Private-Sector Roadway Funding in Texas

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In this paper are examined current use of and issues related to the following seven nontraditional roadway-financing mechanisms in Texas: transportation corporations, road utility districts, municipal utility districts, county road districts, tollways, developer fees, and negotiated improvements and donations.

Texas supports the largest network of publicly financed roadways in the nation: 70,933 mi of state-maintained roadways and approximately 200,000 mi maintained by other government entities. During 1984-1985 Texas spent nearly $4 billion on its roadway system.

The continued urbanization of the state has placed increasing pressure on state and local government roadway funds, and local and state policy makers have looked to nontraditional roadway funding sources and have encouraged the participation of developers and others in private industry. In addition, the development community has sought ways to accelerate roadway implementation. This has resulted in new legislation at the state, city, and county levels to facilitate private sector involvement in roadway development. Although most of these innovative roadway financing methods have been used in other states, some are unique to Texas.

At least seven nontraditional financing mechanisms have been created in Texas: *(a)* transportation corporations, *(b)* road utility districts, *(c)* municipal utility districts, *(d)* county road districts, *(e)* tollways, *(f)* developer fees, and *(g)* negotiated improvements and donations.

TRANSPORTATION CORPORATIONS

Texas state legislation (Article 6 15281, Vernon's Texas Civil Statutes) allows private property owners to form nonprofit, tax-exempt corporations that can accept property and funding donations primarily to assemble right-of-way for highway transportation projects. The legislation also states that such corporations may assist in the planning and design of transportation facilities, and preliminary alignment studies have been done with donated funds. A recent policy statement by the State Department of Highways and Public Transportation (SDHPT) Commission stipulates, however, that the entities are to be viewed as "financing and advisory vehicles only with all decisions with respect to location, design, construction and related matters made solely by the SDHPT" (*1*, p. 11).

A transportation corporation may be formed by the filing of a written application to the SDHPT Commission by at least three qualified electors. The petitioners do not have to own property or reside in the geographic area to be targeted. The petition requests the creation of a corporation that will act on behalf of the commission within a designated area. There is no filing fee or charge for this application, and the geographic area may include territory from one or more of the state's political subdivisions. The commission will then vote on a resolution approving the creation of each corporation. If approved, the corporation will be issued a certificate of incorporation by the Texas Secretary of State.

The corporation is governed by a board of at least three directors who are appointed by the commission. The commission recently adopted a policy statement that prohibits elected officials and persons with substantial financial interests from serving on the boards. Donating landowners, or their representatives, may serve as nonvoting advisory members only. All business meetings of the corporations must be conducted under the Open Meetings Law. The commission may remove board members at will (*1*, p. 11).

Six transportation corporations have been created since 1984, although the commission has appointed a board of directors for only three of these. The lengths of their roadways ranges from 7 to 155 mi (Table 1).

It is too early to comment on the success of the corporation concept in reducing public roadway expenditures. The first corporation, the Grand Parkway Association, has succeeded in obtaining large tracts of donated rights-of-way but is still far from meeting its goals. Because of the size of the proposed Grand Parkway (approximately 155 mi and $600 million), smaller, more recently formed corporations may accomplish their objectives sooner.

ROAD UTILITY DISTRICTS

The Texas Legislature passed the Road Utility District (RUD) Act during 1984. This legislation allows property owners within a designated area to create a legal entity to do any or all of the following: construct, acquire, or improve major arterials or feeder roads to be financed by an ad valorem tax on property within the district. All of the property owners within a proposed district must petition the SDHPT for approval to create a RUD. The RUD acts as an official subdivision of the state.

Petitioners who desire to form a RUD (100 percent of landowners) must pay a $5,000 filing fee to the commission. A five member board of directors is to be elected by voters in the district. Prospective directors must be 18 years of age, Texas residents, and either own land subject to taxation in the district or be registered to vote in the district. Also, with the approval of the affected voters, the district may levy taxes on all property within the district, issue bonds, and collect a maintenance tax not to exceed $0.25 per $100 assessed valuation of property. After the roadway improvements have been made and paid in full, the RUD may dissolve and convey the road to the state, city, or county if there has been prior agreement to do so.

The RUD concept appears to be most applicable when only one or a few landowners are involved because of the 100

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TABLE 1 TEXAS TRANSPORTATION CORPORATIONS

Name	Urban Area	Date Formed	Approximate Length (mi)
Grand Parkway Association[a]	Houston-Harris County	October 1984	155
MoKan Corridor Association[a]	Austin-Travis County and Williamson County	August 1985	31.5
Galveston-Alvin-Pearland Transportation Corporation	Galveston-Brazoria County	November 1985	43
Plateau Region Outer Parkway Corporation	Austin-Travis County	February 1986	7
MoPac South Transportation Corporation[a]	Austin-Travis County	April 1986	8.2
San Marcos Parkway Corporation	San Marcos	May 1986	26

[a]This corporation has appointed directors as of May 1986.

percent cooperation necessary. Its major advantage is that it reduces the burden on a private developer to pay the full costs of roadway improvements. Instead, tax-free bonds are sold and paid for through the special ad valorem tax to spread the costs both over time and among affected users. It is limited by its applicability to only major arterial and feeder roadways.

To date, one RUD in Denton County has been approved by the commission. Another in Harris County is under consideration.

MUNICIPAL UTILITY DISTRICTS

Texas Municipal Utility Districts (MUDs) are established by the State Water Commission primarily to fund the development of drainage-related projects in a district. New state legislation allows a MUD, with the water commission's approval, to petition the SDHPT Commission to acquire powers granted to road utility districts (RUDs). As with the RUDs, 100 percent of the district landowners must petition the commission for this designation. If the petition is granted by the commission, the district calls for an election to determine whether the MUD should exercise road utility district powers. On voter approval, the district must follow the procedures required for RUDs described previously.

The major advantage of a MUD obtaining these powers is that the district with its governing body and taxation powers already exists. It also permits the district to implement a more comprehensive development plan that considers transportation along with drainage, navigation, and other natural resource development.

Currently, no MUDs have formed RUDs under these provisions. However, a MUD in Bastrop County has shown interest in the idea. Another MUD at the Las Colinas development in Irving has received special permission to use MUD taxation powers to fund a peoplemover project connecting office complexes in the planned development.

COUNTY ROAD DISTRICTS

Texas state law allows special county road districts (CRDs) to be established to levy an additional tax for roadway improvements within a district. CRDs are authorized and governed by the elected County Commissioners Court of the county in which the district lies. This court has the authority to develop roadways within the county.

The Commissioners Court can establish a CRD by adopting an order declaring the district established and defining the boundaries of the district. The County Commissioner, in whose precinct the district is located, becomes the road superintendent of the district. All expenditures in excess of $50 must be approved by the full Commissioners Court.

Levy of the special road tax must be initiated by a petition to the court by 50 qualified electors from the district. The court then orders an election to determine whether the county shall levy the tax, which cannot exceed $0.15 per $100 assessed value of property. Majority voter approval is needed to pass the tax. Bonds not to exceed 25 percent of the assessed value of district property may also be issued by the district. Two-thirds voter approval is necessary to pass bond issues.

Several CRDs have been established. The first was the Southwest Travis County Road District One created in 1984. This 7,000-acre district was predominantly woodland and pasture and now plans to spend $20 million to upgrade its arterial system. CRDs are more popular than RUDs because they do not require the 100 percent landowner approval or the establishment of a separate governing body and can be used for any type of roadway. They can, however, meet the intended goal of developing roadways within the district and may be initiated by the private sector with Commissioners Court approval. Indeed, several proposed RUDs have decided to apply as CRDs because of the relative ease of CRD formation.

At least 11 such districts are proposed or in existence in Travis and Williamson counties near Austin. The driving force for their establishment has been local development and lawyers. According to the Municipal Advisory Council of Texas, Texas Municipal Report Index, Austin, Texas, the following counties have CRDs:

Bexar	Kaufman
Bosque	Montague
Bowie	Montgomery
Brazoria	Nacogdoches
Ellis	Sherman
Galveston	Travis
Hays	Williamson
Hidalgo	Wilson
Jasper	

TOLLWAYS

Several toll facilities have been developed through the Texas Turnpike Authority, an agency of the state of Texas created in 1953. In addition, there is renewed interest in private-sector and local government involvement in toll road development. The recently formed Harris County Toll Road Authority was created by the Harris County Commissioners Court and received voter approval for $900 million in bonds in September 1983. Two toll roads are proposed for the Houston area—a 28-mi West Belt Toll Road and a 21.6-mi Hardy Toll Road. Right-of-way assembly has begun, and construction of both roadways is expected to be completed by 1990.

Several other local governments are examining the concept of toll roads to reduce government expenditures. Galveston County currently operates a toll bridge from the west end of Galveston Island and several Texas cities along the Texas-Mexico border operate toll bridges.

Direct private-sector involvement in Texas tollways is currently limited to operation of several toll bridges and a ferry across the Texas-Mexico border. Federal law, the International Bridge Act of 1972, requires that these private bridges be sold to a public agency when their cost plus a modest profit have been recouped. Table 2 gives toll facilities found in Texas.

DEVELOPER FEES

The concept of a local government charging a developer a fee to pay for roadway improvements necessitated by the impacts of new traffic generated by the development is not a new idea. It has been used in several states, for example California and Florida, for some years. Its use in Texas is, however, relatively new, although similar provisions related to utility improvement fees have existed for years.

The cities of Dallas and Farmers Branch (a suburb of Dallas) have passed ordinances that require traffic impact fees to be paid by developers applying for new developments in certain areas of the cities (Parkway Center in northern Dallas and eastern Farmers Branch). Both city ordinances require payments of $0.50 per square foot of office space on a one-time basis as a prerequisite to issuance of a building permit. The collected fees are then to be used by the cities for roadway and traffic signalization improvements in the area affected by the developments.

Under a similar program, the city of Austin requires new developments to issue a letter of credit for a dollar amount determined case by case on the basis by the city staff's determination of traffic impacts and needed improvements before plat approval. Other Texas cities (Garland, Irving, Richardson) assess developers for cost sharing of roadway expenses on the basis of abutting footage or a set ratio of costs based on the type of development (e.g., developer pays 70 percent of arterial costs related to an office complex, 65 percent for apartments, and 50 percent for single-family developments).

Several other Texas cities are currently looking at the feasibility of imposing similar traffic impact fees. Issues related to the legality of such ordinances and the impact that these fees would have on office location are questions now being examined.

TABLE 2 TEXAS TOLLWAYS AND BRIDGES

Facility	Length (mi)	Ownership
Dallas North Tollway	9.8 (+7.4 under construction)	Texas Turnpike Authority (state)
Mountain Creek Lake Bridge	2.1	Texas Turnpike Authority (state)
Houston Ship Channel Bridge	4.2	Texas Turnpike Authority (state)
Cameron County International Bridge	±1	County
Brownsville-Matamoras Bridge	±1	Private
Progresso International Bridges (2)	±1	Private
McAllen-Hidalgo Bridge	±1	City
Los Ebanos International Ferry	±1	Private
Rio Grande City Bridge	±1	Private
Roma International Bridge	±1	County
Laredo International Bridges (2)	±1	City
Eagle Pass Bridge	±1	City
Del Rio Bridge	±1	City
El Paso International Bridges (2)	±1	City
Galveston County Toll Bridge	±1	County
Hardy Toll Road (under development)	21.7	County
West Belt Toll Road (under development)	27.5	County

SOURCE: Texas Turnpike Authority, Mexico-Texas Bridge Association, Harris County Toll Road Authority.

NEGOTIATED IMPROVEMENTS AND DONATIONS

It appears to be quite common for developers in major Texas cities to negotiate with city transportation or planning staff to help provide needed roadway improvements in the area of the new developments. Developers in Dallas, for example, negotiate directly with the city on what roadway improvements they will provide as a provision to their certificates of occupancy. This can include new roadway construction, roadway upgrades, traffic signalization, and intersection improvements. The specifics of those requirements are given in the city ordinance permitting development construction. Austin, Houston, and San Antonio use similar negotiable procedures.

Developers in several Texas cities and counties have set a precedent of donating land for prospective road rights-of-way to cities that in turn present it to the state to encourage new state roadway projects in growing areas.

In San Antonio, $3.3 million in right-of-way of a $122.5 million project to construct State Highway 151 (Northwest Freeway) was donated by the private sector through local government. Forth Worth officials have recently offered $6.3 million worth of right-of-way toward construction of State Highway 121 (Southwest Freeway). San Antonio and Bexar County have also offered the state right-of-way donations estimated at $18 million toward construction of an 18-mi roadway to extend US-90 west of San Antonio northward to State Highway 16. At the Woodlands, a planned community in

TABLE 3 INNOVATIVE ROADWAY FINANCING MECHANISMS IN TEXAS

Name	Authorizing Body	General Purpose	Geographic Area	Confirmation Election Required	Funding Mechanism	Initiated by	Examples
Road Utility District (RUD)	State Highway and Public Transportation Commission	Construct, acquire, improve arterial or main feeders only	County, city or part or combination; not required to be contiguous	Yes	Bonds (⅔ voters approval) $0.25 per $100 assessed value for maintenance bonds from 20 to 25% of land values	All landowners	Denton County Proposed in Dallas, Austin, and Houston
Municipal Utility District (MUD)	Texas Water Commission; may petition SDHPT Commission to acquire RUD powers	Preservation of all natural resources	County, city or part of combination; not required to be contiguous	Yes	Bonds (majority voter approval)	Majority in-value landholders or by 50 persons	Bastrop County
Transportation Corporation	Texas State Highway and Public Transportation Commission	Promote, develop public transportation facilities and systems; secure and obtain rights-of-way; assist in planning and design; assist financing state highways	All or part or combination of political subdivision of the state	No	Bonds or donation	Three or more qualified electors in area	Grand Parkway (Houston) and Galveston-Alvin-Pearland
County Road District	County Commissioners Court of County	Construct, acquire, maintain, operate roads and turnpikes; privately constructed roads purchased	All or part of county or contiguous counties	No	Bonds up to 25% of land value; bonds (⅔ voter approval); road tax based on property value (majority voter approval up to $0.15 per $100 assessed value tax)	Commissioners Court; 50 voters in district petition road tax election	Southwest Travis County and Williamson County
Tollways	Texas Turnpike Authority, city, county, political subdivision, or private	Develop, operate, maintain transportation facilities	City, county or political subdivision or private land	No (yes if bonds issued)	Bonds or user fees	City, county, political subdivision, private landowners	Dallas North Tollway; Mountain Creek Lake Bridge; Houston Ship Channel Bridge; Ham's County Toll Authority; Galveston County Toll Bridge; and Rio Grande River Toll Bridges at El Paso, Laredo, Del Rio, Eagle Pass, Roma, Hidalgo, Progresso, and Brownsville
Traffic impact fees	City, county	Develop transportation facilities to reduce impacts of new developments	City, county or defined part thereof	No	Fee paid by developer, developer-funded improvements	City, county	Farmers Branch (eastern), Dallas (northern), and Parkway Center (Austin)
Negotiated improvements	City, county	Develop transportation facilities to reduce impacts of new developments	On or adjacent to development site	No	Developer-funded improvements	City, county in agreement with developer	Dallas
Developer donations	City, county	Expedite thoroughfare improvements	Any	No	Donations to city or county then to state	Local government and developers	Fort Worth, San Antonio

Montgomery County north of Houston, a 1983 Minute Order by the State Department of Highways and Public Transportation allowed local businesses and governments to contribute land and finances to speed improvements bordering Interstate 45.

CONCLUSIONS

Table 3 gives a summary of the financing methods described in this paper. Although many of these methods have been used in other locales, a few are unique to Texas.

Involving the private sector in project funding has resulted in an attendant interest in accelerating project implementation. Because "time is money," a developer is willing to donate funds to advance a project's schedule.

The practicality of the new schemes has yet to be clearly established. Some limitations are

- The inability of developers to deduct local taxes from income tax when such taxes directly benefit the taxpayer,
- The concern that roadway alignments and priorities are overly influenced by the location of large parcels of land, and
- The risk of relying on property value increases to fund roadway projects.

On the other hand, it is also evident that new approaches to funding are evolving. Although there may be some shortcomings in these new approaches, experience in their application should result in refinement of these approaches.

REFERENCE

1. *Transportation News*. Texas Department of Highways and Public Transportation, April 1986.

Private Enterprise and Highways

ALFRED GOLDSTEIN

In the activities required to create a highway—identification, promotion, land acquisition, design and construction, operation, maintenance—there is a spectrum of possibilities for involvement of the private sector and market processes. The current position in the United Kingdom is described and on that basis, with some wider generalization, future possibilities are analyzed. Highway maintenance is progressively moving to the private sector. There appears to be no reason why most of the maintenance program for main roads could not be delegated to the private sector. A preferred method is outlined. For highways generally, statutory position limits the degree of market provision. It is argued that Parliament would not generally provide powers of compulsory acquisition of homes to private enterprise. Hence the market alone cannot be expected to provide new roads. Some possibilities for the government and the private sector acting together so that the latter could become more involved in highways are explored. An experiment with private funding that was finally declined by government is described. It is argued that this experiment was not necessarily representative and that further trials should take place. Estuarial and river crossings, about which public attitudes appear to be different, provide much scope for privatization. Government would underwrite the requisite statutory powers and could call for bids for the design, construction, operation, and maintenance of the project. The bids would effectively be the tolls required by the bidder, to be collected either directly from users or from the government on the basis of vehicle counts. The Channel Tunnel and the Dartford Crossing of the Thames are examples.

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Activities involved in the creation of a highway may usefully be categorized as

1. Identification of a viable route,
2. Promotion,
3. Acquisition of requisite land and other rights,
4. Design and construction,
5. Operation, and
6. Maintenance.

These activities may be grouped into three stages: Activities 1–3 are the preconstruction stage, Activity 4 may be termed the construction stage, and Activities 5 and 6 are the postconstruction stage. In the following discussion these stages will be treated separately. Also, the provision of highways by the private sector is considered a possible part of the highway network, not a substitute for the status quo.