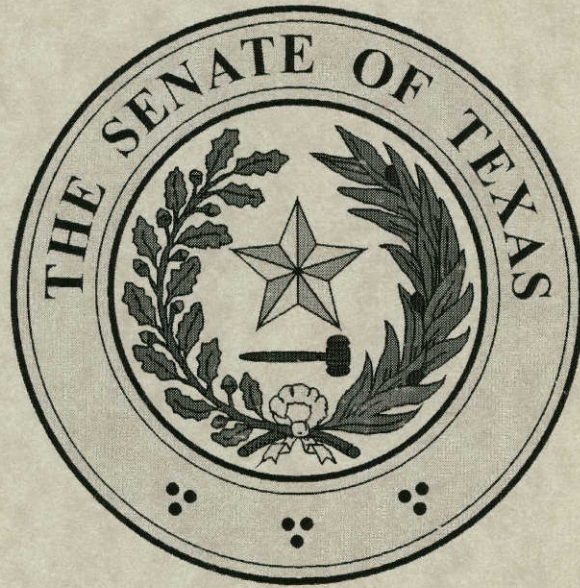


# The Senate Transportation Committee



## Interim Report to the 85th Legislature

November 2016

# SENATE TRANSPORTATION COMMITTEE

SENATOR ROBERT NICHOLS  
Chair  
SENATOR DON HUFFINES  
Vice Chair



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SENATOR SYLVIA GARCIA  
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SENATOR VAN TAYLOR

November 2016

The Honorable Dan Patrick  
Lieutenant Governor  
State of Texas  
Capitol Building, Room 2E.13  
Austin, Texas 78701

Dear Governor Patrick:

The Senate Transportation Committee of the Eighty-Fourth Legislature hereby submits its interim report for consideration by the Eighty-Fifth Legislature. We thank you for providing us the opportunity to address these important issues.

Respectfully submitted,

Handwritten signature of Robert Nichols in black ink.

Senator Robert Nichols, Chair

Senator Don Huffines, Vice Chair

Handwritten signature of Troy Fraser in black ink.

Senator Troy Fraser

Handwritten signature of Bob Hall in black ink.

Senator Bob Hall

Handwritten signature of Lois Kolkhorst in black ink.

Senator Lois Kolkhorst

Handwritten signature of Rodney Ellis in black ink.

Senator Rodney Ellis

Handwritten signature of Sylvia Garcia in black ink.

Senator Sylvia Garcia

Handwritten signature of Kelly Hancock in black ink.

Senator Kelly Hancock

Handwritten signature of Van Taylor in black ink.

Senator Van Taylor



**DON HUFFINES**  
STATE SENATOR • DISTRICT 16

November 28, 2016

The Honorable Robert Nichols  
Chairman, Senate Committee on Transportation  
Sam Houston Building 450 – Post Office Box 12068  
Austin, Texas 78711

Dear Chairman Nichols:

I would like to extend my sincere appreciation to you for all of the work that goes into leading the Senate Transportation Committee. Unfortunately, as this committee's vice chair, I cannot yield to the recommendations of this report. I have the utmost admiration for my fellow committee members and you, this committee's chairman. However, I must respectfully disagree with many of the findings and recommendations of this report, which I feel do not accurately reflect the scope of this committee's hearings throughout the Interim. In lieu of signing on and endorsing the contents of this report, I ask that this letter be admitted as my acknowledgment and respectful rebuttal of its findings.

In one such case, the report concludes that Regional Mobility Authorities (RMAs) undergo "substantial oversight and reporting" even though the Texas A&M Transportation Institute, an organization whose leaders testified during our Interim hearing on RMAs, released a report in February of 2016 that stated, "RMA reporting requirements are minimal and may not capture detailed financial and operating data." These two conclusions are mutually exclusive. Local control of transportation planning and project prioritization is an important policy, but it requires strict oversight of the billions of taxpayer dollars that are vested by the state to RMAs in the form of grants and loans, particularly when some loans are eventually converted to grants. Let us not forget that RMAs are political subdivisions of the state, and let us be ever mindful that the significant taxpayer resources they receive should be met with sufficient oversight. As a watchdog for Texas taxpayers and an ardent supporter of efficient and productive use of limited resources, I firmly believe that current RMA oversight is insufficient, which is why a disinterested third party, such as the State Auditor, must review RMAs' use of taxpayer dollars. This belief is in line with the Sunset Advisory Commission report on the Texas Department of Transportation that calls for additional transparency and oversight of transportation spending. To the extent that political subdivisions of TxDOT receive taxpayer dollars from the state for transportation infrastructure, that same transparency and oversight should apply to them, as well.

In considering mandatory state-imposed vehicle inspections, this report largely neglects the wealth of conclusive, diverse, and scientifically rigorous research that supports the repeal of state-mandated inspections. The report, instead, relies on sources that were not made available to members of this committee. One such source was a pro-inspection research paper that was discredited and debunked before the members of this committee at the hearing on this subject, yet this report still relies on this scientifically dubious information. This

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disregard for the prevailing academic, economic, scientific, and governmental consensus on mandatory vehicle inspections could ultimately impact the residents of this state by asking them to continue paying a fee that is predicated on a false promise. I am deeply disheartened that this committee report would endorse and recommend that millions of Texas drivers be needlessly robbed of their time and money with no discernible safety benefit given in return.

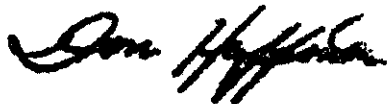
I also find it necessary to draw attention to the report's recommendations regarding the Driver Responsibility Program (DRP). Much like the issue of state-mandated vehicle inspections, the state cannot continue to justify programs that are unnecessarily onerous to Texans merely based on the revenue that these programs generate for the state. To do so would be the antithesis of a limited government philosophy that we should espouse at every turn, where we act on the belief that dollars that stay in the private sector are better spent or invested by families and job creators than they are by state government. It is neither conservative nor compassionate to insist that a debtors' prison, such as the DRP, should be perpetuated to provide a strictly punitive, immoral, and entirely unreliable revenue source for government.

To meet our state's growing infrastructure demands, this committee must take a new direction as it enters into the 85th Legislative Session. Methods of delivery for critical infrastructure must change. For example, DFW residents endure one of the most extensive toll networks in North America. This is an unacceptable outcome for my constituents, who pay the same gas tax as the drivers in East Texas. The latter Texans, however, are not plagued by toll roads, leading to an inequitable transportation infrastructure policy, at best, and highway robbery for my constituents, at worst. It is our responsibility to provide a new vision for transportation, one that works for all Texans.

In conclusion, this report opposes additional transparency and oversight of state tax dollars. It recommends that millions of drivers continue to be burdened by a cumbersome and unnecessary fee for which the state delivers no tangible benefit or return. Lastly, this report prioritizes keeping economically disadvantaged Texans trapped in a punitive debtors' prison over reducing the size of government. For those reasons, I am obligated to withhold my signature from this report.

It has been an honor to serve with you and each of the members of this committee, and I look forward to joining together in the 85<sup>th</sup> Texas Legislature to deliver a transportation infrastructure that will keep Texas businesses and families moving forward.

Sincerely,



Don Huffines  
Senate District 16 - Dallas



# The Senate of The State of Texas

SENATOR RODNEY ELLIS  
District 13

PRESIDENT PRO TEMPORE  
1999 - 2000

COMMITTEES:

Vice-Chair, State Affairs  
Business & Commerce  
Transportation

November 29, 2016

The Honorable Robert Nichols  
Chair, Senate Committee on Transportation  
P.O. Box 12068  
Austin, Texas 78711

Dear Sen. Nichols:

I first want to applaud the work of the Transportation Committee staff in writing this report. It is obvious that they put significant time and effort into researching and compiling all of the data and information.

While I plan on signing on to the report, I do want to express my concern with the recommendation regarding the Driver Responsibility Program (DRP). The DRP is a deeply flawed program that disproportionately affects low-income Texans, and its benefits to the state's trauma care funding should not be used to justify its existence. I strongly believe the DRP should be repealed and hope the 85th Legislature will make this change during the next legislative session.

Sincerely,

A handwritten signature in black ink that reads "Rodney Ellis". The signature is written in a cursive style.

Rodney Ellis

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**SYLVIA R. GARCIA**

STATE SENATOR

DISTRICT 6

Chairman Robert Nichols  
Texas Senate Committee on Transportation  
P.O. Box 12068  
Austin, Texas 78711

Dear Chairman Nichols,

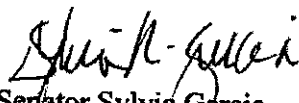
I applaud you and your staff for creating an interim report that is detailed, well-reasoned and balanced. I appreciate the leadership you have shown on all of the issues facing the Transportation Committee.

While I agree with most of its recommendations, I have two concerns. First, while I agree that Vehicle Inspection sticker program should be continued, this issue shouldn't be discussed in isolation. Article 3, Section 49.K, subsection (f)(1) of the Texas Constitution mandates that any revenue associated with vehicle inspections cannot be reduced, rescinded, or repealed unless the legislature dedicates a different source to replace that money. Consequentially, a more detailed discussion of funding solutions is necessary.

Second, although I would prefer a repeal of the Driver Responsibility Program, I am open to some of the reforms suggested in this report. I agree with this report's assertion that the safety of the traveling public is the state's number one priority, and accordingly we should not prioritize the fiscal needs of the State over safety.

Despite these concerns, I wish to convey to you, the committee, and the citizens of Texas who have entrusted us with this duty, that I support the work represented in this report and look forward to working with you to help solve these and other transportation issues that we face.

Sincerely,

  
Senator Sylvia Garcia

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**SENATOR BOB HALL**  
DISTRICT 2

November 30, 2016

The Honorable Robert Nichols  
Chairman  
Senate Transportation Committee  
P.O. Box 12068  
Capitol Station  
Austin, Texas 78711

Dear Chairman Nichols,

Thank you for your leadership and dedication as Chair of the Senate Committee on Transportation. It is my privilege to serve with you, and I appreciate the opportunity to share my perspective regarding the Committee's interim report. I commend the significant effort the Senate Transportation Committee spent on the issues set forth in its interim report, particularly its treatment of Texas ports and commercial vehicle permitting. Because the report includes many fine recommendations, I intend to sign it. However, I submit this letter to be included in the report, as a record of my concerns with a few of the recommendations.

One of my most serious concerns pertains to the report's discussion of the Texas Driver Responsibility Program (DRP) and the recommendations offered. The report asserts that "an all-out repeal would not be plausible" due to "fiscal consequences." The main obstacle to repealing this program, according to the report, is the loss of funding to the Texas trauma system which would "severely impede the system's ability to continue delivering lifesaving care in communities across the state and cause major gaps in the availability of trauma care services." The single source for this far-reaching claim is derived from the written testimony of Mr. Glenn Robinson of the Texas Hospital Association.

The report further recommends that the Legislature eliminate many of the standalone surcharge types and *actually expand the participant base in DRP* "to include individuals who are not necessarily recidivists and would likely be better able to afford smaller points surcharges."

Such legislation understandably would be seen by many Texans as a side-stepping of major issues and a complete dismissal of the fact that less than half of the fines and penalties derived from the DRP are being allocated to the Designated Trauma Facility account. The report itself gives only a cursory acknowledgement at best to concerns with the program's impact on low income Texans, and divergence from the initial intent of the legislation.



**Senate Committees:**

Veteran Affairs & Military Installations - Subcommittee on Border Security *Vice-Chair*, Agriculture, Water & Rural Affairs  
Natural Resources & Economic Development, Transportation, Veteran Affairs & Military Installations



Despite good intentions, the DRP has failed on every front. It has generated less than half of the revenue anticipated, failed to change driver behavior according to traffic incident statistics, and has dramatically increased the number of unlicensed and uninsured drivers on the road. Unable to pay the surcharges, nearly 1.3 million drivers now have invalid licenses. In addition, DRP funds are not being fully allocated to trauma care funding as originally intended. Almost half of all DRP fines and penalties are going straight to the State General Revenue Fund and never reach the designated funding account.

Other means of funding for trauma care can be established. The State should explore eliminating the designated trauma care account and providing funding directly from General Revenue. The Major Events Trust Fund and Texas Enterprise Fund should be eliminated and any uncommitted funds should be applied to initial costs for trauma care. If funding for trauma care is the obstacle preventing DRP's elimination, it means that the program cannot stand on its own merit (intended to make drivers more responsible) and should be eliminated.

In the section regarding motor vehicle inspections, the report essentially says that vehicle safety inspections should continue because they improve driving safety. I take this opportunity to register my disagreement with this assessment and point out that the issue of lost funding was dealt with in a mere two-sentence paragraph at the very end of the discussion.

My disagreement stems from the fact that many, if not a majority of the items inspected have little or nothing to do with safety issues. Of the 21 inspection items listed in the interim report (Pg. 11), at least 9 of them have little or no relation to actually causing an automobile crash or decreasing crash rates.

The seat belts, exhaust system, emissions system, license plate lamp, serial number, VIN number, window tinting, gas caps, and fuel system are all components which are statutorily required to be inspected. However, to use vehicle inspections as the enforcement mechanism for these components under the pretext of safety is dishonest and inaccurate as they have not been shown by either government or private sector studies to affect crash rates.

The U.S. Department of Transportation published a survey in 2008 as part of a Congressional Report in which they examined, among other things, critical mechanical failures attributed to vehicles immediately preceding a crash. Tire failure, brake failure, steering failure, suspension failure, and transmission failure are listed as critical reasons for pre-crash events. Only one type of mechanical failure (tires) is even included in the inspection process. In fact the inspection process itself puts such a negligible focus on safety issues, the whole process would be more accurately renamed for its primary purpose as a "revenue generation" inspection.

Although motor vehicle inspections currently do include some of these items, many are left out, and the argument for keeping them becomes precariously weak when it is considered that a majority of motorists are self-motivated to keep car components such as brakes in good working order.

Fifteen states, including many with high motorist populations such as Florida, have already completely eliminated safety inspection programs. Only twenty-six states still require a scheduled safety inspection each year. By eliminating the inspection program, the Texas Department of Public Safety would also



experience cost savings through a reduction in full-time employees needed to administer the inspections. The motoring public also expends tremendous cost in fees and lost time to comply with the inspection requirement. The cost savings for many individuals and families would be significant if this program were eliminated.

Finally, in its discussion of the third charge, regarding Regional Mobility Authorities (RMAs), the report essentially recommends the status quo, finding that "there seems to be substantial oversight and reporting done by the RMAs." Like many Texans, I believe strongly in accountability and transparency, and am concerned that RMAs oftentimes expend State Highway Funds for invalid reasons.

RMAs are authorized under the Transportation Code, Chapter 370. One significant weakness is that the law allows these units to raise revenue off of toll roads, or to toll existing non-toll roads, and then direct a portion of that money to non-road projects, such as light rail service. The Legislature should eliminate this feature of the law.

RMA reporting requirements are also minimal compared to other agencies and may not capture detailed financial and operating data. The Texas Transportation Institute (TTI) issued a report in February of this year indicating that RMA annual reports and audited statements describe some project details, but sometimes lack details on project expenditures, schedules, and progress. TTI's report stated that "Annual reports are often geared toward displaying the RMA's achievements, in a public-friendly brochure format that lacks specific project management-level details."

Project cost overruns and scheduling problems are also common occurrences with RMAs and exacerbate an already problematic trend of unaccountability.

RMAs should be required to produce more informative reports containing project performance sections, and display how their results align with other RMAs and government agencies.

Thank you for your dedication to these important issues. I look forward to continuing to work with you and other members of the committee during the forthcoming legislative session.

Very truly yours,

A handwritten signature in black ink that reads "Bob Hall". The signature is written in a cursive, slightly slanted style.

Bob Hall

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## Interim Charges

1. Monitor any new and anticipated revenue appropriated to the Texas Department of Transportation and make recommendations that address project prioritization and selection, effectiveness of staffing levels and project delivery methods.
2. Evaluate the efficiency and effectiveness of the state's Vehicle Inspection Program. Make recommendations on how to compress or otherwise reduce the number of required inspections.
3. Review State Highway Fund grants and loans to Regional Mobility Authorities (RMA) and make recommendations if additional oversight procedures are needed to ensure the RMA's expenditures are a valid and accountable use of State Highway Funds.
4. Study the demand placed on the state's ports, roadways and railways resulting from the Panama Canal expansion and make recommendations to ensure transportation infrastructure is adequate to accommodate increases in imports and exports.
5. Evaluate the necessity of the Driver Responsibility Program and make recommendations for alternative methods of achieving the programs objectives.
6. Review current state and federal regulations, penalties and fines related to oversize and overweight vehicles and make recommendations to minimize impacts on the state's roadways and bridges.
7. Monitor the implementation of legislation addressed by the Senate Committee on Transportation during the 84th Legislature, Regular Session and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the following:
  - Progress of the Texas Department of Transportation's efforts to propose a plan to eliminate toll roads;
  - Removing eminent domain authority from private toll corporations;
  - Ending the issuing of any new debt from the Texas Mobility Fund (TMF) and prohibiting future use of the TMF on toll projects; and
  - The Sunset Advisory Commission's review of the Texas Department of Transportation.

## **Senate Committee on Transportation Interim Hearings**

January 27, 2016, Room E1.016

The Committee received invited and public testimony on Charge Nos. 2 and 5.

March 29, 2016, Room E1.016

The Committee received invited testimony on Charge Nos. 3 and 6.

September 14, 2016, Room E1.016

The Committee received invited testimony on Charge Nos. 1 and 7.

*The audio/video recordings, minutes, and witness lists for the above referenced hearings may be found online at: <http://www.senate.texas.gov/75r/senate/commit/c640/c640.htm>*

*Senate Committee on Transportation  
Interim Report to the 85th Legislature*

## Anticipated Revenue

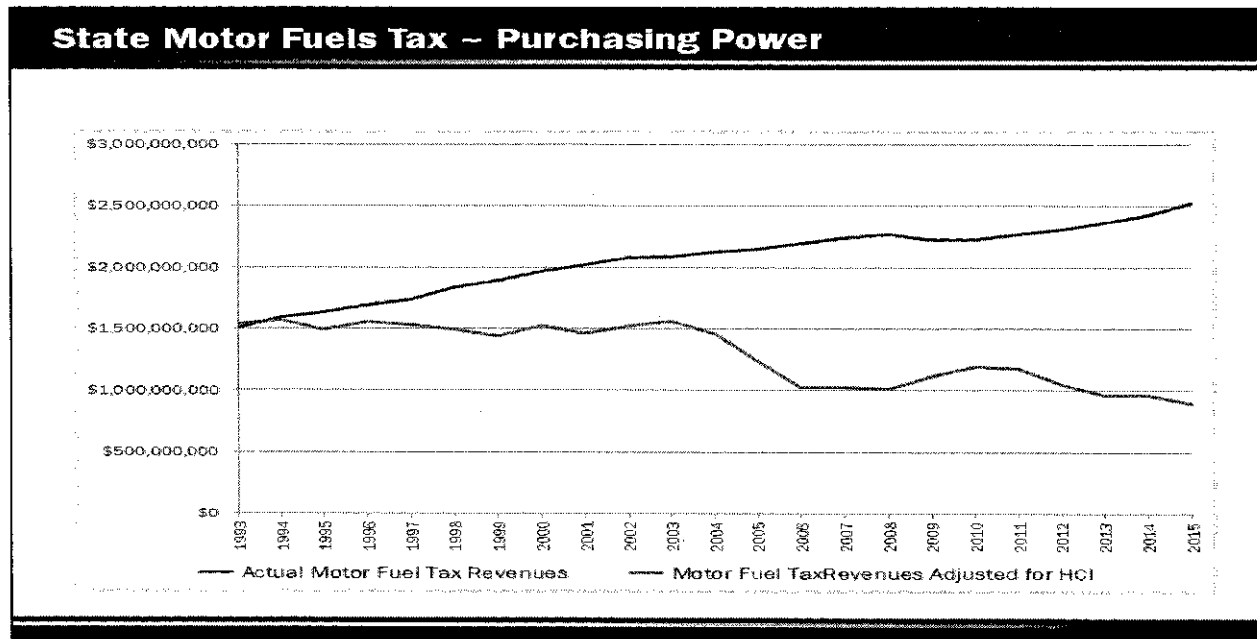
*Monitor any new and anticipated revenue appropriated to the Texas Department of Transportation and make recommendations that address project prioritization and selection, effectiveness of staffing levels and project delivery methods.*

### INTRODUCTION

Highway safety and infrastructure preservation are among the top transportation priorities for the state. There are more than 80,000 center-line miles that are operated and maintained by TxDOT. These pavements are aging while passenger and freight movement in Texas continue to grow. Texas is projected to experience robust growth through 2040 in terms of both population and employment. This growth will be concentrated in urban areas of the state. The projected 61 percent increase in population and 80 percent increase in employment are expected to result in a 57 percent increase in total trip volumes from 2010 levels.

Since the early 2000's, Texas has faced a number of challenges relating to the funding of transportation infrastructure. Among the challenges were the uncertainty of federal funding, historically increasing costs, the aging of the state highway system, increasing population, the revenue effects of increasing fuel economy, the declining purchasing power of state highway funds, and other competing priorities of state budget writers.

The following graphic illustrates the impact of these challenges. The top (blue) line shows actual state Motor Fuel Tax (MFT) revenues since the rates were last adjusted, while the bottom (red) line adjusts the revenue for inflation in construction costs. As is shown, MFT revenues alone have not been able to keep up and sustain the state's infrastructure needs<sup>1</sup>.



<sup>1</sup> Senate Committee on Transportation hearing, Sept. 14, 2016 (written testimony of Marc Williams, Texas Department of Transportation)

In response to these challenges, beginning in 2003, the Texas Legislature has provided several alternative methods of funding that have allowed the Texas Department of Transportation (TxDOT) and its partners to accelerate the delivery of transportation projects. These alternatives have helped get highway projects to construction more quickly than what would have otherwise been possible. Alternative Funding methods have included<sup>2</sup>:

- Comprehensive Development Agreements (CDAs) are a method of alternative financing that enable the state to leverage private investment and share the risks and responsibilities associated with the design, construction, and in some cases financing and maintenance of transportation projects.
- Project Revenue Bonds also known as Toll Revenue Bonds are bonds that are secured by the toll revenue collected. These bonds do not constitute an obligation of the state, the Commission, TxDOT, or any other agency or political subdivision of the state.
- The Texas Mobility Fund (TMF) was authorized by voters in 2001, and the Texas Legislature identified revenues to be dedicated to the fund in 2003 to advance transportation projects. TMF debt service payments are secured by the Fund's revenues and are further backed by the full faith and credit of the state.
  - In 2015, the Legislature enacted legislation that prevents the issuance of new debt except to refund existing bonds for debt service savings and to renew or replace existing credit agreements.
- The Texas Legislature and voters approved roughly \$6 billion for the issuance of State Highway Fund (SHF) Revenue Bonds (Prop 14) for highway improvement projects in 2003.
- In 2007 Texas voters approved a constitutional amendment to allow the Legislature to authorize the Commission to issue up to \$5 billion in general obligation debt. These bonds are referred to as Highway Improvement General Obligation (HIGO), or Prop. 12 Bonds. These bonds, which are payable from the general revenues of the state, are subject to appropriation and can currently be issued up to an aggregate amount of \$5 billion.
- State Infrastructure Banks (SIBs) were authorized at the federal level in 1995 as part of the National Highway Designation Act to allow public and private entities to borrow from states at favorable terms to help accelerate needed highway and transit projects. The Texas SIB, which was authorized in 1997 by the State Legislature, is an account within the SHF.
- Transportation Reinvestment Zones (TRZs) are a tool created by the Texas Legislature to help local entities fund transportation projects. Cities, counties, and port authorities have the authority to set up a TRZ. The local governing body designates a zone in which it will promote a transportation project. Once the zone is created, a base year is established and the incremental increase in property tax revenue collected inside the zone is used to finance a project in the zone. TRZ highway projects may be on or off the State Highway System.

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<sup>2</sup> *Id.*

However, starting in 2013 Leadership and the Texas Legislature decided to change its course, in the issuance of debt to fund projects and focus more on dedicated and reliable funding mechanisms. Thanks to the support from the Governor, Lt. Governor and the Legislature, the voters of Texas overwhelmingly passed Proposition (Prop.) 1 by 80% in November 2014 and Proposition (Prop.) 7 by 83% in 2015. Since the passage of both Propositions, the ending of budgetary "diversions" and passage of House Bill 20 during the 84th Legislative Session, the Texas Legislature has entrusted TxDOT with the state's resources. In doing so those resources were asked to be carried out in a responsible and efficient manner to meet several goals: deliver the right projects, preserve and maintain the state's assets and promote safety.

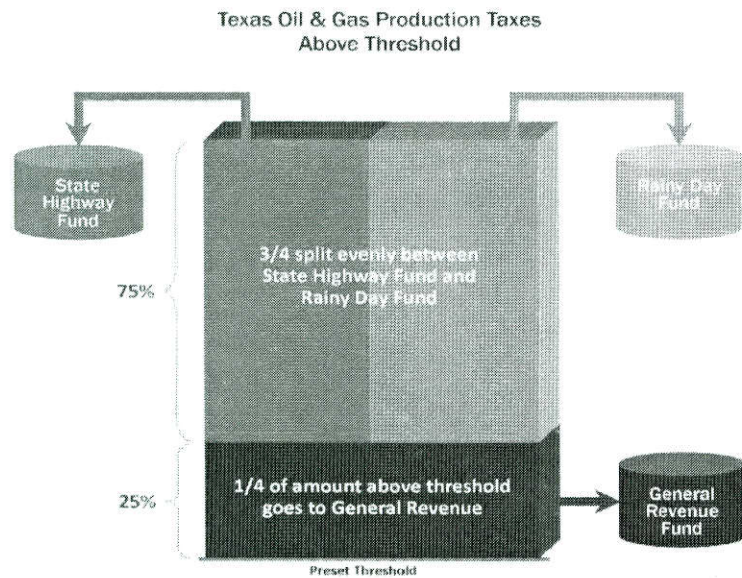
### **Proposition 1**

The 83<sup>rd</sup> Legislature, Third Called Session, approved Senate Joint Resolution 1 (SJR 1), proposing a constitutional amendment creating Proposition 1 (Prop. 1), a new funding source that provided for "the transfer of certain General Revenue (GR) to the Economic Stabilization Fund (ESF) also known as the "Rainy Day Fund" and to the State Highway Fund (SHF) and for the dedication of the revenue transferred to the SHF"<sup>3</sup>. Prop.1 funds may only be used "for constructing, maintaining, and acquiring rights-of-way for public roadways other than toll roads".<sup>4</sup> The funds are deposited into a subaccount within the SHF. In the month preceding each regular legislative session, the Joint Select Committee to Study the Balance of the Economic Stabilization Fund (ESF) determines and adopts a sufficient balance of the ESF. Twenty-five percent of oil and gas severance tax deposits above the ESF sufficient balance are dedicated to fund public education. The remaining 75 percent of the severance tax is distributed evenly between the ESF and the SHF.

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<sup>3</sup> Senate Joint Resolution 1-83rd, 3rd Special Called Session, <http://tlis/BillLookup/Text.aspx?LegSess=833&Bill=SJR1>

<sup>4</sup> *Id.*



**Note:** Actual amounts deposited to the State Highway Fund may vary based on the maximum balance of the Rainy Day Fund set by the Legislature's Joint Select Committee to Study the Balance of the Economic Stabilization Fund.

To date, the SHF has received two Prop. 1 deposits. The first deposit of Prop.1 to the SHF was in the amount of \$1.74 billion in the first half of FY 2015. The second deposit of \$1.13 billion was made in the first half of FY 2016. The state will set aside \$879 million for transfer to the ESF and the SHF based on fiscal 2016 oil production tax collections. Due to a decline in natural gas production tax collections, the Texas Comptroller of Public Accounts' projects a third deposit of \$439.5M million in the first half of FY 2017.<sup>5</sup> The exact amount of future Prop. 1 funds deposited to the SHF is unknown. The uncertainty of future deposits of Prop.1 to the SHF is due to the volatility of oil and gas production. Due to the volatility, the Legislature and TxDOT use an estimate of \$875 million per fiscal year, which is the 10-year historical average of surplus oil and gas taxes that would have been deposited to the SHF if Prop. 1 had been in effect over the last 10 years.

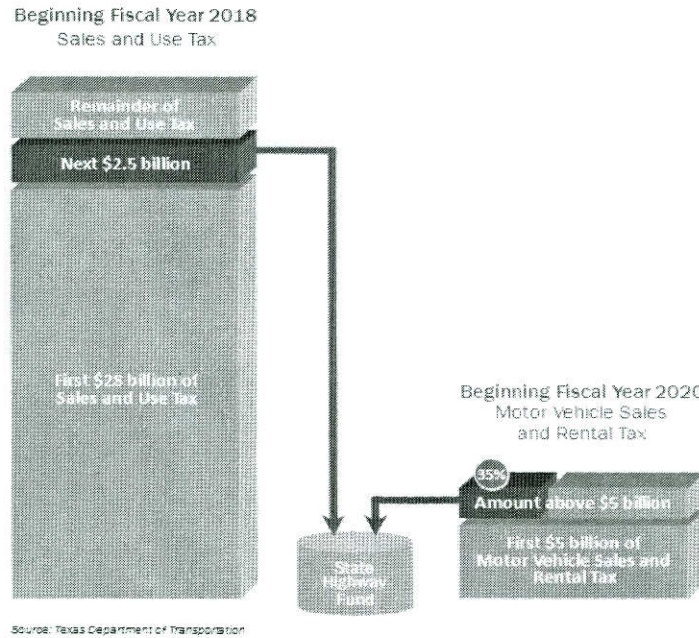
### **Proposition 7**

Prop.7 funding for state highway improvement projects is expected to become available in the second half of FY 2018. Assuming the state's sales and use taxes reach the Comptroller of Public Accounts estimated levels, there is an expectation of \$2.5 billion in FY 2018 and another \$2.5 billion in FY 2019 to be deposited to the SHF for highway improvement projects<sup>6</sup>.

<sup>5</sup> <http://comptroller.texas.gov/about/media-center/news/2016/160907-revenues.php>

<sup>6</sup> Senate Committee on Transportation hearing, Sept. 14, 2016 (written testimony of Marc Williams, Texas Department of Transportation)





In future biennia, the annual Prop. 7 deposits are estimated to increase beyond \$3 billion. The forecasting of Prop. 7 estimates are based on several assumptions<sup>7</sup>:

- 1) state sales and use taxes will rise above \$30.5 billion beginning in FY 2018;
- 2) state motor vehicle sales and rentals taxes will significantly exceed \$5 billion annually;
- 3) the Legislature will not reduce Prop. 7 appropriations; and
- 4) highway improvement funds will not be appropriated to pay Proposition 12 General Obligation Bond (Prop. 12) debt service.

**Federal Funding- FAST ACT**

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<sup>7</sup> *Id.*

The Fixing America's Surface Transportation (FAST) Act was signed into law on December 4, 2015. The FAST Act provides for five years of federal authorization and funding. Long-term federal funding provides the state of Texas with greater financial certainty to oversee the development of large, multi-year projects.

The states prior cash forecast estimates were based on assumptions that Obligation Authority (OA) for Moving Ahead for Progress in the 21st Century (MAP-21) would stay the same in the near future and decline as uncertainty grew over OA in later years. The enactment of FAST Act allows TxDOT to conservatively assume that federal OA will remain available for at least two biennia<sup>8</sup>.

OA for FY 2018 and FY 2019 is estimated to be \$3.4 billion and \$3.5 billion, respectively. Federal reimbursements are expected to total \$5.7 billion in FY 2018 and \$5.1 billion in FY 2019<sup>9</sup>. If Congress moves forward with rescissions, then highway expenditures could be cut in Texas and in other states<sup>10</sup>.

### **Diversions**

By ending budgetary diversion, the state has boosted highway spending by \$1.2 billion over the biennium. In the past, diversion tapped gasoline tax and vehicle registration money from roads to such items as school buses, arts and historical commissions, but recently has mainly gone to paying for state troopers' salaries.

### **HB 20**

HB 20 amended state law pertaining to the operations of transportation planning and expenditures by TxDOT and various transportation planning organizations. Two major aspects of HB 20 are: (1) revisions to the planning and programming processes that planning organizations, TxDOT and the Commission currently use to prioritize and finance transportation infrastructure projects; and (2) new requirements that TxDOT adopt a performance-based planning and programming process with performance metrics, measures and scoring for project selection, while requiring local transportation organizations to develop a 10-year plan for the use of funding allocated to the region<sup>11</sup>.

In addition, HB 20 establishes House and Senate Committees on Transportation Planning to review, study and evaluate certain aspects of transportation funding, project selection and prioritization, performance measures and metrics, and policymaking. Furthermore, HB 20 makes other changes to transportation policy and TxDOT operations, such as creating certain

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

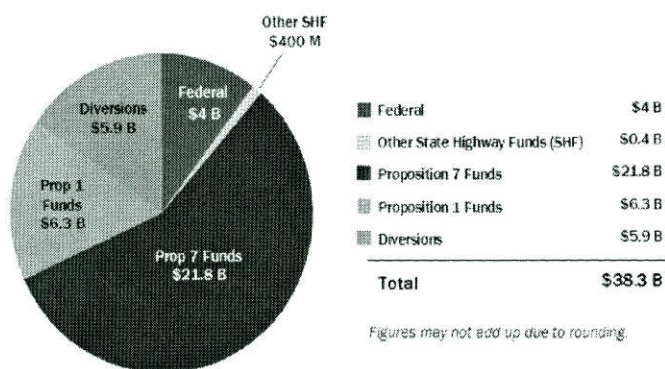
<sup>11</sup> *Id.*

stipulations on design-build contracts by TxDOT and removing policing state highways as an allowable use of money in the SHF, helping to end diversions<sup>12</sup>.

With the assistance of the Planning Organization Stakeholder Committee (POSC) which was comprised of representatives from seven Metropolitan Planning Organizations (MPOs) as well as representatives from seven TxDOT districts, TxDOT has taken a number of steps to fulfill the requirements of HB 20. These actions include consideration of performance-based criteria as part of recent efforts by the Commission to distribute category funding in the 2017 update to TxDOT's Unified Transportation Plan (UTP)<sup>13</sup>.

The UTP is developed annually in accordance with the Texas Administrative Code (TAC §16.105) and is approved by Commission annually prior to August 31<sup>14</sup>. The UTP authorizes projects for construction, development and planning activities and includes projects involving highways, aviation, public transportation and state and coastal waterways. Despite its importance to TxDOT as a planning and programming tool, the UTP is neither a budget nor a guarantee that projects will be built. However, the UTP is a critical tool that guides project development across Texas. In addition, it is a key communication tool that TxDOT uses to foster understanding with stakeholders and the public about project development commitments<sup>15</sup>.

## Conclusion



On August 25, 2016, the Commission approved the 2017 UTP, which contained an historic increase in available funding, specifically an additional \$38.3 billion in funding for fiscal years of 2017-2026.<sup>16</sup> The Commission's approval of the UTP in August directed the new \$38.3 billion to key priorities, including<sup>17</sup>: (1) addressing safety; (2) preserving existing transportation assets; (3) targeting congestion and urban mobility

needs; (4) enhancing regional connectivity corridors; and (5) focusing on strategic initiatives.

This unprecedented level of additional funds are a direct result of actions taken by Governor, Lt. Governor, Texas Legislators, the United States Congress and Texas voters. Texas voters responded by overwhelmingly supporting both constitutional amendments. During the last legislative session, the Texas Legislature put an end to using money in the State Highway Fund (SHF) for the needs of other state agencies and in December of last year, Congress passed a new

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 2017 UTP -- <http://www.txdot.gov/inside-txdot/division/transportation-planning/utp.html>.

<sup>17</sup> *Id.*

five-year federal funding and authorization bill. Nevertheless, it is important with the infusion of additional funding, TxDOT monitor and improve on several issues such as: increasing the amount of engineers on staff, which is essential for the day to day operations of TxDOT. As staff are responsible for the engineering and management of projects, it is necessary there are adequate staff accessible to implement in a timely manner, the additional projects that come with an increase in funding. As well as the purchase of Right of Way, and work with utility companies to relocate utility lines as projects progress.

## Inspection Stations

*Evaluate the efficiency and effectiveness of the state's Vehicle Inspection Program. Make recommendations on how to compress or otherwise reduce the number of required inspections.*

### INTRODUCTION

In the 1930s and 1940s, states began establishing mandatory, periodic vehicle inspection programs to ensure the proper functioning of important safety features.<sup>18</sup> The rationale behind states implementing mandatory inspections was that proper maintenance of automobiles is critical for their safe operation. Improperly functioning brakes, brake lights, headlights, turn signals and other features can result in otherwise avoidable accidents. A lack of maintenance on a vehicle can result in accidents involving other drivers or pedestrians. In 1966, Congress mandated the withholding of federal highway funds from states failing to enact mandatory safety inspections, which increased the number of state programs. Implementation delays by some states led Congress, in 1977, to remove the threat of withholding highway funds<sup>19</sup>. However rail, truck, commercial bus, and aircraft have federally mandated safety inspection programs in the United States, while inspections of personal vehicles, which make up the majority of passenger miles, are optionally imposed at the state level.

### History of the Texas Vehicle Inspection Program<sup>20</sup>

#### 1925 – 1967

- The earliest legislation in Texas relating to safety inspections was the headlamp test law passed in 1925. The law was administered by the Texas Highway Department and was a result of a federal report forecasting the impact of the automobile's popularity in the United States and the need for legislation to regulate its operation.
- The Highway Department was then given authority to approve types of headlights and other vehicle equipment. This authority was transferred to the Department of Public Safety (DPS) when it was organized in 1935.
- House Bill 223, adopted by the 52nd Texas Legislature in 1951, established a compulsory vehicle inspection program.
- In 1957, DPS was reorganized and the state was divided into six regions providing for increased enforcement in rural areas.
- In 1967, the 60th Texas Legislature added steering, wheels and rims, and front seat belts to the inspection criteria.

#### 1969 – 1971

- In 1969, the 61st Texas Legislature added the exhaust system and the exhaust emission system to the items for inspection and the location of the inspection sticker was moved from the lower right-hand corner of the windshield to the lower left-hand corner.

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<sup>18</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of Dr. Daniel Sutter, Troy University)

<sup>19</sup> *Id.*

<sup>20</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of RenEarl Bowie, Texas Department of Public Safety)

Additionally, the fixed deadline of inspection was changed to permit a year-round or staggered system of inspection, where the inspection certificate expires 12 months from the date of issue.

- In 1971, the 62nd Texas Legislature passed legislation providing that an investigating officer of an accident could remove the inspection sticker from the windshield if the vehicle had sustained damages which would make the vehicle unable to pass inspection requirements. Additionally, tires were added to the items for inspection.

#### **1973 – 1977**

- In 1973, the 63rd Texas Legislature required vehicles owned by state agencies and political subdivisions to be inspected. The legislation also required motorcycles to be inspected.
- In 1977, the 65th Texas Legislature passed House Bill 1772 which gave a five-day grace period for enforcement on expired inspection stickers.

#### **1983 – 1993**

- During the 68th Texas Legislature in 1983, House Bill 1593 provided for a two-year inspection sticker for new cars and light trucks.
- The 72nd Texas Legislature in 1991 passed several bills which substantially impacted the Texas Vehicle Inspection Program. House Bill 2 prohibited the issuance of an inspection sticker to a vehicle unless the owner/operator showed proof of financial responsibility. House Bill 2 also repealed legislation that provided for two-year inspections for new vehicles.
- In 1993, the 73rd Texas Legislature passed legislation allowing for the impoundment of vehicles operated or parked in a public place displaying an inspection sticker that was fictitious or issued to another vehicle. Senate Bill 926 reinstated the two-year safety inspection sticker for new vehicles sold in Texas.

#### **2007 – 2009**

- The Texas Motor Vehicle Inspection Program accomplished significant strides by moving away from an antiquated system of paper records and reports to an electronic portal called TAVIS (Texas Automated Vehicle Inspection System).
- As a result of DPS' department-wide reorganization in 2009, the Texas Vehicle Inspection Program was moved from the Highway Patrol Division to the Regulatory Services Division (RSD).

#### **2012-2014**

- The Vehicle Inspection Connection (VIC) officially replaced TAVIS in 2012 to allow vehicle inspectors the ability to record a passing inspection with one click, decreasing the time necessary to enter inspection reports to the state. This Internet-based application continues to offer flexibility with a condensed and streamlined checklist, providing workflow efficiencies and a decreased business investment to conduct inspections.
- VIC enhancements were added through 2014 to ensure efficiency for inspectors and inspection stations.

#### **HB 2305 (“One-Sticker Bill”)**

- House Bill 2305, passed by the 83rd Texas Legislature in 2013, requires the DPS, the Texas Commission on Environmental Quality (TCEQ), and the Texas Department of Motor Vehicles (DMV) to implement a one sticker system to replace the current two sticker system.
- HB 2305 establishes a registration-based system for enforcement of motor vehicle inspection requirements.
- Effective March 1, 2015, DMV or a county tax assessor-collector must verify that the vehicle has passed the required inspection, as indicated in the DPS inspection database, before the vehicle can be registered. If the database information is not available, the vehicle owner may present a passing Vehicle Inspection Report (VIR) issued for the vehicle, in order to complete the registration process. The VIR is not required to be carried for potential display to a peace officer except for commercial vehicles.

## **Texas Registration**

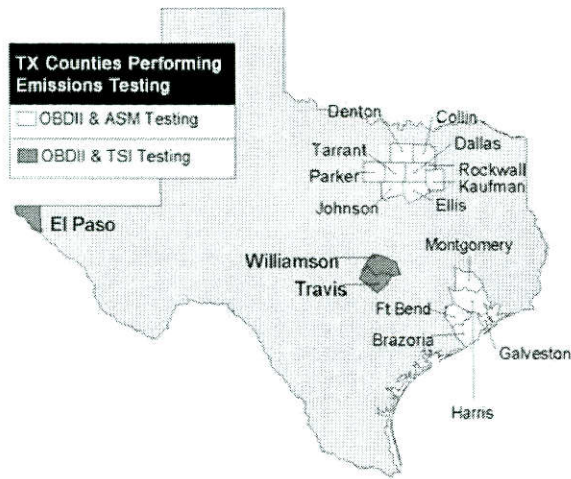
Vehicles registered in Texas are required to pass an annual inspection to ensure compliance with safety standards. All inspections are governed under Transportation Code Chapter 548.051. The type of vehicle determines the specific inspection items. For example, the items inspected for a passenger car are different than the items inspected for a truck-tractor or school bus. The most common inspection is completed for a passenger vehicle<sup>21</sup>.

### **Passenger Vehicle Inspection Items**

1. Horn
2. Windshield Wipers
3. Mirror
4. Steering
5. Seat Belts
6. Brakes (system) (Parking - beginning with 1960 models)
7. Tires
8. Wheel Assembly
9. Exhaust System
10. Exhaust Emission System (beginning with 1968 models)
11. Beam Indicator (beginning with 1948 models)
12. Tail Lamps (2); (1) if 1959 model or earlier
13. Stop Lamps (2); (1) if 1959 model or earlier
14. License Plate Lamp (1)
15. Rear Red Reflectors (2)
16. Turn Signal Lamps (beginning with 1960 models)
17. Head Lamps (2)
18. Motor, Serial, or Vehicle Identification Number
19. Applied window tinting or coating
20. Gas caps on vehicles 2-24 model years old.
21. CNG Fuel System – if so equipped.

<sup>21</sup> Texas Department of Public Safety, <http://www.dps.texas.gov/rsd/vi/index.htm>

While safety inspections are required throughout the state, emissions testing is required of vehicles inspected in **17 Texas counties** to comply with federally mandated clean air requirements<sup>22</sup>.



Vehicle inspections are performed at Official Vehicle Inspection Stations licensed by DPS. Enhanced vehicle emissions inspections were implemented in affected areas in Texas to improve air quality and are integrated with the annual safety inspection program and operated by DPS in conjunction with the TCEQ. Enhanced inspections began in Collin, Dallas, Denton, Harris, and Tarrant Counties on May 1, 2002, and in Brazoria,

Ellis, Fort Bend, Galveston, Johnson, Kaufman, Montgomery, Parker, and Rockwall Counties on May 1, 2003. Travis and Williamson Counties implemented enhanced inspections on September 1, 2005, and El Paso County on January 1, 2007<sup>23</sup>.

In recent years, some states have chosen to eliminate the vehicle safety inspection program because of budget constraints and concerns about program effectiveness. Currently, 26 states have a schedule for conducting safety inspections, Pennsylvania is one of thirteen states that currently require all personal light duty vehicles to be inspected every year. The remaining states have completely eliminated safety inspection programs.

States with a Vehicle Inspection Program States Currently Requiring Annual Safety Inspections		States that Repealed Inspection Programs		
State	Started	State	Started	Ended
Pennsylvania	1929	Colorado	1937	1981
Maine	1930	New Jersey	1938	2010
Massachusetts	1930	District of Columbia	1939	2009
New Hampshire	1931	New Mexico	1953	1977
Virginia	1932	Mississippi	1961	2015
Delaware	1933	Georgia	1965	1982
Utah	1936	Wyoming	1967	1977
Vermont	1936	Florida	1968	1981
Texas	1951	Idaho	1968	1976
West Virginia	1955	Kentucky	1968	1978
New York	1957	South Carolina	1968	1995
Rhode Island	1959	South Dakota	1968	1979
Louisiana	1961	Arkansas	1969	1998
Hawaii	1961	Indiana	1969	1980
North Carolina	1966	Nebraska	1969	1982

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*



Missouri	1969	Oklahoma	1969	2001
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\*Source: Texas Department of Public Safety

### *Argument For Repeal of Inspection Station*

Dr. Sutter, Ph.D., Troy University, believes that legislation is needed to address the issue of safety inspections and their lack of public benefit to citizens of the State of Texas. Below are several arguments he submitted to the Committee and discussed during the interim hearing.

Nationally, highway fatalities have fallen from an average of over 50,000 per year in the 1970s to less than 35,000 over the past five years, even as about half of the state inspection programs have been abolished. Declining fatalities as the number of inspection states declined also suggest a limited impact of inspections on highway safety<sup>24</sup>.

Despite the intuitive link between inspection and safety, several factors might lead inspections to fail to improve safety outcomes. One reason is the potential for offsetting behavior on the part of drivers to changes in the safety of cars and the highways<sup>25</sup>. Drivers will slow down when heavy rain or snow make roads treacherous, and might drive more cautiously if a headlight or brake light is out.

The contribution of mechanical failure to accidents may have declined over time as well; 13 percent of fatal accidents were attributed to defects when Texas implemented its inspection system in the 1950s.

Periodic, mandatory inspections may also simply be ineffective at achieving the intended goal<sup>26</sup>. Texas' annual inspection requires only that the covered parts function on the day of inspection. Drivers have an incentive to perform maintenance to keep themselves and their families safe. If people replace covered parts frequently on their own, inspections will cause only a small number of repairs<sup>27</sup>.

Most states without inspections authorize law enforcement personnel to issue tickets if vehicle safety features are not operating, or even conduct spot safety inspections<sup>28</sup>. If law enforcement personnel can readily identify, ticket, and consequently incentivize drivers to perform maintenance, inspections of all cars may not be necessary to avoid defect-related accidents. Tickets target only cars needing repair, in contrast with the blunt instrument of inspecting all cars to force the needed repairs<sup>29</sup>.

<sup>24</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of Dr. Daniel Sutter, Troy University)

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

The ability of drivers to choose among numerous licensed repair shops render mandatory inspections particularly vulnerable to fraud. Drivers of cars which could not pass a bona fide inspection have an incentive to seek out and patronize stations performing pro forma inspections. A small proportion of fraudulent inspectors and inspections can allow the cars needing repairs to slip through the cracks, leaving thousands of cars in good condition to incur the costs of unneeded inspections<sup>30</sup>.

Older vehicles are more likely to require repairs to pass legitimate inspections. Effective mandatory inspections should increase the cost of owning an older car, reducing the proportion of older cars on the road.

Inspections have also been linked anecdotally to attempts by repair shops to induce customers to pay for repairs not required to pass the inspection. The induced demand could take the form of claiming that a covered part, like brakes, would not pass inspection without repair, or claiming that some item not actually covered by the state's law must be repaired to pass inspection<sup>31</sup>.

A strong piece of evidence complementing our findings comes from the insurance market. Auto insurers in states lacking mandatory inspections could offer premium discounts for drivers voluntarily having a safety and maintenance check performed on their car. Insurers could even work with major auto repair chains to craft their own inspection program<sup>32</sup>.

Many states, and 17 counties in Texas, use periodic emissions tests to verify the proper operation of cars' pollution control equipment. Researchers in environmental economics have found mandatory emissions tests suffer from many of the weaknesses identified for safety inspections. These studies provide independent confirmation that periodic and anticipated inspections are an ineffective policy instrument<sup>33</sup>.

According to Dr. Sutters testimony, he believes that mandatory inspections have no detectible impact on highway safety, they do cost Texans money. Drivers pay \$7 upon inspection and \$7.50 when registering their vehicles. This amounts to over \$100 million for the state's nearly twenty-four million registered automobiles. The cost to service stations who actually check the over 20 inspection criteria could easily exceed the \$7 they are allowed to charge. Approved inspection stations are quite numerous in Texas, and so the cost of travel to obtain an inspection is generally low. Drivers incur a time cost while the inspection is performed. These costs result in no documentable benefits<sup>34</sup>.

### *Arguments for Maintaining Inspection Stations*

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

A 2015 paper in *Transportation Research* recommended that states maintain mandatory inspections (Peck, Matthews, Fischbeck and Hendrickson 2015), but examined the inspection pass rate for vehicles in Pennsylvania. The study found the state safety inspection fail rate for passenger vehicles is 12–18 percent, well above the often-cited rate of two percent<sup>35</sup>. Vehicles that are older than three years old or have more than approximately 30,000 miles can have much higher rates. When analyzing new vehicles, less than or equal to one year old, it is found that even these vehicles have a failure rate greater than zero<sup>36</sup>.

In 2007, the Pennsylvania Department of Transportation (PennDOT) hired Cambridge Systematics to study its safety inspection program. Pennsylvania is considered to be one of the most rigorous safety inspection programs implemented in the country<sup>37</sup>. In their analysis, four years of data on fatalities were examined at both the state and county-level to assess the effectiveness of the vehicle safety program<sup>38</sup>. They used various national databases to account for weather, demographics, and socioeconomic variables. The Cambridge study estimated one to two fewer fatalities per billion vehicle miles traveled (VMT) for any state with a safety program and concluded the vehicle safety inspection program was effective<sup>39</sup>.

A contradicting 2008 study, sponsored by North Carolina legislators, found "no evidence exists showing the safety program is effective" and "program oversight by DMV is inadequate". The study referenced the use of crash data from Nebraska's Division of Motor Vehicles comparing the three-year crash average before and after the discontinuation of Nebraska's vehicle safety inspection program<sup>40</sup>. While they do not find the inspection to effectively reduce vehicle component fatal crashes, they state a limitation to the analysis is "because law enforcement personnel are not mechanics and receive a minimal amount of training in compiling and reporting accident data, it is unlikely a true assessment of how many accidents result from mechanical defects is possible". The report admitted the quality and uniformity of inspections is difficult to enforce, especially in a decentralized inspection program such as North Carolina's<sup>41</sup>.

The majority of vehicle safety inspection publications are relatively old and showed mixed conclusions on whether or not safety inspection programs were effective. Furthermore, these analyses were mostly high-level, comparing overall state inspection program effectiveness and generally not using detailed, county-level, inspection record datasets<sup>42</sup>. It is valuable to do a more detailed analysis due to the varying implementation of the safety inspections from state to

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<sup>35</sup> [http://www.compuspections.com/reports/CMU\\_TransportationResearch\\_PartA.pdf](http://www.compuspections.com/reports/CMU_TransportationResearch_PartA.pdf)

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

state and varying driving patterns from vehicle to vehicle. States with stronger oversight and rigorousness may prove to be a more effective program overall<sup>43</sup>.

Additional factors discussed and taken into consideration were, year of vehicles, locations, total miles traveled and the need for variations in state-specific analysis. A county-scheme distribution allows for conclusions to be drawn based on the population density of a given location, allowing for assertions to be made depending on varying driving patterns due to driving location (e.g., rural county vehicles are driven more yet represent less of the state)<sup>44</sup>. Finally, failure rates are examined based on odometer readings, which perhaps reflect both vehicle age and driving location, as younger vehicles tend to be driven more than older vehicles and vehicles in rural counties tend to be driven more than those in urban counties<sup>45</sup>.

No paper was found to explicitly analyze actual safety inspection pass or fail rates, which may greatly aid an effectiveness study on the inspection level rather than fatal crash level.

In Texas, inspection data is recorded and held in databases owned by TCEQ and DPS. Full inspection data records are considered proprietary, and are not generally used for program performance assessment.

## **CONCLUSION**

While the vehicle fleet is expected to be getting safer over the next few years due to improvements in technology or other external circumstances, the inspection failure rate does not appear to be trending toward zero in the near future. Most vehicles in Texas are more than two to three years old, and additionally one cannot assume that an individual is always responsible for the care and maintenance of a vehicle. Below is a chart showing the amount of inspections passed and failed. While the number of failed exams is not significant they are common.

<b>Number of Vehicle Inspections Passed and Failed</b>		
	<b><u>FY 2014</u></b>	<b><u>FY 2015</u></b>
Passed	19,064,769	19,230,906
Failed	292,361	252,299

\*Source: TxDPS

It also is important to recognize that accurate inspection data is limited and often incorrectly analyzed. Arguments made against the importance of safety are fairly speculative. Lastly, the importance of vehicle maintenance over a vehicle's lifetime is proven to be evident, since regular usage causes vehicles to deteriorate. We conclude that vehicle safety inspections should continue

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

to be implemented in order to keep driving conditions safe, until the inspections impact could be proven otherwise.

Finally, an issue that was not discussed was the funding gap which would hit General Revenue (GR) if the state were to remove or eliminate safety inspections. Below is a chart that shows revenue from Fiscal Year (FY) 2014 from Inspections, resulting in a reduced amount sent to GR.

<b>FY 2014 Estimated Revenue from Stickers Sold</b>		
Revenue Associated with Safety Inspections	\$	116,616,575
Revenue Associated with Commercial Safety Inspections	\$	13,294,000
Total Revenue Associated with Safety Inspections	\$	129,910,575
Revenue Associated with Emissions Inspections	\$	66,430,200
<b>Total Revenue from Sticker Sales</b>	<b>\$</b>	<b>196,340,775</b>

## Regional Mobility Authorities

*Review State Highway Fund grants and loans to Regional Mobility Authorities (RMA) and make recommendations if additional oversight procedures are needed to ensure the RMA's expenditures are a valid and accountable use of State Highway Funds.*

### **BACKGROUND**

Today, more than ever before, we must rely on effective partnerships between the public and private sectors in order to meet the challenge of funding mobility improvements. RMAs present partnership opportunities between the state and its local partners to meet the transportation needs of Texans<sup>46</sup>.

Pursuant to Chapter 370, Texas Transportation Code, RMAs are governmental entities composed of one or more counties or certain municipalities, authorized by the legislature to construct, maintain and operate local transportation projects. Local transportation projects may include roadways, turnpike projects, rail facilities, airports, port facilities and transit systems<sup>47</sup>.

The Texas Transportation Commission (Commission) has, as required by Chapter 370, adopted rules governing the creation and dissolution of RMAs, establishing limited policies applicable to RMAs, including the approval of RMA-proposed projects connecting to the state highway system<sup>48</sup>.

Counties and municipalities that seek to create an RMA must petition the Commission and gain approval. County Commissioners' Courts, and city councils where applicable, must vote to create or join an RMA. Nine RMAs have formed since the Legislature authorized their creation in 2001. The table below outlines the creation to date of all current RMAs' and their boundaries<sup>49</sup>.

County	Created	Counties/Municipalities
Alamo RMA	December 2003	Bexar County
Cameron County RMA	September 2004	Cameron County
Camino Real RMA	June 2006	City of El Paso
Central Texas RMA	October 2002	Travis and Williamson Counties
Grayson County RMA	April 2004	Grayson County
Hidalgo County RMA	November 2005	Hidalgo County and the City of McAllen
North East Texas RMA	October 2004	Bowie, Kaufman, Cherokee, Gregg, Harrison, Panola, Rusk, Smith, Titus, Upshur, Wood, and Van Zandt Counties

<sup>46</sup> Senate Committee on Transportation hearing, March. 29, 2016 (written testimony of James Bass and Benjamin Asher, Texas Department of Transportation)

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

Sulphur River RMA	June 2007	Lamar, Delta, Hopkins and Hunt
Webb County-Laredo RMA	February 2014	Webb County and the City of Laredo

\*Source:TxDOT

## **Transportation Projects and Systems**

RMA's have the authority to acquire, design, finance, construct, operate and maintain a transportation project or system for the benefit of a region and the state. Benefits of RMA's include the following<sup>50</sup>:

- Advancing transportation projects and bringing congestion relief;
- Providing a formal, locally-accountable board for mobility issues;
- Generating revenue for additional transportation projects in the service area;
- Giving local governments more control in transportation planning and construction; and
- Improving mobility and increasing safety for motorists.

The Commission establishes design and construction standards for state-wide uniformity for RMA highway projects on the state system, or those which will connect to a highway on the state system, or a TxDOT rail facility. The Commission must approve any projects connecting to the state highway system or TxDOT rail facility<sup>51</sup>.

## **Transportation Project Financing**

RMA's may use the following statutorily authorized revenue sources<sup>52</sup>: (1) tolls, fares, fees, or other project revenue; (2) government grants and loans; (3) the proceeds of RMA issued revenue bonds; (4) donations; (5) contract payments under an agreement with certain public or private entities; and (6) dedicated taxes and fees for local projects. RMA's are one of several entities which may own and operate a toll facility in Texas. Other tolling entities include TxDOT, regional toll authorities, and county toll authorities.

Texas Transportation Code § 370.111 allows RMA's to issue transportation revenue bonds to pay for some or all system-wide transportation projects. Bonds issued by an RMA under this statute do not constitute state indebtedness or create any state responsibility to pay debt service.

Tolls, fees, fares, or other charges must pay for the cost of maintaining, repairing, and operating an RMA transportation project. RMA's must also pay debt service on any issued bonds, as due. Finally, RMA tolls, fees, fares, or other charges must support any other payment obligation made under contract or agreement<sup>53</sup>.

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*



Surplus revenue may be used for funding other eligible transportation projects, reducing tolls on turnpike projects, or for deposit into the Texas Mobility Fund<sup>54</sup>. Surplus revenue is revenue that exceeds RMA debt service requirements for a transportation project; payment obligations under contract or agreement; coverage requirements for bond indentures; project operation and maintenance costs; the cost of repair, expansion, or improvement of a transportation project; funds allocated for feasibility studies; and other necessary reserves<sup>55</sup>.

### TXDOT Grants to RMAs

Occasionally, TxDOT assists RMAs with initial investments of funds in local transportation systems. RMAs have received TxDOT funds to begin projects that require long-term investment and reliable credit. The State Highway Fund (SHF) is the most common source of funding for TxDOT RMA grants. From the time RMAs were first authorized under Senate Bill 342 (77<sup>th</sup> Legislature, Regular Session, 2001), the Commission has committed and TxDOT has distributed grants to the nine RMAs listed below<sup>56</sup>.

TxDOT Grants issued to RMAs		
Regional Mobility Authority	TxDOT Commitment	Amount Drawn as of 12-2015
Alamo RMA	\$214,270,919	\$143,749,196
Cameron County RMA <sup>A</sup>	\$88,935,436	\$39,060,836
Camino Real RMA	\$1,288,309,681	\$967,163,495
Central Texas RMA	\$741,402,442	\$498,392,135
Grayson County RMA	\$6,500,000	\$1,945,862
Hidalgo County RMA <sup>B</sup>	\$139,912,792	\$21,830
North East Texas RMA	\$204,169,309	\$204,169,309
Sulphur Springs RMA	\$0	\$0
Webb County-Laredo RMA	\$51,576,126	\$0
<b>TOTAL</b>	<b>\$2,735,076,705</b>	<b>\$1,854,502,319</b>

### TXDOT Loans to RMAs

Loans may be made in the form of State Infrastructure Bank (SIB) loans, SHF loans, or other TxDOT agreements with the RMAs. The Commission has made and TxDOT has distributed the following loans to the nine RMAs listed below<sup>57</sup>.

TxDOT Loans to RMAs		
Regional Mobility Authority	TxDOT Commitment	Loan Outstanding as of 12-2015
Alamo RMA	\$20,890,000	\$20,890,000
Cameron County RMA <sup>A</sup>	\$21,600,000	\$15,418,783

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

Camino Real RMA	\$66,830,000	\$58,860,047
Central Texas RMA <sup>B</sup>	\$91,610,000	\$50,000
Grayson County RMA	\$3,500,000	\$235,711
Hidalgo County RMA <sup>C</sup>	\$0	\$0
North East Texas RMA <sup>D</sup>	\$51,450,000	\$58,104,604
Sulphur Springs RMA	\$3,001,226	\$2,645,376
Webb County-Laredo RMA	\$0	\$0
<b>TOTAL</b>	<b>\$258,881,226</b>	<b>\$156,204,521</b>

## Reporting Requirements

Pursuant to Texas Transportation Code § 370.038, the Commission has adopted rules establishing minimum audit requirements, reporting requirements, and ethical standards for RMA directors and employees. Audit requirements and reporting requirements are found in Title 43, Texas Administrative Code (TAC) §§ 26.61-26.65. Title 43, TAC § 26.56 requires internal ethics and compliance procedures for RMAs<sup>58</sup>.

RMAs must annually submit compliance reports to the Executive Director of TxDOT and project reports to the Commission. These reports include progress on compliance with RMA performance requirements established in the rules for each fiscal year and the status of transportation projects<sup>59</sup>.

Texas Transportation Code § 370.182 requires RMAs to have an annual audit performed by an independent, certified public accountant. RMAs are required to submit financial and operating reports to each member-county and city. Under state statute, RMAs must submit reports to member counties and cities that include the authorities' activities including all transportation revenue bond issuances anticipated for the coming year, the financial condition of the authorities, all project schedules, and the status of authorities' performance under the most recent strategic plan. Reports must be submitted no later than March 31<sup>st</sup> of each year<sup>60</sup>.

Below is an itemized list provided by the Central Texas Regional Mobility Authority outlining all reporting they conduct in a year.

### ***Oversight and Accountability Documents***

1. Independent, External Audit: required each year
  - a. Financial Statements, Supplemental Schedule, and Management Discussion and Analysis – (RMA must provide to public and counties and independent auditor's report each year and make a presentation if requested) (Gov't code 2258-023)
2. Single Audit – (Basic Financial Statements and Federal Awards Compliance Report)
3. Compliance report required by TAC 26.65 – All RMAs)
4. 2015 Quarterly Report to Governor Abbott (with copies to local delegation (discretionary))
5. Project Report to TxDOT Transportation Commission

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

6. Annual Continuing Disclosure Report – by: First Southwest Securities. Posted on EMMA and sent to all investors
7. System Accuracy Assessment Report 2011 – Required by RMA – (as self-test/evaluation of efficiency of system)
8. 2015 Annual Report of Conditions – (Overall conditions of roadways maintenance, any recommendations of Gen. Eng. Consultants.) Sent to Trustee (Regions Bank) and posted on EMMA.
9. FY 2015 Proposed Operating Budget / June 25, 2014 - (as adopted by Board of Directors)
10. 2014 Strategic Plan – (published every even numbered year)
11. Moody’s Investor Service – Ratings Update
12. Standard & Poor’s – Ratings Update
13. Financial / Investor Information – (Investor due diligence - Additional information provided via website – and in many cases duplicative of items here today – another tool)
14. Risk Management Audit to ensure proper risk protection of all assets and facilitates. Sent to Trustee.
15. CTRMA Dashboard
16. 2015 Annual Report

### CONCLUSION

As Texas continues to experience exponential population growth, demand on the state-wide transportation system will only increase. TxDOT’s partnerships with RMAs allow for the advancement of crucial transportation projects based on local needs and priorities. Upon review, there seems to be substantial oversight and reporting done by the RMAs.

## Texas Ports

*Study the demand placed on the state's ports, roadways and railways resulting from the Panama Canal expansion and make recommendations to ensure transportation infrastructure is adequate to accommodate increases in imports and exports.*

### **Lieutenant Governor Patrick Announces Select Committee on Texas Ports**

Lieutenant Governor Patrick announced the creation of a new Senate Select Committee on Texas Ports to study the economic benefit of the Panama Canal expansion to Texas ports. The Select Committee will focus on what Texas ports, including inland ports, must do to remain competitive in this new era.

The Senate members appointed to the Select Committee on Texas Ports are as follows:

The Senate members appointed to the Select Committee on Texas Ports are as follows:

Sen. Brandon Creighton – Chair	(represents ports of Beaumont, Port Arthur and Cedar Bayou)
Sen. Jose Menendez – Vice Chair	(represents the Port of San Antonio)
Sen. Juan “Chuy” Hinojosa	(represents Port of Corpus Christi)
Sen. Lois Kolkhorst	(represents the ports of Bay City, Calhoun, Palacios, Victoria and West Calhoun)
Sen. Eduardo “Eddie” Lucio, Jr.	(represents the ports of Brownsville, Harlingen, Isabel and Mansfield)
Sen. Jane Nelson	(represents Fort Worth Alliance Airport)
Sen. Larry Taylor	(represents the ports of Galveston, Houston and Texas City)

"Texas ports are critical to our economy and the Senate is leading the charge to keep Texas the leader in exports and imports in our nation." Texas Lt. Governor Dan Patrick

*The Select Committee has taken over this charge, please visit Senate Select Committee on Texas Ports for recommendations on this Interim Charge.*

## **Driver Responsibility Program**

*Evaluate the necessity of the Driver Responsibility Program and make recommendations for alternative methods of achieving the programs objectives.*

### **BACKGROUND**

In 2003, the Texas Legislature created a dedicated funding stream to support the delivery of trauma care services across the state. In the 13 years since, nearly 80 additional hospitals have achieved trauma designation ensuring this critical care is available statewide to all Texans, regardless of where they call home.

Today, more than 280 designated trauma facilities statewide provide care related to more than 120,000 trauma incidents each year. These include motor vehicle crashes, assaults, falls and any kind of traumatic injury requiring immediate medical attention. A coordinated system of care is necessary to make sure patients can be transported, received and cared for at the appropriate level of care within 60 minutes, also known as the golden hour, for medical intervention to be most effective in saving lives and saving function<sup>61</sup>.

The Texas trauma system has been highly effective at saving lives. The state's trauma case fatality rate for 2014 was 2.54 percent, almost half a point lower than in 2013. These life-saving successes would not be possible without a strong statewide trauma system and dedicated trauma care funding.

A strong trauma system benefits all Texans. As Texas' population grows, our state's trauma system must have the support to grow with it. The American College of Surgeons recommends at least one Level 1 trauma center for every million people.

Yet not everyone who needs trauma care can pay for it. In 2015, Texas trauma facilities reported more \$300 million in trauma care costs for which there was no third-party reimbursement. Trauma funding of \$54 million from state general revenue offset a portion of these costs<sup>62</sup>.

Without an adequately funded trauma system, hospitals are more likely to have to divert patients for care to other facilities that may not be as equipped to handle the level of trauma need. In a Houston study in 2002, the mortality rate nearly doubled when both of the city's Level 1 trauma centers were on diversion<sup>63</sup>.

### **Issue:**

Currently, the state's Driver Responsibility Program (DRP) is the leading source of funding for the Texas trauma care system. The DRP requires drivers convicted of certain traffic offenses, such as driving while intoxicated, to pay annual surcharges for three years to maintain their

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<sup>61</sup> Email: Between Carrie Kroll, Texas Hospital Association and Jonathan Sierra-Ortega Nov. 1, 2017

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

drivers' licenses. Failure to pay a surcharge may result in driver's license suspension. Unfortunately, many drivers have been unable to pay the surcharges. This has resulted in a shortfall of anticipated trauma care funding and increases in county jail incarceration for driving without a valid license and driving without insurance<sup>64</sup>.

DRP fines and penalties are allocated to Account 5111, the Designated Trauma Facility and Emergency Medical Services Account (49.5%), the General Revenue Fund (49.5%), and DPS for administration of the program (1%). Funds from Account 5111 are then distributed to Texas trauma hospitals to offset a portion of their unreimbursed trauma care costs<sup>65</sup>.

Over the past few legislative sessions, advocacy efforts have increased to repeal the DRP. These efforts have highlighted concerns with the program's impact on low income Texans, the criminal justice system, local administration, revenue collection, and divergence from initial intent. Legislation has been proposed to repeal the program to avoid these unintended consequences<sup>66</sup>.

However, repealing the DRP without replacing lost funding to the Texas trauma system would severely impede the system's ability to continue delivering lifesaving care in communities across the state and cause major gaps in the availability of trauma care services<sup>67</sup>.

#### **Current DRP Relief Programs<sup>68</sup>:**

1. DPS provided an amnesty program to eligible drivers in 2011. Fifteen percent of the overall number of eligible drivers participated. (Other amnesty options and future time periods are being explored).
2. Courts offer a statutorily defined Indigency Program which waives surcharges owed, provided the individual produces adequate evidence to the courts to establish indigency.
3. By rule, (37 TAC §15.166) DPS offers an Indigency Program under which surcharges are waived for individuals who complete an application and provide documentation sufficient to prove that their income is at or below 125 percent of the federal poverty level as defined annually by the United States Department of Health and Human Services.
4. By rule, (37 TAC §15.165) DPS offers an Incentive Program which reduces surcharges owed for individuals who complete an application and provide documentation sufficient to prove they are living above 125 percent of the poverty level but less than 300 percent of the federal poverty level as defined annually by the United States Department of Health and Human Services.

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<sup>64</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of Glenn Robinson, Texas Hospital Association)

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of Joe Peters, Texas Department of Public Safety)

5. Upon implementation of the surcharge program in 2004, if a participant defaulted on an installment agreement, he/she was required to pay the remaining balance in full. Legislative changes in 2009 allowed DPS to reestablish installment plans upon receipt of payment in an amount equal to the required monthly payment. This provided relief to participants who were not able to pay a remaining surcharge balance in full but who were able to resume monthly payments.

6. By rule (37 TAC §15.161) as authorized by TRC §708.056, DPS established a points reduction program that provides for the deduction of one point accumulated by a person for each year that the person goes without points conviction appearing on his/her driver record.

7. Currently, DPS offers an option to program participants to pay newly assessed surcharges in a single up-front payment for standalone surcharges. (Driving While Intoxicated (DWI), Driving While License is Invalid (DWLI), No Drivers License (DL), No Insurance). This allows the individual to pay in advance the total amount owed for the 36 month period for which the surcharge would be assessed.

8. DPS has established a military deferral program for persons who have been assessed a surcharge, and who are members of the United States Armed Forces on active duty and deployed outside of the U.S.

9. The Department of Public Safety has developed an outreach program to inform more individuals about DRP by: (1) Including a statement about DRP in TexasSure letters, license renewal notices, and on certain websites, and; (2) Developing training curriculum on DRP for peace officer training.

10. DPS is developing outreach to courts to notify DRP participants of the option to reduce the amount of DRP surcharges for offenses of No Insurance (TRC §708.103) or No DL (TRC §708.104) by 50 percent if drivers comply with applicable insurance and driver license laws within 60 days of the offense.

### **Driver Responsibility Program Redesign<sup>69</sup>**

#### ***Redesign Driver Responsibility Program (DRP) to make it a Points Based System***

**Concept A:** Redesign the existing DRP program to make it a points-only program; increase the type of convictions that can be assessed points; lower points surcharges to a more affordable level to improve compliance and lower the points threshold for creation of the surcharge. This involves a significant system change to eliminate all standalone surcharges. Consideration may be given to exclude **Driving While Intoxicated (DWI)** surcharges by leaving DWI surcharges as the only standalone surcharge due to the severity and serious nature of DWI offenses. Revenue loss to the State will likely be offset with the assessment and collection of additional points surcharges applied to additional offenses.

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<sup>69</sup> *Id.*

**Impact:** Reduces impact to drivers with surcharges in the categories of No Insurance, DWLI, and No DL. It is anticipated there would be no reduction in collected revenue under this concept. More drivers would be subject to smaller surcharge assessments under this concept and would expand the participant base to include individuals who are not necessarily recidivists and would likely be better able to afford smaller points surcharges.

This concept would:

1. Eliminate No Insurance Surcharges as a standalone surcharge type.
2. Eliminate Driving with an Invalid (Suspended) License (DWLI) as a standalone surcharge type.
3. Eliminate Driving with No License / Expired License as a standalone surcharge type.
4. A DWI would be unchanged
5. Cause additional surcharges to be added to the Points category.
  - a) Under today’s DRP statute, drivers are assessed a surcharge of \$100 upon accumulating six points on their driving record.
  - b) Under this concept, a driver would be assessed a smaller surcharge for upon accumulating two, three, four and five points.
  - c) The exact amount of the smaller surcharges that could potentially be collected is dependent on the number of drivers who accrue the requisite points on their driver records at any given time.
  - d) The surcharge amounts under this model could be adjusted to ensure the reduction / elimination of No Insurance, DWLI, and No DL surcharges is offset, so there is no reduction in revenue collected under the current program.
  - e) Additional research will be required to conduct an in depth analysis and establish required surcharge amounts for the lower point totals to ensure this concept would be revenue neutral.

**Current Surcharge Assessments and Collections**

<u>Surcharge Type</u>	<u>Surcharge Assessed Annually (\$)</u>	<u>Surcharges Assessed Annually</u>	<u>Collected Per Year (\$)</u>
<b>No Insurance</b>	125,000,000	475,000	\$55,000,000
<b>No DL</b>	50,000,000	425,000	\$17,500,000
<b>DWLI</b>	70,000,000	260,000	\$21,000,000
<b>TOTAL</b>			<b>\$93,500,000</b>

To be effective, this option would require making all types of reported traffic convictions eligible for surcharges. This approach would significantly increase collections over the current statutory structure provided the assumptions remain valid upon review.

Lower per point surcharges are less onerous and are likely to result in much higher collection rates, especially for drivers with only one or two convictions subject to surcharge.

**Points Option Assessments and Collections**



<u># of Drivers</u>	<u># of Convictions</u>	<u># of Points (New System)</u>	<u>Assessed per Surcharge (New Program)</u>	<u>Assessed per Year (\$)</u>	<u>Collected Projection per Year (\$)</u>
2,458,410	1	2	40	\$98,336,400	\$60,968,568
1,064,284	2	4	80	\$85,142,726	\$52,788,490
379,289	3	6	120	\$45,514,735	\$28,218,136
178,533	4	8	160	\$28,565,275	\$17,710,471
86,663	5	10	200	\$17,332,662	\$10,746,250
49,198	6	12	240	\$11,807,453	\$7,320,621
28,682	7	14	280	\$8,030,845	\$4,979,124
18,333	8	16	320	\$5,866,541	\$3,637,255

Assumptions:

1. The table above assumes a collection rate of 62 percent and \$20 per point surcharge.
2. Conviction counts are based on an annual total provided by the Department and then multiplied by three (the number of years the points remain on the driver record).
3. There is no consideration for points reduction statutes. The impact of applying points reduction is difficult to calculate as we do not have data regarding how many individuals have less than one surcharge for points assessed every 12 months.
4. Depending on the fiscal impact of points reduction in a largely points based system, it may be necessary to consider eliminating points reduction statutory language to ensure fiscal actual collections remain consistent with projections.
5. DWI Surcharges are not included in any calculations due to the serious nature of the DWI convictions.
6. Collections will occur at a similar rate to the collection yield of points surcharges under DRP's existing program structure.
7. The ratio of convictions which resulted in accidents vs those that did not is not factored into this calculation. The calculation is treating all convictions the same. Offenses which resulted in a vehicle crash currently yield one additional point more than those which did not involve a traffic crash.
8. The calculation of convictions and points is based on a review of the driver record activity on a 36-month rolling basis.

9. Overall Collection Rate is based on a mean average after 36 months from the assessment date of the surcharges.

### **Modify DRP to establish One time Surcharge Assessment vs Advance Pay Option<sup>70</sup>**

**Concept B:** If the Driver Responsibility Program were modified to include a one-time surcharge assessment rather than advance pay over the three years currently in place, the following projections can be made:

1. At present, and for the past five years of DRP trending, approximately 50 percent of paying participants opt to pay surcharges in full (not advance pay, just the annual amount) and 50 percent enter installment plans
2. With the advent of a statutory change which would shift all surcharges to a single up-front assessment, surcharge amounts increase up to three-fold (ex: No Insurance surcharges increase from \$250 per year for three years to one assessment of \$750).
3. Fewer participants are projected to have the discretionary income to pay the larger upfront amounts. This assertion is supported by the fact that less than three percent of participants who are able to tender a payment of three years in advance (as authorized under law today) elect to do so.
4. It is projected the percentage of participants who enroll in monthly installment plans will increase as a proportion of paying participants overall.
5. Because monthly payment minimums equal annual surcharge amounts (in today's program), no fiscal impact is projected. Using the example of No Insurance surcharges totaling \$750 (\$250 per year assessed over three years) if the one-time surcharge of \$750 were assessed, more participants would likely enter into installment agreements to maintain compliance.
6. The minimum monthly payment required for a \$750 surcharge amounts to \$20.83 per month or approximately \$250 annually, which results in no impact to collected revenue and in fact may result in an improved collection rate.

### **Increase Current Minimum Payment Schedule to all Participants<sup>71</sup>**

**Concept C:** If DRP were modified to permit participants with outstanding surcharges assessed prior to 9/1/11 to enter installment plans using the current statutory minimum payment schedule, the following is projected:

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

1. At present, monthly installment payments for the smallest surcharge are \$8 per month for surcharges assessed after 9/1/11.
2. For surcharges assessed prior to 9/1/11, the smallest monthly payment amount authorized by statute is \$25.00.
3. For participants with three or more surcharges, this represents a significant difference in monthly payment requirements.
4. A \$100 surcharge assessed prior to 9/1/11 would be paid off in four payments of \$25. The same surcharge assessed after 9/1/11 could be paid off in 12 monthly payments of \$8.33.
5. This modification would result in a projected reduction of \$250,000 to \$350,000 in collected revenue over the first biennium. Collections would normalize to present day levels in subsequent biennia since longer installment plans would have matured.

### **Community Service for Waiver or Reduction in Surcharge<sup>72</sup>**

**Concept D:** Modifying DRP to permit participants to enter into community service offered through and monitored by the courts to either reduce or waive their surcharges.

Community service could be designed to assign a designated per hour dollar value, such as the state minimum wage, to be applied to reduction or elimination of surcharges and prevent driver license suspension for non-compliance.

Examples below if the state minimum wage of \$7.25 per hour of service were applied:

Community Service Hours:	Surcharge Reduced by:
10 hours	\$72.50
20 hours	\$145
30 hours	\$217.50
40 hours	\$290

**Or**

Surcharge Amount	Community Service Hours required to comply:
\$500	69
\$750	104
\$1000	138

1. The courts would advise participants of this option when they appear in person at the court for disposition.

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<sup>72</sup> *Id.*

2. The court would notify DPS at the time of conviction that community service has been approved and the number of hours required for surcharge reduction or elimination.
3. Notice reflecting the adjusted payment amount or waiver amount will be sent to the participant by DPS.
4. The surcharge notice would be sent to the participant and if receipt of community service completion is not received within 105 days of court notification, the 105-day notice will be mailed, giving the participant 30 days to enter into an installment agreement for the full amount of the surcharge or the license will become suspended.
5. Fiscal impact is undetermined as we are unable to predict the number of participants who would take advantage of this option.

### **RECOMMENDATIONS**

The issue of the drivers responsibility program should continue to be monitored and studied by the Legislature. DPS has recommended several viable recommendations to move forward with a transition in how the program should be implemented. Due to fiscal consequences, an all-out repeal would not be plausible and the legislator should consider perhaps looking closely at phasing the driver responsibility program into a points system while leaving Driving While Intoxicated (DWIs) as the lone program to collect the existing surcharges.

## **Oversize and Overweight (OS/OW) Vehicles**

*Review current state and federal regulations, penalties and fines related to oversize and overweight vehicles and make recommendations to minimize impacts on the state's roadways and bridges.*

Federal interest in preserving highways goes back to the enactment of the Federal-Aid Highway Act of 1956, which authorized the Interstate and Defense Highway System. To preserve the Nation's infrastructure and to keep trucks and buses moving efficiently, states must ensure commercial motor vehicles comply with federal size and weight standards. The Federal Highway Administration (FHWA) is responsible for certifying state compliance with Federal standards.

### **History of OS/OW Regulation in Texas**

Statutory regulation of truck size and weight and of OS/OW trucks has been in effect in Texas since 1929, with passage of House Bill No. 583 amended Articles 833 and 834 of the 1925, Texas Penal Code.

Article 833 was amended to give authority to the State Highway Commission to forbid the use of roads and bridges under certain circumstances. This included the authority to post notices to forbid the use of such highway or section thereof “by any vehicle or loads of such weight or tires of such character as will unduly damage such highway.” The statute also authorized the state to set the maximum load permitted on highways and the times when their use would be prohibited. Article 834 amended the Penal Code and gave the Commissioners’ Court of any county—subject to this law—as well as the State Highway Commission power and authority to regulate the tonnage of trucks and heavy vehicles which by “reason of the construction of the vehicle or its weight and tonnage of the load shall tend to rapidly deteriorate or destroy the roads, bridges and culverts along road or highway.” The law required notices to be posted about the maximum load permitted and the time such use is prohibited.

Two other bills were passed during this session that regulated size, weight, and dimensions of vehicles using the public highways. SB 10 and SB 11 regulated the operation of super-heavy or oversize trucks on the public highways<sup>73</sup>.

SB 10 set out the permitting system for operation of super-heavy or oversize equipment on the public highways where the commodities could not be reasonably dismantled and where the gross weight or size exceeded the limits allowed by law. The bill also set out the application for permit authorization. It required the applicant to file a bond with the State Highway Department in an amount set by the department to pay for damage that might be sustained. The bond fee was set at \$5, which was to be deposited to the credit of the Highway Maintenance Fund<sup>74</sup>. The bill also

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<sup>73</sup> Transportation Research Board & Trucking Industry Research Committee, *Transportation Research Circular E-C146, Trucking 101-An Industry Primer*, (Dec. 2010).

<sup>74</sup> *Id.*

required the permit to “contain details on the applicant, equipment to be transported over the highway along with weight and dimensions and the kind and weight of the specific commodity.” The bill also required the permit to state “the highway and distance over which the commodity would be transported and list any conditions that related to the issuance of the permit.”

SB 11 set out the tolerances for weight and axles spacing for vehicles to operate on the public highways. SB 11 prohibited the operation of commercial vehicles on the public highway if their weight was in excess of five percent of the registered gross weight<sup>75</sup>.

HB 6 of the 41st Regular Legislative Session in 1929 also set up within the General Laws of Texas for the construction, maintenance, regulation, and supervision of public highways and provided revenue for this by the licensing of vehicles and distribution and apportionment of fees to the state and county highway funds<sup>76</sup>.

For many years, these regulations stayed in the same form, with one amendment occurring in 1931 and 1949, respectively. However, since 1971, the size and weight laws have been modified many times. This includes not only changes to basic gross vehicle weights, but also more robust regulation of OS/OW trucks, the exemption of certain classes of vehicles and the introduction of the 2060/1547 permit as a one-stop permit to allow OS/OW carriers to operate in multiple counties. Additional changes have been directly tied to maintenance and rehabilitation of the highway network and provide revenues for permit issuance and inspection of loads by DPS and other law enforcement jurisdictions<sup>77</sup>.

The safety of the traveling public is the state's number one priority. Increase OS/OW truck traffic associated with our state's growing economy has amplified long-standing concerns about the impact of that traffic on Texas highways<sup>78</sup>. However it is also important to recognize the importance of freight industry in Texas as it is a huge contributor to our state economy. OS/OW trucks are operating over highways, roads, and bridges not designed for either the weight or volume of that traffic, which is why it has been imperative for the State to get involved. Keeping the traveling public is no easy task, yet in conjunction with TxDOT, DMV, and DPS helping to facilitate and enforce the movement of the state's goods has made Texas prosperous and competitive with other states. Insuring the safety of the traveling public, including OS/OW vehicle operators, is a primary strategic goal of the state legislature, TxDOT, DMV's Motor Carrier Division and enforcement section, and DPS' size and weight enforcement divisions<sup>79</sup>.

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<sup>75</sup> *Id.*

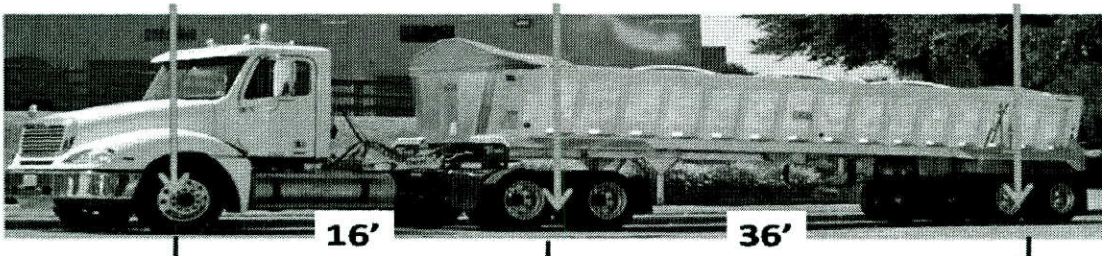
<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

Size and weight limits for public roads in Texas are established in Chapter 621 of the Transportation Code and generally follow federal size and weight laws. The following maximum load dimensions may be operated on Texas' highways without a permit. Pictured below is an



example of legally configured Tandem axle truck<sup>80</sup>:

- Width – 8'6"
- Height – 14"
- Weight:
  - Gross - 80,000 pounds maximum
  - Single axle - 20,000 pounds
  - Tandem axle group - 34,000 pounds

While the preceding standards set forth compliance standards in Texas, Chapter 622 of the Transportation Code creates several statutory exceptions to those size and weight limits. The exceptions are generally based on the types of load being carried or the type of vehicle<sup>81</sup>. Loads and vehicles with an exception in Chapter 622 (other than utility poles) do not need a permit or other special permission to operate at the otherwise disallowed size or weight. The statutory authority for OS/OW permits is primarily found in Chapter 623 of the Transportation Code with some related sections in Chapters 621 and 622<sup>82</sup>.

Texas issues more OS/OW permits than any other state. These permits are only available to transport vehicles and loads which cannot be broken down into smaller loads to comply with legal size and weight limits. This is generally referred to as being a nondivisible load. Texas Administrative Code, Section 219.2(35) defines a nondivisible load or vehicle.

Nondivisible loads exceeding the standards of 80,000 pounds, 8.5 feet wide, 14 feet tall, or legal length limits for the vehicle or vehicle combination require some type of OS/OW permit types to be transported legally. Typical permitted loads include construction and oilfield equipment, bridge beams, generators, transformers, buildings, wind tower components, and other high value

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of Shelly Mellott, Texas Department of Motor Vehicles)

products. Many of these loads require special routing to avoid overhead structures, weak bridges, construction zones, and other obstructions<sup>83</sup>.

Individuals can apply for OS/OW permits, pay fees and route trucks for most vehicles and loads 24 hours a day by using the DMV's Texas Permitting and Routing Optimization System (TxPROS). For permits which require operation on a set, predetermined route, TxPROS analyzes and generates a custom route with turn-by-turn directions for drivers. Currently, more than half of all permits issued by the DMV are self-issued by customers through TxPROS. The system has dramatically reduced permit routing and issuance time, allowing DMV to meet increasing demand for services, enhance safety for the traveling public, and improve tracking of obstacles to oversize/overweight routing<sup>84</sup>.

### Summary of Oversize/Overweight Permits Offered

The DMV offers more than 30 different OS/OW permits. The permits can be for a specific type of load being moved, a certain limit to be exceeded for a set length of time, for specific vehicles only or for a company as a whole, or for a particular type of vehicle<sup>85</sup>.

### Summary of Permits Issued in Recent Years

The total number of OS/OW permits issued grew by almost 13 percent between FY 2012 and FY 2014. A drop occurred during FY 2015, this drop was driven largely by a reduction in the number of permits purchased by the oil and gas industry. That industry sector has accounted for a large share of all permits issued, typically more than 40 percent of the total. Therefore, changes in that sector will directly impact OS/OW permit issuances. Permit issuance through the second quarter of FY 2016 (340,552 permits) is 17.88 percent below the same period in FY 2015 (414,724 permits)<sup>86</sup>.

<b>FY 2012</b>	707,307
<b>FY 2013</b>	755,201
<b>FY 2014</b>	797,520
<b>FY 2015</b>	791,556

### Summary of Oversize/Overweight Permit Revenues

Until the beginning of FY 2017, permit revenues have been and will be deposited into either the State Highway Fund (SHF), the General Revenue (GR) fund or sent to Texas counties. At the beginning of FY 2017, permit revenues will be divided between the SHF, GR, Texas counties,

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

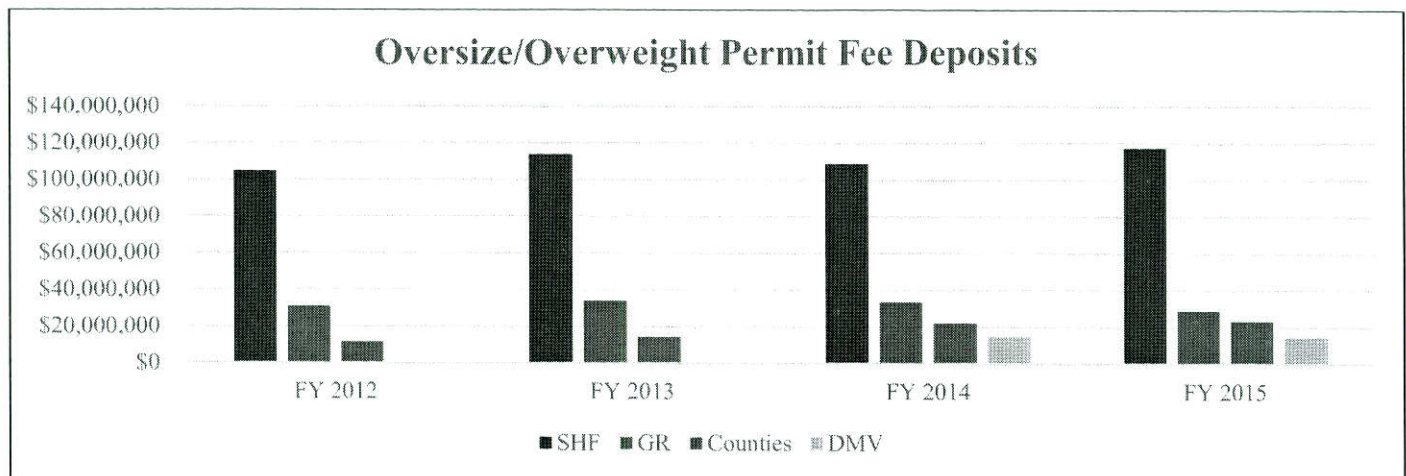
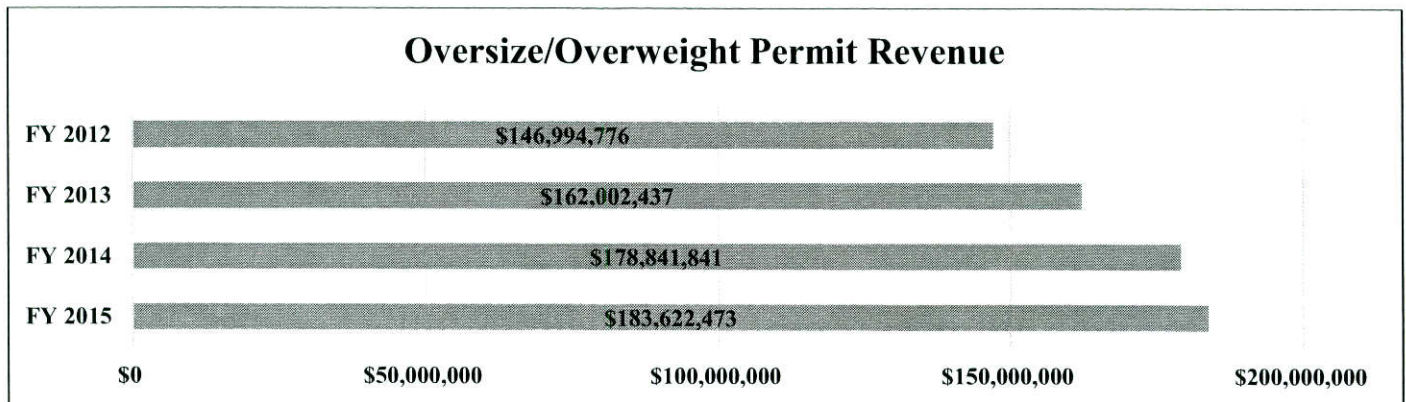
<sup>86</sup> *Id.*



and the newly created DMV Fund to recover the costs of issuing such permits. OS/OW revenue designated to be deposited in the DMV Fund in the future, is currently being deposited into GR<sup>87</sup>.

Each OS/OW permit has its own fee structure and breakdown of where the collected fees are deposited, but for many of the permits 50 percent of each fee collected is deposited into GR, 45 percent is deposited into SHF and the remaining 5 percent goes to the DMV<sup>88</sup>. There are three permits for which the DMV Fund receives no revenue: the Annual Utility Pole, the Ready-Mixed Concrete, and the Annual Timber permits. For a few permit types, 10 percent of the fee revenue is deposited into the DMV Fund and the other 90 percent is deposited into SHF. For Weight Tolerance, Ready-Mixed Concrete, and Annual Timber permits, the portion of fees deposited into GR is solely for distribution to the counties in which the permit will be eligible for use on county roads as selected by the permit purchaser<sup>89</sup>.

The total revenue generated from oversize/overweight permit sales increased by almost 25 percent between FY 2012 and FY 2015. Even though total permits issued declined in FY 2015 (see above), total permit revenue still increased. In FY 2015, revenues to GR and the DMV Fund declined while revenue to the counties and SHF continued to increase.



<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

### ***Oversize/Overweight Enforcement***

As mentioned previously it's the primary strategic goal of the state legislature, DMV, DPS size and weight enforcement divisions as well as authorized local law enforcement to ensure the safety of the public.

### ***DPS Resources for Commercial Vehicle Enforcement***

To enforce commercial vehicle laws and regulations, DPS is equipped with the following resources: 412 Commercial Vehicle Enforcement troopers and 387 North American Safety certified Highway Patrol troopers, 147 non-commissioned inspectors, and 59 commercial vehicle inspection scale facilities

DPS issues citations, staffs and administers programs associated with the size and weight enforcement branch. During the interview with DPS, the research team learned costs involved in enforcement of permitted OS/OW vehicles are not tracked or recorded separately from other size and weight enforcement functions. Therefore, only information regarding total commercial vehicle enforcement operations is presented<sup>90</sup>.

During the 2011 calendar year, DPS troopers conducted 37,626 vehicle inspections and issued 30,290 tickets and 68,491 warnings. With regard to overweight operations, 65,988 overweight violations were cited, resulting in 28,641 overweight tickets and 37,347 warnings.

In addition, DPS measured more than 1.8 million vehicles using weigh in motion equipment; 121,106 vehicles were weighed using permanent scales; 16,060 vehicles were weighed using portable scales; and 20,193 vehicles were weighed using semi-portable scales. Commercial Vehicle Enforcement Service manpower includes 777 full-time personnel, including 514 commissioned personnel; and 263 non-commissioned personnel, including 176 CMV inspectors<sup>91</sup>.

### ***TxDMV Resources for Commercial Vehicle Enforcement***

The enforcement of laws by the DMV depends heavily on law enforcement and the criminal penalties they assess through citations issued roadside on the highways. DMV investigators review these citations and schedule an audit of a motor carrier showing excessive oversize/overweight violations based on law enforcement-issued citations.

The DMV administrative actions can subject motor carriers and shippers found to be in violation of Texas size and weight regulations to written warnings, administrative penalties, and/or revocation/denial of the motor carrier's certificate of registration and OS/OW permits. Section 621.503 of the Transportation Code allows the DMV to pursue an administrative enforcement

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<sup>90</sup> Email between Jonathan Sierra-Ortega and Carl Weeks at Texas Department of Public Safety on Nov. 3, 2016.

<sup>91</sup> *Id.*

action against a shipper in addition to the motor carrier if the shipper causes the vehicle to be loaded too heavy (this authority does not extend to oversize violations). Section 623.272 allows the same enforcement options if a shipper provides false information on a certificate of weight<sup>92</sup>.

The following penalties may be administered by the DMV following an audit of a motor carrier or shipper who is found to be in violation of size or weight laws:

Violation	Penalty
Carrier unknowingly commits violation	Up to \$5,000
Carrier knowingly commits violation	Up to \$15,000
Carrier knowingly commits multiple violations	Up to \$30,000

\*  
\*An administrative penalty must be based on the seriousness of the violation

**Criminal Penalties**

There are also criminal penalties available for violating OS/OW laws. Criminal penalties are assessed and enforced solely by law enforcement, not the DMV. Information related to the number of such criminal violations and assessed penalties cannot be provided by the DMV<sup>93</sup>.

In 2013, HB 2741 (83rd Legislative Session) increased the base criminal penalty for general violations of overweight regulations from \$150 to \$250. A new escalating penalty structure was created based on how overweight the vehicle was and on repeated violations. New penalties were created for operating without an OS/OW permit and for operating at weights above 84,000 pounds, if the load could reasonably have been dismantled<sup>94</sup>.

Violations are enforced by law enforcement agencies in the state. The chart below compares the penalty structure from before the enactment of HB 2741 to the current structure<sup>95</sup>.

Overweight Penalty Comparison			
Penalties Prior to Sept 1, 2013		Current Penalties	
Less than 5,000 lbs.	\$100 to \$150	Less than 2,500 lbs.	\$100 to \$500
5,001 to 10,000 lbs.	\$300 to \$500	2,501 to 5,000 lbs.	\$500 to \$1,000
Over 10,000 lbs.	\$500 to \$1,000	5,001 to 10,000 lbs.	\$1,000 to \$2,500
		10,001 to 20,000 lbs.	\$2,500 to \$5,000
		20,001 to 40,000 lbs.	\$5,000 to \$7,000
		Over 40,000 lbs.	\$7,000 to \$10,000
		Axle penalties stop at 5,001 to 10,000 lbs. level	

<sup>92</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of Shelly Mellott, Texas Department of Motor Vehicles)

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

Penalties could double after 1st offense within 1 year	Penalties can double after 2nd offense within 1 year
Penalty for not having permit for non-divisible load: No provision	Penalty - not having permit for non-divisible load: \$500 to \$1,000 first offense \$2,500 to \$5,000 additional offenses
Penalty - over 84,000 lbs. with divisible load: No provision	Penalty - over 84,000 lbs. with divisible load: \$500 to \$1,000 first offense \$2,500 to \$5,000 additional offenses

***DMV and TxDOT Activities***

During FY 2015, the DMV oversize/overweight enforcement team has been working with the Commercial Vehicle Information Systems Network (CVISN) Team to finalize the design and location of the Advance Bridge Collision Warning Project<sup>96</sup>.

TxPROS, implemented by DMV, is an online permitting and geographic information system (GIS) based mapping system which allows OS/OW permit applicants to apply and self-issue many OS/OW permits. DMV, in conjunction with roadway information supplied by TxDOT, uses TxPROS to route and permit OS/OW vehicles and provide real-time restriction management. TxPROS uses a number of different data sets to select routes for vehicles so that bridges and other hazards to an OS/OW vehicle are protected.

TxPROS has a GIS mapping component which allows TxDOT’s district offices to provide up to date construction, maintenance and bridge information, enabling TxPROS OS/OW routes to be created, removed and added as necessary<sup>97</sup>. This means the very next permit issued by the TxPROS system will be in real time allowing OS/OW vehicles to be able to navigate the most up-to-date routes available. Routing information can include new or completed construction, new or no longer needed restrictions and updates to bridge heights. The TxDOT Bridge Division also provides biennial exact measurements of bridge heights to the TxPROS database in addition to the updates provided by the districts<sup>98</sup>.

TxDOT is charged with building, inspecting and maintaining the 35,224 bridges on the state highway system (on-system) and inspecting and providing findings and recommendations to local governmental entities for the 18,252 bridges off the state highway system (off-system) as well as building, inspecting and maintaining more than 80,000 center-line miles<sup>99</sup>.

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Senate Committee on Transportation hearing, March. 29, 2016 (written testimony of Mark Marek, Texas Department of Transportation)

Despite the State's best efforts to enforce and issue penalties to commercial vehicles, damages caused by third parties to bridges, highways and road signs occurs frequently and measures to collect reimbursements causing the damage to the particular assets can be challenging.

According to available data, bridges on the state highway system were struck 40 times by OS/OW vehicles in 2014 and 2015, resulting in 19 repairs ranging from \$1,188.52 to \$519,415.21 and totaling \$2,163,227.35<sup>100</sup>.

### **Federal Regulations**

The Federal Commercial Motor Vehicle Safety Act (CMVSA) of 1986 requires each state to meet certain minimum standards for Commercial Driver's License (CDL) and commercial learner's permit (CLP) issuance and renewals. Texas adopted the CMVSA requirements as state law (Transportation Code, Chapter 522) in 1989, and DPS began enforcing this law and issuing new CDLs in 1990. Texas' CDL program is the second largest program in the United States, only behind the state of California. Texas administers approximately 52,000 skills exams annually and maintains over one million driver records for commercial drivers. The objective of this program is to reduce injuries and fatalities on Texas public roadways involving large buses and trucks through education, testing and licensing, and enforcement<sup>101</sup>.

In May 2011, the Federal Motor Carrier Safety Administration (FMCSA) amended CDL knowledge and skills testing standards and established new minimum federal standards for the issuance of both CDLs and CLPs. These regulations include<sup>102</sup>:

1. Review all CDL transaction documents within 24 hours of the transaction (secondary review)
2. Revisions to the CDL skills testing requirements
3. Revisions to CDL and CLP Issuance standards
4. Upgrades to Commercial Driver License Information System (CDLIS) network

All states were required to adopt these changes no later than July 8, 2015. Texas requested and received an extension from FMCSA to adopt the changes in December 2016, based on Texas' biennial legislative cycle and time to program the changes. The goal of the FMCSA regulations were to ensure all CLP holders meet the same requirements as a CDL holder, and the upgrades to CDLIS guarantee all states are able to continue exchanging information on commercial licensed drivers.

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<sup>100</sup> *Id.*

<sup>101</sup> Email between Jonathan Sierra-Ortega and Joe Peters at Texas Department of Public Safety on Nov. 10, 2016.

<sup>102</sup> *Id.*

Texas' failure to comply with these new federal regulations could result in FMCSA issuing a Notice of Non-Compliance resulting in:

1. Decertification of the state's CDL program
2. Withholding of up to eight percent of selected federal highway funds
3. Prohibition on issuing interstate commercial driver licenses to Texas residents

As of 10/1/2016, Texas has 684,699 active currently licensed commercial drivers who depend upon their commercial license to make a living. These drivers are responsible for transporting commerce to and from locations within Texas and throughout the United States<sup>103</sup>.

Should FMCSA place Texas out-of-compliance for not meeting these new regulations, Texas commercial driver licenses will not be recognized for interstate commerce. FMCSA defines interstate commerce as trade, traffic, or transportation in the United States:

1. Between a place in a State and a place outside of such State (including a place outside of the United States);
2. Between two places in a State through another State or a place outside of the United States; or
3. Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

According to FMCSA, the following programs may be impacted and the associated amounts withheld from Texas for non-compliance (based upon federal highway funds received in FY15)<sup>104</sup>:

1. 23 USC104(b)(1) – National Highway Safety Program
2. 104(b)(3) – Surface Transportation Program
3. 104(b)(4) – Interstate Maintenance Program
4. Four percent withholding first year noncompliance: \$77,849,498.44
5. Eight percent withholding second year non-compliance: \$155,698,996.88
6. Biennium withholding total: \$233,548,495.32

### ***New Federal CDL Program Regulations - Impact to Texas***

FMCSA reviewed all states' existing commercial skills testing procedures and found they were an inadequate reflection of the skills required for today's commercial drivers. It has been over 16 years since the development and implementation of the current CDL testing standards. To support and promote one national standard for CDL testing, FMCSA revised the commercial testing standards by adopting enhanced scoring criteria, requiring a visual vehicle inspection test, and adding a third basic maneuver (off-set backing).

A review of all driver license office locations revealed only one office had adequate space available to safely implement the new CDL testing maneuvers. The new federal minimum standards required legislative action to amend the Texas Transportation Code to ensure Texas' compliance. This legislation was passed in the 84<sup>th</sup> Legislative Session.

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

### *Current Status*

The new CDL skills testing standards require additional maneuvers, and must be administered in a specified sequence. The CDL Skills Test is divided into three segments: vehicle inspection (pre-trip), basic control maneuver, and on-road driving. Each segment must be passed prior to advancing to the next segment. Based on additional skills test segments and sequencing, the new CDL skills testing standards require two hours to administer compared to one hour for the previous skills test standards. See Table below.

- a. When a segment is failed, the applicant cannot continue, however, the applicant will be allowed to resume a failed segment without having to retake an already passed segment. Example: Applicant passed vehicle inspection (pre-trip), but failed basic control. When the applicant returns for retest, the skills test will resume with basic control segment, without restarting at the vehicle inspection (pre-trip) segment. The following limitations apply:
  - 1) Vehicle Safety Inspection is required and performed by the examiner before any test to ensure the vehicle is safe for testing (insurance/registration, lights, brakes, etc.).
  - 2) Applicant is not allowed to retest or resume testing on the same day.
  - 3) Passed segments of the skills test are valid for 90 days or three failures as long as the CLP is valid.

Previous CDL Skills Test Standards	New CDL Skills Test Standards
(No specified order required)	(Must occur in specified order)
Straight line backing and parallel parking	Segment 1: Vehicle Inspection Test (Pre-Trip)
On-Road Driving Test	Segment 2: Basic Control Maneuver Test (straight line, off-set backing, and parallel parking)
	Segment 3: On-Road Driving Test

In FY16, DPS administered 52,521 CDL skills tests under the old testing standard with a failure rate of 18 percent. Under the new CDL skills testing standards, 63 percent of applicants failed some portion of the test in the first month. See Appendix B for details regarding test failures in October. Retests create additional demand for CDL skills test appointments. A higher failure rate equates to an increase in demand<sup>105</sup>.

Prior to July 2016, DPS administered CDL skill tests at 190 Driver License offices across the state, as all these offices had facilities to support the previous testing standard.

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<sup>105</sup> *Id.*

At these 190 DL offices, approximately 320 Full Time Employees (FTE) administered CDL skills tests, but only 20 percent of the FTEs were performing CDL skills tests as a primary function. In essence, the other 80 percent of FTEs performed multi-functional roles<sup>106</sup>. In FY16, over 5.6 million transactions were performed at driver license offices across the state. FMCSA requires CDL examiners, under the new CDL skills testing standards, to receive specialized training and achieve a specific certification for CDL skills testing<sup>107</sup>.

In July 2016, in order to optimize limited resources and ensure safe conditions for CDL skills testing under the new standards, DPS reduced the number of permanent CDL testing locations from 190 down to 25. They also reduced the number of CDL examiners from approximately 320 down to 160. DPS currently has access to 27 CDL testing lanes at the 25 CDL testing sites<sup>108</sup>.

### **New State Regulations**

The following bills passed during the 84<sup>th</sup> Legislative Session<sup>109</sup>:

H.B. 1252 requires DPS to establish, by rule, uniform weighing procedures to ensure an accurate weight is obtained for a motor vehicle by a weight enforcement officer. The bill authorized DPS to revoke or rescind the authority of a weight enforcement officer who fails to comply with those rules or a weight enforcement officer of a municipal police department, sheriff's department, or constable's office.

SB 562 created an annual overlength permit allowing vehicles or combinations up to lengths not exceeding 110 feet. This eliminated the need to buy four quarterly overlength permit, cost of the permit is \$960, which is the same as four quarterly permits.

SB 971 expanded the definition of an "implement of husbandry" to include a towed vehicle which transports to the field and spreads fertilizers or agricultural chemicals and a motor vehicle designed an adapted to deliver feed to livestock. The change allows those vehicle types to qualify for the width exceptions in addition, these vehicles types may also be transported with an Annual Implements of Husbandry permit.

SB 1171 reduced Annual Timber Permit from \$1,500 to \$900 and travel on certain posted load-restricted roads was authorized.

SB 1338 changes the technical term "combine" to "harvest machine.", added a provision that 81.5 feet is the length limit of a truck-tractor operated in combination with a semitrailer and trailer, or semitrailer and semitrailer, excluding the length of the truck-tractor, if used to transport

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Senate Committee on Transportation hearing, Jan. 27, 2016 (written testimony of Shelly Mellott, Texas Department of Motor Vehicles)



a harvest machine used in farm custom harvesting operations on a farm, as long as it is traveling on a non-system road, and is in a county with less than 300,000 population.

### **Recommendation**

It is too early and difficult to make any outright recommendations in regards to the new federal or state regulations that have recently passed. TxDOT works in conjunction with various state agencies to assist in routing for OS/OW vehicles. While the permitting process for these vehicles is administered by DMV and the enforcement is handled by DPS and local authorities, TxDOT's deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods. However, Texas needs to be a little more proactive in implementing some additional tools to help TxDOT address any additional strain put on the states infrastructure. One consideration is assessing a penalty for damages caused by third parties to bridges, highways and road signs especially if a truck is off a TxPROs specific route or fails to obtain a permit for a specific route.

Finally, the Legislature should monitor DPS implementation of new federal standards as it relates to commercial vehicles and encourage the agency to find ways to mitigate and strains that exist with CDL testing and testing facilities. The agency should look at providing adequate facilities to safely administer CDL skills tests, as well as FTEs to serve as CDL examiners or to back-fill FTE shortages. Another option DPS may consider is entering into MOUs (contracts) with private and governmental entities desiring to administer CDL skills tests.

## **Monitoring of Legislation from 84th Regular Session**

*Monitor the implementation of legislation addressed by the Senate Committee on Transportation during the 84th Legislature, Regular Session and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the following:*

- *Progress of the Texas Department of Transportation's efforts to propose a plan to eliminate toll roads;*
- *Removing eminent domain authority from private toll corporations;*
- *Ending the issuing of any new debt from the Texas Mobility Fund (TMF) and prohibiting future use of the TMF on toll projects; and*
- *The Sunset Advisory Commission's review of the Texas Department of Transportation.*

## **Progress of the Texas Department of Transportation's efforts to propose a plan to eliminate toll roads**

House Bill 2612 and Rider 46, 84th Legislature, Regular Session, 2015, required the TxDOT to prepare a report on the feasibility of eliminating toll roads in the State of Texas. The report is divided into three sections, which correspond to the requirements of the legislation<sup>110</sup>:

- 1) lists the amount of debt service on bonds issued for each toll project in this state;
- 2) identify, based on criteria provided by the Texas Transportation Commission (Commission), bonds which would be appropriate for accelerated or complete lump-sum payment of debt service;
- 3) propose a plan to eliminate all toll roads in this state, except for tolls on roads constructed, operated, or maintained only with proceeds from the issuance of bonds by a toll project entity other than the department, by methods including:
  - a) the accelerated or complete lump-sum payment of debt service on bonds identified under Subdivision (1); or
  - b) requiring, as a condition on receipt of state financial assistance, a commitment by a toll project entity to eliminate toll collection on a project for which the financial assistance is provided.”

The report includes a review of the 53 toll roads and 28 financial tolling systems in the state, excluding international bridges<sup>111</sup>. A chart of the outstanding debt, debt service and upfront payment for non-public toll roads, public toll roads in the state, and the five Comprehensive Development agreements (CDAs), can be seen below.

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<sup>110</sup> Senate Committee on Transportation hearing, Sep. 27, 2016 (written testimony of James Bass, Texas Department of Motor Vehicles)

<sup>111</sup>Id.

	Total Outstanding Principal (in millions)	Total Debt until Payments Maturity	Service Final Cost (in millions)	Upfront Payment
Non-TxDOT Publicly-Operated Toll Roads	\$15,301.1	\$27,920.2	\$17,115.1	
TxDOT Publicly-Operated Toll Roads	\$6,285.9	\$11,965.8	\$7,120.8	
Sub-Total	\$21,587.0	\$39,935.8	\$24,235.9*	
CDA Toll Road Projects	N/A	N/A	\$12,500**	
<b>Total</b>	N/A	N/A	<b>\$36,735.9</b>	

\*Upfront Payment cost is as of 1/1/16

\*\*Comprehensive Development Agreement (CDA) termination payment amount is as 1/1/18 and is a preliminary estimate.

Full report can be viewed: <http://ftp.dot.state.tx.us/pub/txdot-info/sla/090116-hb-2612.pdf>

**Removing eminent domain authority from private toll corporations**

HB 565 requires the Commission before approving the construction of a privately owned turnpike or toll project that will connect to the state highway system, to hold a local public meeting concerning the project in the region in which the project is located. The bill also<sup>112</sup>:

- Repealed the ability of a private toll road corporation to independently exercise the power of eminent domain and states that a private toll project entity can enter into an agreement with a public toll project entity (TxDOT, Regional Mobility Authority, Regional Tollway Authority, or certain counties) to finance, construct, maintain or operate a toll road.
- Allows a public toll project entity and a private toll project entity to enter into an agreement to exercise the power of eminent domain if: (1) it is necessary for the construction of the project; and (2) the project is applied to public use with adequate compensation as defined by Article 1, Section 17 of the Texas Constitution.

TxDOT’s current rules concerning Commission approval of the construction of a privately owned turnpike or toll project that will connect to the state highway system already requires TxDOT to hold public meetings on projects<sup>113</sup>.

Potential projects of the Texas Turnpike Corporation (TTC), a private corporation with no affiliation to the State or TxDOT, are outlined in the chart below.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

Private Toll Corporation	Project	Status
Texas Turnpike Corporation	105 Toll Vidor	Proposes a 10 mile project from Beaumont to Vidor. Pursuing local support.
Texas Turnpike Corporation	Cibolo Turnpike	Extension of FM 1103 to I-10 in San Antonio. In discussions with City of Cibolo and Schertz

### Recommendation

No private toll project entity should have the ability to enter into an agreement with a public toll project entity to exercise the power of eminent domain or even have the ability to exercise eminent domain. A bill should be filed to eliminate any and all private toll project entity's from having any ability to exercise the power of eminent domain even if exercised in agreement with a public toll entity.

### **Ending the issuing of any new debt from the Texas Mobility Fund (TMF) and prohibiting future use of the TMF on toll projects**

In House Bill 122 (HB 122), 84th Legislature, Regular Session, the Legislature restricted the issuance of additional TMF bonds only for the purpose of refunding existing debt. TxDOT may continue to use TMF surplus revenues (i.e., taxes and fees above those needed for debt service) for the construction, reconstruction, acquisition and expansion of state highways and public transportation projects, but may no longer expend such funds on tolled highways<sup>114</sup>.

The TMF was authorized by voters in 2001 to help advance transportation projects, and the Legislature identified revenues to be dedicated to the fund in 2003. Current TMF taxes and fee revenues include, but are not limited to, drivers' license fees, drivers' record fees, vehicle inspection fees, certificate of title fees, certain license plate fees, motor carrier penalties and interest on funds. Revenues are dedicated first to paying debt service on the issued bonds<sup>115</sup>. Estimated TMF debt service in the TxDOT Legislative Appropriations Request for FY 2018 is \$408 million and for FY 2019 is \$416 million. These two estimates include Build America Bonds (BABs), which include a 35 percent direct subsidy on interest payments from the federal government, in connection with Series 2009A bonds<sup>116</sup>.

Prior to the passage of HB 122, TxDOT had issued \$7.39 billion in TMF bonds at a 3.85 percent weighted average cost of borrowing. Bond capacity was constrained by statutory debt service coverage requirements as certified by the Comptroller. TMF bonds are limited

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

to a maximum maturity of 30 years. As of August 1, 2016, TxDOT had an outstanding principal balance of \$6.27 billion, and remaining TMF debt service totaled \$10.88 billion<sup>117</sup>.

**The Sunset Advisory Commission's review of the Texas Department of Transportation.**

As required by House Bill 1675 (83rd Regular Session, 2013), TxDOT is currently under the Sunset Review process. The review began in June 2015 when Sunset Commission staff requested TxDOT submit to the Sunset Commission a Self-Evaluation Report (SER). TxDOT submitted the SER on September 1, 2015<sup>118</sup>.

The TxDOT SER provides an overview of the entire agency and details TxDOT's organizational structure, budget information, programs and operations. Sunset staff began their review of TxDOT with a presentation to TxDOT's executive leadership and division directors on April 6, 2016. Since that time, TxDOT staff at all levels and Sunset staff have met regularly to discuss TxDOT operations including contracting, project planning, project financing, toll operations and duties, responsibilities and interactions of TxDOT divisions and districts.

Publication of the Sunset Staff Report is scheduled for mid-November, at which time TxDOT will have two weeks to submit responses for the Sunset Commission to review before a public hearing on either December 8 or 9, 2016.

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

