |
| 4.6 TxDOT should make its website easier to use. | Partially Implemented – TxDOT has added new interactive databases to its website to allow users to review construction information and track the Department’s performance on 27 key measures. TxDOT also conducted a usability study of its website using an external entity, and plans to make improvements based on the study’s results through Fall 2010. |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|--|---|
| Issue 5 – Elements of TxDOT’s Contracting Functions Lack Efficiency and Could Expose the State to Unacceptable Levels of Risk. | |
| Contracting Framework – Change in Statute | |
| 5.1 Authorize TxDOT to use the design-build model of project delivery for traditional highway projects. | Not Implemented – See Issue 5 of this report. This recommendation would require a change in statute. |
| Contracting Framework – Change in Statute and Management Action | |
| 5.2 Remove provisions in statute and rule requiring TxDOT to advertise its contract solicitations in local or statewide newspapers. a. Change in Statute. Remove statutory advertising requirements for construction and maintenance contract notifications. b. Management Action. Direct TxDOT to remove its rule requiring advertisement of its professional services bid opportunities. | Not Implemented – See Issue 5 of this report. a. This recommendation would require a change in statute. b. The Department has not removed its rule requiring advertisement of its professional services bid opportunities. Instead, the Department is awaiting legislative direction on the change in statute portion of the recommendation before taking any management action. Removing this requirement would have resulted in an estimating savings of \$13,422 in fiscal year 2010. |
| Contracting Procedures – Management Action | |
| 5.3 TxDOT should develop clear communication policies regarding contract solicitations for its professional services contracts. | Implemented – The Department amended its contract management manual to provide clearer communication policies. |
| 5.4 TxDOT should provide additional information on overhead rates to districts and ensure that they use it. | Implemented – The Department updated its contract training to include negotiation and establishment of overhead rates. The Department also improved the process that provides overhead rate data to district and division contract negotiators so that they receive the data in a timely manner. |
| 5.5 TxDOT should set timeframes for each major step in the development of professional services contracts. | Implemented – The Department established specific timeframes for each step in its professional services contract process. |
| Staffing and Oversight – Management Action | |
| 5.6 TxDOT should consider providing additional professional staff to support its Consultant Contract Office. | Implemented – In August 2010, the Department hired four additional staff for its Consultant Contract Office. |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|---|---|
| 5.7 TxDOT should strengthen oversight and accountability of professional services contracts in its district offices. | Implemented – The Department moved some of the contracting responsibilities to the multi-district regions to allow TxDOT to consistently implement procedures that improve contract services. |
| 5.8 TxDOT should require contract management training for its professional services project managers and other employees involved in professional services contract administration. | Implemented – The Department has developed and implemented a two-part training curriculum for professional services contract administrators. This training provides in-depth instruction on the correct handling of the Department’s contracting policies. |
| Staffing and Oversight – Change in Statute | |
| 5.9 Require Comprehensive Development Agreements or related types of agreements for privately operated toll roads to be certified by the Comptroller of Public Accounts and approved by the Attorney General. | Not Implemented – Since TxDOT’s authority for Comprehensive Development Agreements (CDAs) expires on August 31, 2011, this recommendation no longer remains applicable and is not included in this report. Existing law already requires the Comptroller to review and approve associated traffic and revenue studies. The Attorney General must also review CDAs for legal sufficiency and the Legislative Budget Board must approve any CDA. |
| Issue 6 – TxDOT’s Motor Vehicle Functions Do Not Fit Within Its Core Mission to Plan, Build, and Maintain the State’s Transportation System. | |
| Change in Statute | |
| 6.1 Transfer motor vehicle functions currently at TxDOT to a newly created Texas Department of Motor Vehicles. | Statutory Alternative Implemented – Because the 81st Legislature passed House Bill 3097 that transferred certain motor vehicle functions at TxDOT to a newly created Texas Department of Motor Vehicles effective November 1, 2009, the 2008 recommendation is not included in this report. |
| Issue 7 – More Information Is Needed to Improve Regulation of Oversize and Overweight Vehicles to Prevent Damage to Roads and Bridges. | |
| Change in Statute | |
| 7.1 Require the new Texas Department of Motor Vehicles to review and report on improving the regulation of oversize and overweight vehicles. | Not Implemented – See Issue 7 of this report. TxDOT needs statutory and legislative direction to implement this recommendation since the oversize and overweight vehicle permitting and enforcement functions were not transferred to the Texas Department of Motor Vehicles as part of House Bill 3097, 81st Legislature. |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status | |
|---|--|--|
| Issue 8 – Key Elements of TxDOT’s Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices. | | |
| Administration – Management Action | | |
| 8.1 TxDOT needs to provide necessary resources to enforce its statutory provisions regarding salvage vehicle dealers. | Statutory Alternative Implemented – As a result of the creation of the Texas Department of Motor Vehicles, the 2008 recommendations regarding the regulation of motor vehicle dealers, salvage vehicle dealers, and household goods carriers are not included in this report, but will be re-evaluated when the Texas Department of Motor Vehicles undergoes Sunset review in 2015. | |
| Licensing – Change in Statute | | |
| 8.2 Establish a process for informing the public whether household goods carriers conduct criminal history checks on their employees. | | |
| Enforcement – Change in Statute | | |
| 8.3 Authorize the Department’s Motor Vehicle Division to provide specialized training as an enforcement option for violations of motor vehicle dealer regulations. | | |
| 8.4 Authorize the Department to levy administrative penalties for salvage vehicle dealers and require an administrative penalty matrix for both salvage and motor vehicle dealers. | | |
| 8.5 Remove the cap on the amount of total penalty for a knowing violation of the regulation of household goods carriers. | | |
| 8.6 Strengthen TxDOT’s household goods carriers’ enforcement authority by including summary suspension. | | |
| 8.7 Authorize TxDOT to order refunds as part of an agreed order of complaints involving motor vehicle dealers and household goods carriers. | | |
| 8.8 Authorize TxDOT to issue cease-and-desist orders against unlicensed household goods carriers. | | |
| Enforcement – Management Action | | |
| 8.9 The Department should compile and report statistical information on complaints and enforcement actions in its household goods carriers registration program. | | |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|---|---|
| Issue 9 – The State’s Overall Approach to Outdoor Advertising Does Not Follow Common Regulatory Practices and May Result in Inequities in Valuation. | |
| Program Structure – Management Action | |
| 9.1 TxDOT should centralize the outdoor advertising regulatory program, requiring staff to report to the Right-of-Way Division instead of district engineers. | Implemented – The Department centralized its outdoor advertising program within its Right-of-Way Division. The program includes 15 outdoor advertising field compliance agents that perform site inspections and handle enforcement issues, and five state compliance staff that handle reviewing applications, open records requests, and training. The Department has also drafted new rules for outdoor advertising regulation which will be presented to the Transportation Commission in November 2010. |
| Administration – Change in Statute | |
| 9.2 Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads. | Not Implemented – See Issue 9 of this report. The Department continues to need statutory and legislative direction to implement these recommendations. |
| 9.3 Standardize the appeals process for denied sign permits by eliminating the Board of Variance. | |
| 9.4 Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account. | |
| Administration – Management Action | |
| 9.5 TxDOT should ensure that the cost of regulating outdoor advertising is covered by fee revenue generated by the program. | Partially Implemented – The Department has drafted new rules for outdoor advertising regulation which will be presented to the Transportation Commission in November 2010. The draft rules include a new fee schedule to ensure the program is revenue-neutral. |
| Licensing – Change in Statute | |
| 9.6 Authorize the Department to deny license renewal if a licensee’s permits are in poor standing. | Partially Implemented – See Issue 9 of this report. The Department continues to need statutory and legislative direction to implement this recommendation. |
| Enforcement – Change in Statute | |
| 9.7 Require the Department to develop a complaints process, track and report complaints, and provide information to the public about how to file a complaint. | Partially Implemented – See Issue 9 of this report. The Department continues to need statutory and legislative direction to implement this recommendation. |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|--|--|
| 9.8 Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification account. | Not Implemented – See Issue 9 of this report. The Department continues to need statutory and legislative direction to implement this recommendation. |
| Enforcement – Management Action | |
| 9.9 The Department should scale enforcement actions to the seriousness of offenses. | Partially Implemented – The Department has drafted new rules for outdoor advertising regulation that include new administrative penalties for violations of outdoor advertising regulations along rural roads. The draft rules will be presented to the Transportation Commission in November 2010. The Department currently does not have authority to assess administrative penalties for violations along federal-aid roads. Recommendation 9.8 would provide standard administrative penalty authority for federal-aid roads allowing the Department to fully implement this recommendation. |
| Change in Statute | |
| 9.10 Require cities to pay the costs of condemnation if they do not allow relocation of billboards affected by state roadway projects within their jurisdictions. | Not Implemented – See Issue 9 of this report. This recommendation requires a change in statute. |
| Recommendations to Legislative Committees | |
| 9.11 Request that the Legislature, through the appropriate legislative committees, consider the process for valuation of outdoor advertising for condemnation and ad valorem tax purposes, with a goal towards resolving inequities. | Implemented – In February 2009, the Sunset Commission sent a letter to the Senate Transportation and Homeland Security Committee and House Transportation Committee with these requests. Neither committee took action on these issues. |
| 9.12 Request that the Senate Committee on Transportation and Homeland Security and the House Committee on Transportation establish a task force to study costs associated with outdoor advertising regulation. | |
| Issue 10 – TxDOT Does Not Provide Adequate Attention to Rail Transportation Issues. | |
| Change in Statute | |
| 10.1 Require TxDOT to establish a Rail Transportation Division. | Implemented – Since the Department established a Rail Division in November 2009, this statutory recommendation is no longer necessary and is not included in this report. |

Status of 2008 Sunset Commission Recommendations on the Texas Department of Transportation

| 2008 Recommendation | Status |
|---|---|
| Management Action | |
| 10.2 Direct TxDOT to study the feasibility of selling the South Orient Railroad and report to the Legislature. | Implemented – The Department issued a report to the Legislature on the feasibility of selling the South Orient Railroad in February 2009. |
| Issue 11 – Unmanaged Dynamic Message Signs May Affect TxDOT’s Ability to Ease Traffic Flows. | |
| Change in Statute | |
| 11.1 Require all electronic signage to be actively managed to mitigate congestion, including designating alternative routes. | Partially Implemented – See Issue 11 of this report. The Department continues to need statutory and legislative direction to implement this recommendation. |
| Issue 12 – TxDOT Has Not Spent Its Green Ribbon Project Allocation in a Timely Manner. | |
| Change in Statute | |
| 12.1 Require 0.5 percent of highway or toll road projects be spent on landscaping projects in non-attainment and near non-attainment areas. | Alternative Partially Implemented – See Issue 12 of this report. This recommendation would require a change in statute. |
| Issue 13 – Lack of Comprehensive Information About TxDOT’s Use of Propane May Affect Decisions Regarding Its Alternative Fuel Vehicle Fleet. | |
| Management Action | |
| 13.1 Direct TxDOT to report to the Legislature on opportunities and challenges for increasing the use of propane vehicles in its fleet. | Not Implemented – The Department has compiled information regarding the use and expansion of propane vehicles in its fleet, but has not issued a report the Legislature. |

Agency at a Glance
(November 2010)

Agency at a Glance

The Texas Department of Transportation (TxDOT) began in 1917 as the State Highway Department. Since that time, the Department has evolved from its original responsibilities of granting financial aid and directing county road construction programs, to a much broader mission of delivering a 21st century transportation system to address the State's growing transportation needs. To fulfill its mission of providing safe, efficient, and effective means for the movement of people and goods throughout the state, TxDOT:

- plans, constructs, maintains, and supports the State's transportation system, including roads, bridges, public transportation, railroads, airports, the Gulf Intracoastal Waterway, and ferry systems;
- develops and operates a system of toll roads using public and private-sector partners and financing options; and
- manages operations on the state highway system, including improving traffic safety, issuing oversize/overweight permits, providing rest areas and travel information, and regulating outdoor advertising.

Key Facts

- **Texas Transportation Commission.** The Texas Transportation Commission provides policy direction for the State's transportation needs and consists of five members appointed by the Governor, with the advice and consent of the Senate. The members must reflect the diverse geographic regions and population groups of the state, and one member must reside in a rural area. Commission members serve staggered, six-year terms and the Governor designates the Chair. The chart, *Texas Transportation Commission*, identifies current Commission members.

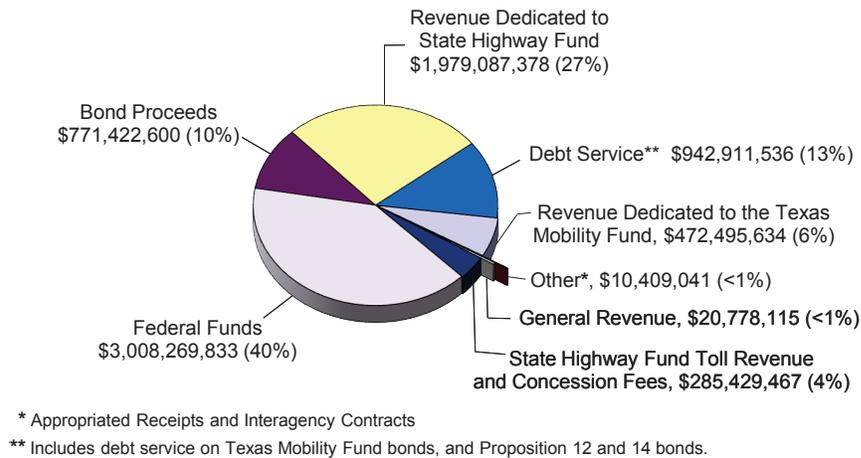
Texas Transportation Commission

| Member | Residence | Qualification | Term Expires |
|-----------------------|------------------|-------------------------------------|---------------------|
| Deirdre Delisi, Chair | Austin | Public Member | 2013 |
| Ned S. Holmes | Houston | Public Member | 2011 |
| Ted Houghton | El Paso | Public Member | 2015 |
| William Meadows | Fort Worth | Public Member | 2013 |
| Fred Underwood | Lubbock | Represents rural areas of the state | 2015 |

- **Staff.** The Department has about 12,000 staff, located in the Austin headquarters and in 25 district offices across the state. TxDOT's four regional support centers, located in Fort Worth, Houston, Lubbock, and San Antonio provide operational and project delivery support to the districts.
- **Funding.** In fiscal year 2010, TxDOT received nearly \$7.5 billion in revenue, mostly from state taxes and fees, bond proceeds, and federal funding; and \$1.6 billion of American Recovery and

Reinvestment Act funding. Combined, federal funds and revenues dedicated to the State Highway Fund constitute two-thirds of the Department's fiscal year 2010 revenues. The pie chart, *TxDOT Sources of Revenue*, further details this information.

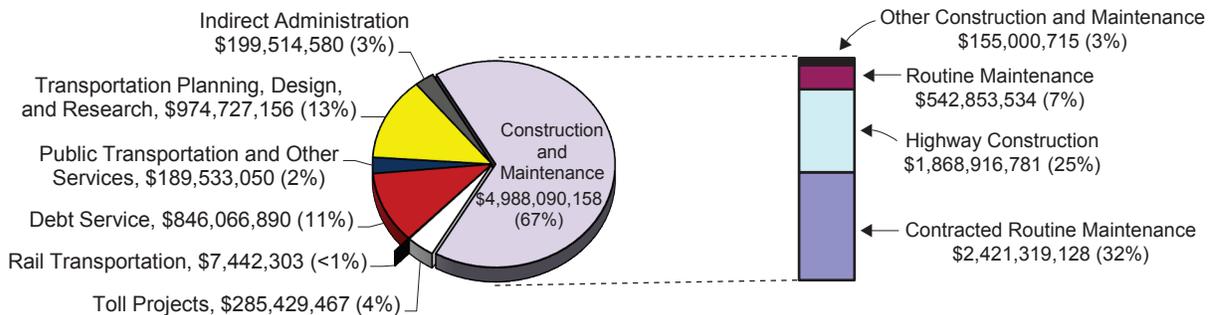
TxDOT Sources of Revenue FY 2010



Total: \$7,490,803,604

In fiscal year 2010, TxDOT's expenditures totaled approximately \$7.5 billion. The Department spent nearly \$5 billion, or 67 percent, on construction and maintenance of the state highway system. The pie chart, *TxDOT Expenditures*, provides more information.

TxDOT Expenditures FY 2010



Total: \$7,490,803,604

- New Financing Tools.** Since 2001, TxDOT has issued approximately \$6.3 billion in Texas Mobility Fund bonds and \$5.4 billion total in Proposition 14 (backed by the State Highway Fund) and Proposition 12 (backed by the State's general revenue) bonds. The Transportation Commission has also approved the creation of eight regional mobility authorities, entered into six Comprehensive Development Agreements, and authorized \$1.4 billion in pass-through financing to local governments.

- **Highway Construction and Maintenance.** TxDOT maintains almost 80,000 centerline miles of federal interstates, U.S. and state highways, and farm- and ranch-to-market roads. Steps in project implementation include planning and preliminary feasibility studies, environmental analysis, public involvement, detailed design, right-of-way acquisition, and finally, construction. In fiscal year 2010, the Department awarded 1,067 construction and major maintenance contracts totaling \$3.3 billion, and 1,403 routine maintenance contracts totaling \$338 million.
- **Statewide Transportation Support.** The Texas transportation system includes roads, bridges, public transportation, rail, airports, and waterways that connect and provide mobility to urban and rural areas in the state. Many entities on the federal, state, and local levels participate in transportation planning and delivery. Appendix A, *Key Transportation Entities*, describes the responsibilities of these entities in more detail. In addition to maintaining the State's roadways, TxDOT supports the State's entire transportation system.

Bridges. TxDOT administers the federal Highway Bridge Program, inspecting all public vehicular bridges – both on and off the designated state highway system – to determine their condition. TxDOT awarded \$240 million in bridge projects in fiscal year 2010, including about \$186 million for on-system and \$54 million for off-system bridges. In fiscal year 2010, more than 80 percent of all bridges ranked in good or better condition.

Rail. TxDOT's Rail Division, established in November 2009, is responsible for rail planning; operations and safety; coordinating and reviewing state and federally funded rail projects; and maintaining state and district railroad maps. The Department's forthcoming Texas Rail System Plan identifies more than \$7.6 billion in needed rail improvements around the state.

Waterways and Ports. Since 1975 TxDOT has been the non-federal sponsor of the Texas portion of the Gulf Intracoastal Waterway. To date, the Department has furnished 15 upland dredged material placement areas totaling over 2,200 acres for maintenance of the 423-mile main channel of the Gulf Intracoastal Waterway. Historically, ports have been built and maintained through partnerships between the federal government, private companies, and local taxpayer-funded initiatives. TxDOT works with a Ports Advisory Committee to study and recommend port projects each year. In the most recent *Texas Ports 2010–2011 Capital Program*, TxDOT and Texas ports identified 87 needed projects totaling \$559 million, \$279 million of which would be the State's share.

Aviation. TxDOT provides planning, capital improvement, and maintenance grant assistance to about 270 general aviation airports, including 267 federally funded airports and three privately owned airports eligible for federal, but not state funds. In fiscal year 2010, through its two grant programs, TxDOT awarded 240 grants totaling \$61 million in state and federal funds. The Department also provides air charter and flight maintenance services for official state business.

Public Transportation. TxDOT focuses its support of public transportation on providing planning and grant assistance to a variety of public transportation providers and planning organizations. In fiscal year 2010, TxDOT awarded \$105 million in grants to public transportation providers to establish, maintain, or expand their systems.

- **Travel Information.** TxDOT supports and promotes travel to and within Texas by providing information and services to highway users and the traveling public. The Department also manages the “Don't Mess with Texas” and Adopt-a-Highway programs to reduce litter on state highways, encourage citizen involvement in litter prevention programs through education and participation, and provide a more positive travel experience.

- **Permitting.** To protect the traveling public, the State's roadway infrastructure, and certain loads, TxDOT issues permits for vehicles exceeding size and weight limits established by law. These permits help limit damage and preserve roads by designating a route that can safely accommodate the oversize or overweight vehicle. In fiscal year 2010, TxDOT issued 500,522 oversize/overweight permits, generating \$94 million.

To preserve the scenic beauty of highways, the federal Highway Beautification Act requires states to regulate billboards to remain eligible for federal transportation funding. State law also requires similar regulation of billboards along rural roads. In fiscal year 2010, TxDOT permitted 12,210 billboards, of which 310 were new billboards along federal-aid highways and 25 were new billboards along rural roads.

Issues

Issue 1

Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.

Background

The 2008 Sunset staff review of the Texas Department of Transportation (TxDOT) occurred in an atmosphere of extreme legislative and public distrust of the Department and the way it operated. As TxDOT moved to implement the innovative funding and development mechanisms first enacted in 2001, the Legislature began to question its own actions and TxDOT's response to the new authority. Early concerns about the Department's approach to toll roads and its interest in public-private partnerships became a deep-seated distrust of TxDOT's motives and direction, as reflected in the Legislature's insistent drive to recapture policy ground lost to the Department. The Legislature's repeated attempts to make TxDOT more responsive, transparent, and accountable further reflected this distrust.

The public was distrustful of TxDOT as well, particularly its toll road efforts. As part of the 2008 TxDOT Sunset review, more than 1,000 individuals submitted comments to Sunset staff. The majority of the comments, about 76 percent, suggested eliminating the Texas Transportation Commission and replacing it with a single, elected Transportation Commissioner. In addition, about 26 percent specifically stated that TxDOT needs to be more accountable.

Findings

Despite the Department's progress towards becoming more responsive, more time is needed to ensure the change is genuine and that trust and confidence are warranted.

The 2008 Sunset review found that concern about the Department and the direction of state transportation policy was deep and undeniable. This suspicion cast doubt on virtually every transportation-related decision the Department made, preventing it from most effectively meeting the State's transportation needs.

The recommendations previously adopted by the Sunset Commission were intended to initiate decisive action to rebuild trust and confidence in TxDOT by establishing greater accountability under the oversight of a single Commissioner of Transportation; enhancing the Legislature's role in setting transportation policy and overseeing the Department's implementation of this policy; and providing better access to transportation information and research. The chart on the following page, *TxDOT Continuation Recommendations*, summarizes these recommendations and their status.

While TxDOT has shown progress, much work remains to fully restore trust in the Department.

TxDOT Continuation Recommendations

| 2008 Sunset Commission Recommendation | Status |
|--|--|
| <ul style="list-style-type: none"> ● Abolish the Texas Transportation Commission and replace it with a Governor-appointed Commissioner of Transportation, confirmed by the Senate. The Commissioner would serve a two-year term. ● The Commissioner would be required to be experienced and skilled in transportation planning, development, financing, construction, and maintenance, or have appropriate finance or management experience. A person would not be eligible to be appointed or serve as the Commissioner if the person served in the Legislature in the previous 10 years. | <p>Change in law still needed. This recommendation was based on findings that showed the Legislature had tried repeatedly to make TxDOT more transparent, responsive, and accountable without success; and the Department’s responsiveness to both the Legislature and the public had decreased significantly, jeopardizing its effectiveness as the State’s transportation agency. Although the Department has made progress, more time is needed to determine whether or not initial changes will be fully implemented, sustained, and have the effect of restoring trust and confidence in the Department. Without this assurance, the Sunset Commission’s recommendation to replace the Transportation Commission with a single, appointed commissioner remains appropriate to better ensure that TxDOT’s accountability, trust, and responsiveness is restored.</p> <p>Senate Bill 970, 81st Legislature (2009) removed the requirement that TxDOT’s Executive Director be a registered professional engineer and added the requirement that he or she have transportation planning and development and organizational management experience and skills.</p> |
| <ul style="list-style-type: none"> ● Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the State’s transportation system. | <p>Alternative recommendation to legislative committees needed. This recommendation was based on providing necessary oversight of the Department and the state’s transportation system. The primary function of the recommended Legislative Oversight Committee was to conduct a complete organizational management audit of TxDOT and oversee implementation of the resulting recommendations. At the behest of the House Transportation Committee and Senate Committee on Transportation and Homeland Security, the Transportation Commission directed the Department to contract out for this management audit, which has been completed. The Transportation Commission has established a TxDOT Restructure Council to facilitate implementation of the audit’s recommendations.</p> <p>Also, the Senate Transportation and Homeland Security Committee, the House Transportation Committee, and the newly established Select Committee on Transportation Funding significantly increased oversight of the Department and the State’s transportation system during the interim.</p> <p>Although the original recommendation is no longer appropriate, requesting the committees to continue providing more direct oversight of the Department and the State’s transportation system would help ensure the intent of the previous Sunset Commission recommendation is realized.</p> |

TxDOT Continuation Recommendations

| 2008 Sunset Commission Recommendation | Status |
|---|---|
| <ul style="list-style-type: none"> • Authorize the Transportation Legislative Oversight Committee to contract with a management consulting firm to assess and recommend organizational and process improvements at the Department. | <p>Alternative recommendation to legislative committees needed. This recommendation was based on the finding that the lack of trust and confidence in TxDOT contributed to doubt about the Department’s management of its operations, including its organizational structure, use of resources, compliance with legislative intent, and overall performance, preventing TxDOT from being an effective state agency.</p> <p>The Transportation Commission hired Grant Thornton to conduct a management audit of the agency, which was presented to the Transportation Commission in May 2010. The TxDOT Restructure Council is currently evaluating the audit recommendations. Before the end of the year, the TxDOT Restructure Council expects to determine areas of emphasis and implementation priorities which it will present to the Transportation Commission. Since the management audit has been conducted, albeit not as independently as the Sunset Commission’s recommendation intended, this recommendation is no longer appropriate.</p> <p>However, the TxDOT Restructure Council is temporary (members anticipate disbanding by the end of the year) and no assurances that the Commission will implement the management audit recommendations exist. Although the original recommendation is no longer appropriate, requesting the legislative committees to oversee and assess TxDOT’s progress in implementing the audit recommendations and requiring TxDOT to report the status of its implementation efforts would provide needed and continuing oversight intended by the original Sunset Commission recommendation.</p> |
| <ul style="list-style-type: none"> • Require the Transportation Legislative Oversight Committee to review and comment on TxDOT’s research program, including individual research projects and activities. • Clarify that the Transportation Legislative Oversight Committee could work with all Texas university transportation research programs to obtain transportation research independent of TxDOT. | <p>Alternative recommendation to legislative committees needed. This recommendation was based on the lack of available independent, objective, and reliable information about the state transportation system. This information was limited since TxDOT controls most of the transportation information legislators and the public use, and TxDOT determines the research topics and controls funding for this research. This recommendation remains appropriate for the current standing committees to consider as part of their ongoing oversight of the Department. Absent the establishment of the Legislative Oversight Committee on Transportation, the recommendation to clarify that the Committee could work with Texas transportation research universities is no longer appropriate. The standing legislative committees can request needed information from any university.</p> |

TxDOT Continuation Recommendations

| 2008 Sunset Commission Recommendation | Status |
|---|--|
| <ul style="list-style-type: none"> Apply the standard Sunset across-the-board requirement for the Commissioner to develop a policy regarding negotiated rulemaking and alternative dispute resolution, and update the other across-the-board recommendations to apply to the Commissioner rather than the Texas Transportation Commission. | <p>Change in law still needed. The Department’s statute does not reflect standard language typically applied across the board during Sunset reviews. These recommendations remain appropriate to improve the Department’s rulemaking and dispute resolution processes, and to update the other standard across-the-board provisions.</p> |
| <ul style="list-style-type: none"> Continue TxDOT for four years. | <p>Change in law still needed. This recommendation is aimed at restoring trust and confidence in TxDOT by establishing what is in effect a four-year “legislative conservatorship” to ensure needed changes occur. This recommendation remains appropriate to continue to provide needed oversight of the Department and to give the Legislature the opportunity to evaluate the Department’s progress in implementing these changes sooner than the typical 12-year Sunset date.</p> |

These recommendations were further developed and clarified by the Legislature, culminating in the Conference Committee Report on House Bill 300, the TxDOT Sunset bill. Although the bill did not pass, the Department proceeded to implement some of the recommendations, including contracting for a management audit, and adding a Strategic Research Program to its Research and Technology Implementation Office purview.

Sunset staff examined the appropriateness of the Sunset Commission’s recommendations and found that while the Commission and Department are taking steps to make TxDOT more responsive, accountable, and transparent, more time is needed to determine whether these changes will have the desired results. As such, most of the Sunset Commission’s recommendations, modified to reflect the Department’s initial efforts and legislative interest, continue to be appropriate to ensure ongoing implementation and legislative oversight and accountability.

Recommendations

Since some of the recommendations from 2008 have been implemented or are no longer appropriate, they are not included in this issue. Therefore, please note that the recommendations have been re-numbered and no longer match the original numbering shown in the Status Chart on page 7.

Change in Statute

1.1 Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.

This recommendation would abolish the five-member Texas Transportation Commission and replace it with a single Commissioner of Transportation. The Governor would appoint the Commissioner

with the check and balance of Senate confirmation every two years. The Commissioner's two-year term would expire February 1 of each odd-numbered year. If the Governor does not reappoint the Commissioner or make a new appointment by February 28 of odd-numbered years, then the authority to appoint the Commissioner would, by statute, transfer to the Lieutenant Governor. Although the appointment by the Governor would be subject to Senate confirmation, the appointment by the Lieutenant Governor would not.

A new Commissioner would help restore the accountability, trust, and responsiveness of TxDOT. Senate confirmation every two years would forge a strong link of accountability to the Legislature and frequent affirmation of acceptable Commissioner performance by a Senate vote of confidence. With the appointment of a full-time Commissioner, the executive director's position and the statutory requirement for engineering and transportation planning, development, and construction and maintenance experience would no longer be necessary. Instead of an executive director, the Commissioner could choose to hire staff with whatever engineering, business, and management experience the Commissioner feels necessary to oversee the operations of the agency. For example, engineering expertise could be provided through the Assistant Executive Director for Engineering Operations position.

Recommendation to Legislative Committees

1.2 Request that the Senate Committee on Transportation and Homeland Security and the House Committee on Transportation continue providing necessary oversight of the Department and the State's transportation system.

Instead of creating a separate Transportation Legislative Oversight Committee to provide additional and possibly duplicative oversight of TxDOT and the State's transportation system, the Sunset Commission would request the Committees, as part of their ongoing charge, to consider:

- overseeing and assessing TxDOT's progress in implementing the management audit and other recommendations, particularly those identified by the TxDOT Restructure Council as priorities;
- monitoring TxDOT's planning, programming, and funding of the State's transportation system, including reviewing and commenting on TxDOT's transportation research program;
- assessing the cost-effectiveness of the use of state, local, and private funds in the transportation system;
- identifying critical problems in the transportation system, including funding constraints and recommending strategies to solve those problems; and
- determining long-range needs of the transportation system and recommending policy priorities for the system.

This recommendation would help strengthen the Legislature's position in interactions with the Department by ensuring continued oversight of both TxDOT and the State's transportation system, as intended by the original Sunset Commission recommendations. As part of this recommendation, TxDOT would be required to report the status of its implementation of the management audit recommendations and process improvements to the Committees as well as the Senate Finance and House Appropriations Committees. This recommendation would also help restore trust in the research being used to set transportation policy by allowing the Committees to review TxDOT's research program and provide comments or direction regarding individual research projects.

Change in Statute

1.3 Continue TxDOT for four years.

This recommendation would continue TxDOT for a four-year period to ensure that needed changes have occurred to re-establish the Legislature's and the public's trust and confidence in the Department. This shorter Sunset review timeframe will give the Legislature the opportunity to evaluate these changes, including the accountability of a single Transportation Commissioner. The Legislature could make any changes it deems necessary in the Department's next Sunset review in 2015.

1.4 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.

This recommendation would ensure TxDOT develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The Department would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the Department to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses. The other standard across-the-board requirements would be updated to apply to a single Commissioner, rather than the Transportation Commission.

Fiscal Implication Summary

These recommendations would result in an estimated \$628,671 annual savings to the State Highway Fund. Eliminating the five Texas Transportation Commission members would result in an annual savings of about \$79,570 for the part-time salary. Eliminating the five commissioner assistant positions would result in a savings of \$510,078 for these salaries and benefits. An additional savings of \$39,023 would result from elimination of the travel and operating expenses of both the Commission members and their assistants. With a full-time Commissioner, the Department would not need both an Executive Director and a Deputy Executive Director. The savings from eliminating one of these positions, and reorganizing staffing and salaries accordingly, would provide the necessary funding for the Commissioner's salary as determined by the Legislature.

Texas Department of Transportation

| Fiscal Year | Savings to the State Highway Fund | Change in FTEs From FY 2011 |
|--------------------|--|------------------------------------|
| 2012 | \$628,671 | -6 |
| 2013 | \$628,671 | -6 |
| 2014 | \$628,671 | -6 |
| 2015 | \$628,671 | -6 |
| 2016 | \$628,671 | -6 |

Responses to Issue 1

Recommendation 1.1

Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.

Agency Response to 1.1

The Department has no comment. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 1.1

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

William Howard Wolf, Austin

Against 1.1

Kirby Carpenter, Vice President – Texas Good Roads Association, Austin

Don P. Dixon, San Antonio

Tom Johnson, Executive Vice President – Associated General Contractors of Texas, Austin

Modifications

1. Replace the five-member Texas Transportation Commission with a three-member Transportation Commission. The Commissioners would continue to be appointed by the Governor with the advice and consent of the Senate. (Senator Robert Nichols, Member – Sunset Advisory Commission and Kirby Carpenter, Vice President – Texas Good Roads Association, Austin)
2. Make the Transportation Commissioner an elected position, elected to the same term as the Comptroller. (Don P. Dixon, San Antonio)

Staff Comment: The Comptroller is popularly elected every four years.

3. Replace the Transportation Commission with an elected commission made up of commissioners that are regionally elected, similar to the State Board of Education. (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio)
4. Make the Transportation Commissioner an elected position. (Pat Dossey, San Antonio and Nikki Kuhns, San Antonio)
5. Replace the Transportation Commission with three elected Commissioners, similar to the Railroad Commission. (David Smith – Texans Uniting for Reform and Freedom, Dallas)

6. Require TxDOT officials be elected rather than appointed. (Mel Borel – Texans Uniting for Reform and Freedom, San Antonio; Bruce Burton, Co-Director – Texans Against Tolls, Austin; and Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)
7. Make the Commissioner subject to performance reviews on a regularly scheduled basis. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin)
8. Create environmental and urban public transportation policy advisor positions to provide the Commissioner of Transportation with a more comprehensive outlook regarding all facets of transportation policy and decision-making, and to ensure these aspects of transportation policy and decision-making are not overlooked and are comprehensively represented in any policy and decision-making discussions. (Brandt Mannchen, Houston)

Recommendation 1.2

Request that the Senate Committee on Transportation and Homeland Security and the House Committee on Transportation continue providing necessary oversight of the Department and the State’s transportation system.

Agency Response to 1.2

The Department continues to participate in the hearings of these Committees and responds routinely to requests for information, including providing quarterly updates and information on Department activities. This recommendation encourages continued cooperation and responsiveness from the Department to the Committees. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 1.2

Brandt Mannchen, Houston

Against 1.2

None received.

Modification

9. Establish a Transportation Legislative Oversight Committee. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin)

Recommendation 1.3

Continue TxDOT for four years.

Agency Response to 1.3

Over the last 20 years, the Department has undergone Sunset review four times and received several recommendations through other state and independent audits. Given the magnitude of the recommended changes and the implementation efforts currently underway, transition

for an agency the size of TxDOT will require more than four years to see measurable, genuine results and provide for proper analysis of those efforts.

Agency Modification

10. Continue TxDOT for the standard 12-year period. TxDOT has made extraordinary strides in providing for an accountable and transparent structure and extension of the standard 12 years is reasonable and should be considered by the Sunset Advisory Commission.

(Deirdre Delisi, Chair – Texas Transportation Commission)

For 1.3

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Barbara Roeling, P.G., Chairman – Texas Board of Professional Geoscientists, Austin

Against 1.3

None received.

Modifications

11. Abolish TxDOT and replace it with a new agency. (Mel Borel – Texans Uniting for Reform and Freedom, San Antonio)
12. Sunset TxDOT by directing the Finance Committee to place TxDOT into receivership. (Pierre de Rochemont, Founder – Central Texas Republican Liberty Caucus, Austin)

Recommendation 1.4

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.

Agency Response to 1.4

The Department concurs with this recommendation. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 1.4

Brandt Mannchen, Houston

Against 1.4

None received.

Commission Decision

Adopted Recommendation 1.1 with a modification clarifying that the Commissioner of Transportation would be prohibited from serving if the Commissioner's term has expired and the Commissioner has not been reappointed and confirmed by the Senate.

Also adopted Recommendations 1.2 through 1.4.

Legislative Action

The Legislature did not adopt Recommendation 1.1, as modified, to replace the Transportation Commission with an appointed Commissioner, retaining the current five-member Commission. Instead, the Legislature defined the rural member as being a registered voter in a county with a population of less than 150,000 in Senate Bill 1420.

Senate Bill 1420 continues TxDOT for four years to provide increased oversight to ensure needed changes have occurred to re-establish the Legislature's and the public's trust and confidence in the Department. (Recommendation 1.3) The Legislature added a provision to require TxDOT, in preparation for its Sunset review, to submit to the Sunset Commission a complete and detailed financial audit conducted by an independent certified public accountant.

Finally, S.B. 1420 updates standard Sunset across-the-board requirements to make current eligibility provisions for the Commission members apply at the time of taking office instead of at the time of appointment, and applies the standard Sunset across-the-board requirement regarding alternative dispute resolution. (Recommendation 1.4)

Recommendation 1.2 did not require legislative action.

Issue 2

TxDOT's Internal Controls Are Not Adequate to Ensure the Transparency and Accountability Necessary to Maintain Public Trust and Confidence.

Background

To ensure propriety and preserve public confidence, officers and employees of the State should have specific standards to guide their conduct and clear mechanisms for enforcing those standards. The Texas Department of Transportation's (TxDOT's) acknowledgment of a \$1.1 billion error in early 2008 raised significant concerns regarding the Department's financial operations and internal controls, and its conduct in responding to the situation. These concerns added to the growing distrust of TxDOT and raised additional questions as to the mechanisms in place to ensure accountability of TxDOT's officers and employees.

Finding

Although the Department has taken steps to improve its internal controls, the Sunset Commission's recommendations to statutorily strengthen some of TxDOT's internal controls continue to be appropriate to ensure their full and continued implementation.

Several recommendations regarding the Department's internal controls were brought forth through the public hearing process in 2008. Considering the significant \$1.1 billion error and perceived lack of responsiveness of the Department to the Legislature, the Sunset Commission determined TxDOT did not have the proper standards in place to guide their employees' conduct or to enforce these standards.

The Department has taken steps to improve its internal controls, including adopting several requirements consistent with the federal Sarbanes-Oxley Act and implementing an agencywide Internal Compliance Program. Statutory direction is still needed to ensure full and ongoing implementation of some of these changes. The chart on the following page, *Internal Controls Recommendations*, summarizes the Sunset Commission's recommendations that need additional statutory authority and direction, and their status.

Statutory direction is necessary to ensure TxDOT maintains its management and ethics policies.

Internal Controls Recommendations

| 2008 Sunset Commission Recommendation | Status |
|---|--|
| <ul style="list-style-type: none"> Require TxDOT's Chief Financial Officer to report directly to the Commissioner of Transportation. | <p>Change in law still needed. This recommendation, brought forth through the 2008 public hearing process, is aimed at ensuring adequate oversight and accountability of the Department's financial operations. The Department continues to need statutory direction to implement this reporting structure for the Commissioner of Transportation.</p> |
| <ul style="list-style-type: none"> Require TxDOT to evaluate the performance of its administrative and decision-making staff to determine whether employees should retain their positions within the Department. | <p>Change in law still needed. This recommendation, brought forth through the 2008 public hearing process, was based on the need for the Commissioner of Transportation to ensure that TxDOT employees perform their duties with the citizens of Texas foremost in mind and that the Commissioner has the authority necessary to evaluate employees based on these objectives. While TxDOT administration follows a formal evaluation process for all TxDOT employees, including the Executive Director, this recommendation remains appropriate to give the Commissioner of Transportation the necessary statutory and legislative direction to carry out this recommendation.</p> |
| <ul style="list-style-type: none"> Require TxDOT and its employees to develop, adopt, and adhere to a Code of Ethics, and to establish an ethics hotline for reporting violations. | <p>Change in law still needed. This recommendation, brought forth through the 2008 public hearing process, requires TxDOT to develop and adopt a Code of Ethics and for each employee to annually affirm adherence to this Code of Ethics. The Department has adopted a Code of Ethics for all employees and a separate one for Senior Financial Officers, including required ethics training for each employee and a mandatory refresher course. The Department has also established an ethics hotline. To ensure ongoing implementation, statutorily requiring this recommendation is still appropriate.</p> |

Recommendations

Since some of the recommendations from 2008 have been implemented or are no longer appropriate, they are not included in this issue. Therefore, please note that the recommendations have been re-numbered and no longer match the original numbering shown in the Status Chart on page 7.

Change in Statute

2.1 Require TxDOT's Chief Financial Officer to report directly to the Commissioner of Transportation.

This recommendation is contingent upon the adoption of Recommendation 1.1 in Issue 1 which would replace the Transportation Commission with a single Commissioner of Transportation. Under this recommendation, TxDOT's Chief Financial Officer would report directly to the Commissioner of Transportation instead of reporting to the Executive Director to ensure adequate oversight and accountability of the Department's financial operations.

2.2 Require TxDOT to evaluate the performance of its administrative and decision making staff to determine whether employees should retain their positions within the Department.

This recommendation would require the Commissioner of Transportation to ensure that TxDOT employees are performing their duties with the citizens of Texas foremost in mind, which includes being professional, diligent, and responsive to directives and requests from the Commissioner and the Legislature. To carry out this recommendation, TxDOT employees would undergo performance reviews. Based on the outcomes of these reviews, the Commissioner would need to re-evaluate the employment of any employee not satisfying these objectives.

2.3 Require TxDOT and its employees to develop, adopt, and adhere to a Code of Ethics, and to establish an ethics hotline for reporting violations.

Under this recommendation, TxDOT employees would be statutorily required to develop and adopt a Code of Ethics to promulgate a transparent culture and enhance public trust in the agency. All TxDOT employees would be required to annually affirm their adherence to this Code of Ethics. TxDOT would also be required, by statute, to establish an ethics hotline through which employees and others could report, anonymously or by name, violations of the Code of Ethics.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State.

Responses to Issue 2

Recommendation 2.1

Require TxDOT's Chief Financial Officer to report directly to the Commissioner of Transportation.

Agency Response to 2.1

Should the Commission structure remain the same, the Executive Director position would likely be retained as well. As such a structure that allows the Chief Financial Officer to report to the Commission on various matters but still allow for direct reporting to the Executive Director would seem more appropriate.

Agency Modification

1. If the Commission structure is maintained, let the Chief Financial Officer report to the Commission on requested matters, but allow for direct reporting to the Executive Director.

(Deirdre Delisi, Chair – Texas Transportation Commission)

For 2.1

Brandt Mannchen, Houston

Against 2.1

None received.

Recommendation 2.2

Require TxDOT to evaluate the performance of its administrative and decision making staff to determine whether employees should retain their positions within the Department.

Agency Response to 2.2

The Department continues to follow a formal evaluation process for all employees and concurs with this recommendation. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 2.2

Brandt Mannchen, Houston

Against 2.2

None received.

Recommendation 2.3

Require TxDOT and its employees to develop, adopt, and adhere to a Code of Ethics, and to establish an ethics hotline for reporting violations.

Agency Response to 2.3

The Department has implemented this recommendation and concurs with a statutory requirement to adopt and adhere to such ethics standards. The Transportation Commission approved the creation of an Internal Compliance Program in November 2007 which continues to maintain and improve upon the TxDOT Code of Ethics. The development and implementation of the program has been recognized at the national level and received awards from the American Association of State Highway and Transportation Officials and the Western Association of State Highway and Transportation Officials. Ethics training is required for every employee and member of the Transportation Commission with mandatory annual refresher courses. An ethics hotline was also established in 2007 allowing employees and the public to report violations by visiting www.txdotwatch.com or calling TxDOT Watch toll-free at 1-877-769-8936. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 2.3

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 2.3

None received.

Commission Decision

Adopted Recommendations 2.1 through 2.3.

Legislative Action

In Senate Bill 1420, the Legislature modified the Sunset provision regarding the Chief Financial Officer to specify the Officer's duties include ensuring that the Department's financial activities are conducted in a transparent and reliable manner, and certifying each month that construction and maintenance contracts will not create a state liability that exceeds the Department's most recent cash flow forecast. (Recommendation 2.1) The Legislature also added two provisions to further strengthen TxDOT's internal controls by requiring staff to deliver the Department's legislative appropriations request to the Commission at least 30 days before submitting it to the Legislative Budget Board, and requiring TxDOT's General Counsel to be licensed as an attorney in Texas.

Senate Bill 1420 also requires TxDOT to evaluate the performance of its staff to determine whether employees should retain their positions within the Department. The bill requires the annual performance evaluation to include an evaluation of an employee's professionalism, diligence, and responsiveness to directives and requests from the Commission and the Legislature. The Legislature

modified the Sunset provision to require the Commission to consider terminating employees at or above the level of district engineer or division or office director whose performance is deemed unsatisfactory. The Department shall consider terminating employees below the level of district engineer. The bill also requires the Department to provide a report to the Commission regarding employees with unsatisfactory performance who were not terminated. (Recommendation 2.2)

Senate Bill 1420 requires all TxDOT employees to annually affirm their adherence to the Department's ethics policy and requires the Department to establish and operate a telephone hotline for reporting, anonymously or not, alleged fraud, waste, or abuse or an alleged violation of the ethics policy. The Legislature modified this Sunset provision to require the Commission to establish a compliance program, including a compliance office to oversee the program and operation of the hotline. The bill specifies the responsibilities of the compliance office, including acting to prevent, detect, and investigate serious breaches of departmental policy; fraud, waste, and abuse of office; and criminal activity or allegations of wrongdoing within the Department. (Recommendation 2.3)

Issue 3

The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made.

Background

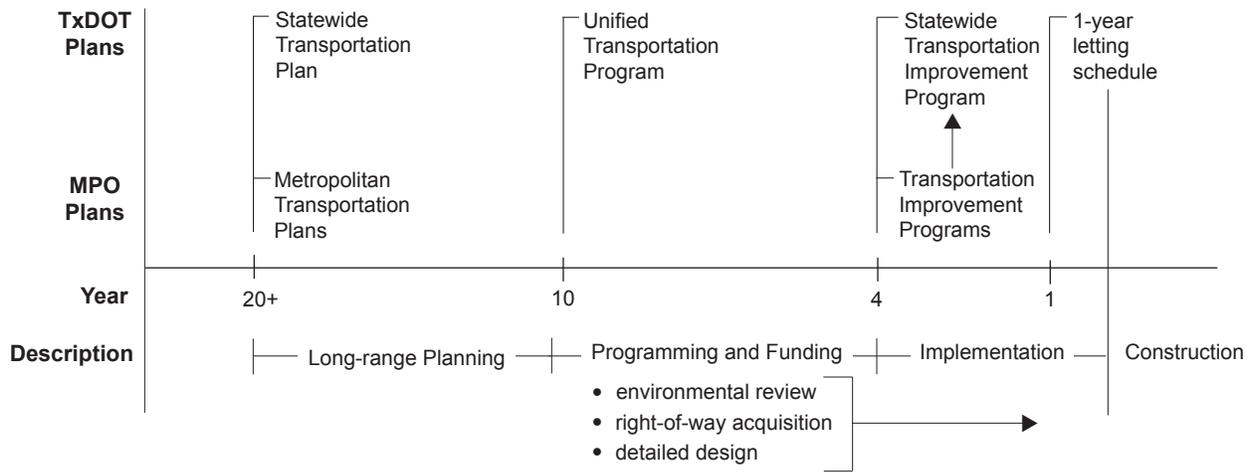
The Texas Department of Transportation (TxDOT) plans, programs, and implements transportation projects through a complex partnership with the federal government and metropolitan planning organizations (MPOs). A complicated array of state and local-level documents, several required by federal law, guides transportation project development through four phases: planning, programming, implementation, and construction. Planning and programming documents define statewide transportation goals, identify local priorities, and allocate federal and state transportation funding throughout the state.

Federally required plans include MPOs' regional plans and the Department's statewide plans. Each MPO must develop a long-range Metropolitan Transportation Plan describing regional transportation goals, forecasting available funding, and listing specific projects to implement with available funding. MPOs must update these plans every five years, or four years in areas not meeting federal air quality standards. Every two years, the MPOs must also update separate Transportation Improvement Programs (TIPs), which are shorter four-year lists of near-term projects taken from the Metropolitan Transportation Plans. Staff in TxDOT's districts develop a separate TIP for the rural areas of the state outside of MPO boundaries.

For its part, TxDOT must develop a long-range Statewide Transportation Plan outlining broad policy goals. The Department also must combine each MPO's TIP into a Statewide Transportation Improvement Program (STIP) that lists all projects receiving federal funds over the next four years. Projects must be included in the STIP and approved by the Federal Highway Administration before they can receive federal funding.

Although not required by federal or state law, TxDOT prepares a key, internal work program, the Unified Transportation Program (UTP). Through this 10-year financial and project implementation plan, TxDOT projects how much federal and state transportation funding will be available in 12 project categories such as maintenance, safety, and mobility, and how much will be allocated to each MPO and district. MPOs and TxDOT's district offices use the funding levels to develop projects and prepare annual contract letting schedules. The chart on the following page, *Transportation Planning Timeline*, depicts the relationships between the UTP and the various federally required plans.

Transportation Planning Timeline



Finding

The Sunset Commission’s recommendations to improve transparency and accountability of transportation planning continue to be appropriate, with minor changes to ensure consistency with the Department’s recently adopted rules.

The 2008 Sunset review found that TxDOT’s long-range planning efforts were disjointed and did not result in a comprehensive and understandable view of the State’s transportation goals. Also, TxDOT’s project selection and implementation system was not understandable or transparent, frustrating legislators and the public, who felt cut off from meaningful participation in the State’s long-term transportation goals and from reliable information about progress towards those goals.

The recommendations previously adopted by the Sunset Commission were intended to refocus state and local transportation planning efforts into a meaningful long-range Statewide Transportation Plan; bring more clarity into the State’s project selection and implementation process; establish a system for measuring and reporting on progress; and include rural areas of the state in formal planning efforts. The chart, *Planning Process Recommendations*, summarizes these recommendations and their status.

Planning Process Recommendations

| 2008 Sunset Commission Recommendation | Status |
|--|--|
| <ul style="list-style-type: none"> 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 towards those goals. | <p>Change in law still needed. This recommendation was based on findings that TxDOT's long-range statewide policy plan had not been updated since 1994, and the Department's long-term goals, funding forecasts, and needs analysis were unclear and disconnected from other planning efforts. Although the Transportation Commission is scheduled to adopt an updated long-range plan at its November 2010 meeting, the Sunset Commission's recommendation remains appropriate to ensure TxDOT maintains a regularly updated, high-level plan from which all other transportation planning and measurement programs should follow.</p> |
| <ul style="list-style-type: none"> Require TxDOT to establish a transparent, well-defined, and understandable system of project approval and programming that integrates project milestones, timelines, priorities, and cash forecasts. | <p>Change in law still needed. This recommendation was based on findings that TxDOT's project selection and implementation system was not understandable or transparent. Most critically, the Department's key document for programming and financing state transportation projects, the Unified Transportation Program, was developed internally by TxDOT staff with no guidance from state law or rule. While TxDOT has adopted rules to carry out this recommendation, the statutory framework and requirement to maintain regularly updated rules governing the planning process should still be placed in statute to ensure ongoing implementation. In evaluating the rules compared with the Sunset Commission's recommendation, only minor changes are needed to ensure consistency with the new rules. These changes include using the word "benchmark" instead of "milestone" and adjusting requirements for cash forecasting to be consistent with the rules' more specific language.</p> |
| <ul style="list-style-type: none"> Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects. | <p>Change in law still needed. This recommendation was based on the finding that TxDOT districts did not develop consistent, publicly available work programs that identified the status of transportation projects at the local level. TxDOT has since adopted rules requiring the work programs described in the recommendation. TxDOT has also been developing an agencywide project management system to provide a standard format for tracking district work programs, and to report project status on TxDOT's website. The Sunset Commission's recommendation does not conflict with these rules or TxDOT's ongoing efforts to improve project tracking and should still be placed in statute to ensure ongoing implementation.</p> |

Planning Process Recommendations

| 2008 Sunset Commission Recommendation | Status |
|---|---|
| <ul style="list-style-type: none"> • Require TxDOT to develop online reporting systems for providing project specific information in a real-time dashboard, judging the effects of spending on specific transportation problems, and assessing progress in meeting overall transportation goals. | <p>Change in law still needed. This recommendation was based on findings that TxDOT did not provide consistent or meaningful reporting on the status of transportation planning and development to the public or the Legislature. TxDOT’s recently adopted planning rules require several reporting systems similar to those required by this recommendation. The Department has launched several online systems, including Project Tracker and TxDOT Tracker, to begin providing regularly updated information about individual projects and the Department’s overall performance. The Department has also developed a 24-month letting plan and the first phase of the four-year plan. Although TxDOT has taken these steps to comply with the recommendation, a statutory requirement to provide and maintain this information is still appropriate to ensure ongoing implementation.</p> <p>Sunset staff evaluated the Department’s implementation of this recommendation and determined that some adjustments are needed to ensure consistency with the newly adopted rules and the Department’s ongoing efforts. These changes include allowing the Department to update the information on a regular basis specified in rule, rather than real-time, given the practical constraints of implementing the new, complex project tracking software that feeds into the online systems. TxDOT would be allowed to provide legislative district reports by tailoring information from TxDOT district reports, instead of having to re-create new systems to track projects within the different boundaries of legislative districts. The recommendation would also require the Department to adopt the specific requirements of the systems and details of how they will be implemented in rule, to allow increased participation by stakeholders and the public, and to allow for any necessary adjustments as the Department continues implementation.</p> |
| <ul style="list-style-type: none"> • Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state. | <p>Change in law still needed. This recommendation was based on the finding that rural areas of the state do not have a consistent role in long- or short-range transportation planning. TxDOT’s recently adopted planning rules provide a clear role for already-established Rural Planning Organizations (RPOs) in transportation planning. TxDOT has also developed an RPO guidebook and workshop materials to brief potential RPOs about rural planning. However, the recommendation continues to be appropriate to ensure ongoing implementation of the rules, and to require TxDOT to take a greater role in facilitating the creation of RPOs, since few actually exist. Sunset staff evaluated the recommendation previously adopted by the Sunset Commission and determined that given current funding constraints, the Department should be authorized, rather than required, to provide funding for these organizations. The recommendation would still require the Department to provide other assistance, such as staff support, to help establish RPOs.</p> |

Last session, the Legislature further developed and clarified these recommendations, culminating in the Conference Committee Report on House Bill 300, the TxDOT Sunset bill. Although the bill did not pass, the Department proceeded to implement some of the recommendations by adopting new transportation planning rules, which will become effective in January 2011.

Sunset staff examined the appropriateness of the Sunset Commission's previous recommendations and found that a framework and basic requirements for the Department's transportation planning process should still be placed in statute to ensure ongoing implementation. However, staff took into consideration the agreed-upon language adopted through the Department's recent rulemaking process and made some minor adjustments to the recommendations to ensure consistency with the new rules.

A framework for TxDOT's planning process should still be placed in statute.

Recommendations

Change in Statute

3.1 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.

This recommendation would integrate TxDOT's various planning efforts into a single, measurable plan. This new plan should present a focused, meaningful vision to guide all of TxDOT's and MPOs' other short-range planning and programming efforts.

The new plan would re-engineer the Statewide Transportation Plan, already required by both federal and state law. This recommendation would add to existing statutory provisions by requiring the following elements.

- **Measurable goals.** TxDOT would develop specific, long-term transportation goals for the state, and measurable targets for each goal. The Department would report annually to the Legislature on its progress toward these goals, as already required in state law. This information also would be easily accessible from TxDOT's website.
- **Statewide priorities.** The Department would identify priority corridors, projects, or areas of the state of particular concern in meeting statewide goals.
- **Participation plan.** TxDOT would develop a participation plan specifying methods for obtaining formal input on statewide goals and priorities from other relevant state agencies, political subdivisions, local planning organizations, and the general public.
- **Regular updates.** The plan would span 24 years and would be updated every four years, similar to MPOs' long-range plans.
- **Forecast assumptions.** TxDOT and MPOs would collaborate to develop mutually acceptable assumptions for long-range federal and state funding forecasts. These assumptions would guide TxDOT's and MPOs' long-range planning in the Statewide Transportation Plan and Metropolitan Transportation Plans.

- **Integration with other long-range plans.** All other long-range transportation planning and policy efforts would support the specific goals outlined in the Statewide Transportation Plan. TxDOT should clearly reference how these plans fit together with and support the Statewide Transportation Plan.

Establishing this long-range plan would give a high-level prioritized focus from which all other transportation planning and measurement programs would flow.

3.2 Require TxDOT to establish a transparent, well-defined, and understandable system of project approval and programming within TxDOT that integrates project benchmarks, timelines, priorities, and cash forecasts.

This recommendation would place the framework for TxDOT’s transportation programming process in statute to provide greater visibility about its overall purpose and greater control to the Legislature regarding the way TxDOT makes transportation decisions. Specific elements of the programming process would be left to the Department through rulemaking. TxDOT would be required to establish a project development plan and statewide work program that largely reflects its current internal programming document, the Unified Transportation Program. The recommendation would require TxDOT to annually set target funding levels and list all projects it plans to develop and begin constructing over a 10-year time period, but would not require the specific list of projects to be established in statute or rule to maintain the Department’s flexibility to make adjustments during project implementation.

TxDOT would collaborate with its local transportation partners to update the actual programming document each year. The annual updates would include funding scenarios, a list of major projects with benchmarks and timelines, and project priority groups, as guided by agency rules, discussed in more detail below. The Department would be required to work with MPOs and other local planning entities to develop scenarios for the annual funding forecast based on a range of underlying assumptions. TxDOT, however, would be responsible for determining the forecast to be used for statewide planning purposes by MPOs and TxDOT. The Department would also develop publicly available summary documents highlighting project benchmarks, priorities, and forecasts in a way that is understandable to the public.

The recommendation would require TxDOT to define, in rule, program funding categories, such as safety, maintenance, and mobility. These rules would also describe how the Department selects projects for inclusion in the program in cooperation with MPOs and local partners. In implementing the recommendation, TxDOT must ensure that rules do not conflict with federal transportation planning requirements. TxDOT would also be required to adopt rules, as discussed below, to provide tools that are not in its current programming process, to better manage and monitor the Department’s performance.

- **Project benchmarks and timelines.** Through a project approval process clearly defined in rule, TxDOT and its local partners would be required to develop benchmarks and timelines for implementation of major transportation projects in the programming document. Benchmarks and timelines would need to be set for both implementation and construction phases. These partners would define a “major project” so that creating and tracking benchmarks and timelines would not be unreasonably difficult to implement. The list of major projects would be updated annually, and projects could not enter the four-year implementation phase of the programming document unless critical benchmarks and timelines were met. Benchmarks should include, at a minimum,

target timeframes for each major stage of project development, such as preliminary engineering, advance planning and environmental review, right-of-way acquisition, and production of final plans, specifications, and estimates.

- **Project priority groups.** Through a process clearly defined in rule, TxDOT and local partners would assign all projects in the programming document to broad priority groups. The highest priority group would reflect the list of major projects identified for benchmark tracking. Other projects would be grouped into categories of lesser priorities. Grouping projects in this manner would establish prioritized categories instead of prioritized projects, a difficult task to accomplish when many projects carry similar importance in different regions of the state. TxDOT's central office staff could use project priority groups as one indicator to help allocate staff time and resources to the most important statewide projects. Prioritization would also make the programming document more useful in explaining how TxDOT's work program is meeting statewide goals.
- **Funding allocations.** TxDOT would be required to establish and regularly update formulas for allocating funds in each program category at least every five years through a clearly defined rulemaking process.
- **Cash forecast.** The Department would be required to annually produce and publish an official cash forecast through a process and schedule clearly defined in rule. TxDOT would be required to allocate funds based on the adopted funding allocation formulas, and could not exceed the cash forecast.

This recommendation would require TxDOT to annually produce a programming document that shows the progress of transportation projects through development, promotes the allocation of resources systematically among competing priorities, provides reasonable projections of future funding to help planning and avoid surprises, and increases the overall transparency of project programming.

3.3 Require TxDOT districts to develop detailed work programs driven by benchmarks for major projects and other statewide goals for smaller projects.

This recommendation would require each TxDOT district to develop a consistent, publicly available work program based on projects in the programming document described in Recommendation 3.2. These work programs would cover a four-year period and include all projects that districts will implement during that time. The work programs would track major projects in the same way as the overall programming document, according to project implementation benchmarks developed in cooperation with local transportation partners. Information on lower priority projects would also be available in summary form. District work programs would provide valuable information describing the status of local projects to transportation partners and the public. TxDOT should use information in the work programs to monitor performance of the district and key district personnel.

3.4 Require TxDOT to develop online reporting systems for providing project specific information in a regularly updated dashboard, judging the effects of spending on specific transportation problems, and assessing progress in meeting overall transportation goals.

- **Dashboard reporting system.** This recommendation would require TxDOT to develop an online, comprehensive, and regularly updated dashboard reporting system, with input from the Legislature, local planning organizations, and the public, through a process clearly defined in rule. The dashboard report would combine information from all of TxDOT's plans into one master

list that would be presented in an easy-to-navigate and searchable format. TxDOT should use information such as letting schedules that are currently available, and update the online information on a regular schedule specified in rule. TxDOT would be required to adopt rules clearly describing the specific elements in the dashboard report which should include, but not be limited to, the following elements, as practically available and not cost prohibitive:

- details on funding sources for projects, including information linking specific sources of funding to specific projects;
 - project benchmarks and timelines, current progress towards goals for meeting specific benchmarks, and a list of project managers assigned to projects and their contact information;
 - an annual review of project benchmarks and timelines to determine their completion rates and show whether the projects were on time;
 - for projects scheduled to last more than one month or costing more than \$5 million, work zone information detailing the number of lanes open or closed; time of closure; and expected and measured delay when closed;
 - clearly defined criteria for projects classified as maintenance and disclosure of the condition of a road prior to maintenance expenditures;
 - information about the sources of funding and expenditures by TxDOT district, spending category, and type of revenue, including private sources such as Comprehensive Development Agreements or toll revenue; and
 - options to download statistical information in various formats, including HTML, PDF, Excel, or other database programs.
- **Effects of transportation spending.** TxDOT would be required, by rule, to develop a process to clearly identify both the State’s transportation needs and the State’s transportation wants, and a system to report on the effects of spending on specific transportation problems. TxDOT would be required to adopt rules clearly describing how this information would be reported, including locally entered information about local transportation projects listed in priority order by district, as part of the online dashboard report described above. A user should be able to easily compare projects in this system with projects actually in TxDOT planning or construction phases using the dashboard report.

TxDOT would be required to prepare a list of the most significant transportation problems in each TxDOT district, and report on the effectiveness of transportation spending in addressing these problems, described by the indicators below, to justify why each project is a priority. TxDOT would be required to prepare before and after studies on the effects of all TxDOT spending programs, internally or through a university’s transportation research program. Performance measures would be defined in rule and should include the following indicators, searchable on the dashboard report by county, road numbers, and functional road class:

- pavement condition indicators such as the International Roughness Index used by the Federal Highway Administration, and the percentage of pavement in good or better condition;
- bridge condition indicators such as structurally deficient, functionally obsolete, and bridge deterioration scores;

- congestion and traffic delay indicators, including the locations of the worst delays and variable travel times on major streets and highways, and the effects on both person and truck freight travel; and
 - crash, injury, and fatality indicators including a list of the worst sections of road in the state by TxDOT district, as practically available.
- **Annual reports.** TxDOT would also provide at least three types of annual reports that would be available on TxDOT’s and districts’ websites in a searchable and easily accessible format.

Statewide report. The Department would prepare the “State of Texas Transportation” report, providing a high-level summary of annual progress in meeting transportation goals. The report should include information about attainment of statewide goals as described in the Statewide Transportation Plan, progress in attaining major priorities, a summary of success in meeting statewide project implementation milestones, and information about the accuracy of past financial forecasts. The report would be formally presented to legislative committees with oversight of transportation issues each year, and be easily accessible on the Department’s website.

Legislative district report. Each year, TxDOT would develop “report card” information similar to that contained in the State of Texas Transportation report, but containing information on progress in attaining transportation goals in the TxDOT districts within each state legislative district. TxDOT should provide members of the Legislature with this specific report and meet with them at their request to explain it.

TxDOT district report. TxDOT would provide this same type of report for each of its districts, forwarding it to local planning entities, cities, county commissioners’ courts, regional planning councils, and other appropriate local entities in the TxDOT district.

As part of this recommendation, the Legislature should consider eliminating many of the reports it requires TxDOT to produce by rider in the General Appropriations Act, since information they contain would be available through the newly created reporting system.

These changes would greatly expand the type of information that is available and easily accessible to the public and the Legislature regarding the status of projects and the State’s transportation system. By showing more clearly where projects are and how they progress in TxDOT’s processes, these new reporting systems would make TxDOT’s decision making process considerably more transparent. They would also provide useful information for judging TxDOT’s performance in completing individual projects and in meeting identified transportation needs and priorities.

3.5 Require TxDOT to help establish and provide support for transportation planning in rural areas of the state.

This recommendation would require TxDOT to help facilitate the creation of transportation planning groups in rural areas, in cooperation with councils of governments, city and county governments, MPOs, and other local transportation partners. The structure and membership of rural planning groups could vary depending on the local situation.

Rural planning groups would be responsible for selecting projects for inclusion in the four-year Statewide Transportation Improvement Program, instead of leaving this task to district engineers as is currently the case. As part of this recommendation, TxDOT should consider whether changing some

district boundaries to align more closely with those of councils of governments would better facilitate rural planning.

TxDOT would be authorized to help fund and staff these rural planning efforts. The Department could use a portion of existing Statewide Planning and Research funds, provided by the federal government for statewide long-range planning, to support rural planning efforts. Because these funds require a local match, TxDOT should work with rural planning groups to determine match needs and any available funds, including the use of transportation development credits provided to the Department by the Federal Highway Administration.

This recommendation would help provide an organized, predictable planning process for rural areas of the state similar to that of metropolitan areas. Under this recommendation, rural planning groups would have clear authority, similar to MPOs, to set local priorities and approve transportation projects within their planning boundaries. TxDOT should retain authority to plan, select, and approve statewide connectivity projects in rural areas, with input from these rural planning groups.

Fiscal Implication Summary

TxDOT has already implemented many of these recommendations within its existing budget, including redeveloping the Statewide Transportation Plan; restructuring the transportation planning document and adopting new planning rules; and improving reporting on progress towards meeting the State's transportation goals by developing new tracking systems and online reporting tools. The Department should be able to fund the ongoing implementation of these recommendations through its existing budget.

Supporting rural planning efforts statewide could require some additional staff time and administrative costs, but the Department could cover these costs through its existing budget. The recommendation does not require the establishment of formal Rural Planning Organizations nor does it require hiring full-time dedicated staff for rural planning efforts.

Responses to Issue 3

Overall Agency Response to Issue 3

The agency appreciates Sunset staff's acknowledgement of the Department's work to implement new project development rules providing for a more accountable and transparent planning process. Because the rules will become effective January 1, 2011, TxDOT requests the Sunset Commission consider withholding recommended statutory changes until TxDOT and its partners have had the opportunity to work through this process. The Transportation Commission retains the authority to alter the rules as needed, and will continue to seek the guidance of the Legislature as it considers changes. (Deirdre Delisi, Chair – Texas Transportation Commission)

Recommendation 3.1

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.

Agency Response to 3.1

The Department redeveloped and updated the long-range plan, and the Commission recently adopted the 2035 Statewide Long-Range Transportation Plan to implement this recommendation. The Department concurs with requirements placed in statute to ensure the updating and adoption of the plan regularly. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 3.1

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 3.1

None received.

Modifications

1. Require TxDOT to incorporate land use planning and best practices in determining statewide transportation goals. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin and Annalisa Peace, Executive Director – Greater Edwards Aquifer Alliance, San Antonio)

2. Require TxDOT to recommend transportation needs based on a needs and cost analysis. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)
3. Allow the public, not TxDOT, the right to determine their transportation needs and how to best address those needs. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)

Recommendation 3.2

Require TxDOT to establish a transparent, well-defined, and understandable system of project approval and programming within TxDOT that integrates project benchmarks, timelines, priorities, and cash forecasts.

Agency Response to 3.2

The Department concurs and the Transportation Commission adopted new planning and project development rules in August 2010 providing for a more uniform, transparent, and understandable project development process. While statutory requirements to adhere to and report on the new process are welcome, flexibility in specific requirements is requested to ensure appropriate implementation and compliance with federal guidelines which are often modified. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 3.2

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 3.2

None received.

Modification

4. Require TxDOT to provide true transparency and accountability in all of its projects, including proposed toll roads. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)

Recommendation 3.3

Require TxDOT districts to develop detailed work programs driven by benchmarks for major projects and other statewide goals for smaller projects.

Agency Response to 3.3

The Department concurs and has implemented this recommendation with continual enhancements. A new project management tracking program called Primavera 6 allows users

to access information about transportation projects in one database in real time. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 3.3

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 3.3

None received.

Recommendation 3.4

Require TxDOT to develop online reporting systems for providing project specific information in a regularly updated dashboard, judging the effects of spending on specific transportation problems, and assessing progress in meeting overall transportation goals.

Agency Response to 3.4

The Department concurs and has implemented two initiatives through the Primavera 6 program on the TxDOT website addressing this recommendation. The Project Tracker program, which is updated regularly, provides for project specific information by county and TxDOT District, as well as Texas House, Senate, and Congressional districts. In addition, the TxDOT Tracker program on the Department’s website follows performance through 27 key measures and indicators, allowing the public to see statewide congestion trends as well as how projects are staying within budget constraints. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 3.4

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 3.4

None received.

Modifications

5. Provide a more sophisticated search capacity and the ability to download statistical information on the online system. Improve the information provided on the system by giving more specific project descriptions, information on funding sources and contract terms, and impacts on traffic operations for the duration of the project. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin)

6. Require TxDOT to provide accurate, easily accessible, and easily understood financial reports regarding each transportation project from its inception and include up-to-date actual and projected costs. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)

Recommendation 3.5

Require TxDOT to help establish and provide support for transportation planning in rural areas of the state.

Agency Response to 3.5

A statutory requirement for coordination of transportation planning would formalize a process established by TxDOT through the previously mentioned project development and planning rules. The current rules define Rural Planning Organizations and include provisions for rural Transportation Improvement Programs (TIPs) developed by TxDOT in consultation with local officials. Projects must be selected in accordance with prescribed project selection procedures and in consultation with affected local officials. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 3.5

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Annalisa Peace, Executive Director – Greater Edwards Aquifer Alliance, San Antonio

Against 3.5

Don P. Dixon, San Antonio

Modification

7. If transportation development credits are used for the local match for rural planning groups, require the credits to come from the 25 percent Commission discretionary pool. The Regional Transportation Council has supported using transportation credits as the local match for carryover federal metropolitan planning funds. TxDOT’s current policy is to use 25 percent of the credits as Commission discretionary and the remaining 75 percent being allocated based on a competitive call for projects with MPO input. (The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas)

Commission Decision

Adopted Recommendations 3.1 through 3.4.

Legislative Action

Senate Bill 1420 makes several key statutory changes to better integrate and improve the coordination and transparency of the State's transportation planning processes, as described below.

Long-Range Planning in the Statewide Transportation Plan. The bill adds to existing statutory provisions relating to the Statewide Transportation Plan to integrate all of TxDOT's long-range planning efforts into this single, 24-year plan. The bill requires the Statewide Transportation Plan to contain specific, long-term transportation goals for the state and measurable targets for each goal, and to identify priority corridors, projects, or areas of the state that are of particular concern to the Department in meeting these goals. TxDOT must develop a participation plan for obtaining input from state and local entities and the public on the plan's goals and priorities, annually report on progress towards meeting these goals, including making this information available on its website, and update the plan every four years or more frequently as necessary. The bill requires both TxDOT and Metropolitan Planning Organizations (MPOs) to work together to develop mutually acceptable funding assumptions to guide long-term transportation planning. (Recommendation 3.1)

Mid-Range Project Programming in the Unified Transportation Program. Senate Bill 1420 establishes the Unified Transportation Program (UTP) covering a period of 10 years in statute to guide development and authorize construction of transportation projects. The program must list all projects TxDOT intends to develop or begin construction of during the program period. The Commission, by rule and in collaboration with local transportation entities, must establish criteria for selecting projects; definitions for program funding categories including safety, maintenance, and mobility; and definitions for each phase of a major transportation project. The Commission must establish criteria for designating major transportation projects and develop benchmarks for evaluating their progress and readiness to be implemented. The Commission, by rule, must also establish categories in the UTP, assign each project to a category, and designate the priority ranking of each project within each category, with the highest priority projects being major transportation projects. TxDOT must annually update the UTP, including a forecast of all funds the Department expects to receive to help guide planning. In addition, TxDOT must prepare and publish a 20-year cash flow forecast by September 1 of each year. Finally, the bill requires TxDOT to publish the entire UTP and summary documents in appropriate media and on the agency's website. (Recommendation 3.2)

The Legislature modified the Sunset provision to include specific requirements for funding categories and funding allocation formulas within the UTP. Senate Bill 1420 requires the Commission, by rule, to specify formulas for allocating funds to TxDOT districts and MPOs for seven funding categories specified in statute, including preventive maintenance and rehabilitation, mobility, and congestion mitigation; and requires the Commission to update the formulas at least every four years. The bill requires the Commission to determine the allocation of funds for all other funding categories, subject to applicable state and federal law. The bill requires TxDOT to allocate funds to its districts based on these formulas and specifies the Department may not exceed the cash flow forecast. (Recommendation 3.2)

Short-Range District Work Programs. The bill requires each TxDOT district to develop a consistently formatted work program based on the UTP, containing all of the projects the district proposes to implement during a four-year period. The work program must contain information regarding the progress of major transportation projects according to the benchmarks and timelines established in the UTP, and a summary of the progress on other district projects. The bill also requires TxDOT to publish the work programs in appropriate media and on its website, and to use the work programs to monitor and evaluate the performance of districts and district employees. (Recommendation 3.3)

Online Reporting Systems. Senate Bill 1420 requires the Department to establish an online project information reporting system and a transportation expenditure reporting system. The Legislature modified the Sunset provision to require specific types of project, funding, and expenditure information through the online systems.

The information reporting system must contain information about all of the Department's transportation plans and programs, and each Department project, including the status, source of funding, and timelines for project completion. The bill requires this system to also contain information about the Department's funds, including the amount and general type of each expenditure as described in the Comptroller's statewide accounting system. In developing this system, TxDOT must collaborate with the Legislature, local transportation entities, and the public, and make statistical information available on the Department's website. The transportation expenditure reporting system must contain information regarding the priorities of expenditures for identified transportation projects, including the effectiveness of the Department's expenditures on transportation projects, pavement and bridge conditions, travel congestion, and traffic fatalities. This information must be made available in a format that allows for electronic searches by specific county, highway, or type of road. The Legislature also added a provision requiring TxDOT to retain and archive appropriate documentation supporting the information provided in the reporting systems, according to records retention rules promulgated by the Texas State Library and Archives Commission. (Recommendation 3.4)

Statewide Transportation Report. Senate Bill 1420 requires the Department to annually evaluate and publish a report regarding the status of each transportation goal for the State, including the progress of long-term goals identified by the Statewide Transportation Plan, the status of major priority projects, a summary of benchmarks completed, and information about the accuracy of previous Department financial forecasts. The bill requires the Department to disaggregate this information by TxDOT district and provide this information to each member of the Legislature and political subdivisions, and make the information available on its website. The bill also allows the Department to combine required reports to avoid duplication. (Recommendation 3.4)

Issue 4

TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Unbiased, and Meaningful Public Involvement.

Background

Federal and state laws recognize the importance of open, responsive government by requiring agencies to meet basic standards for public information and public input. Texas statutes, such as the Texas Public Information Act and Texas Open Meetings Act, require all state agencies to follow basic guidelines ensuring minimum standards for public involvement and public information.^{1,2} Standard provisions applied to most agencies' statutes through the Sunset process also require basic systems for tracking and analyzing complaints.

Federal laws also provide for public involvement, particularly with regard to state transportation planning and project development. The National Environmental Policy Act, the Federal Highway Administration, and the Council on Environmental Quality all require varying levels of public involvement such as meetings with affected property owners and formal public hearings on a project-by-project basis, depending on size and complexity. Federal regulations also require that state departments of transportation and metropolitan planning organizations document how they involve the public in transportation planning as a condition of receiving federal funds. The Texas Department of Transportation's (TxDOT's) central office ensures that staffs located in decentralized district offices adhere to these minimum federal requirements for public participation.

Findings

TxDOT continues to need statutory authority to ensure full implementation of improvements to its public involvement and complaints procedures.

The 2008 Sunset review found that given the importance of transportation to the State's economy and Texans' daily lives and the level of public interest in TxDOT and its functions, TxDOT was not meeting the high expectations placed upon it for quality public involvement. In particular, the Sunset review found that TxDOT did not provide sufficient agencywide public involvement guidance, resulting in inconsistent public involvement efforts focused more on meeting minimum requirements than obtaining meaningful input.

The 2008 Sunset review also found that the Department's statute and complaints procedures did not reflect current standards typically applied across the board during Sunset reviews, and the Department lacked an effective agencywide system to track and manage complaints. As a result, the Department's administration did not have access to complaints information necessary to analyze trends that could indicate larger problems.

Although the Department is taking steps to develop and implement both an agencywide public involvement policy and complaint system, statutory

TxDOT's public involvement efforts have not focused on obtaining meaningful input.

TxDOT has recently implemented an agencywide complaint management system.

direction is still needed to ensure full implementation of these changes. The Department formed two workgroups to develop and implement a more meaningful public involvement policy, and has also contracted with Texas Southern University to evaluate TxDOT's public involvement strategies and make recommendations to the Transportation Commission. However, policy changes will not be considered as a result of these efforts until the Commission's December 2010 meeting. Also, in October 2010, TxDOT deployed a new, agencywide system to track and manage complaints, and is continuing to develop the software and train staff on its use. Because of the newness of this system, TxDOT does not yet have the data necessary to analyze complaint information trends as previously recommended by the Sunset Commission.

No significant changes have occurred to affect the Sunset Commission's 2008 decision to strengthen lobbying prohibitions for TxDOT.

In 2008, the Sunset Commission recommended expressly prohibiting the Commissioner of Transportation and TxDOT employees from lobbying for or against a legislative measure. The recommendation to strengthen TxDOT's lobbying restrictions remains appropriate to address concerns that some TxDOT officials or employees may have overstepped their authority to suggest operational improvements, and instead appeared to have engaged in advocacy.

Recommendations

Change in Statute

4.1 Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agencywide.

This recommendation would require TxDOT to develop an official policy that provides guidance outlining additional public involvement strategies such as those suggested by the U.S. Department of Transportation, and consider requiring district and division staff to document these activities.³

TxDOT should also work to clearly tie public involvement to decision making and provide clear information to the public about the specific outcomes of their input. This recommendation should apply to all public input with TxDOT, including into statewide transportation policy making, specific projects through the environmental process, and all of the Department's rulemaking procedures. This recommendation would help shift the agency away from focusing solely on meeting statutory mandates, and towards actively using meaningful public involvement to help it make quality transportation system decisions.

TxDOT would also be required to provide information about public input relating to all environmental impact statements, including the number of positive, negative, or neutral comments received. TxDOT must also present this information to the Commissioner of Transportation in an open meeting, and report this information on its website in a timely manner. Making this information available will

provide the documentation necessary to assure the public that the information provided to the Federal Highway Administration accurately represents the views expressed by the public through TxDOT's public involvement process.

4.2 Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.

This recommendation would require TxDOT to develop policies and procedures to formally document and effectively manage the complaints it receives agencywide according to the following provisions.

- Adopt rules that clearly define TxDOT's complaint process from receipt to disposition, and specify that these rules apply to each of its divisions and districts.
- Develop a standard form for the public to make a complaint to the Department. The complaint form should be available to the public on the Department's website and complaints should be accepted through the Internet.
- Compile detailed statistics and analyze complaint information trends to get a clearer picture of the problems the public has with TxDOT's functions and responsibilities. This complaint data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. The Department should track this information on a district basis, as well as by each division. TxDOT should report this information monthly to administration and quarterly to the Commissioner.

These provisions would strengthen TxDOT's complaint process and ensure the Department, the public, and the Legislature are aware of complaint trends that could indicate concerns with TxDOT's operations. This recommendation would also update the standard Sunset across-the-board language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints.

4.3 Strengthen lobbying prohibitions for TxDOT.

This recommendation would prohibit the Commissioner of Transportation and TxDOT employees from using any money under the agency's control or engaging in activities to attempt to influence the passage or defeat of a legislative measure. Advocacy or activity of this nature would be grounds for dismissal of an employee. This recommendation would not prohibit the Commissioner of Transportation or employees of TxDOT from using state resources to provide public information or to provide information responsive to a request, nor would it prohibit TxDOT from lobbying for federal appropriations.

Implicit with this recommendation is the repeal of the statutory provision (Texas Transportation Code, sec. 201.0545) that requires the Transportation Commission to consider ways to improve its operations and authorizes the Commission Chair to periodically report to the Legislature concerning potential statutory changes that would improve the operation of the Department. Strengthening lobbying prohibitions for TxDOT officials and employees would effectively render this provision meaningless. These changes would address concerns that some TxDOT officials or employees may have overstepped their authority to suggest operational improvements, and instead appear to engage in advocacy.

Fiscal Implication Summary

The recommendations could be implemented using existing resources and would not have a fiscal impact to the State.

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¹ Texas Government Code, ch. 552.

² Texas Government Code, ch. 551.

³ United States Department of Transportation/Federal Transit Administration, *Public Involvement Techniques for Transportation Decision-Making* (August 2001), p. iii-iv. Online. Available: www.planning.dot.gov/PublicInvolvement/pi_documents/pdf/toc-foreword.pdf. Accessed: November 10, 2010.

Responses to Issue 4

Recommendation 4.1

Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agencywide.

Agency Response to 4.1

The Department concurs with this recommendation and we are currently working on ways to be sure public involvement opportunities are apparent through the Department's website. In addition, an internal workgroup was established to look at current public involvement processes and the Department has partnered with Texas Southern University to help develop a statewide public involvement policy and identify areas where the Department can provide more meaningful public involvement opportunities. The final product will be presented to the Transportation Commission at their December 15, 2010 workshop for consideration and future adoption. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 4.1

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 4.1

None received.

Modifications

1. Require anyone with ties to the road building industry or whose company would potentially profit from a road project to disclose this when submitting comments or testimony. (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio and Mel Borel – Texans Uniting for Reform and Freedom, San Antonio)
2. Require TxDOT to develop a policy where it must provide, for any citizen who asks, a free electronic copy or compact disc of an environmental document, like an environmental assessment or impact statement. (Brandt Mannchen, Houston)
3. Require TxDOT to develop a fair, reliable, and comprehensive public outreach, education, participation and input program. The program should include the following.
 - a. Advisory, policy-making, and stakeholders' vision committees must mirror and represent the diverse populations and constituencies that exist in Texas.
 - b. Meetings must be held at times when the majority of the public can easily attend.

- c. Meetings must be held in different counties and locations where these diverse populations and constituencies exist.
- d. The availability of materials in hard copy and on the internet must occur several weeks before public meetings/hearings.
- e. Public review and comment periods should be at least 45-60 days with several weeks provided after the public meetings/hearings for comments generated as a result of the meeting/hearings.
- f. TxDOT must use public input in substantial, visible, and substantial, visible, and significant ways and amounts.
- g. Meetings must be publicized by TxDOT of the advisory, policy-making, and stakeholders' vision committees and other important events in the press, on radio, on television, via the website, and by mailings.
- h. Development and maintenance of an easy to join mailing list for those who want to receive updates and public meeting notifications.
- i. The plan should be based on civic clubs, neighborhoods, wards, precincts, and other small land area organizing units.
- j. TxDOT must provide specific public input objectives it will implement in each district and statewide.
- k. The following interests should be represented on the TxDOT advisory, policymaking, and stakeholder vision committees: labor, transit riders, bicyclists, low income residents, ethnic minorities, disabled persons, seniors, youth, students, teachers, academicians, civic groups, environmentalists, small business owners, pedestrians, and transit advocates.

(Brandt Mannchen, Houston)

- 4. TxDOT advisory, policymaking, and stakeholder vision committees should include groups such as labor, transit riders, bicyclists, low-income residents, ethnic minorities, disabled persons, seniors, youth, students, teachers, academicians, civic groups, environmentalists, small business owners, pedestrians, and transit advocates. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin; and Annalisa Peace, Executive Director – Greater Edwards Aquifer Alliance, San Antonio)
- 5. Require TxDOT to develop and maintain an easy to join mailing list for those who want to receive updates and public meeting notifications. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin)

Recommendation 4.2

Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.

Agency Response to 4.2

The Department concurs and recently implemented a statewide system for a more formalized complaint resolution process to include tracking and resolving complaints. This system will allow TxDOT to process and track written, oral, and email complaints as well as generate regular reports to identify the types of complaints, trends, and key issues. In addition, we have developed and implemented a one-page internet form for written complaints as recommended which is available on the Department's website at www.txdot.gov/contact_us/complaints.htm. As updates and enhancements are implemented, the Department will continue to monitor complaints and make changes to the form as needed to accommodate all needs. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 4.2

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 4.2

None received.

Modification

6. Make the complaint tracking system open to the public to contribute to and view. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin)

Recommendation 4.3

Strengthen lobbying prohibitions for TxDOT.

Agency Response to 4.3

Since current state law prohibits state employees from lobbying, adding a similar or identical statute for TxDOT staff is redundant. In addition, while the Commission has not provided a report to the Legislature on potential statutory changes in recent years, we would like to retain the opportunity to do so. The Commission remains close to Department operations and functions and can often provide the insight and knowledge related to statutory enhancements that may not be apparent outside the agency structure. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 4.3

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Annalisa Peace, Executive Director – Greater Edwards Aquifer Alliance, San Antonio

Against 4.3

None received.

Modifications

7. Make the lobbying prohibition provision more stringent by also prohibiting the funds and personnel of TxDOT from influencing a legislative measure as well as from lobbying at state, federal, and local levels for rules, regulations, and policy harmful to the public. Also, require TxDOT to reinstate the policy prohibiting employees from getting involved in politics. (Don P. Dixon, San Antonio)
8. Prohibit TxDOT from lobbying with taxpayer money. Any continuation or expansion of lobbying is unacceptable. (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio)

Commission Decision

Adopted Recommendations 4.1 through 4.3.

Legislative Action

Senate Bill 1420 requires TxDOT to develop and implement a policy that guides and encourages public involvement with the Department. The bill requires the policy to include specific elements, such as using techniques that target different groups and individuals, making efforts to clearly tie public involvement to the decisions the Department makes, and applying the policy to all public input with the Department. The bill also requires TxDOT to document the number of positive, negative, or neutral comments received regarding all environmental impact statements and provide this information to the Commission and the public. The Legislature added language to require a person who makes or submits a public comment to disclose in writing on a witness card whether the person does business with the Department, may benefit monetarily from a project, or is a TxDOT employee. (Recommendation 4.1)

Senate Bill 1420 requires TxDOT to develop policies and procedures to formally document and effectively manage the complaints it receives agencywide. The bill requires TxDOT to adopt rules that clearly define the agency's complaint process from receipt to disposition, for each of its divisions and districts. The bill requires TxDOT to develop a standard form for the public to make a complaint to the Department, make the form available on its website, and allow for electronic submission of complaints. The Department must compile detailed statistics and analyze complaint information trends, including the nature of complaints and their disposition, the number of similar

complaints filed, and the length of time to resolve complaints. The Department must also report the information, statistics, and analysis monthly to administration and quarterly to the Commission. The bill also updates the standard Sunset across-the-board language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints. (Recommendation 4.2)

Senate Bill 1420 prohibits Commission members and TxDOT employees from using money under the agency's control or engaging in activities to attempt to influence the passage or defeat of legislation, and specifies that such activity is grounds for dismissal of an employee. The Legislature modified this provision to prohibit TxDOT from spending appropriated funds for the purpose of selecting, hiring, or retaining a registered lobbyist, unless the expenditure is allowed under state law. The bill also repeals the statutory provision for the Commission to report to the Legislature concerning potential statutory changes to improve the Department's operations. However, the Legislature modified the Sunset provision to allow the Commission and Department employees to provide public information responsive to a request, and to communicate with the federal government in pursuit of federal appropriations or programs. (Recommendation 4.3)

Issue 5

State Statute Unnecessarily Restricts Contracting Practices Available to TxDOT.

Background

The Texas Department of Transportation (TxDOT) is the State's largest user of contract services. In fiscal year 2010, the Department spent about \$4.9 billion, of its \$7.5 billion in expenditures on construction, maintenance, and engineering-related services contracts. State statute requires TxDOT to contract for road construction on non-tolled facilities based on the traditional design-bid-build method of project delivery. This method requires contract design work to be performed by one entity followed by a separate contracting process for construction. However, for tolled facilities, TxDOT has the flexibility under state law to use the design-build method, which allows TxDOT to contract with one entity for both the design and construction of a project, and elements for each phase can occur simultaneously. Since 2001, state law has allowed local governments to use design-build contracts to develop facilities, and in 2007, the Legislature broadened this authority to include civil projects, such as roadways. Nationally, 33 states, not including Texas, use design-build contracts for transportation projects.¹

As required by statute and rule, TxDOT advertises in newspapers the time and place its construction and maintenance contract bids will be opened and awarded.² In fiscal year 2010, TxDOT spent more than \$1.7 million for 3,399 construction and maintenance contract notifications in 248 newspapers.

Finding

Despite recent changes to address contracting concerns, the Sunset Commission's recommendations regarding TxDOT's contracting practices continue to be appropriate.

The 2008 Sunset review recognized that state agencies should be allowed to use an appropriate range of project delivery methods when contracting for services. These different methods give agencies flexibility to address their specific needs with the most appropriate tools. However, the Sunset review found that statute unnecessarily restricts contracting practices available to TxDOT. As a result, the Sunset Commission recommended allowing TxDOT to use the design-build model of project delivery for traditional highway projects. This recommendation remains appropriate to provide an additional tool for the Department to use to help meet the State's transportation needs more efficiently.

The 2008 Sunset review also recognized that an agency should engage in cost-effective bid and contract notification processes, but TxDOT's statute requires the Department to advertise information regarding the time and place of construction and maintenance contract bid openings in newspapers.³ Since the initial implementation of these policies in 1925, newspaper notices are no longer thought to be the way most contractors find out information on contract awards. Internet and web-based notifications have become common

TxDOT can only use design-build contracts for tolled facilities.

Newspaper notifications are not how contractors find out about contract awards.

practice and readily available. The State already requires opportunities for contracts totaling more than \$25,000 to be published on the Electronic State Business Daily website.⁴ TxDOT also posts these bid opportunities on its website and maintains a mailing list for notifying potential construction or maintenance contractors of bid opportunities.

Those most likely to find newspaper notifications useful are smaller companies that have not done business with TxDOT before, and they can still be reached through a more targeted advertising approach for the smaller projects of interest to them. Making newspaper notifications permissive, rather than mandatory, would allow TxDOT to use them when appropriate, and would save time and money without sacrificing effectiveness. The Sunset Commission recommended removing these provisions and this recommendation continues to be appropriate since neither of these outdated requirements is an effective expenditure of state transportation dollars.

Recommendations

Change in Statute

5.1 Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.

TxDOT's statute currently only allows toll roads to use the design-build model of project delivery, in which design and construction phases of a project occur under one contract. This recommendation would allow the Department to use design-build for traditionally financed highway projects. This recommendation would not require TxDOT to use design-build, but would simply authorize its use.

TxDOT would develop rules specifying the conditions under which a design-build contract could be considered. Factors that should be addressed in rule include the size and complexity of the project; the speed in which the project is needed; the level and training of agency staff managing the project; and any other elements determined to be important in the proper use of this project delivery model.

5.2 Remove provisions in statute requiring TxDOT to advertise certain contract notifications in local or statewide newspapers.

This recommendation would remove statutory advertising requirements for construction and maintenance contract notifications. TxDOT would still have the authority to use newspaper notifications in situations where their use is necessary and cost effective. For example, this type of notification may be useful for smaller projects that might interest contractors who have not worked with TxDOT before.

Fiscal Implication Summary

The recommendation to eliminate required newspaper advertising for construction and maintenance contract notifications, at TxDOT's discretion, would result in savings to the State Highway Fund. TxDOT could reduce annual expenditures from the State Highway Fund by an estimated \$1 million, assuming TxDOT would eliminate newspaper notice for larger projects.

Texas Department of Transportation

| Fiscal Year | Savings to the State Highway Fund |
|--------------------|--|
| 2012 | \$1,000,000 |
| 2013 | \$1,000,000 |
| 2014 | \$1,000,000 |
| 2015 | \$1,000,000 |
| 2016 | \$1,000,000 |

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¹ National Conference of State Legislatures, *Surface Transportation Funding: Options for States* (Denver, Colo., May 2006), Appendix D, p. 83.

² Texas Transportation Code, sec. 223.002.

³ Ibid.

⁴ Texas Government Code, sec. 2155.083.

Responses to Issue 5

Recommendation 5.1

Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.

Agency Response to 5.1

The Department concurs with this recommendation. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 5.1

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Against 5.1

Don P. Dixon, San Antonio

Pat Dossey, San Antonio

Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio

Modifications

1. Limit TxDOT's design-build authority to only new capacity construction projects valued at \$200 million or more. (Senator Robert Nichols, Member – Sunset Advisory Commission)
2. Cease all authority to enter into design-build Comprehensive Development Agreements (CDAs) for road projects, including prohibiting TxDOT and Regional Mobility Authorities from using this authority. Ending CDAs of all types means prohibiting best value bidding; payments to losing bidders; non-compete agreements that forbid or penalize free road expansion surrounding toll roads; and manipulating speed limits on free roads to drive more traffic to toll roads. (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio)
3. Limit the use of design-build to the largest and most complex projects. (Tom Johnson, Executive Vice President – Associated General Contractors of Texas, Austin)
4. Authorize TxDOT to use design-build, but require the design-build procedures be consistent with the authority provided to cities, counties, and special districts to help ensure consistency. (Steve Stagner, President – Texas Council of Engineering Companies, Austin)
5. If design-build authority is granted to TxDOT, also convey the full range of alternate project delivery authority that is provided to local and regional entities, including such

procedures as construction management at-risk. (Steve Stagner, President – Texas Council of Engineering Companies, Austin)

Recommendation 5.2

Remove provisions in statute requiring TxDOT to advertise certain contract notifications in local or statewide newspapers.

Agency Response to 5.2

The Department has no comment. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 5.2

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Against 5.2

Emily Cates, Editor – Daily Commercial Record, Dallas

Modifications

6. Change the statute to provide notice earlier when the Request for Proposal is sent out for review. Revise the statute to require the Department to give notice to interested persons regarding the time and place at which bids on a contract will be opened and the contract awarded. Authorize the Department, by rule, to determine the most effective method for providing the notice. (GK Sprinkle, Austin – on behalf of the Daily Court Review, Houston and Daily Commercial Record, Dallas)
7. Instead of requiring TxDOT to publish notice of the time and place at which bids on a contract will be opened and the contract awarded, require TxDOT to publish notice of contract bids at least twice in one or more newspapers of general circulation. Require the second publication to be on or before the tenth day before the first day bids may be submitted. Also, require the notice to be published once a week for two consecutive weeks and to state that plans and specifications for the work to be done or specifications for the purchase are on file with a designated official of TxDOT, may be examined without charge, and the location where they may be examined. (David Sprinkle, Public Policy Consultant – on behalf of the Daily Court Review, Houston and Daily Commercial Record, Dallas and Emily Cates, Editor – Daily Commercial Record, Dallas)

Staff Comment: The State already requires opportunities for contracts totaling more than \$25,000 to be published on the Electronic State Business Daily website. TxDOT also posts these bid opportunities on its website and maintains a mailing list for notifying potential construction or maintenance contractors of bid opportunities.

Commission Decision

Adopted Recommendations 5.1 and 5.2.

Legislative Action

Senate Bill 1420 continues the authority of TxDOT to enter into design-build contracts for tolled highway projects, and authorizes the use of design-build contracts for nontolled highway projects. The bill defines a design-build contract as an agreement with a private entity for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project. The Legislature modified the Sunset provision to specify the Department may only enter into a design-build contract for a highway project costing \$50 million or more, and may only enter into three design-build contracts each fiscal year until August 31, 2015, when the limitation on the number of projects expires. The bill also specifically prohibits a private entity from having a leasehold interest in the highway project or the right to operate or retain revenue from the operation of a transportation project. The Legislature added language to ensure the private entities can meet the requirements of the project and that they will not change their contract team except under certain circumstances. The Legislature further modified the provision by setting out the requirements and procedures TxDOT and a design-build contractor must follow in using the design-build method. (Recommendation 5.1)

The bill removes a statutory provision requiring TxDOT to publish, in local newspapers, notice of the time and place at which bids on a construction and maintenance contract will be opened and awarded and instead requires the Commission, by rule, to determine the most effective method for providing this notice. (Recommendation 5.2)

Issue 6

TxDOT's Motor Vehicle Functions Do Not Fit Within Its Core Mission to Plan, Build, and Maintain the State's Transportation System.

Issue 6 is not included in this report because a statutory alternative was implemented by the 81st Legislature, as discussed in the Status Chart on page 7.

Issue 7

More Information Is Needed to Improve Regulation of Oversize and Overweight Vehicles to Prevent Damage to Roads and Bridges.

Background

To protect the traveling public, the State's roadway infrastructure, and certain loads, the Texas Department of Transportation (TxDOT) issues permits for vehicles that exceed weight and size limits established by law. Oversize and overweight vehicles contribute to the deterioration of road integrity and quality, increasing maintenance costs. These permits help limit damage and preserve roads and bridges by designating a route that can safely accommodate the oversize or overweight vehicle. Vehicles that exceed legal weight, height, width, or length limits are required to obtain one of 27 permits available through TxDOT. Permits help mitigate maintenance costs to the transportation system and ensure safe routing of the transported load. During fiscal year 2010, TxDOT issued 500,522 oversize and overweight permits, collecting \$93.9 million in revenues with \$67.9 million deposited to the State Highway Fund and \$26 million to General Revenue. Based on current trends, TxDOT anticipates the number of oversize and overweight permits will increase in upcoming years.

Finding

The Sunset Commission's recommendation to review and report on improvements to the regulation of oversize and overweight vehicles continues to be appropriate.

This recommendation was brought forth through the public hearing process in 2008. The Sunset Commission found that the numerous exemptions from oversize and overweight regulations and the increasing numbers of these vehicles causes considerable damage to roads and bridges, raising maintenance costs significantly. Also, not enough focus has been given to identifying and recommending improvements to the regulation of oversize and overweight vehicles. The 2008 Sunset Commission recommendation required the newly created Texas Department of Motor Vehicles to review and report on improving the regulation of oversize and overweight vehicles, including the consideration of different approaches to regulation. However, since the regulation of oversize and overweight vehicles did not transfer to Texas Department of Motor Vehicles, TxDOT is the appropriate agency to conduct this review and report on improvements.

TxDOT has been conducting research on the current use of the state highway system by oversize and overweight vehicles. Once the Department completes its analyses, it can begin developing information regarding the feasibility and impacts of different approaches to regulating oversize and overweight vehicles to help decrease maintenance costs and better preserve the state highway system. Thus far, TxDOT has published a report regarding super heavy loads and has completed research in evaluating longer combination

Exemptions from oversize and overweight regulations cause considerable damage to roads and bridges.

vehicles.¹ An additional seven research projects, including determining the impact of oversize and overweight vehicles on buried utilities and mapping oversize and overweight vehicle routes, remain in progress.²

To ensure this research will continue and include consideration of different approaches to regulation as specified by the Sunset Commission, this recommendation continues to be appropriate to help limit damage and preserve Texas roads and bridges caused by oversize and overweight vehicles.

Recommendation

Change in Statute

7.1 Require TxDOT to review and report on improving the regulation of oversize and overweight vehicles.

Under this recommendation, TxDOT would be required to continue to work to evaluate the impacts and improve the regulation of oversize and overweight vehicles, including the consideration of the following:

- prohibiting overweight vehicles from using Texas highways if the loads cannot be engineered to prevent damage to the road(s) or bridge(s) based upon the weight specifications for which the roads and bridges were built;
- requiring an applicant for an overweight permit to pay a graduated highway maintenance fee based on the overweight amount that is commensurate with the damage done to roads and bridges;
- requiring all fees collected by the State from oversize and overweight permits to be deposited to the State Highway Fund; and
- eliminating all exemptions for overweight vehicles and requiring an overweight permit and fee in an amount commensurate to the amount of damage done to the roads and bridges by the permitted vehicle.

Information regarding the feasibility and impacts of different approaches to regulating oversize and overweight vehicles would help future consideration of ways to reduce damage to roads and bridges and provide increased funding for maintenance costs.

Fiscal Implication Summary

This recommendation would not result in a fiscal impact to the State.

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¹ Texas Transportation Institute, *Seal Coat Damage Evaluation Due to Superheavy Load Moves Based on a Mechanistic-Empirical Approach*, by Jeong Ho Oh and Andrew J. Wimsatt, report no. 0-5270-1 (College Station, Texas, December 2009). Online. Available: tti.tamu.edu/documents/0-5270-1.pdf. Accessed: October 26, 2010.

² Amadeo Saenz, Executive Director, Texas Department of Transportation, Rural Transportation Needs, written testimony to the Joint Hearing of the House Committees on Transportation and Agriculture and Livestock (Austin, Texas, April 28, 2010), p. 15.

Responses to Issue 7

Recommendation 7.1

Require TxDOT to review and report on improving the regulation of oversize and overweight vehicles.

Agency Response to 7.1

The Department concurs with this recommendation and continues to study this issue. Several studies have been completed and more are currently underway which analyze the impact of oversize and overweight vehicles and look at trends for future use of the system as vehicle sizes and weights increase to accommodate economic demands. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 7.1

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Houston

Against 7.1

None received.

Modification

1. Move all oversize and overweight functions at TxDOT to the Texas Department of Motor Vehicles. (John D. Esparza, President and CEO – Texas Motor Transportation Association, Austin)

Commission Decision

Adopted Recommendation 7.1 requiring TxDOT to review and report on improving the regulation of oversize and overweight vehicles with a modification to direct TxDOT to brief the Sunset staff quarterly on the progress toward reporting its recommendations for improvements to the regulation of oversize and overweight vehicles. Specifies TxDOT's report(s) and recommendations should be completed by December 31, 2011.

Legislative Action

The Legislature did not adopt Recommendation 7.1, as modified. Instead the Legislature, in Senate Bill 1420, transferred the regulation of oversize and overweight vehicles from TxDOT to the Department of Motor Vehicles (DMV) by January 1, 2012. Senate Bill 1420 provides for TxDOT to retain responsibility for certain oversize and overweight matters, including setting

maximum vehicle and load weights; the certification of vertical clearance of structures such as bridges or underpasses for purposes of operating vehicles; erecting signs regarding weight and load limits; and conducting engineering and traffic studies related to setting maximum width of a vehicle.

Issue 8

Key Elements of TxDOT's Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices.

Issue 8 is not included in this report because a statutory alternative was implemented by the 81st Legislature, as discussed in the Status Chart on page 7.

Issue 9

The State's Overall Approach to Outdoor Advertising Does Not Follow Common Licensing Practices, Reducing the Effectiveness of Regulation.

Background

The federal Highway Beautification Act requires the Texas Department of Transportation (TxDOT) to “effectively control” outdoor advertising along federal-aid primary roads such as interstates and U.S. highways. The federal government does not provide funding, but it may withhold federal highway funding to ensure compliance. A separate state statute extends similar regulation to rural roads not on the federal-aid system. The Department’s Right-of-Way Division sets overall policy and direction for the program. TxDOT also certifies 41 cities to issue billboard permits and conduct enforcement along federal-aid roads on behalf of the Department. The regulations require a license for certain outdoor advertisers and permits for each sign, but do not require the heavy regulatory effort of occupational licensing. In fiscal year 2010, TxDOT administered the outdoor advertising program with a \$635,332 budget. At the end of fiscal year 2010, the Department had issued 1,158 licenses and 11,496 individual permits for signs along federal-aid roads, and 714 individual permits for signs along rural roads.

Findings

Although TxDOT has centralized its outdoor advertising program, the Sunset Commission’s recommendations to standardize the regulation of and effectively administer the centralized program continue to be appropriate.

The 2008 Sunset review found that the structure and set up of TxDOT’s outdoor advertising program did not provide for the best regulation of the industry and could reduce the Department’s effectiveness in regulating outdoor advertising and providing fair treatment to licensees. The review also found various licensing and enforcement provisions in the Department’s statute did not follow model licensing practices, which could further reduce the effectiveness of regulation.

In response to the Sunset Commission’s recommendations and as part of its own efforts to improve its organizational approach to regulating outdoor advertising, TxDOT centralized its outdoor advertising program. Currently, the Right-of-Way Division oversees all aspects of the program and has drafted new rules that include a new fee schedule that would implement the Sunset Commission’s recommendation to ensure the program’s fee revenue covers the cost of regulating outdoor advertising. The Department estimates the proposed fee increases will generate a total \$1.3 million in revenue in fiscal year 2011, which is a \$674,455 increase from fiscal year 2010. The table the following page, *Outdoor Advertising Fee Schedule Comparison*, shows the Department’s current and proposed fees.

A proposed fee increase is expected to double revenue and cover the cost of regulation.

Outdoor Advertising Fee Schedule Comparison

| | Current Fees | Proposed Fees* | Revenue FY 2010 |
|------------------------------|---|--|----------------------------|
| Federal-Aid Roads | <ul style="list-style-type: none"> • \$125 initial license fee • \$60 annual license renewal • \$96 initial permit fee for each sign • \$40 annual renewal for each sign • \$25 permit transfer fee • \$25 replacement permit plate | <ul style="list-style-type: none"> • \$125 initial license fee • \$75 annual license renewal • \$100 initial permit fee for each sign • \$75 annual renewal for each sign • \$25 permit transfer fee • \$25 replacement permit plate | \$585,605 |
| Rural Roads | <ul style="list-style-type: none"> • \$96 initial permit fee for each sign • \$40 annual renewal for each sign • \$25 permit transfer fee | <ul style="list-style-type: none"> • \$100 initial permit fee for each sign • \$75 annual renewal for each sign • \$25 permit transfer fee <p>New Fee</p> <ul style="list-style-type: none"> • \$25 replacement permit plate | \$27,440 |

* The proposed fees are included in draft rules the Department will present to the Transportation Commission in November 2010.

However, several of the Sunset Commission’s prior recommendations require statutory changes. The chart, *Outdoor Advertising Recommendations*, summarizes these recommendations and their status. Sunset staff examined the appropriateness of these recommendations and found TxDOT still needs statutory and legislative direction to fully implement the recommendations. In addition to considering the Department’s current efforts to implement the original recommendations, staff also examined legislative changes made to the Department’s Sunset bill and incorporated them into the recommendations.

Outdoor Advertising Recommendations

| 2008 Sunset Commission Recommendation | Status |
|--|---|
| <ul style="list-style-type: none"> ● Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads. ● Standardize the appeals process for denied sign permits by eliminating the Board of Variance. ● Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account. | <p>Change in law still needed. These recommendations were based on findings that TxDOT’s regulatory efforts for outdoor advertising along federal-aid and rural roads are not administered through the same processes. While the Department has drafted rules for a consistent appeals process that allows applicants denied a permit to appeal the decision to the Executive Director, without additional statutory changes, it cannot fully implement all the recommendations. The Sunset Commission’s recommendations remain appropriate to promote consistent treatment of licensees and applicants and efficiency by streamlining administrative processes.</p> |
| <ul style="list-style-type: none"> ● Authorize the Department to deny license renewal if a licensee’s permits are in poor standing. | <p>Change in law still needed. This recommendation was based on the Department’s lack of explicit statutory authority to deny the renewal of an existing license for outdoor advertisers on federal-aid roads if the license holder’s permits are in poor standing. The Department continues to need statutory authority to clarify its ability to deny a license renewal if needed.</p> |
| <ul style="list-style-type: none"> ● Require the Department to develop a complaints process, track and report complaints, and provide information to the public about how to file a complaint. ● Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification Account. | <p>Change in law still needed. Both recommendations were based on findings that TxDOT’s statute lacks standard enforcement provisions that could increase its effectiveness in regulating outdoor advertising. Since 2008, the Department has developed a public complaint process. Both instructions on how to file a complaint and a complaint form are available electronically on the Department’s website. However, the recommendation remains appropriate to ensure continued implementation of the complaints system. Additionally, statutory changes are still needed to extend administrative penalty authority to violations along federal-aid roads and clarify existing authority for rural roads.</p> |
| <ul style="list-style-type: none"> ● Require cities to pay the costs of condemnation if they do not allow relocation of billboards affected by state roadway projects within their jurisdictions. | <p>Change in law still needed. This recommendation, brought forth through the 2008 public hearing process, is aimed at expanding options for outdoor advertising structures affected by a state roadway project that require removal or relocation. The Department continues to need statutory authority to enforce this recommendation.</p> |

Recommendations

Since some of the recommendations from 2008 have been implemented or are no longer appropriate, they are not included in this issue. Therefore, please note that the recommendations have been re-numbered and no longer match the original numbering shown in the Status Chart on page 7.

Change in Statute

9.1 Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads.

This recommendation would require a license to operate outdoor advertising on rural roads, matching the license requirements that currently exist for outdoor advertisers only on federal-aid roads. Under this change, a single license would enable outdoor advertisers to operate on both road systems. Outdoor advertisers would still have to obtain permits for individual signs with different standards, such as height and spacing, for each type of road.

The license for outdoor advertisers on rural roads would be subject to the same enforcement authority as currently governs the federal-aid road license. These provisions include the authority to revoke or suspend licenses, or place licensees on probation for a violation of statute or rules. In combination with Recommendation 9.4, clarifying the Department's authority to deny license renewal, these provisions would provide standard enforcement options for all outdoor advertisers operating along the state highway system to ensure more consistent regulation of signs on all roads.

9.2 Standardize the appeals process for denied sign permits by eliminating the Board of Variance.

This recommendation would eliminate TxDOT's Board of Variance for hearing appeals of rural road sign permit denials. TxDOT would use the same review process for rural road permit appeals as currently exists for federal-aid roads. Under this change, the agency head would have authority to grant variances from the rural road sign standards. This recommendation would standardize administration of the outdoor advertising regulatory program and complement TxDOT's current efforts to outline, in rule, consistent appeal processes for both federal-aid and rural roads.

9.3 Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account.

This change would require that the small amount of fees collected for signs along rural roads be deposited into the same Texas Highway Beautification Account in General Revenue as fees collected for federal-aid roads, instead of to the State Highway Fund. This change would streamline the collection and tracking of revenues for licenses and permits on both types of roads.

9.4 Authorize the Department to deny license renewal if a licensee's permits are in poor standing.

This recommendation would clarify the Department's authority to deny the renewal of an existing license for outdoor advertisers on federal-aid roads. Providing this standard enforcement tool would ensure the Department considers any compliance issues that a licensee might have before renewing a license.

9.5 Require the Department, by rule, to establish a complaints process and procedures for tracking and reporting outdoor advertising complaints, and providing information to the public about how to file a complaint.

This recommendation would complement the Department's recent efforts to develop a complaint process by requiring it to clearly outline in rule how it will handle complaints regarding outdoor advertising. The rules should include, at a minimum:

- a system for prioritizing complaints so the most serious complaints receive attention before less serious complaints;
- procedures for complaint investigation and resolution; and
- a procedure for compiling and reporting detailed annual statistics about complaints.

The Department should also have processes in place to inform the public of complaint procedures. Persons affected by the regulations should be able to file a written complaint against a licensee on a simple form provided by the Department. Requiring complaints procedures and improved tracking and analysis of all complaints would ensure better involvement by all stakeholders in the regulation of outdoor advertising and would help TxDOT better understand issues of concern to those stakeholders.

9.6 Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification account.

This recommendation would clarify the existing administrative penalty authority as an enforcement tool for regulating outdoor advertising on rural roads. Specifically, this recommendation would eliminate language that a violation be intentional before the Department may assess an administrative penalty under its rural road regulations. It would also provide for an appeal of such a penalty by substantial evidence instead of by trial de novo. The recommendation would also extend this standard administrative penalty authority to violations of the Department's regulations on federal-aid roads.

As part of this recommendation, all fines collected for both types of roads should be deposited into the existing General Revenue-Dedicated Texas Highway Beautification Account, not to the State Highway Fund. These changes would expand TxDOT's enforcement options and make regulations along both types of roads more consistent.

9.7 Require cities to pay the costs of condemnation if they do not allow relocation of billboards affected by state roadway projects within their jurisdictions.

This recommendation would require municipalities to choose whether to allow relocation of an outdoor advertising structure or pay the costs of condemnation when a structure located in their jurisdiction is affected by a state roadway relocation, location, or re-routing that requires removal or relocation of the sign. This recommendation would make cities more accountable for decisions they make regarding relocation of outdoor advertising structures. Cities would no longer be able to rely on the State to pay condemnation costs for billboards that the cities disallow.

Fiscal Implication Summary

The statutory recommendations to deposit all program fees and fines into the General Revenue-Dedicated Texas Highway Beautification Account would result in an approximate \$27,440 annual gain to this account, and a loss of the same amount to the State Highway Fund. Costs associated with other statutory recommendations in this issue, such as requiring a license to operate outdoor advertising signs along rural roads and better tracking and reporting complaints information, should be offset by increased fees on licensees.

Texas Department of Transportation

| Fiscal Year | Gain to the General Revenue-Dedicated Texas Highway Beautification Account | Loss to the State Highway Fund |
|--------------------|---|---------------------------------------|
| 2012 | \$27,440 | \$27,440 |
| 2013 | \$27,440 | \$27,440 |
| 2014 | \$27,440 | \$27,440 |
| 2015 | \$27,440 | \$27,440 |
| 2016 | \$27,440 | \$27,440 |

Responses to Issue 9

Recommendation 9.1

Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads.

Agency Response to 9.1

The Department concurs with this recommendation. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 9.1

Tim Anderson, Director – Outdoor Advertising Association of Texas, San Antonio

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 9.1

None received.

Recommendation 9.2

Standardize the appeals process for denied sign permits by eliminating the Board of Variance.

Agency Response to 9.2

The Department concurs with this recommendation which will achieve consistency within the regulations and enforcement through statute. Federal law does not authorize a variance program for the primary system and not allowing for variances on rural roads would allow for consistent implementation. Please note, however, the agency head would not have authority to grant variances from the rural road sign standards under this change. Instead, an appeals process would be established by rule, and the agency head would determine the correctness of the denial. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 9.2

Tim Anderson, Director – Outdoor Advertising Association of Texas, San Antonio

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 9.2

None received.

Recommendation 9.3

Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account.

Agency Response to 9.3

The Department concurs that all deposits related to outdoor advertising fees should be deposited into one account as opposed to multiple accounts.

Agency Modification

1. Deposit all outdoor advertising fees to the State Highway Fund instead of General Revenue to allow TxDOT to better utilize the funds for staffing and associated costs. The Department currently has mechanisms in place for the State Highway Fund to appropriately account for funds received and expended through outdoor advertising.

(Deirdre Delisi, Chair – Texas Transportation Commission)

For 9.3

Tim Anderson, Director – Outdoor Advertising Association of Texas, San Antonio

Brandt Mannchen, Houston

Against 9.3

None received.

Recommendation 9.4

Authorize the Department to deny license renewal if a licensee's permits are in poor standing.

Agency Response to 9.4

The Department concurs with this recommendation. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 9.4

Tim Anderson, Director – Outdoor Advertising Association of Texas, San Antonio

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 9.4

None received.

Recommendation 9.5

Require the Department, by rule, to establish a complaints process and procedures for tracking and reporting outdoor advertising complaints, and providing information to the public about how to file a complaint.

Agency Response to 9.5

The Department concurs with this recommendation and it complements recent implementation of a complaint process by requiring a clear outline in rule on how to handle outdoor advertising complaints. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 9.5

Tim Anderson, Director – Outdoor Advertising Association of Texas, San Antonio

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 9.5

None received.

Modification

2. As part of the complaints procedure, require TxDOT to track resolution rates and report them in an annual report. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin)

Recommendation 9.6

Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification account.

Agency Response to 9.6

The Department concurs with this recommendation. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 9.6

Tim Anderson, Director – Outdoor Advertising Association of Texas, San Antonio

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 9.6

None received.

Modification

3. Provide standard administrative penalty authority for both federal-aid and rural roads, but require all fines be deposited to the State Highway Fund instead of the General Revenue-Dedicated Texas Highway Beautification Account. (Senator Robert Nichols, Member – Sunset Advisory Commission)

Recommendation 9.7

Require cities to pay the costs of condemnation if they do not allow relocation of billboards affected by state roadway projects within their jurisdictions.

Agency Response to 9.7

The Department has no comment. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 9.7

Tim Anderson, Director – Outdoor Advertising Association of Texas, San Antonio

Against 9.7

Brandt Mannchen, Houston

Commission Decision

Adopted Recommendations 9.1, 9.2, 9.4, and 9.5.

Modified and adopted Recommendation 9.3 to require TxDOT to deposit all outdoor advertising fees into the State Highway Fund.

Modified and adopted recommendation 9.6 to provide standard administrative penalty authority for both federal-aid and rural roads, and require all fines be deposited into the State Highway Fund.

Legislative Action

Senate Bill 1420 requires an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads. (Recommendation 9.1) The bill clarifies the Department's enforcement authority to deny a license renewal and subjects licenses for outdoor advertisers on rural roads to the same enforcement authority as currently governs the federal-aid road license. (Recommendations 9.1 and 9.4) Additionally, the bill clarifies the existing administrative penalty authority as an enforcement tool for regulating outdoor advertising on rural roads and extends this authority to violations of regulations on federal-aid roads. The bill also removes the standard for imposing an administrative penalty for an *intentional* violation on a rural road, and changes the standard for judicial review from de novo to substantial evidence. (Recommendation 9.6 as modified)

The bill standardizes the appeals process by eliminating the Board of Variance for hearing appeals of rural road sign permit denials. TxDOT will use the same review process for rural road permit appeals as currently exists for federal-aid roads and the agency head will have authority to grant variances from the rural road sign standards. (Recommendation 9.2)

Senate Bill 1420 requires TxDOT to deposit all outdoor advertising fees into the State Highway Fund. The fees collected for signs along federal-aid roads will be deposited into the State Highway Fund, the same as fees collected for signs along rural roads, instead of the Texas Highway Beautification Account in General Revenue. (Recommendation 9.3 as modified)

The bill also requires the Department, by rule, to establish a process and procedures for tracking and reporting outdoor advertising complaints, and providing information to the public about how to file a complaint. The Legislature modified the Sunset provision requiring the Department to provide a simple form for filing complaints, by removing the requirement that the form be adopted in rule. (Recommendation 9.5)

Issue 10

TxDOT Does Not Provide Adequate Attention to Rail Transportation Issues.

Issue 10 is not included in this report because TxDOT established a Rail Division in November 2009, as discussed in the Status Chart on page 7.

Issue 11

Unmanaged Dynamic Message Signs May Affect TxDOT's Ability to Ease Traffic Flows.

Background

Dynamic Message Signs are electronic traffic control devices used primarily for managing travel, controlling and diverting traffic, and identifying current and anticipated roadway conditions. These changeable message signs display emergency and safety information along with warning and guidance information related to traffic control. In Texas, these signs are typically operated from Traffic Management Centers throughout the state, which are managed and operated by the Texas Department of Transportation (TxDOT) as well as some larger urban cities. TxDOT has about 580 signs in operation statewide at an initial investment of about \$105 million for installation and an estimated annual maintenance cost of \$3.7 million.

Finding

No significant changes have occurred to affect the Sunset Commission's 2008 decision to require TxDOT to actively manage all Dynamic Message Signs.

This recommendation was brought forth through the public hearing process in 2008. The Sunset Commission found that although TxDOT has been expanding the deployment of Dynamic Message Signs, not all of the signs are actively managed, and therefore do not serve their intended purpose to help ease congestion and to provide useful and timely traffic information to the traveling public, including suggesting alternative routes when applicable. The Sunset Commission recommended requiring TxDOT to actively manage all electronic signage to help alleviate traffic congestion by ensuring that information is current and accurate. This recommendation remains appropriate to ensure state law clearly directs TxDOT to actively manage a system of changeable message signs on highways to mitigate traffic congestion.

TxDOT does not actively manage all Dynamic Message Signs.

Recommendation ---

Change in Statute

11.1 Require all electronic signage to be actively managed to mitigate congestion, including suggesting alternative routes when applicable.

This change would require TxDOT to ensure that all Dynamic Message Signs located on highways are managed by personnel from TxDOT or with the cooperation of local governments. Active management of these signs would ensure that they are operational to provide real-time traffic information to the traveling public to help facilitate the flow of traffic.

Fiscal Implication Summary ---

This recommendation would not result in a fiscal impact to the State.

Responses to Issue 11

Recommendation 11.1

Require all electronic signage to be actively managed to mitigate congestion, including suggesting alternative routes when applicable.

Agency Response to 11.1

The Department concurs and continues to implement this recommendation to the best of our ability through our current available resources. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 11.1

The Honorable Ron Natinsky, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Houston

Against 11.1

None received.

Commission Decision

Adopted Recommendation 11.1.

Legislative Action

Senate Bill 1420 requires the Department, in cooperation with local governments, to actively manage Dynamic Message Signs on highways to help mitigate traffic congestion by providing current information including traffic incidents, weather conditions, road construction, and alternative routes when applicable. (Recommendation 11.1)

Issue 12

Statutory Direction Is Necessary to Ensure Continued Implementation of the Green Ribbon Project.

Background

The Texas Department of Transportation's (TxDOT's) Green Ribbon Project is a public-private partnership initiative to enhance the appearance of public highways by incorporating the planting of trees and shrubs, emphasizing natural beauty and greenspace, integrating public art, and highlighting cultural uniqueness of neighborhoods to other areas of the state in the design and improvement of public highways. Since 2001, the Legislature has included an appropriations bill rider that requires the Department, in certain areas of the state with air quality concerns, to allocate 0.5 percent of the amount of a contract for construction, maintenance, or improvement of a highway project for landscaping improvements.¹ In 2009, the Legislature further refined the requirement, clarifying that no limitations per contract amount exist on these expenditures. More than \$95 million has been allocated to TxDOT districts through the Green Ribbon Project since 2002, as well as an additional \$72.8 million in federal funding for plant material in Houston.

Finding

No significant changes have occurred to affect the Sunset Commission's 2008 decision to statutorily require a portion of highway and toll projects be spent on landscaping.

This recommendation was brought forth through the public hearing process in 2008. The Sunset Commission found that although the Transportation Commission had been allocating the funds for landscaping projects as required by rider, some TxDOT districts had not obligated all of their allocations. The Sunset Commission recommended placing this requirement in statute and specifying that the allocation would also be required on all current and future toll roads in non-attainment and near non-attainment areas for meeting federal air quality standards for ozone.

Since the TxDOT Sunset bill did not pass during the last legislative session, this requirement was not placed in statute. However, the requirement remained as a rider in the Department's bill pattern in the General Appropriations Act for fiscal years 2010 and 2011. The Department has requested a revision to this rider in its Legislative Appropriations Request for fiscal years 2012 and 2013 to address the situation in which landscape improvements on a project may not be possible or practicable, such as for areas lacking suitable right of way. The revision would allow rather than require a district to spend the allocation on landscaping improvements on the project for which the allocation was received. The Sunset Commission's 2008 recommendation to place the requirement in statute remains appropriate to give better direction to TxDOT and improve accountability of the Green Ribbon Project funding.

The recommendation to place the Green Ribbon Project in statute remains appropriate.

Recommendation

Change in Statute

12.1 Require 0.5 percent of highway or toll road projects be spent on landscaping projects in non-attainment and near non-attainment areas.

Under this recommendation TxDOT would be statutorily required to allocate to the district or districts contracting for a highway project in non-attainment or near non-attainment areas for ozone, at least 0.5 percent of the amount to be spent under the contract for construction, maintenance, or improvement of the highway, to be used for landscaping improvements. A district that receives an allocation shall spend the allocation on landscaping improvements associated with the project that was the subject of the contract. If landscape improvements on the project are not possible, the district shall spend the allocation on landscape improvements to another highway or highway segment located in the district in the non-attainment or near non-attainment area.

Landscaping improvements are defined as planting of indigenous or adapted trees and other plants that are suitable for the climate in which they will be located, and preparing the soil and installing irrigation systems for the growth of the trees and plants. This allocation would also be required on all current and future toll roads in non-attainment and near non-attainment areas. In these instances, TxDOT or the toll road authority would be required to allocate the funding. Placing this requirement in statute would give better direction to TxDOT and improve accountability of the Green Ribbon Project funding.

Fiscal Implication Summary

This recommendation would not result in a fiscal impact to the State.

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¹ Rider 20 pp. VII-30, Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009, General Appropriations Act.

Responses to Issue 12

Recommendation 12.1

Require 0.5 percent of highway or toll road projects be spent on landscaping projects in non-attainment and near non-attainment areas.

Agency Response to 12.1

The Department concurs and continues to implement this recommendation per the provisions of Rider 20 from the General Appropriations Act for Fiscal Years 2010-2011. (Deirdre Delisi, Chair – Texas Transportation Commission)

For 12.1

Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin

Brandt Mannchen, Houston

Against 12.1

None received.

Commission Decision

Not adopted. The Sunset Commission took no action on Issue 12.

Legislative Action

No action needed.

Issue 13

Lack of Comprehensive Information About TxDOT's Use of Propane May Affect Decisions Regarding Its Alternative Fuel Vehicle Fleet.

Issue 13 is not included in this report since it was a management action and did not require a statutory change, as discussed in the Status Chart on page 7.

New Issues

New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

TxDOT Administration and Funding

14. Divide TxDOT into two pieces. One piece would be responsible for focusing on maintaining current roads and building new roads. The second piece would be responsible for focusing on transportation finance and coordinating different activities for the various modes of transportation. This structure would help address future transportation needs, which cannot be dealt with by scaling up the present system. (William Howard Wolf, Austin and David Smith – Texans Uniting for Reform and Freedom, Dallas)
15. Place TxDOT under conservatorship and establish an Inspector General so that employees have a safe haven to report waste, fraud, abuse, or corruption inside the agency; to enforce the laws governing the agency; and to ensure other controls are consistently implemented and followed. (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio and Mel Borel – Texans Uniting for Reform and Freedom, San Antonio)
16. Require TxDOT to use zero-based budgeting to restore financial accountability. (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio and Mel Borel – Texans Uniting for Reform and Freedom, San Antonio)

Toll Roads

17. Require TxDOT to cease its advertising efforts that attempt to persuade and convince the public to accept toll roads, Comprehensive Development Agreements (or public-private partnerships), or any version of the Trans-Texas Corridor, as per House Bill 2142, 81st Legislature (2009). (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio)
18. End selling our public freeways to foreign entities using controversial contracts called Comprehensive Development Agreements, also known as public-private partnerships. Also end “best value” proposals (instead of awarding based on low bid), payments to losing bidders, non-compete agreements that forbid or penalize free road expansion surrounding toll roads, manipulation of speed limits on free roads to drive more traffic to toll roads, and guaranteed profits. (Mel Borel – Texans Uniting for Reform and Freedom, San Antonio)
19. End Comprehensive Development Agreements, public-private partnerships, and managed lanes. (David Smith – Texans Uniting for Reform and Freedom, Dallas)
20. Repeal the Trans-Texas Corridor. (David Smith – Texans Uniting for Reform and Freedom, Dallas)

21. Require an independent agency examine the “My 35” project to determine whether it is TxDOT’s Trans-Texas Corridor by another name. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)
22. Stop allowing public funds to be used for private toll roads. (Don P. Dixon, San Antonio)

State Transportation Funding

23. End all diversions from the State Highway Fund, including the \$3 to \$4 billion per year vehicle sales tax revenue. (Terri Hall, Founder/Director – Texans Uniting for Reform and Freedom, San Antonio and David Smith – Texans Uniting for Reform and Freedom, Dallas)

Other Transportation Entities

24. Dissolve the Regional Mobility Authorities which are a second tier bureaucracy that duplicate the duties of TxDOT. (Don P. Dixon, San Antonio)
25. Abolish unaccountable Regional Mobility Authorities. (Mel Borel – Texans Uniting for Reform and Freedom, San Antonio)
26. Allow only elected officials to have voting power on Metropolitan Planning Organizations when allocating tax dollars. (Mel Borel – Texans Uniting for Reform and Freedom, San Antonio)
27. Clearly define the role of Metropolitan Planning Organizations in statute as performing regional project selection, not project development activities for individual projects. (Steve Stagner, President – Texas Council of Engineering Companies, Austin)

Miscellaneous

28. When TxDOT audits, inspects, and reviews documents that reveal information that indicates a licensed entity or person may have committed a violation, require TxDOT to forward such relevant information to the pertinent licensing board. (Barbara Roeling, P.G., Chairman – Texas Board of Professional Geoscientists, Austin)
29. Provide an alternative funding source for transportation analysis other than TxDOT, so that any technical authority may provide an impartial assessment and plan. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)
30. Make TxDOT engineers accountable to a professional licensing board with punitive powers for unethical or unprofessional behavior, equivalent to the State Medical Board or State Bar. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)
31. Make all Sunset Advisory Commission recommendations retroactive to include TxDOT projects started prior to the Sunset Review. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)

32. Mandate the use of independent agencies to determine the level of environmental review needed on any TxDOT transportation project and to mandate the appropriate level of environmental study is performed before the conclusion of the planning phase of the of the TxDOT project. (Dr. Martin Levett – Citizens’ Alliance for Smart Expansion, New Braunfels)
33. Place the 2008 Sunset Commission management action that directed TxDOT to improve its website usability, especially the accessibility of information on the status of the system and opportunities for public involvement, and recommended that TxDOT should upgrade its search engine and provide access to a searchable database of minute orders in statute. (Kari Banta, Transportation Associate – Lone Star Chapter of the Sierra Club, Austin)
34. Strengthen the 2008 Sunset Commission management action that directed TxDOT to provide additional information on overhead rates to its districts and ensure that they use it, by requiring TxDOT to recognize and certify the rates in its Audit Office rather than delegating the authority to multiple employees. (Steve Stager, President – Texas Council of Engineering Companies, Austin)

Commission Decision

Adopted the following new issues not previously listed.

- Require appointed official(s) serving as a member of the Texas Transportation Commission or as Commissioner of Transportation to resign from office before accepting any campaign contributions if running for elected office.
- As a management action, direct TxDOT management to develop a detailed Implementation Plan for the implementation of the recommendations of the Sunset Commission, the Restructure Council, and the Grant Thornton audit. A full-time dedicated Implementation Team should be put in place immediately with the assistance of an outside professional change management firm. This Implementation Plan should be completed by June 30, 2011. This Implementation Plan should detail each process or procedure to be implemented, a specific timeline for each step of each process or procedure, and the individual responsible for the successful implementation. The Implementation Plan should be substantially implemented by June 30, 2014.

Request that the Senate Committee on Transportation and Homeland Security and the House Transportation Committee monitor the progress in implementation of the Plan. TxDOT should report monthly on progress towards meeting the implementation timeline, including processes and procedures that are failing to meet the implementation timeline. The Committees may recommend corrective action on those processes and procedures that are failing to meet the implementation timeline, and TxDOT management would have to respond in writing to action taken in response to any recommended corrective actions.

Legislative Action

Senate Bill 1420 prohibits a member of the Commission from accepting a campaign contribution if running for an elected office, and considers a member to have resigned from the Commission if such a contribution is accepted. (New Issue)

As a management recommendation not needing statutory change, the New Issue requiring TxDOT to develop a detailed Implementation Plan did not result in legislative action.

Provisions Added by Legislature

Provisions Added by Legislature

1. Authorize comprehensive development agreements for select transportation projects.

Senate Bill 14200 authorizes TxDOT to enter into comprehensive development agreements (CDAs) only for all or part of the following projects, with this authority expiring on August 31, 2015 for all of the projects except the State Highway 99 (Grand Parkway) project:

- the State Highway 99 (Grand Parkway) project;
- the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;
- the North Tarrant Express project in Tarrant and Dallas Counties, including on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E); on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);
- the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;
- the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;
- the State Highway 288 project in Brazoria County and Harris County; and
- the U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99.

The bill also authorizes TxDOT or certain Regional Mobility Authorities (RMAs) to enter into a CDA relating to improvements to or construction of the following projects, with this authority expiring on August 31, 2015:

- the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;
- the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; or
- a project consisting of the construction of the Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847; and the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100.

Before entering into a CDA for these projects, the Department or RMA as applicable must obtain the appropriate environmental clearance by August 31, 2013 for any project other than the State Highway 99 (Grand Parkway) project, and present a full financial plan for the project, including costing methodology and cost proposals, to the Commission. The bill also requires the Department

or RMA to present a report to the Commission on the status of each CDA project, including status of environmental clearance, explanation of any project delays, and anticipated procurement completion date, by December 1, 2012.

The bill specifies that the CDA for the North Tarrant Express project entered into on June 23, 2009, may provide for negotiating and entering into facility agreements for future phases or segments of the project, and provides the current developer with a right of first negotiation. The bill authorizes TxDOT to forgo the use of any further competitive procurement process for any subsequent facility agreements related to the North Tarrant Express project. Finally, the bill specifies these facility agreements must terminate on or before June 22, 2061, and may not be extended or renewed.

2. Authorize Regional Mobility Authorities to enter into certain design-build contracts.

The bill continues the authority of RMAs to enter into design-build contracts, but authorizes the use of these contracts to include the financing of a transportation project. The bill limits an RMA to entering into no more than two design-build contracts in any fiscal year and sets out the requirements and procedures an RMA and design-build contractor must follow in using the design-build method. The bill also specifically prohibits a private entity from having a leasehold interest in the highway project or the right to operate or retain revenue from the operation of the transportation project.

3. Establish procedures to expedite the environmental review process for certain highway projects.

Senate Bill 1420 authorizes a procedure and requirements for expediting the environmental review process for certain transportation projects. The bill allows the Department or a local government sponsor defined as a city, county, regional tollway authority, regional mobility authority, local government corporation, or transportation corporation to prepare an environmental review document for highway projects in TxDOT's approved transportation programs or identified by the Commission as being eligible. Local governments can prepare an environmental review document for a highway project not meeting the above criteria by notifying the Department and submitting a fee set by the Commission to cover the cost of review. The bill also requires the Commission to establish standards for these environmental reviews, including issues to be included, content of documents, procedures, and review deadlines. The bill allows the standards to include a process and criteria for prioritizing environmental review documents if the Department lacks adequate resources to timely process all documents it receives.

The bill also authorizes the Department and a local government sponsor to enter into an agreement that defines the relative roles and responsibilities of the parties in the preparation and review of environmental review documents for a specific project, and authorizes the Federal Highway Administration to be a party to such an agreement in specified instances. The bill also requires the Department to submit to the Commission and Legislature and post on its website reports regarding the status of projects undergoing expedited environmental review procedures.

The bill allows the Department or a county, regional tollway authority, or RMA to enter into an agreement to provide funds to a state or federal agency to expedite the agency's environmental review process. The bill provides that the agreement may specify transportation projects considered

priorities for review, must require the agency to complete the review in less time than is customary, and must be available on the website of the entity entering into the agreement. The bill specifies an agreement does not diminish or modify the rights of the public regarding review and comment on transportation projects. The bill also requires the Department, by rule, to establish a process to certify Department district environmental specialists to work on all documents related to state and federal environmental review processes.

4. Clarify funds in regional subaccounts may only be allocated for Department-approved projects.

Senate Bill 1420 specifies the money TxDOT currently holds in a subaccount for the benefit of the region in which a toll project or system is located can only be allocated for projects approved by the Department and specifies the money must not only be allocated, but also distributed at the time the project is approved by the Department.

5. Establish a committee to help determine financial aspects of certain toll projects.

The bill adds a provision determining financial terms for toll projects in which a private entity has a financial interest, and for which certain local dedicated funds and revenues will be used and right of way provided. For such projects, the distribution of financial risk, method of financing, and tolling structure and methodology must be determined by a committee consisting of a representative of TxDOT; any local toll project entity in the area in which the project is located; the applicable Metropolitan Planning Organization; and each municipality or county that has provided revenue or right-of-way for the project.

6. Allow transfers of real property to governmental entities for public road purposes.

Senate Bill 1420 adds a provision to TxDOT's existing authority to transfer property to a governmental entity to allow the Department to waive payment for highway right-of-way no longer needed for a state highway purpose that is transferred to a governmental entity if the entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes. The bill specifies if the transferred property ceases to be used for public road purposes, it immediately and automatically reverts back to the State.

7. Clarify municipal and county use of transportation reinvestment zone revenues.

Senate Bill 1420 authorizes a county to establish an ad valorem tax increment account for a transportation reinvestment zone, funded through taxes collected on property in the zone. The county may abate all or a portion of the county's property taxes imposed in the zone. The bill also authorizes a municipality or county to issue bonds to pay all or part of the cost of a transportation project within a transportation reinvestment zone, and to use funds in the zone's tax increment account to secure the bonds. For municipalities, any remaining money in the account may be used for other purposes as determined by the municipality.

8. Designate the Edmund P. Kuempel Rest Areas in Guadalupe County.

Senate Bill 1420 designates the eastbound and westbound rest areas on Interstate Highway 10 in Guadalupe County as the Edmund P. Kuempel Rest Areas. TxDOT is not required to design, construct, and erect necessary markers unless a grant or donation of private funds covers the cost.

9. Authorize TxDOT to designate wildfire emergency evacuation routes.

The bill authorizes TxDOT to designate an emergency evacuation route for use in a wildfire emergency in a county with a population of less than 75,000 and with a verifiable history of wildfire. The bill allows TxDOT to establish criteria to determine which areas of a county are subject to a potential wildfire emergency, and requires the criteria to provide for the evacuation of commercial establishments such as motels, hotels, and other businesses with overnight accommodations. The bill also authorizes TxDOT to assist in the improvement of a designated wildfire emergency evacuation route and allows a designated route to include federal or state highways or county roads.

Appendix

Appendix A

Key Transportation Entities

Federal

U.S. Department of Transportation

Umbrella agency overseeing 12 federal transportation agencies, including the following:

Federal Highway Administration

- funding and oversight of federal-aid highways and interstates
- oversight of federal highway planning, environmental, safety, and other regulations

Federal Aviation Administration

- grants and safety oversight of public aviation facilities

Federal Railroad Administration

- rail safety programs
- freight and passenger rail planning

Federal Transit Administration

- grants and safety oversight of public mass transportation

State

Texas Department of Transportation

- statewide funding, planning, construction, and maintenance of federal and state roads
- compliance with federal regulations, including bridge safety and environmental reviews
- research and coordination of public transportation, airports, ports, and rail
- oversee operation of Texas' only statewide toll authority, the Texas Turnpike Authority

Regional

Metropolitan Planning Organizations

- federally required in regions with population more than 50,000
- 25 in Texas, do not cover rural areas of the state
- established by an agreement between local officials and the Governor
- create long- and short-term regional transportation and air quality plans
- select projects for federal transportation funding

Regional Mobility Authorities

- created by one or more counties, with Transportation Commission approval
- eight in Texas (Alamo, Cameron, Camino Real, Central Texas, Grayson County, Hidalgo County, Northeast Texas, and Sulphur River)
- authority to develop toll projects and generate revenue streams for other transportation projects

Regional Toll Authority

- one in Texas – the North Texas Tollway Authority, created in 1997
- develops, finances, constructs, and operates toll roads in North Texas

Councils of Governments

- 24 in Texas covering the entire state
- role in transportation varies across state
- MPOs in Houston and Dallas-Fort Worth regions located within a COG
- many provide rural transportation services and participate in rural planning

Local

Local Governments

- cities and counties build and maintain city and county roads not on the federal or state system
- eight county toll authorities develop and operate toll roads in Brazoria, Chambers, Collin, Fort Bend, Harris, Liberty, Montgomery, and Waller County
- transit agencies provide local public transportation such as buses and light rail
- ports and airports are operated locally

SUNSET STAFF REVIEW OF THE TEXAS DEPARTMENT OF TRANSPORTATION

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