

State Boosts Tolls to Finance Highways

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Recent legislation and new agency policies have prompted a dramatic change in the way Texas pays for highways. Toll roads, now rarely encountered outside the state's largest metropolitan areas, soon could become common in cities large and small as the Texas Department of Transportation (TxDOT) incorporates tolling elements into virtually all of its planning for new road construction and the expansion or extension of existing highways. This new tolling policy, combined with TxDOT's recently approved bonding authority, represents a fundamental departure not only from the state's longstanding "pay-as-you-go" approach to highway financing but also from the conventional toll-road model.

Advocates argue that widespread tolling must be adopted in order to adequately finance unmet demands for highway construction and maintenance generated by the state's rapidly growing population of motorists. Some opponents argue that tolling existing highways amounts to a double tax on a virtual necessity merely to generate revenue without necessarily producing significant traffic congestion relief or added roadway capacity. Other opponents concede that tolling should play a role in highway financing but dispute the notion that, in the words of Texas Transportation Commission (TTC) Chairman Ric Williamson, Texas communities must choose between "no roads, slow roads, or toll roads." This report examines how toll roads have become integral to TxDOT's long-term highway plans and how this new transportation policy is affecting communities across Texas.

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"Pay as you go"

Almost all of the revenue in the State Highway Fund (Fund 6), administered by TxDOT, is dedicated to transportation purposes. Historically, Texas has financed the construction of highways with cash on hand from Fund 6. Available funding for highway

Fuel tax policy in other states

Although Texas has not raised its 20-cent per gallon MFT rates since 1991, at least 17 states either have raised gasoline and/or diesel fuel rates or made other MFT-related changes in the past six years that have increased transportation revenue. From 1999 through 2003, Kansas has raised rates four times, Arkansas and Maine three each, and Nebraska twice. Ohio's second rate hike took effect July 1, 2004. The average state gasoline excise tax rate was 18 cents per gallon as of January 2004. Eight states, including Florida, allow local governments to tax motor fuels, and nine states, including California and Florida, also tax gasoline sales on a purchase-price percentage basis.

projects has been appropriated by the Legislature and disbursed by the TTC. In addition, Art. 3, sec. 49 of the Texas Constitution, which generally prohibits state debt, until recently had prevented the state from issuing bonds to finance non-toll-road construction with borrowed money. For these reasons, the state's approach to highway financing long has been termed "pay as you go."

Fund 6 consists of dedicated state revenue and federal funds, mostly revenue from federal and state motor fuel taxes (MFTs). The MFT rate in Texas is 20 cents per gallon of gasoline and diesel fuel and 15 cents per gallon of liquified gas. The federal rates per gallon are 18.4 cents for gasoline, 24.4 cents for diesel, and range from 4.3 cents to 13.6 cents for liquified gas. The Legislature last raised the state's MFT rate in 1991, from 15 cents to 20 cents. From October of fiscal 1992 to the present, net state MFT revenue has averaged \$2.45 billion annually, totaling \$2.84 billion in fiscal 2003. According to the Comptroller's Office, this represents an average annual increase over this period of 5.65 percent (3.49 percent excluding fiscal 1992, the first year of the last rate hike), but only 0.2 percent in fiscal 2003.

One-quarter of net MFT revenue is constitutionally dedicated to public education, and the remaining three-quarters are dedicated to highway-related functions, including policing by the Department of Public Safety. Fund 6 also receives all sales tax revenue collected on lubricants, such as motor oil, and nearly two-thirds of all

vehicle and trailer registration fee revenue, plus some of the revenue from other transportation-related fees. Congress allocates federal highway dollars generated by MFTs to reimburse states for eligible expenses based on statutory formulas.

TxDOT's biennial expenditures are among the largest of any single state agency. Its fiscal 2004-05 budget exceeds \$10.5 billion – \$4.7 billion of which is federal – a total increase of 2.5 percent over fiscal 2002-03. The Legislature in 2003 appropriated \$7.7 billion for highways: \$5.6 billion for construction and \$2.1 billion for maintenance. The remaining \$2.8 billion pays mostly for highway planning, right-of-way acquisition, aviation, public transportation, research, and vehicle titling and registration. Nevertheless, in recent years there has been a growing awareness among many policymakers that funds available for transportation are insufficient to meet present and future demands for building and maintaining an adequate highway system.

A highway funding crisis?

Prior to the 77th Legislature's regular session in 2001, many state transportation policymakers became convinced that Texas should adopt innovative new methods of financing highways to keep pace with rapid population growth and the rising costs of road construction. They argued that Texas' traditional "pay-as-you-go" approach to highway finance had become obsolete and that demand had far outstripped capacity, leading to traffic congestion that impedes economic development and hampers quality of life.

Much of the current highway system was built more than 30 years ago during the national interstate highway construction boom, when land for right-of-way was cheaper and more plentiful. Transportation officials note that Texas' large, maturing system costs roughly the same to maintain now as it did to build then. Since 1992, according to the Federal Highway Administration (FHWA), federal-aid highway construction inflation has increased by almost 40 percent, compared to a nearly 32 percent increase in overall inflation as measured by the federal Consumer Price Index. TxDOT's cost index actually decreased 7.2 percent in fiscal 2002, however, and rose only 0.9 percent in fiscal 2003.

As a result of inflation, spending on construction yields fewer miles of new roadway today than in the past, while the motoring population continues to grow. According to TxDOT, vehicle miles traveled daily on Texas highways between 1992 and 2003 increased 48 percent, from almost 300 million to more than 440 million. During that same period, TxDOT added only 6,100 miles of new lanes, a 3 percent increase.

There is general agreement that TxDOT's level of funding is insufficient to meet transportation demand in the state, although estimates vary as to the size of the gap. TxDOT consistently maintains that available funds can satisfy only about one-third of the state's transportation spending needs, including new highway construction, maintenance, and preservation. The 33 percent figure originated with a 1997 TxDOT internal study that set

Existing toll roads in Texas

While toll roads are not new to Texas, until recently they have played a limited role in the state's highway system and virtually no role in the overall scheme of state highway finance. Most of the toll roads in use today are self-sustaining commuter routes confined to the state's largest urban areas. Their primary purpose is to facilitate traffic flow within cities or between adjacent cities or urban and suburban areas. Toll roads historically have been built utilizing new rights-of-way where no roads previously existed or were under construction. In addition, they have been financed almost exclusively by toll revenue with little or no state or federal tax funding, aside from loans.

In 1953, the Legislature created the Texas Turnpike Authority (TTA), which issued toll revenue bonds to finance construction of the Dallas-Fort Worth Turnpike. It opened in 1957 and was so successful that the bonds were retired 17 years early, in 1977. The state then assumed ownership and discontinued tolls, and in 1978 the turnpike became Interstate Highway 30. In 1966, the TTA began building the Dallas North Tollway (DNT), which since has been extended twice. The North Texas Tollway Authority (NTTA), a regional entity created in 1997, subsequently assumed control of the DNT and also built the President George Bush Turnpike. The TTA became a division of TxDOT in 1997.

In 1983, the 68th Legislature authorized creation of the Harris County Toll Road Authority (HCTRA). The county division operates three Houston-area toll roads: the Sam Houston Tollway, the Hardy Toll Road, and the new Westpark Tollway. Two federal high-occupancy/toll lane pilot projects that toll two-occupant vehicles using

lanes designated for high-occupancy vehicles (having three or more passengers) during peak periods also are in Harris County. In late August, the Fort Bend County Toll Road Authority (FBCTRA) opened the first of two toll roads connecting to two existing HCTRA roads. In addition, TxDOT recently spent \$20 million to acquire what had been Texas's only private toll road, the 22-mile Camino Colombia near Laredo. TxDOT previously bid \$11 million unsuccessfully at a foreclosure sale.

In general, toll rates are set and toll payments collected by the entity responsible for building and operating the toll road, whether by one of the local or regional toll authorities, regional mobility authorities (RMAs), private operators under contract with TxDOT, or one of about a dozen private companies authorized for specific routes (although none currently operate any toll roads). Typically, toll revenue is spent initially on bond debt service, which includes investors' return, before it is applied to maintenance and operations.

Toll authorities in metropolitan Dallas and Houston offer both cash toll payment and electronic toll collection (ETC) using in-vehicle, pre-paid, deduction-based tags (see *How tolls are paid*, page 10). Rates on NTTA toll roads average 10 cents per mile, while HCTRA's average rate per mile is 11 cents, and FBCTRA's average rate per mile is 16.5 cents. Prior to foreclosure, the Camino Colombia charged \$3 per car and \$16 per truck. After closing for routine repairs and upgrading, the road reopened on September 8, 2004, as State Highway 255. It was free until November 8, when the new basic toll rate of \$2 per two-axle vehicle took effect. The maximum rate is \$8 for six-axle vehicles.

the agency's "optimum" overall spending level at a 10-year annual average of \$11.8 billion. The 2004 Unified Transportation Program, TxDOT's 10-year master highway-building plan, lists approximately \$13.6 billion worth of pending projects, but the optimum spending level encompasses all programs and activities paid for out of Fund 6, not just those directly related to highways. Moreover, Metroplex transportation advocates have identified \$16.7 billion in added-capacity projects needed in the state's five largest cities alone that currently are unfunded through 2014. Therefore, estimates related to TxDOT's funding gap vary depending on which set of projects is considered.

Some observers dispute TxDOT's claim that transportation needs outstrip available funding by a ratio of 3 to 1. They point out that a 1995 survey commissioned by the agency cited an available funding level of 44 percent; that the calculation of 33 percent has been updated only once since 1997 and does not reflect recent developments (i.e., bonding authority); and that the percentage is based on funding the agency's overall optimum spending level, not just highways or less expensive alternative plans.

Until recently, the principal option available to the state in responding to the need for increased transportation spending has been to raise MFT rates. With too many competing demands, the Legislature ceased using general revenue for highway funding in the late 1980s. The Legislative Budget Board has estimated that a 1-cent MFT rate increase would yield approximately \$100 million annually in additional gross revenue. The state, however, has not raised the MFT rate since 1991 for a variety of reasons. Many transportation planners argue that MFTs are a diminishing revenue source that always will lag behind demand for new roadways. According to the National Conference of State Legislatures, MFT revenue does not keep pace with inflation or the economy absent rate increases. Even increases in MFT rates tend to be offset by improvements in fuel efficiency, say these experts, a trend that only will continue with the increased popularity of hybrid vehicles that use supplemental electric power sources. Finally, as gasoline prices rise, consumption tends to decrease, which nullifies any potential gain in MFT revenue, they say.

In addition, many lawmakers oppose raising taxes, including MFTs, and instead believe the state should pursue alternate mechanisms of highway finance. Many seeking

alternatives to increase highway funding assert that a toll is tantamount to a "user fee" that drivers may avoid at their discretion rather than a mandatory "tax" extracted from consumers at the gasoline pump.

Two primary mechanisms have been promoted to allow the state to move beyond the "pay-as-you-go" model of highway construction and meet a higher proportion of highway financing needs: revenue bonds, with which the state could borrow money against specific revenue sources, and expanded tolling authority, which could help pay for projects either directly through collections or by supporting bond debt. By leveraging future revenues, the state could better meet its immediate needs, say supporters of these alternatives.

Some observers, however, are skeptical of the extent to which the state should rely upon tolls and bonding to fund highway construction. They contend that MFTs remain a viable source of revenue, as evidenced by U.S. Environmental Protection Agency data indicating that average fuel economy actually has declined since 1987, largely due to the increasing popularity of light trucks and sport utility vehicles. They argue that gasoline taxes already serve as user fees paid by motorists. Some contend that tolls on existing roadways, even for improvements, amount to a "double tax" levied on drivers who already pay fuel taxes at the gasoline pump. In addition, some critics opposed amending the Constitution to allow TxDOT to borrow money to finance construction projects. Bonding, they argued, does not generate new money for highways and ultimately will increase road construction costs due to debt service and other related expenses.

Public attitudes toward state support for toll roads have shifted over the years. In 1954, voters approved Art. 3, sec. 52-b of the Constitution, which prohibited using state money or credit to build or maintain toll roads. Toll roads could be financed only with the revenue generated by the road itself. In 1987, voters rejected a proposed constitutional amendment that would have permitted joint projects by the Texas Turnpike Authority and TxDOT; allowed the state to contribute money from any source for such projects; and allowed certain counties and cities to use revenue from a special property tax to subsidize toll roads. In 1991, however, voters approved an amendment to Art. 3, sec. 52-b allowing TxDOT to contribute state money for toll projects as long as any Fund 6 money used for this purpose was repaid with toll revenue.

In a 1995 toll road survey commissioned by TxDOT, nearly 62 percent of respondents preferred toll roads to gasoline tax increases. Nevertheless, a similar majority favored tolling only new roads, and 55 percent supported restricting the spending of toll revenue to roads where it was collected.

Recent legislation

Legislation enacted in the past few years has made new highway financing options, including bonds and tolling, available to TxDOT officials and other transportation planners.

To address the constitutional prohibition on state debt, in 2001 the 77th Legislature enacted SB 4 by Shapiro authorizing the creation of the Texas Mobility Fund (TMF). This revolving bond fund, administered by the TTC, may be used to support bond debt for any state transportation project, including public toll roads. The TMF will receive surplus revenue from the new \$30 state traffic fine and habitual “bad driver” surcharges established in 2003 and applicable to most moving traffic violations. Eventually, the fund will be capitalized with a combination of revenue from various driver’s license and vehicle inspection fees and penalties.

SB 342 by Shapiro, also enacted in 2001, established in law the concept of “toll equity.” TxDOT now may spend money from any source on public toll road projects without reimbursement. The TTC may convert any segment of the state’s “free” highway system to a toll road, but the revenue generated must be spent on that roadway for any bond debt service plus maintenance and operations. Surplus revenue would be deposited into Fund 6 to be spent on other toll projects or facilities. In addition, the bill authorized the TTC to approve the creation of regional mobility authorities (RMAs). The TTC may transfer highways to RMAs for maintenance and operation as toll roads. RMAs may spend the toll revenue from such conversions on any roadway within their jurisdictions.

Voters in 2001 approved a constitutional amendment, SJR 16 by Shapiro, to allow the creation of the TMF and repeal the requirement for repayment of TxDOT funds lent or granted for toll projects.

In 2003, the 78th Legislature enacted an omnibus transportation bill (HB 3588 by Krusee) and a subsequent “clean-up” bill (HB 2 by Krusee, enacted during the third called session). These laws expand the powers of RMAs, which, along with counties and the toll authorities in the Houston and Dallas areas, now may condemn private property through the power of eminent domain. RMAs also may issue revenue bonds to build toll roads that they would operate and maintain. In addition, TxDOT may participate with both public and private entities in utilizing a borrowing mechanism known as “pass-through” or “shadow” tolls. These negotiated payments are made incrementally to local governmental entities or private companies based on traffic volumes to help defray their costs of financing road construction and/or operation. The payments are made as if tolls were being collected from motorists by the operators upon project completion. Such financing can accelerate lower-priority projects, allow more local discretion, and help assure investors that project costs will be repaid over time.

In addition to toll revenue bonds, such as those helping finance State Highway 130 near Austin, TxDOT may issue up to an estimated \$3 billion in bonds against the TMF. This debt authorization is in addition to the \$3 billion in bonds TxDOT may issue against Fund 6 – not to exceed \$1 billion per fiscal year – constitutionally authorized in 2003 through HJR 28 by Pickett. HB 3588 also changed the annual toll equity spending limit from 30 percent of federal funding to \$800 million.

Toll roads also are a major funding component of the Trans Texas Corridor. As authorized by HB 3588, TxDOT has begun planning for Gov. Rick Perry’s proposed statewide network linking major metropolitan areas via integrated superhighway, rail, and underground utility systems. TxDOT would share costs and generate revenue through leasing and franchising agreements with project developers/contractors, landowners, users, and retailers.

To accelerate spending on needed projects, TxDOT also is using the “tapered match” method to front-load federal funds for several eligible projects (90 percent on interstates, 80 percent on others), thereby delaying payments of the state’s share. To avoid a recurrence of cash flow problems that arose in late 2001, TxDOT now may borrow short-term against anticipated revenue to pay for its operations, as authorized by HB 471 by Pickett enacted in 2003.

Other recent funding initiatives involving MFTs, however, have failed to pass. HB 3106 by Alexander, which proposed raising the gasoline tax from 20 cents to 25 cents per gallon, was left pending in committee during the 2001 regular session. In 2003, HB 2312 by Krusee, which would have allowed local governments to levy additional fuel taxes to generate revenue for their own transportation projects, was left pending in the House Calendars Committee.

A new toll road policy

The legislation enacted in 2001 and 2003 rejected higher gasoline taxes in favor of authorizing TxDOT to finance highway construction by issuing bonds and expanding the number and kind of transportation projects that can be paid for with toll revenue. This has led to an unprecedented and controversial new tolling policy that TxDOT is implementing statewide.

Since the statutory framework was established, TxDOT has begun planning and implementing a number of toll road projects using some of the newly authorized financing mechanisms. In 2002, TxDOT sold \$2.2 billion in toll revenue bonds and anticipation notes to help pay for construction of the Central Texas Turnpike Project. It includes State Highway 45 North, the Loop 1 (MoPac) extension, and the first four phases of State Highway 130, a planned 49-mile bypass designed to relieve congestion on Interstate Highway 35 in and around Austin. TxDOT estimates that toll rates on SH 130 will average 12.5 cents per mile for passenger cars and 48 cents per mile for trucks.

The Central Texas Regional Mobility Authority (CTRMA), the state's first, is developing plans for a 12-mile toll road from northwest Austin to a point north of Leander in Williamson County, bypassing Cedar Park. The \$200 million US 183-A project will be financed partially with toll revenue bonds issued by the CTRMA. Toll rates are projected to be between 10 and 15 cents per mile.

Such tolling projects, which function as a means to finance construction of new urban highways, do not signify a dramatic departure from how toll roads historically have been utilized in metropolitan areas such as Dallas and Houston. Other aspects of the state's new tolling policy, however, represent a conceptual sea change in state transportation financing. In December 2003, the TTC instructed TxDOT staff to begin evaluating all controlled-

access highway projects as possible candidates for tolling. This includes all projects involving new lane construction, both those under way and those being planned. Toward that end, TxDOT is paying Texas A&M University's Texas Transportation Institute \$96,000 to develop a toll viability computer program for district office use in determining the revenue potential of various projects.

As the 2003 policy directive illustrates, tolling has emerged as an integral part of TxDOT's overall approach to highway financing and project planning, encompassing new construction, added capacity, planned improvements, and ongoing maintenance. No longer will tolls be limited to separate, self-sustaining, intercity turnpikes or intracity expressways. Under certain conditions, tolls now may be charged on virtually any portion of the tax-supported state highway system, from a new section already planned or under construction to extend or complete an existing roadway, to new express lanes, to new roads connecting existing or planned roads. Under its new authority, the TTC may charge tolls on any state highway and transfer segments of state highways to local governments for tolling. Conceivably, the TTC could seek congressional authority granted other states to negotiate full acquisition of federal-system roadways and charge tolls. With a few exceptions, federal law generally prohibits states from tolling interstate highways, but some congressional leaders are discussing lifting the ban.

Because toll revenue is expected to contribute significantly to project maintenance and operations, not just construction costs, tolls are less likely to be discontinued, as they were for the Dallas-Fort Worth Turnpike (see *Existing toll roads in Texas*, page 3). Moreover, TxDOT eventually plans to spend toll revenue either for ongoing toll road improvements or for other projects in the same area. The TTC now views tolling less as a discretionary surcharge applicable solely to debt retirement on distinct, premium urban routes and more as a general user fee suitable for many types of state roadway projects that can generate additional revenue to leverage other funds. Rep. Joe Pickett of El Paso would go a step further and dedicate toll revenue to highway maintenance statewide instead of recirculating it locally. He suggests that TxDOT identify and accelerate the most viable toll projects throughout the state and use the revenue generated to perpetually supplement highway system maintenance expenditures, which currently exceed \$2 billion per year, and reallocate existing maintenance funds to unmet construction needs.

Proposed alternatives to toll roads

In addition to raising motor fuel tax (MFT) rates or allowing local-option MFTs, several other highway finance policy alternatives to building more toll roads are under consideration as the 79th legislative session approaches. Among them are:

- **Indexing MFT rates or taxing gasoline sales.** Linking these excise taxes to the Consumer Price Index would cause revenue to grow with inflation instead of being tied only to consumption, as would taxing gasoline sales by a percentage of the purchase price.
- **Redirecting Fund 6 diversions.** Public education and state law enforcement agencies receive more than 25 percent of MFT revenue. TxDOT receives approximately 90 percent of State Highway Fund monies, but the fund gets 50 percent or less of the fee revenue from special vehicle registration, vehicle certificates, and commercial transportation.
- **Dedicating other transportation-related taxes and fees.** The General Revenue Fund receives all revenue from motor vehicle sales/use/rental taxes as well as from fees for vehicle inspections, driver's licenses, and driver record information. The latter three sources, with some minor exceptions, will be redirected to the TMF as of fiscal 2006. Currently, counties keep some revenue from traffic citations issued by the Department of Public Safety, but local governments keep none of the revenue from other similar sources that is paid or collected within their jurisdictions.
- **Promoting mass transit.** Based on the success of the Dallas Area Rapid Transit system and the greater Houston area's commuter and light rail lines, some mass-transit advocates are pushing for more metropolitan train and bus lines, along with express bus lanes, to relieve traffic congestion. Intercity passenger rail also is a key component of the governor's Trans Texas Corridor plan.
- **Reducing traffic and altering trip frequency and timing.** Proposals include increasing high-occupancy-vehicle and high-occupancy/toll lanes, adding surcharges for roadway use during peak congestion periods (i.e., "value-pricing"), and encouraging carpooling, telecommuting, and flexible work scheduling.

Reaction to these developments has been mixed, leading some to question whether TxDOT is being too aggressive in relying so heavily on toll revenue to reduce its project funding gap. For these critics, and motorists unaccustomed to paying tolls, "pay-as-you-go" highway financing has taken on a whole new meaning.

Community reactions to recent tolling proposals

TxDOT's new tolling mandate has been embraced in some areas, including the Dallas-Fort Worth Metroplex where officials have allocated nearly \$6 billion to toll-related projects currently in planning and development. In addition, on July 26, 2004, the San Antonio-Bexar County Metropolitan Planning Organization voted to build at least 18 miles of ETC express toll lanes on North Loop 1604

and to toll main lanes on US Highway 281. Some small urban areas experiencing rapid growth also are turning to toll roads. Montgomery County, for example, is planning to issue bonds for an expansion project in exchange for shadow toll payments (see page 5) from TxDOT. Smith and Gregg counties have formed an RMA and may decide to toll part of their planned double loop around Tyler and Longview. Other communities that have formed RMAs as part of their mobility plans are Bexar, Cameron, Grayson, and Travis/Williamson counties. In other areas, most notably Austin, planned toll roads, particularly on highway segments already planned or under construction, have sparked controversy.

The TTC asserts that tolling – by generating additional revenue and/or supporting enough borrowing to free up (leverage) other funds – will accelerate project delivery. This means, according to the TTC, that cities will be able

Tolling policy in other states

A survey of several states that have extensive toll road systems shows that toll road operations and financing typically are separate from those of tax-supported highways.

In New York only toll revenue – not state money – may be spent on state toll roads. Even highways transferred from the state system to the toll road system cannot be tolled. The toll road system contributes to the state transportation fund, but toll road bonds may be repaid only with toll revenue.

In Pennsylvania, whose turnpike commission for the first time in 13 years raised toll rates in August 2004, the legislature must authorize tolling of any highway outside the toll road system. In the past 10 years, however, the addition of three new mandated segments was paid for with a combination of state and federal tax and fee revenue and toll revenue bonds, but all the toll revenue the roads generate must be spent on debt service or, eventually, the toll road system.

In Oklahoma, all toll roads were conceived, built, and financed as such and are self-supporting. A portion of motor fuel tax revenue is attributed to the toll road system and allocated to the state's general fund, however, and can be spent on toll roads only in the event of potential bond default.

A state entity operates Florida's primary 449-mile toll road system that opened in 1957. The Florida Turnpike Enterprise is exempt from most state transportation department regulations and charges one of the nation's lowest rates – 6 cents per mile for customers who pay electronically (see How tolls are paid, page 10) and 7.5 cents a mile for drivers who pay cash (truck drivers pay slightly more). Upon bond retirement in 1985, tolls were retained and the revenue spent on new toll projects. Three urban authorities and two counties also operate toll roads. In 2012, Orlando will begin congestion-based toll road pricing, in which rates vary by time of day based on traffic volumes.

California, by contrast, has no toll roads funded exclusively by the state or operated by fully independent toll entities. Two joint local authorities operate three toll

roads in Orange County. In 1989, the state legislature authorized public-private partnerships leading to the development of four toll projects involving the state and various private consortia. Two projects ended due to political controversy and/or legal problems, which also hampered a third endeavor.

In the early 1990s, under a right-of-way lease-back arrangement with the state, a private company built four, 10-mile express toll lanes in the median of State Route 91 in Orange County. In order to secure bonding, the 35-year franchise agreement contained a no-compete clause that precluded the California Transportation Department (Caltrans) from expanding the highway when traffic increased and congestion worsened. Caltrans added free lanes anyway based on safety concerns, and the franchisee sued the state to block the improvements. The Orange County Transportation Authority, the local public transit provider, eventually bought the project in 2003. An Australian firm continues to work on a fourth joint project, a new 9.5-mile toll road designed primarily for truck traffic between Mexico and San Diego County.

In an effort to strengthen its financial condition, the City of Chicago has leased the operation of the Chicago Skyway toll road to a private consortium. The Skyway is an elevated 7.8-mile tolled section of Interstate 90 that, according to the City of Chicago, only recently has become profitable since opening in 1959. Under the \$1.82 billion, 99-year lease agreement, the new operators are permitted to raise tolls gradually from the current level of \$2 up to \$5 by 2017, with further increases linked to inflation.

None of the transportation departments in the states mentioned above are integrating toll revenue into their highway financing plans to the same extent as Texas. In these states, the only roadway elements tolled other than multi-mile stretches of highway are bridges, tunnels, and express/high-occupancy-vehicle lanes. Nevertheless, several states either have discussed toll conversion or are considering it now to deal with funding shortfalls. Some segments of two interstate highways have become toll roads in Kansas and Oklahoma, but conversion in Oklahoma requires legislative authorization per project, precluding unilateral conversion by highway officials.

to address their traffic congestion problems sooner, while saving on construction costs that only will increase due to inflation. TxDOT estimates that toll leveraging may cut project start times in half – from 12 to six years – for nearly 90 percent of planned urban congestion-relief projects, totaling \$5.4 billion, from 2005 through 2009. However, another policy directive from TxDOT may prove to be the most compelling factor that Texas' largest cities must weigh in deciding whether to incorporate tolling into their transportation plans.

Tolling as a condition for receiving mobility bond funds. In September 2004, the TTC approved the proposed TMF strategic plan, under which the TTC will allocate one-third of net TMF bond proceeds toward traffic congestion relief and statewide connectivity projects in small urban areas (those with fewer than 200,000 inhabitants). The remaining two-thirds will be allocated using the Texas Metropolitan Mobility Plan (TMMP) authorized by the TTC in August 2003, to toll highways and other leveraged mobility projects in eight of the state's largest metropolitan areas – Austin, Corpus Christi, Dallas-Fort Worth, El Paso, Houston-Galveston, Lubbock, McAllen (Hidalgo County), and San Antonio – home to more than 60 percent of Texas residents. Any undesignated allocations of TMF bond proceeds could be committed to metropolitan areas that still had unfunded toll projects. According to the plan, the eight major metropolitan areas would have up to three years to access the TMF, but TxDOT officials have indicated that all the bond funding will be designated well before then.

In addition, for the first time, the TTC will direct TMMP congestion relief money (distinct from TMF proceeds) to the major metropolitan areas much like block grants, instead of on an individual project basis. TxDOT will use an index to measure how well proposed projects would reduce traffic congestion. Local transportation officials had until August 1, 2004, to submit their priorities for inclusion in the TMMP. The TTC approved the plan on October 28, 2004. Local officials will have input on final project selection in conjunction with TxDOT.

TxDOT maintains that tolling in general, and the formula-based allocation of mobility bond funds to the major metropolitan areas in particular, will have no impact on the distribution of Fund 6 money for highway projects. TTC members have indicated, however, that less TMF money would be available to metropolitan areas having fewer (or no) projects with toll revenue elements because

TxDOT would have to bear a larger share of these costs. This has led some officials in major cities to believe that TxDOT's new policy essentially forces them to plan for toll roads or risk losing access to limited TMF bond money which, in turn, could restrict the number of projects considered for other types of funding.

Officials in El Paso, for example, contend that TxDOT's approach does not fit the needs of their city. Standing to lose \$81 million, they requested a postponement of their TMMP submission and, at one point, suggested that they be considered for TMF funding from the one-third set aside for smaller urban areas. El Paso officials point out that their highway loop is incomplete and that their overall transportation system is not yet sophisticated enough to support toll roads. They also note that a large proportion of local drivers, many of whom live in Juarez, Mexico, are low-income workers who can ill afford to pay extra to commute.

The July 2004 adoption by the Capital Area MPO (CAMPO) of a controversial, toll-laden mobility plan prevailed largely on the concern that, failing approval, the Austin area would lose \$161 million in mobility funding to larger cities. The plan calls for tolling short improvements to several existing roadways as well as a few new connecting highways. CTRMA likely will operate most of these projects. New extensions of both ends of the Loop 1 limited-access expressway (MoPac Blvd.) would be tolled, including a 1.5-mile stretch containing a long-planned overpass that is nearing completion. Both segments provide access to large residential developments, raising concerns about creating more congestion and endangering pedestrians along alternate routes. Critics also have complained that the public had too little time to consider the multi-faceted proposal, which would take Austin from no toll roads of any kind to at least seven. The controversy has spurred litigation and spawned recall efforts aimed at several local elected officials who voted for the plan. CAMPO now is reconsidering the plan. Instead of tolling the Loop 1 overpass, new toll and/or high-occupancy-vehicle "managed" lanes may be added in central Austin by reconfiguring existing lanes on MoPac.

Plans to convert "free" roads into toll roads. In other cases, TxDOT has sparked public opposition against proposals to toll highway extensions that originally were not conceived as toll roads. In October 2004, following protests from residents and business interests in northwest Harris County, TxDOT abandoned its plan to help pay

How tolls are paid

While most toll roads, even new ones, still accept cash (including coins), the industry-wide trend is toward some means of electronic toll collection (ETC). To pay tolls electronically, a motorist must obtain what is commonly referred to as a toll tag, either directly from the toll road operator or from contracted providers (a deposit and rental fee may be required). Roughly the size of a credit card, the tag typically adheres to the windshield. A transponder embedded in the tag sends a signal to the toll road operating system's computerized receiving equipment, usually located above the on-ramps or entrance lanes in toll plazas. Not only do toll tags relieve drivers of the need to produce cash when using a toll road, they make it unnecessary for drivers to stop, or even slow down, at toll booths.

Most operators create pre-paid toll accounts billed to customers' credit or debit cards or paid in cash. Some operators require minimum purchases or usage amounts that must be replenished when accounts reach an established floor. Some operators generate bills that, like credit card accounts, must be paid periodically. ETC users typically pay lower rates than cash customers but may incur penalties for zero balances or expired cards.

Most systems, particularly those that do not accept cash, photograph vehicles' license plates so that drivers who enter the system without toll tags may be charged or fined through the mail. Failure to pay a toll in Texas is a misdemeanor that carries fines and other punishments

similar to those for parking violations. The toll authorities in Dallas and Houston mail notices to multiple or habitual violators, who may incur additional fees and penalties for late or non-payment. The North Texas Tollway Authority (NTTA) may forward unresolved violations to the Department of Public Safety, while the Harris County Toll Road Authority (HCTRA) may conduct administrative hearings that can result in vehicle impoundment and delayed registration renewal.

TxDOT favors the use of ETC as much as possible throughout the state highway system. Whether to provide the option of cash payment will be determined on a project-by-project basis, TxDOT officials say, and some new toll roads may use ETC exclusively.

In an effort to promote widespread ETC use, TxDOT is developing a pre-paid, deduction-based toll tag called TxTAG for use on any toll road statewide. TxDOT, NTTA, and HCTRA are working toward full statewide toll-tag interoperability. In addition, HCTRA and NTTA currently use toll tags that are fully compatible with each other.

Regardless of the payment method, toll revenue goes to the road's owner, a public or private entity that may contract the operation to another entity. Currently, there are no private toll roads in Texas, but the revenue stream can be routed directly to private lenders, i.e., bondholders who have invested in toll projects.

for the northward extension of the Tomball Parkway by converting an existing eight-mile segment to a toll road. Highway planners now are considering alternative funding options for this extension, including the use of toll lanes in conjunction with free lanes.

North of Dallas, however, despite opposition from residents and, initially, municipal officials in the communities of Frisco and The Colony, the Regional Transportation Council on October 14, 2004, approved electronic-only tolling on the 14-mile expanded segment of nearby State Highway 121 in Denton County. In addition,

Collin County is considering whether to toll its segment of SH 121, and an 11.4-mile extension of SH 161 through Irving and Grand Prairie also will be tolled.

Earlier in 2004, TxDOT completed a long-awaited expansion of six-lane US 183 in northwest Austin. TxDOT briefly considered tolling the newly widened section, prompting an outcry from nearby residents. Similar attempts at tolling newly completed extensions/ expansions of state highways in Tarrant, Brazos, and Bexar counties also were abandoned earlier this year due to public opposition.

Nevertheless, toll conversion remains an integral part of TxDOT's new policy, although TxDOT says it has no plans to toll existing lanes. Austin's proposed mobility plan initially included toll express lanes in the median of a parkway (the incomplete Loop 360) on the edge of the Hill Country, but plans to implement that phase currently are on hold. Although details are not final and implementation may be delayed, the plan still calls for tolling new capacity on both existing primary airport routes, one of which has been undergoing expansion for years and one that may get new toll lanes.

Despite concerns about traffic congestion, many residents in these areas resent the prospect of paying tolls to use essential existing routes that, they assert, already have been paid for with tax dollars. The new tolling policy, they argue, serves only to raise revenue for TxDOT, not to relieve congestion or add capacity, particularly because plans to convert existing roads to toll roads need not involve the addition of new lanes. Motorists already have paid for these roads at the pump, critics say, and it is unfair to ask taxpayers to pay tolls on existing highways – essentially a “double tax” – to finance the construction of roads elsewhere.

A related complaint centers around the perception that transportation planners might attempt to reduce competition with revenue-generating toll roads by providing as alternatives, at best, only frontage roads with traffic signals. Crowded frontage roads with traffic signals and stop signs will provide no real alternatives during periods of heavy congestion, critics say, and some even fear that construction or maintenance of alternative roadways might be frozen or delayed in order to encourage more drivers to “choose” toll roads. They point to training materials developed by TxDOT that encourage agency planners to increase toll road revenues by giving drivers few free alternatives. A presentation titled “Toll Road Finance 101,” for example, recommends that district engineers build discontinuous frontage roads, noting that “free alternatives mean lower revenues.” TxDOT officials say this thinking reflects

tax-exempt bond investors' preferred market conditions. Nevertheless, TxDOT contemplates an aggressive public relations campaign to promote toll road use.

Supporters of the new highway financing policy say that there is no such thing as a “free” road; there are only “tax roads” and toll roads. Motorists pay for roads either way, they argue, and toll roads have the advantage of collecting money only from those who actually drive on them, not from the motoring public at large, making tolls truly user fees. If the current highway fiscal structure does not change, transportation policymakers say they must seek new funding sources such as tolls or be overwhelmed by growing demand and increased traffic congestion. In response to critics who object to the use of toll revenue to fund other highway projects, TxDOT and CTRMA officials have said that all toll revenue will be spent either on the roads generating it or on other highways within the local area. Finally, to address the concerns of those who believe transportation planners have a disincentive to invest in non-toll roads, TxDOT officials have said publicly that comparable, non-toll routes always will be available as alternatives to toll roads. They concede, however, that the alternate routes could be signalized frontage roads or existing roads through business districts.

Some toll road opponents contend that TxDOT is overreaching in an attempt to make toll roads an instant panacea for decades of transportation underfunding. They claim that tolling new highways, existing roads, or previously planned improvements, rather than only new premium routes, will deprive middle-income and affluent taxpayers of one of their few tangible public benefits. If the antipathy toward mandated tolling demonstrated in communities such as Austin and El Paso continues to spread, some foresee efforts in the 79th Legislature to restrict the tolling ability of TxDOT and the RMAs, such as by prohibiting use of tolling on existing or already planned freeways.

– by Patrick K. Graves

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Building
Room 420
P.O. Box 2910
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Staff:

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