

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) has authority over transportation policy development involving the state transportation system.

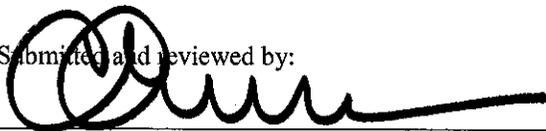
Prior to the expiration of the Transportation Equity Act for the 21st Century (TEA 21), the Texas Department of Transportation offered a number of proposals for the United States Congress to consider as it reauthorized the act. The Congress chose to act on many of those recommendations when it passed the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) on July 29, 2005. Those recommendations included federal flexibility to match the state flexibility found in legislation signed into law by Governor Rick Perry, minimizing design-build regulations, awarding transportation development credits on a *pro rata* basis, greater discretion in tolling the federal-aid highway system, streamlining the environmental process, and receiving a greater rate of return on the fuel taxes sent to Washington, D.C.

The 109th United States Congress, Second Session, has now convened.

Various members of the Texas Congressional Delegation, as well as officials of the United States Department of Transportation (US DOT), have expressed an interest in receiving the commission's recommendations on federal legislation and executive branch actions. These recommendations are in the attached report, titled "Building on Success."

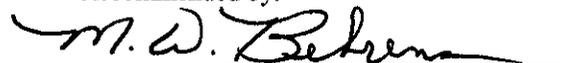
IT IS THEREFORE ORDERED that the commission adopts this report, attached as Exhibit A, in its entirety and that the chairman of the commission provide the report to the governor, the lieutenant governor, the speaker of the house of representatives, members of the Texas delegation to the United States Congress, the presiding officers of its relevant committees of jurisdiction, the secretary of the United States Department of Transportation, and the administrator of the Federal Highway Administration.

Submitted and reviewed by:



Director, Government and Business
Enterprises Division

Recommended by:



Executive Director

110428 FEB 23 06

Minute Number Date Passed

**T E X A S T R A N S P O R T A T I O N
C O M M I S S I O N**

**Building on Success
109th Congress, 2nd Session**

**A report to the
United States Congress**

**Making recommendations to
improve Texas transportation
infrastructure and delivery system
through federal funding and policy flexibility**

February 23, 2006

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A copy of this report has been filed with the State Library in accordance with state law.

INTRODUCTION

For more than two decades, the Texas Department of Transportation (TxDOT) has been actively engaged in federal legislative efforts. Through the years, our federal agenda has evolved, but our core goals have remained the same to ensure that federal policies and funding support TxDOT's mission to provide safe, effective, and efficient movement of people and goods.

Since 1988, reauthorization of the federal surface transportation act presented the greatest challenge to TxDOT's goals--and the greatest opportunity to advance them. On August 10, 2005, President Bush signed into law the "Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users" (SAFETEA-LU), reauthorizing federal highway, highway safety and transit programs through 2009. The bill provides a record level of federal financial investment in these programs; however, it also offers greater opportunity to improve our transportation system through public-private partnerships and innovative financing programs.

During the second session of the 109th Congress, the Texas Department of Transportation will continue to work with congressional members and administration leadership to not only protect the financial and policy gains of SAFETEA-LU, but to further strengthen them. We will advocate for complete and timely implementation of SAFETEA-LU, and begin laying the groundwork for the next reauthorization bill. As always, we will work with our local and regional partners to achieve the maximum level of investment possible for our state's transportation infrastructure in the FY 2007 federal appropriations process.

To be successful in developing and maintaining an effective transportation system that serves not only our state but our nation, we must have flexibility in the policies that govern all aspects of our operations. The natural disasters of 2005 and early 2006 have greatly reinforced this message. TxDOT has begun and will continue to work to ensure that the state's infrastructure system is adequately prepared for not only potential hurricanes, but wildfires, ice storms, and man-made disasters as well.

As is indicated with this legislative agenda, we are looking to work with our local, state, federal and private partners to protect and further strengthen financing and policy tools concentrating on five key goals: 1) reduced congestion, 2) enhanced safety, 3) expanded economic opportunity, 4) improved air quality, and 5) increased value of our state's transportation assets.

Contained in this report are brief synopses of our 2006, or post-SAFETEA-LU, federal priorities.

Questions regarding this report should be directed to Coby Chase (cchase@dot.state.tx.us) at 512/463-6086 or Cindy Mueller (cmueller@dot.state.tx.us) at 202/434-0230 in the department's Government and Business Enterprises Division or in writing to 125 East 11th Street, Austin, Texas 78701.

TEXAS TRANSPORTATION PRIORITIES

109th Congress, 2nd Session

For more than three years, TxDOT and its partners fought for advances in funding flexibility and innovation in SAFETEA-LU. We also aggressively pursued flexibility in our oversight and delivery of many of our transportation programs. At the end of the day, we were very successful in our endeavors. We must now work with our federal partners throughout the rulemaking processes to ensure the stability of these gains, as well as with our congressional partners throughout the 2nd Session to continue our legislative progress.

BUILDING ON SUCCESS

The following are a mix of policy issues that TxDOT strongly advocated for and successfully changed in SAFETEA-LU, as well as some new and emerging issues.

Expanded Federal Tolling Authority

- Work with FHWA and new tolling and pricing team to ensure state is able to take full advantage of new toll financing tools.

SAFETEA-LU expanded the ability of state DOTs to utilize tolls on certain types of federally funded projects. It also created three new opportunities to utilize vehicle tolls as a means to finance interstate construction and/or reconstruction, reduce congestion and/or improve air quality. FHWA has issued two official announcements clarifying the processes for participation in these tolling and pricing programs, and two other announcements to encourage state participation. A "Tolling and Pricing Team" has been established to assist and review DOT "Expressions of Interest" for specific federal tolling programs. TxDOT will work with FHWA and the review team to ensure that the state takes full advantage of these new financing tools.

Enhancement Funding Flexibility

- Amend federal law to allow the use of enhancement funding for disaster- and emergency-related transportation infrastructure preparedness and improvement.

The Transportation Enhancement Program was created by Congress in the early 1990s by redirecting billions of dollars nationwide away from state congestion relief and safety programs into local projects such as hike-and-bike trails and tourism promotion. With the passage of SAFETEA-LU, Congress continued this trend, dedicating over \$333 million of Texas' transportation funding over the next four years to this program. The hurricanes of 2005--Katrina, Rita and Wilma--taught our nation many lessons. The mass evacuation of more than 1.8 million vehicles and 2.5 million individuals from the Texas Gulf Coast area proved an overwhelming burden to the state's transportation infrastructure. It is vitally important that the State of Texas do everything within its power to ensure that its transportation infrastructure is capable of protecting and sustaining its citizens prior to, during and following a major natural disaster. TxDOT has begun and will continue working with members of Congress to amend federal law to grant states the flexibility to utilize their enhancement funding for disaster and emergency related transportation infrastructure preparedness and improvement. This program would greatly improve mass evacuations through the installation of dynamic message signs, vehicle detection devices and closed-circuit television cameras at strategic locations.

Environmental Streamlining

- Make full use of Texas' new responsibilities.

TxDOT is dedicated to further streamlining the environmental review and project delivery processes. Texas is one of five states (Alaska, California, Ohio, and Oklahoma being the others) designated in SAFETEA-LU to pilot a new project delivery program that will grant FHWA's NEPA review authority to these individual states. The delegation of this authority will result in significant cost savings to the state, measured in reduced days of project review. FHWA is developing a Notice of Proposed Rulemaking to implement this program, and TxDOT is working closely with them to ensure all provisions are acceptable and that the state can adhere to them.

Private Activity Bonds (PABs)

- Submit application to FHWA for PAB funding for key projects, such as TTC-69.

Private activity bonds are tax-exempt bonds issued for the purpose of providing special financing benefits for qualified projects. These bonds are used to attract private investment for projects that have some public benefit resulting in reduced financing costs due to the exception of federal tax. In the past, only airport and port projects were eligible for PAB funding. With the passage of SAFETEA-LU, \$15 billion in tax-exempt PABs have been authorized for use on highway, rail and intermodal surface projects, as well as international bridges authorized by federal or state law. FHWA recently issued proposed guidelines for those seeking PAB funding. TxDOT and its partners will work with FHWA to maximize the investment of PAB funding for Texas. We will be submitting applications to FHWA for PAB funding for a number of key projects, including TTC-69. If Texas is successful, \$1 billion of PAB funding would produce an additional \$200 million in equity contributions from the private sector which would be applied to the cost of construction of the given project. That is money the public sector would not have to produce for the project. Because of Texas' new state bonding authority, TxDOT is well positioned to, and will, compete for this new financial tool.

Design-Build Contracting

- Ensure rulemaking process maintains intent of the design-build provisions TxDOT obtained in SAFETEA-LU.

“Design-Build” is an innovative project delivery method that combines the design and construction of a toll project into one contract rather than the traditional “Design-Bid-Build” method. SAFTEA-LU amended federal law to allow for the use of design-build. FHWA must now open its rulemaking process to amend design-build contracting provisions to ensure legislative intent is maintained and the use of state design-build procurement practices is permitted. TxDOT is working with the Federal Highway Administration (FHWA) and key congressional members to ensure the new rules maintain the intent of the law we worked so hard to achieve.

Transportation Development Credits (TDCs)

- Ensure rulemaking processes do not restrict/limit use of TDCs.

TDCs, formerly known as toll credits, are a unique and innovative financing tool that TxDOT has used for many years to assist transit providers to fund much needed vehicle purchases. Traditionally, TDCs have been “earned” when local and state funds alone are used to construct toll facilities. The federal government “credits” states for their investment in these projects. With the passage of SAFETEA-LU states are now given credit on a *pro rata* basis for their investments in toll projects. Applying this new calculation method to Texas’ existing toll investments should net an additional \$2.1 billion in TDCs. This innovative financing tool means that TxDOT will be able to further more transit and rail projects through the use of this innovative financing tool. Specifically, local entities will be able to apply to the commission for TDCs which will then be applied as the “local match” for their federally funded project. On the federal level, TxDOT will work with FHWA, Federal Railroad Administration (FRA) and Federal Transit Administration (FTA) to ensure that state and local entities get the maximum benefit from the use of this tool. There has been discussion in the past regarding the application of regulatory restrictions on TDC use. TxDOT will fight to ensure adherence to the intent of SAFETEA-LU language and that TDC use is not limited.

Rail Relocation and Improvements

- Educate congressional members, and appropriators in particular, about our state’s vast rail relocation and improvement needs to ensure maximum funding return to the state in the FY 2007 appropriations process.

Using concepts provided by TxDOT, SAFETEA-LU establishes a grant program to provide financial assistance for local rail relocation and improvement projects which will mitigate the adverse effects of rail traffic on safety, motor vehicle flow or community quality of life. Subject to appropriations, Texas could receive as much as \$100 million from this new grant program. TxDOT will work with Congress to educate members on our state’s vast rail relocation and improvement needs and we will work with appropriators to maximize the benefits of this new program.

Highway Trust Fund

- Work with SAFETEA-LU transportation finance commissions to ensure flexible and innovative federal funding for transportation infrastructure needs.

We must retain the integrity of the Highway Trust Fund while congressional and industry leaders search for new mechanisms to fund our nation's infrastructure needs. In Texas, our identified transportation needs outweigh available funding by a margin of 3-to-1. Along with already cited innovative financing programs, Texas supports congressional efforts to explore other opportunities to provide increased funding for transportation. SAFETEA-LU established two commissions, the National Surface Transportation Policy and Revenue Commission and the National Surface Transportation Infrastructure Financing Commission, charged with reviewing existing transportation funding mechanisms and making recommendations to ensure the viability of our nation's surface transportation system. TxDOT will work with these commissions to ensure the state's interests are well represented in these efforts.

Improved Texas Highway Funding Equity

- Continue to fight to ensure that Texas receives, at a minimum, its designated rate of return (ROR) throughout the life of SAFETEA-LU.

SAFETEA-LU represents a significant victory for donor states like Texas, with an improved minimum guaranteed ROR on federal highway formula programs and High Priority Project allocations. The act increases this minimum ROR, now known as an "Equity Bonus," from 90.5% under TEA 21 to 91.5% by 2007 and then 92% in 2008 and 2009. By itself, this improved equity bonus language will bring an additional \$300 million to Texas. When combined with the overall increased funding provided in the act, SAFETEA-LU's formulas bring Texas an additional \$5 billion in federal highway program funds compared to TEA 21.

Demonstration Projects

- Ensure funding appropriated throughout the state for transportation projects can be utilized in an efficient manner.
- Promote “regional funding model” utilized by TxDOT as method to be utilized by appropriators.
- Provide authorization for states to purchase unused federal funds from other states prior to their lapse date.

Discretionary funding for demonstration projects often creates unnecessary problems for both DOTs and local governmental entities. Funding amounts often fall far short of the total project amounts. At times, projects themselves have not been “vetted” via any local or regional planning process; at other times the local match for the funding has not been identified prior to award of the funding. All of these issues can render the funding useless in terms of the project it has been designated for. TxDOT is working with members of the Texas Congressional Delegation, MPOs and local elected officials to try and ensure that funding appropriated for projects throughout Texas can indeed be utilized in an efficient manner. We are also promoting the “regional funding model” utilized by TxDOT as a method to be used by appropriators. At times, states run the risk of allowing their contract authority to lapse due to an inability to obligate those funds before the deadline. Sometimes, this is because states do not have sufficient non-federal funds to match their federal contract authority dollars. States that have available non-federal funds can provide financial assistance to these states by purchasing their unused contract authority (e.g. demonstration projects, surface transportation program, safety, bridges, etc.), thereby increasing available federal funds.

International Trade

- Identify methods which expedite commercial and private vehicle flow through our ports of entry while ensuring a maximum level of safety and security.

SAFETEA-LU restructured the Corridor/Border Program, dividing it and making the border portion a formula program. The new formula program directs funding to border-states for the promotion and facilitation of trade across U.S. borders, as was originally intended. Texas has the most ports of entry and the longest contiguous U.S.-international border. As such, there is a great need for these funds in Texas and the new formula program acknowledges this need. Unfortunately, funding alone will not solve all of our state's border problems. We made advances this last year, and will continue in 2006 to work with a variety of federal agencies, including the Department of Homeland Security, Federal Motor Carrier Safety Administration and the DOT. There is not only a need for expedited commercial and private vehicle flow through our ports, but also a presidential directive. We are working at this time with federal and state partners in an attempt to address this while also ensuring a maximum safety and security. Specifically, we are working to define what a "low-risk port of entry" could be for Texas.

Federal Aviation Reauthorization

- Include provisions in federal legislation to provide a stable funding source for general aviation airport improvements.
- Oppose any efforts to impose a new user fee program for general aviation.

TxDOT supports a stable federal Airport Improvement Program. Many areas throughout Texas depend on a reliable general aviation system. VISION 100, or the Century of Aviation Authorization Act, will expire on September 30, 2007. As we begin work on the next aviation authorization bill, TxDOT will emphasize the need for federal aviation programs to provide adequate and predictable funding for general aviation airport improvements. At the present time, AIP demonstration projects do not always receive federal discretionary funding, requiring states to fund these projects with their already scarce formula funds.

Water Resources Development Act (WRDA)

- Ensure funding for Texas projects in WRDA reauthorization legislation.
- Include provisions in WRDA to allow continued funding of operations and maintenance of Gulf Intracoastal Waterway (GIWW).

Congress has not passed a WRDA reauthorization since the act expired in 2002. The most recent reauthorization proposal passed the House in 2005 and awaits consideration of the full Senate this spring. TxDOT has provided legislators with a list of projects throughout the state in need of funding; however, it is important to Texas to assure adequate funding for the continued provision of operations and maintenance for the GIWW.

Public Transportation

- Explore alternative methods to fund growing operational and capital needs.
- Work with federal partners to further the coordination of public transportation resources throughout the state.

With the passage of SAFETEA-LU, public transportation received more funding than ever before. New and former formula funding programs, such as the Growing and High Density States and Job Access Reverse Commute Program, were established in the bill. Even with these changes, we must continue to work with congressional members and the FTA to explore alternative funding methods to bridge the growing gap between available financial resources and the operating and capital needs of transit providers. SAFETEA-LU also included language to encourage coordination between public and non-emergency medical transportation providers. In consultation with the Regional Planning and Public Transportation Study Group, TxDOT will work with federal partners to further efforts, which began with H.B. 3588 during the 78th Texas Legislature, to coordinate all public transportation resources throughout the state.