



Testimony

Testimony on Local Option Transportation Legislation CSHB 9 and CSHJR 9

House Transportation Committee

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& Communications

Thank you, Chairman Pickett and Members of the House Transportation Committee, for the opportunity to discuss the local option transportation legislation being debated this session.

Before I begin, I want to qualify my remarks, in that we received the committee substitute this morning and are still reviewing it in detail.

The Foundation recognizes the tremendous challenge faced by the legislature in addressing our state's transportation problems while attempting to maintain the fiscal environment that has made Texas the economic engine of the nation. This committee and Chairwoman Truitt have been vocal leaders, working tirelessly to reduce congestion at a time of significant growth. This is especially evident in the amount of effort put forward by Chairwoman Truitt and Chairman Carona in developing a funding mechanism for the construction, maintenance, and operation of a regional rail system within the D/FW Metroplex.

As we currently understand the legislation, the bill seeks to provide a method for local communities to provide transportation funding options by presenting a variety of revenue options¹ before the voters, including the following:

- A gas or diesel fuel tax up to 10 cents per gallon
- A new resident fee up to \$250
- An annual mobility fee up to \$60
- A parking management fee up to \$2 per day in city and county facilities
- An annual vehicle emissions fee up to \$15
- Up to a doubling of the driver's license fee from \$24 to \$48²

Among our concerns is the lack of a clear fiscal impact on taxpayers for this legislation. Earlier

this month, the Legislative Budget Board (LBB) released an estimate in its Fiscal Note³ of how much the Senate version of the local option bill—SB 855—would cost taxpayers in major metropolitan areas. From 2010 to 2014, if only the *fees* portion of SB 855 were imposed, this legislation if approved by voters could generate the following revenue:

- \$985.2 million in the North Texas Region
- \$226.5 million in the Capital Region
- \$101.5 million in the West Texas Border Region⁴

However, LBB's calculations do not take into account the potential gas and diesel tax increases. Logistically speaking, it is nearly impossible to capture an accurate count of how much the county gas and diesel tax increase could cost taxpayers, since no data is kept on the quantity of gas going to each county. However, by looking at the average miles driven according to the Federal Highway Administration, the average fuel economy, the regions' populations, multiplied by the maximum tax rate allowed, we came up with the following data.

If a county imposes all the fees allowed under SB 855, as listed above, and tacks on the additional 10-cent per gallon gas and diesel tax increase, Texans in these counties could be looking at a total 5-year tax bill of:

- \$2.2 billion in the North Texas Region
- \$451.5 million in the Alamo Region
- \$499.6 million in the Capital Region
- \$298.2 million in the West Texas Border Region

Combined, this legislation has the capacity to eventually cost Texas taxpayers billions, and that figure only includes the major metropolitan areas—and does not include Waco, Ft. Hood, Corpus Christi, Harlingen, or any other region added.

While these taxes and fees would require voter approval, a more ideal manner in which to consider revenue increases, voter approval itself does not answer the question as to whether or not this measure is appropriate public policy for providing congestion relief. Voters are assuming that the legislature will have given the measure considerable scrutiny before it is placed onto a ballot. Because of its permanence, we believe a tax bill should be one of the most difficult things for the legislature to accomplish.

Our concerns as outlined in the following pages revolve around six key areas:

- The legislature should not consider putting a tax increase before voters until current transportation taxes are used for transportation
- Government spending at all levels, including many local government budgets, has grown disproportionately large
- Many local communities citing a transportation funding crisis are not using all tools currently at their disposal
- The legislation contains a progressive income financing structure, similar to an income tax, which would create a slippery slope and formalize in statute the concept of paying for government services based on one's income
- The legislation appears to permit double taxation, projects that do not relieve traffic congestion, and needs several transparency and taxpayer protections
- The legislation has run astray of its intended purpose, becoming increasingly complex and far-reaching, and even appears to create a broad welfare program in San Antonio unrelated to transportation

I. The legislature should not consider putting a tax increase before voters until current transportation taxes are used for transportation

We are extremely supportive and appreciative of the work put forward by this committee and the bill's author to attempt to end transportation funding diversions as quickly as possible, and stand ready to continue to do what we can

to highlight the matter.

However, especially during these troubled economic times, it is important that the legislature do everything in its power to address problems without increasing Texans' tax burden. Most importantly, the legislature should end the practice of diverting transportation tax revenue to non-transportation purposes.

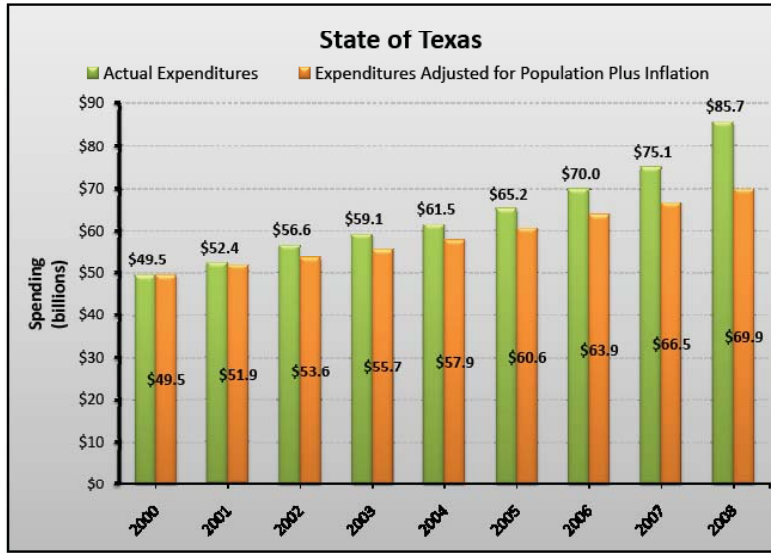
According to TxDOT, the 1998-99 state budget contained nearly \$700 million⁵ in such diversions, and that has mushroomed to encompass more than \$1.5 billion⁶ in diversions for the current 2008-09 budget. This revenue collected from users of the state's transportation system has been diverted to pay for the following activities that do nothing to reduce traffic congestion:

- Attorney General: Mineral Rights Litigation
- Health and Human Services Commission
- Texas Transportation Institute
- Department of Public Safety
- Texas Workforce Commission: Client Transportation
- Commission on the Arts
- Historical Commission
- State Office of Administrative Hearings
- Lufkin Tourist Information Center
- Salary Increase for Schedule C
- Regulation of Controlled Substances
- Silver Alert for Missing Children
- Medical Transportation: Medicaid Match
- Auto Theft Prevention
- EMS Grants
- Vehicle Sales Tax to General Revenue
- "Mobile Refrigeration"

This session's appropriations appear to be heading in the same direction, with both the House⁷ and Senate⁸ budgets diverting in excess of \$1 billion from transportation revenue for non-transportation purposes. That is the first place the legislature should look for revenue to relieve traffic congestion, not new taxes.

II. Government spending at all levels, including many local government budgets, has grown disproportionately large

While we recognize the significance of the transportation challenges faced by our state, and the dwindling amount of money spent on transportation, we believe the crisis is more of a priority question, than a question of available funding. To provide an example of this we can see that local, state, and federal spending has exceeded actual growth—a trend we believe should be restrained, not magnified.



For more information on the state's budget, please visit <http://www.lbb.state.tx.us/>

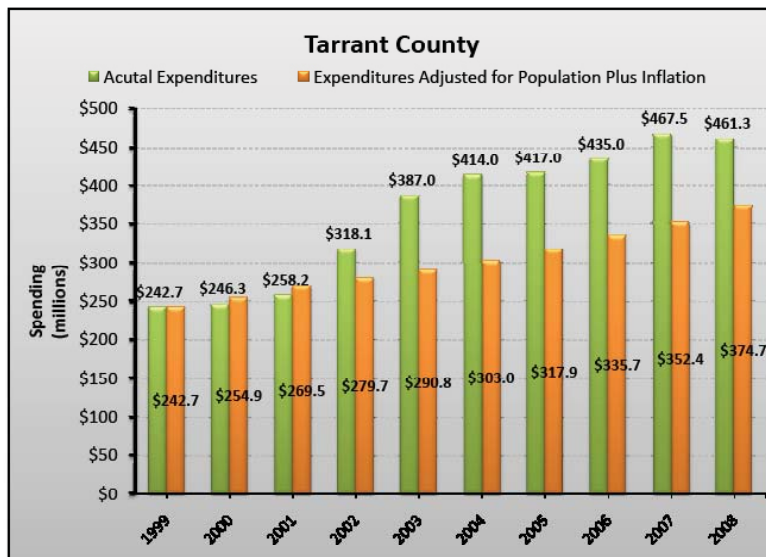
Between 2000 and 2008, the state's total budget grew by 73.1 percent from \$49.5 billion⁹ to \$85.7 billion¹⁰, while the sum of population plus inflation only increased by 41.3 percent over the same period. That means the cost of government per person has gone up during this decade. The discrepancy between spending and the population plus inflation measure is even more distinct at the local level.

From fiscal year 1999 to fiscal year 2008, Tarrant County's budget* nearly doubled from \$242.7 million¹¹ to \$461.3 million¹², a 90.1 percent difference in seven years. Yet, population plus inflation over the same period grew by only 54.4 percent.

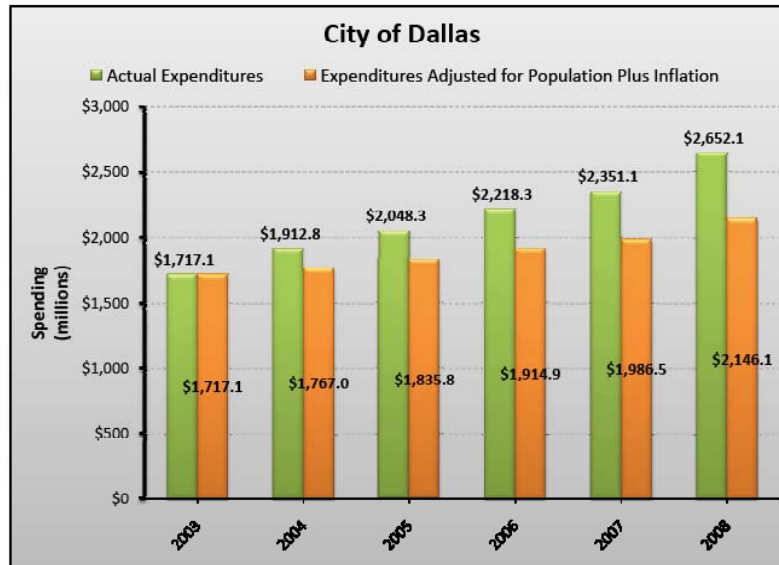
In Dallas, the city's 2003 budget shows a total adopted budget

figure of \$1.7 billion.¹³ By 2008, the city's budget had grown to \$2.7 billion¹⁴—an increase of 54.5 percent. Perhaps this could be justified if the city needed the extra funds to maintain essential services for a rapidly growing population, but the data indicates that was not the case. From 2003 to 2008, the sum of population plus inflation increased by only 25 percent.

This is further exacerbated by the destructive trend of government expansion at the federal level. Between 1983 and 2000, the federal government's share of GDP fell from 23.5 percent to 18.4 percent. It increased to 20.9 percent last year, and could reach 28 percent this year. According to some reports, total federal government spending in 2010 may approach 40 percent of GDP.



Financial statements prior to FY 1999 were not available at the time of publication. For more information, please visit <http://www.tarrantcounty.com/eBudget/site/default.asp>



Adopted budget information prior to FY 2002-03 was not available at the time of publication. For more information, please visit http://www.dallascityhall.com/Budget/budget_0708.html

Government spending is clearly excessive—growing at a rate faster than justified and becoming a considerable headwind to our economic recovery. We respectfully submit that taxpayers deserve for this information to be taken into consideration when listening to calls for tax increases. This spending highlights a need for all governments to consider prioritizing their current available revenue, rather than opting to increase existing tax burdens.

III. Many local communities citing a transportation funding crisis are not using all tools currently at their disposal

As seen in our attached research that was published today, many cities that would be covered by this legislation do not currently use all available tools to generate revenue for transportation, and instead either use available taxing capacity for such things as economic development and fire protection, or still have available taxing capacity. While local communities cite a transportation funding crisis, it appears to be more of a funding priority crisis, as they have substantial ability to generate increased revenue for transportation, if transportation is in crisis.

For instance, within the North Texas MPO, more than \$300 million¹⁵ could have been generated in additional revenue for transit authorities in 2008 had cities reprioritized existing sales taxes for transportation, without raising taxes at all. This highlights the different priorities cities within the same region place on transportation (see attached report, *The Existing Local Otion for Transportation, An Analysis of Existing Local Transportation Funding Tools*, April 2009).

IV. The legislation contains a progressive income financing structure, similar to an income tax, which would create a slippery slope and formalize in statute the concept of paying for government services based on one’s income

According to language in the bill, it appears to be the case that one won’t have to pay these fees unless their income reaches a certain threshold. This is a progressive income funding structure that has many of the elements seen in conventional income taxes, and passage of this could create in statute a mechanism and precedent for such taxes.

By tradition, our system for financing roads has come through taxes, fees, and tolls, which are more or less proportionate to one’s use of the infrastructure. But if the fees in this legislation are adopted in local communities, one of two people making equal use of the infrastructure would pay the government while the other would not, based on their income. That injects a means test into our public finance system for roads, which is quite a departure from Texas’ historical rejection of finance structures that are similar to a progressive income tax.

This is a slippery slope and sets up battles that force the legislature to pick winners and losers, shifting the tax burden off one preferred demographic and onto another that is disfavored. And there is an abundance of research, including our own, that has established that Texas’ economic dominance over other states is due in large part to the fact that we don’t tax citizens based on their income.

V. The legislation appears to permit double taxation, projects that do not relieve traffic congestion, and needs several transparency and taxpayer protections

We have raised several concerns about this legislation, some of which were addressed in the Senate version, and others not.

The bill appears to open the door to double taxation

Under this legislation, counties would be permitted to use the local option funds to reimburse government entities for the “planning, acquiring, establishing, developing, constructing, or renovating” projects—yet there is no mechanism to reimburse taxpayers for the funds used to originally plan, acquire, establish, develop, construct or renovate those projects. Under this scenario, the same taxpayer might be required to pay twice for the same activity (engineering, ROW acquisition, etc.).

The bill includes projects that do not relieve traffic congestion

The legislation specifically permits local communities to use local option transportation funding to build scenic, hike and bike trails that do nothing to reduce major urban traffic congestion. Activities such as this are more appropriately described as recreational, as they do not address the transportation “crisis.”

The ballot should require separate items for the initial capital costs and the ongoing M&O taxes and fees

Current language in the bill forbids separate ballot items, but if this measure is focused on letting the voters decide whether or not they support the revenue structure, they should be provided an opportunity to vote on two separate items—both the initial costs and the ongoing taxes and fees to support the maintenance and operations of the infrastructure. By listing these items separately, the public will gain the most accurate picture possible, and local governments will be forced to trim their requests because the ballot will be under greater scrutiny.

The bill contains no penalties on using funds for lobby, election, or advocacy activities

The legislation should have strict prohibitions and penalties on certain uses of the proceeds from these revenue sources. This includes any use of the funds to reimburse or otherwise cover costs related to holding the election—whether for direct advocacy or simple administration. There should also be a prohibition and penalties against using the funds for lobbying of any kind; while the Senate measure included a measure

prohibiting the hiring of persons who file with the Texas Ethics Commission, it does not include a prohibition and penalties on hiring someone to influence city councils, county commissioners courts, or other government entities such as mass transit agencies, airports, special districts, etc.

The bill needs meaningful financial transparency by posting check registers online

Texas has been a leader in financial transparency. The state, as well as many school districts and local governments, now post their check registers online. Collin County was the first county to post its check register online, and Comptroller Susan Combs makes it easy for other local governments to follow this lead by having a toolkit for local officials to use. We believe financial transparency discourages and roots out fraud, waste, and abuse. Any government entity receiving these funds should be required to post its check registers online so the public can follow their money to its intended purpose. The Senate version includes a single annual report that is made public, which comes nowhere close to providing meaningful information for the public.

The Comptroller and State Auditor should receive specific authority to review activities

Since local communities are coming to the state seeking permission to increase taxes and fees, the money collected for that purpose should be subject to full review by the state. The bill permits the state auditor to audit entities with certain reason, but the comptroller is not included and we think this should be changed.

Local option elections should be held on November uniform election dates in even-numbered years

Because of the significant fiscal impact this legislation will have on taxpayers, it is important that the elections which authorize these fees and taxes be held in a manner that maximizes voter participation. The Senate version included a small provision for San Antonio to do this, but this committee substitute does not appear to have any such provision for even-numbered years.

VI. The legislation has run astray of its intended purpose, and appears to create a broad welfare program in San Antonio unrelated to transportation

Despite statewide transportation needs, this bill was developed by the D/FW region in response to their unique needs, and not created to improve our statewide transportation system. The Senate version would create a haphazard approach to improving statewide mobility.

Because of the speed at which this bill was amended and approved in the Senate, most taxpayers currently driving in the more recent regions where this tax could be imposed have not had a practical opportunity to engage in a dialogue or offer their opinions.

Most disturbing, the bill appears to include the creation of a welfare program in San Antonio that would take money generated from transportation revenue and redistribute it to individuals whose income is under 300%¹⁶ of the federal poverty level.

Conclusion

We are grateful to the bill's author and this committee for the diligence given to addressing our state's transportation challenges. But what started as a regional effort to solve a unique challenge to fund light rail in the D/FW Metroplex has grown

into a massive, confusing tax bill that includes most of the state's population centers, appears to permit double taxation, includes projects that do not relieve traffic congestion, while using a progressive income finance structure resembling a conventional income tax. We respectfully submit that this is not the way to address our transportation challenges.

We believe that government is growing far too fast, and during today's economic climate taxpayers are expecting government to tighten its own belt and do everything in its power to avoid increasing their tax burden. We encourage the legislature to end transportation funding diversions and for local communities to make transportation a priority by using available tools such as the sales tax. We also continue to offer our cooperation and support in working with legislators this interim to identify a permanent solution to our state's transportation funding problems. ★

ENDNOTES

¹ Texas Legislature Online, Committee Substitute for Senate Bill 855: Subchapter B Local Option Funding, <http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/SB00855E.pdf>.

² Texas Constitution and Statutes, Transportation Code Section 521.421 <http://www.statutes.legis.state.tx.us/SOTWDocs/TN/pdf/TN.521.pdf>.

³ Legislative Budget Board, "Fiscal Note," <http://www.legis.state.tx.us/tlodocs/81R/fiscalnotes/pdf/SB00855S.pdf>.

⁴ Ibid.

⁵ Texas Legislature Online, House Bill 1 1998-99 75th Legislature Biennium.

⁶ Texas Legislature Online, Senate Bill 1 80th Legislature 2008-09 Biennium, http://www.lbb.state.tx.us/Bill_80/3_Senate_Bill_1/Bill-80-3_Senate_Bill_1_0107.pdf.

⁷ Legislative Budget Board, "Summary of House Committee Substitute for Senate Bill 1: For the 2010-2011 Biennium," April 2009. http://www.lbb.state.tx.us/Bill_81/3_House/Bill-81-3_House_Summary_0409.pdf.

⁸ Legislative Budget Board, "Summary of Committee Substitute for Senate Bill 1: For the 2010-2011 Biennium," March 2009. http://www.lbb.state.tx.us/Bill_81/2_Senate/Bill-81-2_Senate_Summary_0309.pdf.

⁹ Legislative Budget Board, "2002-2003 Fiscal Size Up," pg. 425: http://www.lbb.state.tx.us/Fiscal_Size-up_Archive/Fiscal_Size-up_2002-2003_0102.pdf.

¹⁰ Legislative Budget Board, "2008-2009 Fiscal Size Up," pg. 553: http://www.lbb.state.tx.us/Fiscal_Size-up/Fiscal%20Size-up%202008-09.pdf.

¹¹ Tarrant County, Budget and Risk Management, "Comprehensive Annual Financial Report FY 1999," pg. xi: <http://www.tarrantcounty.com/eauditor/lib/eauditor/CAFRFY1999.pdf>.

¹² Tarrant County, Budget and Risk Management, "Tarrant County Financial Statements for the month of August 2008," pg. 4: <http://www.tarrantcounty.com/eauditor/lib/eauditor/August2008.pdf>.

¹³ City of Dallas, Budget Management Services, "Adopted Budget: Budget in Brief," pg. 5: http://www.dallascityhall.com/pdf/Financial/BIB_03.pdf.

¹⁴ City of Dallas, Budget Management Services, "2008-2009 Adopted Annual Budget: Budget Overview," pg. xxi: <http://www.dallascityhall.com/Budget/adopted0809/BudgetOverview.pdf>.

¹⁵ Heflin, Talmadge and James Quintero. 2009. The Existing Local Option for Transportation: An Analysis of Existing Local Transportation Funding Tools. The Texas Public Policy Foundation, April 2009. <http://www.texaspolicy.com/pdf/2009-04-PP13-transtax-jq-th.pdf>.

¹⁶ Texas Legislature Online, Committee Substitute for House Bill 9: Section 616.1555, 2(A).

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