

# FORWARD MOMENTUM

Recommendations to:  
Reduce Congestion  
Enhance Safety  
Expand Economic Opportunity  
Improve Air Quality and  
Increase the Value of Texas' Transportation Assets



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## RECOMMENDATIONS TO:

*Reduce Congestion*

*Enhance Safety*

*Expand Economic Opportunity*

*Improve Air Quality and*

*Increase the Value of Texas' Transportation Assets*

A report to the 110<sup>th</sup> Congress, 1<sup>st</sup> Session  
by the Texas Transportation Commission

February 28, 2007

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## INTRODUCTION

Since the passage of the “Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users” (SAFETEA-LU) in 2005, the guiding principle of TxDOT’s federal legislative activities has been “Building on Success.” This principle has not changed; however, in order to ensure the future reliability of our state’s transportation infrastructure, we must now move forward and begin the process of educating our partners on the importance of both building on our past successes and forging new ones.

For more than two decades, the Texas Department of Transportation (TxDOT) has been actively engaged in federal legislative advocacy; however, our greatest challenge may still await us. Experts in and out of the transportation industry predict that the funding levels authorized in SAFETEA-LU will exceed revenues to the Highway Trust Fund within the next few years, effectively rendering it bankrupt. The traditional modes of funding, operation and thinking are no longer working for our state or nation.

In many ways, TxDOT has already begun the education process through the many public meetings it holds throughout the state and the publications it distributes each month. TxDOT worked hard during the course of SAFETEA-LU to lay the groundwork for the use of new and innovative financing tools in transportation infrastructure delivery. During the 110th Congress, the department will continue to work with members of Congress, the Bush administration and our other federal partners to not only protect the gains of SAFETEA-LU, but to strengthen them.

Contained in this report are brief synopses of the Texas Department of Transportation’s 2007, or post-SAFETEA-LU, federal priorities.

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# **TEXAS TRANSPORTATION PRIORITIES**

## **110TH CONGRESS, 1ST SESSION**

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Throughout the development and passage of SAFETEA-LU, TxDOT and its partners—both public and private—fought hard to achieve advances in funding and policy flexibility. At the end of the day, success was achieved. Since the bill’s passage, we have continued to work through the federal rulemaking process to ensure congressional intent is maintained, and with lawmakers to ensure they understand that new laws are creating important new opportunities in Texas. As we move forward into the 110th Congress, it is absolutely critical to further these efforts and our successes.

### **FORWARD MOMENTUM**

The following is an overview of broad policy issues. None of these issues can be considered new, but they continue to be important to the future of our state’s transportation infrastructure delivery system. Other items, such as Aviation Reauthorization and the Water Resource Development Act (WRDA), are elements of timing. All of the issues in one way or another reflect the department’s commitment to achieving its five core goals of reducing congestion, enhancing safety, expanding economic opportunity, improving air quality, and increasing the value of transportation assets.

# HIGHWAY FUNDING PRIORITIES

## IMPROVED FUNDING FLEXIBILITY

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When looking into the future and exploring possibilities for funding Texas' transportation infrastructure, the watchword is "flexibility."

TxDOT has always been a leader in the nation's transportation community. Legislative successes on the federal and state levels have put Texas at the forefront of new and innovative transportation financing. However, because of an institutional overreliance on traditional fuel taxes, moving forward and finding partners willing to work in a new paradigm has at times been challenging.

In SAFETEA-LU, Congress called for the establishment of the National Surface Transportation Policy and Revenue Study Commission (Revenue Study Commission) to examine the nation's surface transportation system, its future needs and how to pay for them. TxDOT believes that the Revenue Study Commission and Congress must upend institutional thinking and embrace innovation. We must strive to achieve a more results-driven funding process with clearly stated goals and objectives. For that to happen, the Revenue Study Commission will need to keep meeting beyond their current deadline of July 1, 2007. Transportation Secretary Mary Peters and others have called for the commission's charge to be extended to year's end. We support the proposed extension and remain ready to share details of the Texas experience with our federal partners.

Along with the Revenue Study Commission, SAFETEA-LU also called for the creation of a second finance policy commission, the National Surface Transportation Infrastructure Financing Commission. This Commission will concentrate its efforts on considering alternative approaches for generating Highway Trust Fund (HTF) revenues.

Over the years, countless studies and panels have been commissioned in an effort to address the future of our nation's transportation system, the HTF and how to fund them. It is our hope that, as a result of their work, the Revenue Study Commission and the Financing Commission will bring national attention to the need for institutional change and be able to develop sound recommendations for Congress and the administration.

Greater flexibility in transportation funding policies will allow Texas and other states to do more with the funds they have, regardless of whether additional funds are made available for transportation projects. However, whether it is flexibility in the use of innovative bond or private activity funds, traditional formula funds, or discretionary funds, a measure of accountability must be included. All federal funds sent to states and local entities should include the proviso that certain transportation-oriented goals be achieved with those funds. TxDOT will work with Congressional and Administrative leaders to develop flexible, goal-oriented transportation funding policies for the future.

***We Propose To:***

- ♦ Work with the National Surface Transportation Policy and Revenue Commission, the National Surface Transportation Infrastructure Financing Commission and our other federal partners to ensure flexible and innovative federal funding for transportation infrastructure needs.
- ♦ Support an amendment to federal law to extend the current tenure of the National Surface Transportation Policy and Revenue Study Commission.
- ♦ Support the development of flexible, goal-oriented transportation funding policies.

## TRANSPORTATION INFRASTRUCTURE INVESTMENT

Although Congress expanded the ability of state departments of transportation (DOT) to issue debt, and also eased a variety of associated restrictions allowing for greater private-sector participation, our nation's transportation infrastructure is still in need of additional sources of capital.

The use of equity capital for investment in transportation infrastructure is gaining attention. Pension funds, both public and private sector, have over \$7 trillion of capital and comprise the largest potential source of investment for future transportation projects. We must now take the next step by urging Congress to allow for expanded means of investment such as equity capital.

### ***We Propose To:***

- Work with Congress to amend federal law to allow equity capital to be utilized as a transportation investment source.
- Work with Congress to amend federal Tax Code to exempt partnership distributions or corporate dividends related to ownership of toll road from income taxation.

## PRIVATE ACTIVITY BOND REFINEMENT

Private Activity Bonds (PABs) are a source of funding used to attract private investment in projects that have a distinct public benefit, such as water and sewage facilities, and public and low-income housing. The tax exemption increases the normally low value of the investor return, allowing public infrastructure projects to better compete for private investment dollars. Until now, airports and maritime ports were the only eligible transportation projects.

Although TxDOT is moving forward and proposing the use of PABs for several of its major projects, issues do exist with current statute. In adopting the new PAB provisions in SAFETEA-LU, Congress provided limited guidance regarding federal limitations on the investment and expenditure of revenues generated by the issuance of these bonds. As a consequence, questions exist regarding arbitrage and right-of-way acquisition limitations, and use of funds for the purchase of existing infrastructure within the given project.

TxDOT will continue to work with its partners in both the legislative and regulatory arenas in an effort to find workable solutions to these issues.

### ***We Propose To:***

- ♦ Pursue legislative remedies to amend restricting provisions and remove limitations on PAB issuance.
- ♦ Work with the Departments of the Treasury and Transportation to adapt regulations to accommodate for the unique needs of highway, rail and intermodal projects under the PAB program.

## TOLLING AUTHORITY EXPANSION

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SAFETEA-LU recognized the importance of tolling as a means of funding needed transportation projects, and also, expanded the ability of state DOTs to utilize tolls on certain types of federally funded projects. It also created three new pilot programs to test the use of vehicle tolls as a means to finance interstate construction and/or reconstruction, reduce congestion and improve air quality.

Tolling isn't an easy or popular decision for states, but TxDOT is leading a national trend toward innovative financing. The Government Accountability Office released a report in June of 2006 that cited Texas (and Governor Perry specifically) as a leader in using tolls to reduce congestion.

Despite our successes in SAFETEA-LU to expand tolling options, federal law still severely curtails states' ability to fully utilize tolling to meet their financing and mobility needs. Federal law generally prohibits imposing tolls on interstate highways for which federal funds have been used. In several situations, however, Congress has enacted specific legislation to allow states to "buy back," or reimburse the federal government for federal funds applied to a highway segment, thereby relieving it of the prohibition against tolls. Congressional efforts to make this option as accessible as possible will greatly assist future endeavors as we seek new ways to fund our tremendous transportation needs in Texas.

Even if such authority is granted on the federal level, state law requires both voter and County Commissioner Court approval before any segment of an existing roadway is converted to a toll facility.

History has shown that it is unlikely the next reauthorization will fully supplement a federal gas tax that has been decreasing in value for decades. TxDOT will work to educate Congress of the importance of including reasonable and efficient funding solutions, such as tolling, in the next reauthorization bill.

### **We Propose To:**

- ♦ Reduce restrictions on tolling programs and remove their pilot project status to give states, such as Texas, as many opportunities as possible for new funding alternatives.

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- Authorize states to implement interstate tolling options beyond current SAFETEA-LU pilot programs and allow toll revenues from toll-financed facilities to be used for other critical system needs.
- Allow states to “buy back” or reimburse the federal government for its share of investment in interstate segments.

## DESIGN-BUILD CONTRACTING

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SAFETEA-LU amended federal law to allow for the use of “design-build,” an innovative method of project delivery that combines the design and construction of a toll project into one contract rather than the traditional “design-bid-build” method. Federal Highway Administration (FHWA) opened its rulemaking process during the summer of 2006 to amend existing design-build contracting provisions. Unfortunately, some elements of the proposed rules did not follow congressional intent. TxDOT worked closely with its partner states and several industry associations to submit comments detailing their concerns with the draft. We will continue to actively work with U.S. DOT and our partners to ensure the creation of a workable set of regulations that meet the intent of language in SAFETEA-LU.

### **We Propose To:**

- Work with our federal partners to ensure that final administrative rules follow legislative intent and do not impose more cumbersome restrictions on the design-build process.

## UNUSED CONTRACT AUTHORITY

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At times, contract authority can lapse because states do not have sufficient non-federal funds to match these dollars. TxDOT believes states that have available non-federal funds should be able to provide financial assistance to other states by purchasing their unused contract authority (e.g. discretionary projects, surface transportation program, safety, bridges, etc.).

### **We Propose To:**

- Amend federal law to provide a state authorization to purchase unused federal contract authority from other state departments of transportation prior to the lapse date.

## ENHANCEMENT FUNDING

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Currently, each state DOT is required to set aside 10 percent of its Surface Transportation Program formula funds for use on transportation enhancement projects such as hike-and-bike trails and historical preservation. With the passage of SAFETEA-LU, Congress dedicated over \$333 million of Texas' federal transportation dollars to fund enhancement projects. While this program is important, its lack of flexibility severely hampers the ability of state DOTs to maximize federal funds to meet their more pressing mobility needs, such as highway construction and maintenance for congestion relief and safety. A review of other states throughout the nation found DOTs exercising little creativity or flexibility with the use of their enhancement dollars. The Enhancement Program would benefit from provisions that more clearly support the use of those funds to support states' mobility needs.

### **We Propose To:**

- Amend federal law to allow state DOTs greater flexibility in their use of enhancement funding to better meet transportation mobility needs.

## DISCRETIONARY PROJECT REFORM

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While well-intended, discretionary projects, or “earmarks” as they are more commonly known, can create significant financial problems for state and local entities. This issue is particularly evident in authorization legislation such as SAFETEA-LU, yet can also be seen in annual appropriation processes. In SAFETEA-LU, a sum of over \$669 million was earmarked for highway-related transportation projects throughout the State of Texas. While this may seem like a substantial and useful sum, approximately a third of the total dollar amount was designated for projects that had not been previously approved via a statewide or regional planning process. Furthermore, authorization bill earmarks do not bring additional funds to the state, but simply subdivide money already promised to the state. As a consequence, communities throughout the state have to “rob Peter to pay Paul” in a constant zero-sum game. Mobility projects that have been approved for funding by local officials must be moved off priority lists so that funding can be reallocated in an effort to fully fund the newly authorized discretionary projects.

This issue is neither new, nor isolated to Texas. DOTs throughout the nation are struggling with how best to address this problem. TxDOT will continue to work with the Texas Congressional Delegation, and regional and local governmental entities in an effort to ensure that funding appropriated for projects throughout Texas can be utilized in the most efficient manner possible.

While many authorization earmarks do more harm than good, other requests—those that reflect a region’s needs and priorities through the appropriations process—can be helpful. TxDOT believes that discretionary projects should comport with state and metropolitan planning processes, and that those which do not should be counted against a local or regional entity’s annual state funding allocation.

As debate begins on development of the next transportation reauthorization bill, TxDOT will work with all its partners, on the local, state and federal level in an attempt to address the issue of authorization earmarks before they once again become a detriment to state transportation funding and delivery processes.

Finally, in an era of unending funding rescissions, TxDOT will work with Congress and FHWA to amend federal law to allow “unused” earmarks to be directed toward meeting a state’s rescission obligations.

**We Propose To:**

- Encourage the Texas Congressional Delegation to limit earmarks to projects that reflect mobility needs identified by statewide and regional planning processes.
- Work with local, state and federal officials to address the negative financial and planning impact of authorization earmarks.
- Work with Congress and FHWA to amend federal law to allow “unused” earmarks to be directed toward meeting a state’s rescission obligations.

## IMPROVED FUNDING EQUITY

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When Texans pay their motor fuel taxes at the pump, they contribute to the federal Highway Trust Fund, which in turn pays for all federal-aid highway programs. Texans deserve to get back a fair share of the gas tax dollars they contribute. TxDOT defines that fair share as a 95 percent guaranteed rate of return on all federal highway program funds.

Current federal law falls far short of this goal. In spite of hard fought gains in SAFETEA-LU, the minimum guaranteed rate of return is only 92 percent and it only applies to 90 percent of all authorized federal-aid highway program funds.

When 100 percent of highway program dollars are taken into consideration, Texas' actual minimum guaranteed rate of return is only 83 percent. This reduced rate of return affects the amount of federal-aid highway program dollars Texans can count on to address the state's growing mobility challenge.

As a result, for every \$1.00 in federal motor fuels taxes that Texans pay to the federal government, they only get back 70 cents in federal-aid highway program funds. Before we can spend any federal tax revenues on our mobility needs, Texans must first contribute 0.5 cents to the federal Leaking Underground Storage Tank Fund; then the next 15.5 cents goes into the Transit Account of the Highway Trust Fund (We estimate that Texas is getting only 8 cents of that 15.5 cent contribution back in federal transit program dollars). The remaining 84 cents gets deposited into the Highway Account. Finally, because Texas' actual minimum guaranteed rate of return (ROR) is only 83 percent, we can only count on that percent of the remaining 84 cents to come back to Texas. As a result, only 70 cents of the original \$1.00 Texas pays into the Highway Trust Fund comes back to the state for highway purposes; and at best, only 78 cents combined of every \$1.00 paid is available for highways and transit projects in Texas.

Congress must continue to make all of the federal-aid highway programs subject to a 95 percent Equity Bonus or similar provision. If that occurred, Texas could see a 12.5 percent increase in its available funds with 80 cents of every Texas motor fuels tax dollar returned to the state.

Congress must also help Texas address its urban congestion through increased federal transit funding to Texas. If Texas also received a 95 percent ROR through the federal transit programs (14.7 cents of every dollar), Texas would finally approach a true 95 percent overall return on its motor fuels tax dollar.

**We Propose To:**

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

# INTERMODAL PRIORITIES

## FEDERAL AVIATION REAUTHORIZATION

General aviation plays a vital role in Texas and supports local economies. It is a necessary access link to business and industry throughout the state. In addition to access benefits, the state's general aviation industry has an annual impact of over \$5.9 billion. As a participant in the Federal Aviation Administration's (FAA) State Block Grant Program since 1993, TxDOT is responsible for taking the lead in carrying out the state's Airport Improvement Program (AIP) for all reliever and non-reliever general aviation airports in Texas. As such, TxDOT supports a stable, reliably funded federal Airport Improvement Program.

VISION 100, or the Century of Aviation Authorization Act, expires on September 30, 2007. As Congress begins work on the aviation reauthorization bill, TxDOT will be educating members and emphasizing the importance of continuing an adequate level of funding for FAA's AIP, vital to the future growth and development of our nation's airport system. As airport congestion continues to grow, providing improved air transportation access to smaller communities will become an even greater issue.

As previously discussed, discretionary projects can be a challenge for Block Grant states such as Texas. These states do not always receive discretionary funding from the FAA for congressionally designated AIP discretionary projects, requiring the reallocation of funding from one location with Texas to another.

### *We Propose To:*

- ✦ Work with Congress and our other federal partners through the aviation reauthorization process to ensure and protect a stable Airport Improvement Program funding source.
- ✦ Recommend a minimum five year reauthorization of the airport grant program.
- ✦ Work with Congress and FAA to ease discretionary funding restrictions placed on Block Grant states in receipt of AIP discretionary projects, while maintaining current formula funding distributions.

## WATER RESOURCES DEVELOPMENT ACT

A Water Resources Development Act (WRDA) has not been reauthorized since the Act expired over four years ago in 2002. The most recent reauthorization proposal passed both the House and Senate; however, the conference report failed to reach consensus in the final days of the 109<sup>th</sup> Congress.

WRDA reauthorizations are traditionally project-driven legislation. TxDOT has worked with local officials in developing a list of projects from throughout the state that have been deemed in need of funding. As in the past, this list will be provided to our delegation for their consideration.

TxDOT's greatest concern however, in the passage of WRDA, is the establishment of a more stable source of funding for the continued operation and maintenance of the Gulf Intracoastal Waterway. We will continue to work with key legislators and industry representatives to push for a more stable source of funding that will better ensure the future viability of our state's coastal waterways.

### ***We Propose To:***

- Work with Congress to ensure a more stable source of funding for the continued operation and maintenance of the Gulf Intracoastal Waterway.

## PUBLIC TRANSPORTATION

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Passage of SAFETEA-LU brought an increase in federal funding to public transportation. However, even with this increase, the gap between available funding and the operating and capital needs of the state's transit providers continues to grow. Operators have found themselves in the position of having to trade off critical capital investments for short-term operating expenditures. TxDOT will continue to work with Congress and the Federal Transit Administration (FTA) to explore new and innovative methods to bridge this ever-growing gap in funding.

Earlier in this document, we stated that earmarks do not always help the big picture in terms of highway funding. Transit can be a different story. With limited budgets that often cannot cover routine maintenance, much less new vehicles, Texas' rural and small urban transit providers are searching for ways to fund their programmatic needs. As individual units, these small providers simply do not have the ability to actively pursue discretionary funding for much-needed capital equipment; however, as a collected group they are much more powerful. We believe the pursuit of a "statewide earmark" for transit vehicles is both worthy and important, and will continue to work with our state's transit providers and the Texas Transit Association to achieve this goal.

To further expand the impact of a statewide earmark, TxDOT is researching the possibility of creating "Regional Maintenance Facilities" throughout the state. Regional maintenance facilities would relieve local providers of many of their maintenance and training costs and focus funding in a manner that could provide the maximum benefit possible.

As with FHWA, the FTA is in the process of proposing new administrative regulations based on actions from SAFETEA-LU. TxDOT submitted comments expressing concerns and suggestions to the FTA regarding several of their proposals, including those for the Job Access and Reverse Commute, New Freedom and Elderly Individuals and Individuals with Disabilities Programs.

### **We Propose To:**

- ♦ Work with the Texas Congressional Delegation to pursue a statewide transit earmark during annual appropriations processes.
- ♦ Continue to monitor FTA's post-SAFETEA-LU rulemaking and work to ensure TxDOT's policy positions are taken into consideration in these processes.

## RAIL RELOCATION AND IMPROVEMENT

SAFETEA-LU authorized a new \$350 million per annum rail relocation and improvement grant program, designed to mitigate the negative effects of rail traffic on safety, motor vehicle flow and community quality of life. Although the program has yet to be funded, TxDOT will strongly encourage Congress to fund not only the existing authorization, but also to expand innovative financing options to include giving states the ability to use surface transportation funds for the acquisition or relocation of rail lines and facilities. Federal support is critical to meet the state's approximately \$15 billion in rail relocation and improvement needs.

### ***We Propose To:***

- Work with members of Congress to ensure a maximum level of funding is appropriated to the state to assist with meeting its rail relocation and improvement needs.
- Amend Chapter 3 of Title 23 to allow states to use surface transportation funds for the acquisition and/or relocation of passenger or freight rail lines and facilities.

## INTERNATIONAL TRADE

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TxDOT is committed to working with our state and federal partners to expedite commercial and private vehicle flow through our ports-of-entry while still doing our part to ensure safe and secure borders. TxDOT does not view those goals as mutually exclusive. The Corridor/Border Program was restructured in SAFETEA-LU by dividing it and making the border portion a formula program. This restructuring has greatly benefited the State of Texas. Under the old program, Texas received only \$4.2 million in fiscal year 2004; under the new program, Texas received approximately \$31.3 million in fiscal year 2005 and is projected to receive \$53.4 million in fiscal year 2009. The new formula program directs funding to U.S. 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 the mobility problems along the Texas/Mexico border. TxDOT will continue work with its federal partners, including Federal Motor Carrier Safety Administration and Homeland Security's Customs and Border Patrol to develop safe and efficient border crossing facilities for the movement of people and freight across our international border.

### **We Propose To:**

- Work with federal partners to identify and employ best methods for expediting commercial and private vehicle flow through our ports of entry while ensuring a maximum level of safety and security.

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