TEXAS PUBLIC POLICY FOUNDATION

2019-20 LEGISLATOR'S GUIDE to the issues

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TEXAS PUBLIC POLICY FOUNDATION
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Transportation

The Issue

Texas' population has been growing at about double the national rate for more than a decade; this, combined with increased international trade, places heightened demands on infrastructure, creating congestion and maintenance challenges. As a modest countervailing offset, Americans drive fewer miles due to internet shopping, entertainment, and communications, with 9,812 miles per capita driven in December 2017, compared to the peak of about 10,091 in June, 2005, a decline of 3%.

Texas' strong growth is reflected in the 2018 Unified Transportation Program totaling $71.2 billion in projects over 10 years through 2027.

Texas' $0.20 per gallon tax on gasoline and diesel generates about $3.5 billion annually—a quarter of which goes to public schools—and does not produce enough revenue by itself to completely fund transportation spending. Thus, state policymakers have supplemented transportation spending with funding secured from other sources, such as a claim on the state's oil and gas taxes (Proposition 1) and sales taxes (Proposition 7), with debt financing and new toll road authorizations being deemphasized as policy priorities change. Proposition 1 revenues rise and fall with the oil and gas market and are expected to generate about $1.7 billion in 2018-19 and increase to $2 billion or more in 2020-21. Proposition 7, based on sales taxes and vehicle sales is more stable, generating $4.7 billion in 2018-19, rising to $5.8 billion in 2020-21. The Legislature has earmarked some Proposition 7 funds to pay for debt service on Proposition 12 bonds, totaling some $613 million in 2018-19.

In recent years, almost 42% of the Texas Department of Transportation's (TxDOT) funding has come from the federal government with federal funds generated by taxes on fuel and other transportation items supplemented with $70 billion in general revenue transfers. The Trump administration has proposed significantly increasing infrastructure spending. Pending action in Congress, this spending could take the form of added general revenue spending with Congress dictating priorities or it could reflect the president's proposal to use loan guarantees and favorable tax treatment to encourage infrastructure spending by private parties and state and local governments. A requirement of this initiative would be the securing of a revenue stream. To the extent the latter happens, Texas' recent aversion to toll roads will either have to be overcome or state and local revenue sources must be dedicated to pay for the project's local share costs.

HB 20 (84-R) contained several reforms of note, requiring the Texas Transportation Commission (TCC) to implement performance-based planning to generate metrics for the executive and legislative branches to measure performance and prioritize projects using objective criteria. But the TCC was given wide latitude to ignore its project ranking criteria by allowing for discretionary funding decisions up to 10% of TxDOT's biennial budget. Since new project starts make up less than half of the overall TxDOT budget, granting 10% discretionary authority allows the TCC to ignore much of its own ranking process by allocating about 25% of spending on new projects that didn't make the prioritized project list. The

continued

Legislature should follow up on this measure and review the TCC's project ranking and objective criteria.

Design-Build Contracting

Design-build differs from traditional design-bid-build contracting in that, in the former, a contractor is responsible for designing and building the project while in the latter, a different party, usually the government, designs the project and then bids it out to a contractor to build. Design-bid-build typically results in a longer, more expensive process.

In the six-year period ending in 2014, TxDOT awarded five design-build contracts totaling $3.85 billion. This method of procurement is estimated to have saved Texas taxpayers some $1.08 billion, or 22% of the total spent. However, HB 20 raised the threshold of value for design-build contracts from $50 million to $150 million. This appears to have reduced TxDOT's design-build activity, which was the intent of the clause. Further, a design-build contract may not extend a maintenance agreement as part of the award for a term of longer than five years. This discourages design and construction techniques that can cost more on the front end but end up saving money on the back end through reduced maintenance costs—roads and bridges typically cost more to maintain over their lifetimes than to build.

Further, according to a federal study, the national average time savings for project completion in a design-build contract versus a design-bid-build contract is approximately 14%. For example, the DFW Connector Project used design-build, shaving 28 months off the expected timeline versus the traditional bidding process. This saved $43 million in construction inflation while allowing 180,000 cars to use the DFW Connector earlier than they otherwise would have, saving about $60 million in commuter costs.

Beyond these design-build limitations, in 2011, the Legislature enacted a little-examined restriction on design-build that significantly hobbles that contracting method's use in that the law requires "a schematic design approximately 30% complete" for the issuance of a proposal request for a design-build project. This restriction increases engineering staff costs at TxDOT and reduces the savings in time and money from design-build procurements by predetermining a critical portion of the design. This reduces the innovation and flexibility that contractors may provide on a project. Lifting this restriction would increase the savings that could be obtained from design-build contracting.

The Facts

- Texas restricts money and time saving design-build contracts to no more than three per year and no less than $150 million. Other large states do not have parallel restrictions.
- Per capita miles driven has been flat since 2006. When combined with increasing fuel efficiency, alternative-fueled vehicles, and inflation, this means the fuel tax becomes less capable of funding transportation, placing a greater reliance on other revenue sources.

Recommendations

- Pending new federal transportation legislation, revisit dedicated state and local funding mechanisms, placing limitations on funding sources to protect the taxpayer and guard against costly and inefficient projects that may be subsidized by new flows of federal funds.
- Remove the disincentives to propose long-lasting designs and construction techniques by allowing construction companies to take contractual responsibility for maintenance beyond the current five-year limitation as part of the initial contract award.
- Remove limitations on design-build contracting by striking both the yearly limit of three, eliminating the minimum size of $150 million, and the requirement for designs to be 30% complete before going out to bid.

Resources

Texas Transportation Funding, Including Texas Clear Lanes and Congestion Relief Update, Texas Department of Transportation (March 2018).

Unified Transportation Program 2018, Texas Department of Transportation (Aug. 2017).

Texas Department of Transportation Annual Financial Report, FY 2017, Texas Department of Transportation (Dec. 2017).

The Road Forward: Improving Efficiency in Texas Transportation Spending by Chuck DeVore, Texas Public Policy Foundation (March 2015).

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