# Green Fees & Scissors in Texas:



# **13 Recommendations for Greening** the State Budget May, 2005





www.greenscissors.org

**Center for Public Policies Public Citizen, Texas Priorities Office** 

Texas Clean Water Action

Friends of the Earth

Lone Star Chapter, Sierra Club

S.M.A.R.T

**Texas Public Interest Research Group** 

**Texas Center for Policy Studies** 

Greening the State Budget

### Green Fees & Scissors in Texas:

Our strategy contained in this report seeks to promote public debate which 1) prioritizes the protection of the state's environment. 2) increases the effectiveness of natural resource 3) relieves fiscal programs and pressures for the State of Texas. Our relate proposals to the size and effectiveness of various natural resource programs in the State of Texas. In our view, moving further toward fee-based funding and budget cuts can be beneficial to both the environment AND Texas taxpayers.

The recommendations in this report are designed to help frame public policy debates and push budget cuts and fee increases that help both the environment and taxpavers. The approach, pioneered bv the national Green Scissors Campaign, led by Friends of the Earth, Taxpayers for Common Sense and the U.S. Public Interest Research Group, has successfully cut more than \$26 billion wasteful in programs and subsidies that have been eliminated from the federal budget. Similar statelevel reform efforts have been undertaken in California, the District of Maryland, Columbia, Michigan, Minnesota, North Carolina, Virginia and Washington.

We look forward future Green to Scissors Reports and workina to implement them and request the participation of the public and our state's leaders in spearheading this long-overdue reform.

# 13 Recommendations for Greening the State Budget Acknowledgements

The Greening the State Budget report was made possible by the generous support of the Magnolia Charitable Trust, the Educational Foundation of America, the Lawrence Foundation and the Turner

Foundation, as well as an individual

contribution from Fred Stanback.

In addition, in-kind support and editorial assistance was offered by the Lone Star Chapter of the Sierra Club and Friends of the Earth.

The report was written by Cyrus Reed, Texas Center for Policy Studies director, with assistance from Scott McClain, also of TCPS. The authors alone bear responsibility for any factual errors.

The organizations support the principles of the Greening the Budget report to help create policies for Texas that are fiscally responsible and environmentally sound. They do not necessarily endorse or have expertise on every recommendation in the report.

Green Scissors is a registered trademark of Friends of the Earth. www.foe.org

> Texas Center for Policy Studies www.texascenter.org © 2005

Printed on 100% tree-free kenaf paper

Please contact Texas Center for Policy Studies at 512-474-0811 for additional copies. Shipping charges may apply. Available on the web at <u>www.greenscissors.org</u> and www.texascenter.org/feeproj.

# **Executive Summary**

Texas' political leaders will approve a budget for Fiscal Years 2006 and 2007 sometime this month, although debates about more adequately funding public schools could extend decision-making on the budget even longer. This report offers thirteen fiscally sound recommendations that could help these leaders ease the budget crisis - potentially freeing up more funds for schools -- more adequately fund important natural programs, while resource discouraging pollution and natural resource degradation. While some of the recommendations involve longterm policy shifts and will take time to implement, many could be adopted in the next month before the budget and regular legislative sessions are finalized. All told. these 13 recommendations could free up at least \$300 million and perhaps more than \$1 billion for the state's budget writers, either through creation of additional fees, appropriating fees that are already created or ending tax loopholes or cutting costly programs.

This report – which finds its inspiration in the national Green Scissors Campaign spearheaded by Friends of the Earth, Taxpayers for Common Sense and U.S. PIRG among others – documents biennial savings or additional revenues:

- Between \$140 and \$610 million by ending tax loopholes, mainly the lack of coal tax, which leads to higher hidden costs in water pollution and natural resource degradation;
- Between \$36 and \$86 million by raising the sales tax cap on sporting goods to better fund state and local parks
- \$64 million by appropriating existing environmental fees used to clean dirty air in Texas' major cities;
- \$63 million by raising fees that in their current form act like hidden subsidies for pollution;
- an undetermined amount through creation of new fees to encourage energy and water conservation; and
- An undetermined amount by cutting or "greening" environmentally destructive projects.

Table of Contents Executive Summary 3 Introduction 6 **Close Tax** Loopholes 8 **Raise Sporting** Goods Sales Tax Cap 10 Appropriate **Existing** Clean Air Fees 11 Reform **Current Water** & Air Fees 13 **Create Water** & Energy Conservation Fees 16 Recover 19 Economic Benefit in Penalizing Law-Breakers Cut and Green Wasteful Projects 20Endnotes 27



Greening the State Budget

# Close Tax Loopholes: Institute Coal Tax and Mining Reclamation Fee

Texas is one of the few major coal-mining states that does not have a coal severance tax, or coal production tax or other environmental fees related to coal mining and coal use. In fact, it has a minimal mining fee of \$120 per acre of area mined. It is time for Texas to look at a balanced energy taxing system. While this report does not advocate a specific tax, we believe the Legislature should raise reclamation fees, while also looking at potential taxes related to coal.

#### **Raise Sporting Good Sales Tax Cap**

Texas funds its state and local parks principally through the state sales tax on sporting goods. Nonetheless, that sales tax has been capped at \$32 million per year, despite the fact that sales tax from sporting goods have risen over the last 10 years. The change would allow Texas to beef up its spending on local and state parks, which are well behind the national average.

#### Appropriate Existing Clean Air Fees

During recent legislative sessions new fees were created to fund two key air programs designed to clear the high ozone over Dallas, Houston and other areas with consistently dirty air. The Texas Emissions Reduction Program and the Low-Income Vehicle Repair Assistance, Retrofit and Accelerated Vehicle Retirement Program, however, have received substantially less than needed to meet clean air obligations, and considerably less than the programs are actually generating – putting compliance with clean air standards in jeopardy.

# **Reform Current Emissions Fees and End Polluter Subsidies**

Every two years, budget writers struggle to get adequate monies into programs related to water at the Texas Commission on Environmental Quality, which must depend upon General Revenues for a significant portion of its budget. It is time for the fees charged to water right holders, wastewater dischargers and water utilities to finally equal what the programs need to meet basic obligations. Similarly, the Legislature should double the cap on the air emissions fee so that big polluters pay a bigger part of the Clean Air Program at TCEQ.

# Table 1. Summary of Fiscal Impact of GreenScissors Recommendations

Green Scissors	Estimated
Recommendation	Biennial
	Savings/Added
	Revenue
Coal Production Tax and	\$140 - \$610
Reclamation Fees	million or Study
Raise Sporting Good Sales	\$36 - \$86
Tax Cap for Local and State	million
Parks	
Appropriate Existing Clean	
Air Fees	
Texas Emissions Reduction	\$54 million
Program	
Low-Income Vehicle Repair	\$6 million
Program	
Reform Current Water and	
Air Emissions Fees	
Increase Water Fees	\$0-50 million
Increase Air Emissions Cap	\$13 million
from 4,000 to 8,000 tons	
Create Water & Energy	
Conservation Fees	
Water Conservation Fee	Through Study
Energy Efficiency Fee	Through Study
Recover Economic Benefit	No Estimate
when Assessing Penalty	
Cut and "Green" Wasteful	
Projects	
Green Governor's Enterprise	No estimate
& Technology Fund	
Eliminate Subsidies for Clean	(\$20 million)
Coal	
Increase Green Purchasing	No estimate
for Highways	
Trans-Texas Corridor	Moratorium

# Create Fee for Broad-based Water Conservation and Energy Efficiency

The Legislature should explore a new water and energy consumption fee as a way to put more money into water conservation and energy efficiency programs. Both issues have been debated this legislative session with significant opposition. However, a study over the next two years could make some sort of broad-based electricity and water fee or tax part of a way to support needed programs, while encouraging conservation where it is most likely to happen – in the pocketbook.

# Recover Economic Benefit when Charging Environmental Law-Breakers

Texas companies which break environmental laws – if caught –more often than not face a slap on the wrist and actually gain economically by not having complied with the law. The Texas Commission on Environmental Quality must finally charge Texas law-breakers the economic benefit they gained as part of the penalty. Not only would this change in enforcement and penalty practice raise revenues from environmental scalawags, it would encourage all companies to start obeying the laws, leading to cleaner air, water and land.

### Cut and Green Wasteful Projects

Requirements and goals for state agencies to increase their purchases of "green" and recycled materials in the last 10 years have had profound impacts on state purchases and contracts, most notably in the use of state highway recycled products like crumb rubber. More, however, can still be done, particularly with new toll road projects through the Texas Mobility Fund. In addition, these new projects should be subject to environmental impact assessments and public hearings - before they potentially waste millions or billions of taxpayer monies. We recommend putting a moratorium on the Trans-Texas Corridor projects altogether. Similarly, the Governor's Enterprise Fund and Emerging Technologies Fund to attract new businesses to Texas or to expand gives no consideration of existing ones environmental stewardship, compliance history or potential negative impacts. A special focus on conservation and alternative energy water technology - as well as adding requirements of having an exemplary compliance history - could help attract the best companies to Texas, and not the best politically connected. Finally, while producing electricity by burning coal in a cleaner manner is a worthy goal; state government should not rob itself of needed resources by providing tax breaks or incentives that might otherwise go to truly renewable resources. The definition of renewable energy should be kept clean, and should not include clean coal, gasification projects or other waste-to-energy schemes which would move the state away from its goals of getting more electricity from renewable resources.

# Introduction: Fiscal & Environmental Responsibility

Fiscal and environmental responsibilities are related in two ways. First, you get what you pay for. In Texas, inadequate funding of natural resource agencies and their functions has shortchanged those state agencies dedicated to assuring basic quality of life issue. Secondly, an inadequate tax system that actually encourages consumption and subsidizes pollution only adds to the environmental challenges Texas faces. These subsidies include inadequate fees to pay for cleanup or transfer the cost on to the general public, wasteful projects with little regard for their environmental impact, inadequate penalties for those breaking environmental laws and an inherent subsidy to coal production.

### **Inadequate Funding**

After facing down a projected state deficit of some \$10 billion dollars in 2003 – with cuts in government services across the board -- Texas leaders are about to approve a budget which is considerably larger this legislative session, particularly if agreement is reached for a way to pay for some \$3 billion in additional funds for public education. Funds earmarked for natural resource agencies, however, remain a tiny part of the budget – roughly two percent – and actually as proposed fall by some four percent in one version and two percent in the other compared with current levels of spending.

Texas' quality of life is threatened by increasing air and water pollution, difficulties in meeting future water needs and a scarcity of public recreation and wildlife resources. Markers demonstrating the scope of Texas' pollution problems abound. According to the most recent information, Texas is among the states with the most toxic air pollution from manufacturing facilities and **the most global warming gases.** Furthermore, in 2000, Texas generated more hazardous wastes than ever before and it has more people living in cities with dirty air than any other state except California.<sup>1</sup> Of the state surface waters it assessed between 1995 and 2000, nearly 30 percent of streams and rivers, and nearly 40 percent of reservoirs and estuaries are contaminated by some form of pollution.<sup>ii</sup> Texas spending on natural resource agencies is notably low compared to most states. Currently, about \$2.3 billion of the 2004-2005 budget – or about two percent of the total state budget -- is earmarked for natural resource agencies. (LBB, 2005).

#### Chart 1. Biennial Budgets for Article VI Natural Resource Agencies (Millions)



#### TCEQ TPWD All Agencie

#### Source: Legislative Budget Board, 2005.

Budgets for state agencies that regulate pollution and promote clean-up have remained stagnant over the past six years -- especially if inflation is considered.<sup>iii</sup> Texans' quality of life suffers from such neglect. In so many areas such as pesticide regulation and food safety levels, air emissions from cars and industrial plants, clean drinking water, hazardous and radioactive waste management, oil and gas drilling and waste, uranium by-products, park and public recreational area maintenance, acquisition of new parkland, and clean and pristine rivers, Texas is failing its citizenry. New funding is needed to respond to complaints over indoor air quality. Texas needs to develop and assure the availability of water resources, maintain our state and local parks, our wildlife refuges and fisheries, and clean up oil spills and beach debris. Even though very few

dollars are required, Texas must add funding to test our fish to make sure they are safe to eat.

These numerous regulatory functions provide an important economic development tool in the state's tool chest. As an example, one of the reasons for the recent decision by Toyota to locate a plant in the San Antonio area as opposed to Dallas was the cleaner air, early action by local leaders to comply with new federal ozone standards, and inaction in Dallas to comply with the standards. A recent study commissioned by the Texas Coalition for Conservation which studies 37 state parks looked at direct expenditures, impact on sales, personal income and job creation effects of the non-local visitors to the parks. The study, conducted by Stacy Tomas and John Crompton of Texas A&M, found that even parks "losing money" more than made up for it through the impact of annual expenditures, resident's income, jobs and the "multiplier" effect.<sup>iv</sup> A second phase of the study found that over \$700 million in new economic activity was generated by visitors to state parks.

A March 2003 study by Southwick Associates found that when the combined economic output of anglers (\$4.56 billion), hunters (\$3.4 billion), and wildlife watchers (\$2.7 billion), was over \$10.9 billion in 2001. They also helped generate over 95,000 jobs.<sup>v</sup> The majority of those anglers, hunters and wildlife watchers need access to public facilities, whether at the state, local or federal level.

SB 1/HB 1 anticipates cutting the budgets of most natural resource agencies (Title VI) further. Seven of the 13 recommendations contained in this report would help beef up these budgets through new fees and appropriation of existing fees to the benefit of all Texans. None is more important than appropriating the clean air fees already generated by Texans to help clear the air in Houston, Dallas and other areas of the state.

#### **Pollution Subsidies**

In addition to inadequate funding, the tax and fee system as currently designed actually encourages pollution and natural resource destruction. Coal, which accounts for 35 to 40 percent of Texan's energy use, does not pay a coal production tax, severance tax or virtually any regulatory fees at the state level, while oil and gas – the other major energy sources – pay several and are major contributors to the state budget. In essence, the dirtiest fossil fuel is subsidized at the expense of the cleaner ones.

Furthermore, the fee system designed to support the main environmental agency – the Texas Commission on Environmental Quality – is inequitable. Those who pollute more, pay less in fees. Similarly, water fees are historically low, meaning the agency must rely on General Revenue funds – generated by sales tax mainly – to subsidize programs that should be paid for by water rights holders, water utilities and wastewater discharge permit holders among others.

Environmental penalties enacted by the Texas Commission on Environmental Commission are so low that law-breakers actually gain economically by breaking the law, essentially subsidizing their illegal behavior. This is an unfair subsidy to polluters.

Furthermore, new programs at the state level – such as the Mobility Fund, Trans-Texas Corridor and the Governor's Enterprise Fund to attract new business offer massive public giveaways for highways and businesses, yet have no environmental requirements to make sure they don't attract the wrong type of businesses or build roads that will damage the natural resources by promoting sprawl or cutting through key natural areas.

Finally, Texas is making important advances toward promoting alternative renewable energy sources. Yet proposals to include clean coal and other non-renewable energy schemes – such as gasification of municipal solid waste – as quasi-renewables threaten to divert this advance and take away incentives designed to help spur renewable energy.

# Close Tax Loopholes: Institute Coal Tax and Mining Reclamation Fee

While producers of oil and natural gas in Texas are required to pay significant fees and taxes to the state, most other natural resource extraction industries pay only minimal fees and taxes. One way Texas could generate new revenues would be to increase fees and taxes on coal mining, uranium mining, and timber felling. Among these three industries, coal production would provide the largest source of additional revenues.

Unlike oil and gas production, there is no severance tax on the market value of coal. The absence of such a severance tax encourages its use as a basic fuel in Texas, despite its high environmental costs. Virtually all of the coal mined in Texas is high-sulfur, low-quality lignite. Texas coal is among the nation's dirtiest in terms of its sulfur content and the emissions that result from its combustion. (Texas imports about 45 percent of its coal, mostly from Wyoming.) Coal mined in Texas and used to generate electricity has an average sulfur content of 0.97 percent. However, the average sulfur content for all coal -- both imported and Texas-mined -- has an average sulfur content of 0.65 percent.<sup>vi</sup>

The use of coal in Texas has serious environmental and public health consequences. The top nine air polluters in Texas are all power plants or industrial facilities that burn coal or lignite.<sup>vii</sup> The top 16 emitters of air pollution all burn coal or lignite and between them released over 1.1 million tons of criteria air pollutants, or about 55% of all pollutants, directly contributing to the smog (ozone) problems in cities such as Dallas, Houston and Longview.<sup>viii</sup> In addition, 18 coal-fired power plants in Texas reported releasing more than 9,300 pounds of highly toxic mercury air emissions in 2000, or about 10 percent of all mercury emitted by power plants throughout the U.S. Along with producing criteria air pollutants and mercury, coalfired power plants in Texas are leading producers of particulate matter that causes respiratory problems when ingested into the lungs. These power plants also contribute to regional haze, which affects both health and visibility. A 2002 medical study found that long-term exposure to

combustion-related fine particulate matter air pollution – such as that emitted by coal-fired power plants – is an important environmental risk factor for both cardiopulmonary and lung cancer mortality.<sup>ix</sup> Another 2002 study found that more than 1.5 million children in Texas live within 30 miles of a coal-fired power plant, and more than 90,000 of these children suffer from asthma.<sup>x</sup> These power plants also emit large amounts of carbon dioxide, one of the leading contributors to global climate change.

Coal producers do pay some minimal fees to the state. Texas charges a permit fee for coal mining sites of at least \$5,000 for a new permit, \$3,000 for a renewal, and \$500 for revising a permit. In addition, the Railroad Commission, which regulates the coal industry in Texas, assesses an annual fee for each acre of land from which coal is extracted. That fee has been raised from \$120 per acre to some \$390 per acre over the last few years, largely in response to the need to replace General Revenue with fees at most state agencies.

Still, comparatively, coal pays nothing. Natural gas producers in Texas pay 7.5 percent of the market value of gas produced in the state. Oil producers in state pay 4.6 percent of the market value of the oil they produce, or 4.6 cents on every 42 standard barrel of oil, whichever is more. Taken together, these two "severance" taxes raise between \$1 and \$2 billion dollars a year for the state depending upon prices.

#### Chart 2. Texas State Revenues Generated by Natural Gas, Oil and Coal Production Tax, FY 78-05



Oil and natural gas producers also pay regulatory fees and taxes. Oil producers must pay an oilfield cleanup fee and regulatory tax, which together have ranged from  $\frac{1}{2}$  to  $\frac{13}{16}$  of 1 cent on each barrel of 42 standard gallons produced, while

#### Page 8

natural gas producers pay a similar, though lower, oilfield clean-up fee. To help clean up oil spills and leaking underground storage tanks, additional fees are imposed upon transfer of crude oil to or from marine vessels and upon the import or withdrawal of petroleum products from bulk storage facilities. These fees have generated hundreds of millions of dollars and spurred abandoned oil plugging and spill response.

#### A Coal Tax?

Other states have adopted severance, production, excise or other types of taxes on coal production to raise state monies and help offset some of the environmental degradation caused by coal mining without significant job losses. Of the fifteen other major coal-producing states in the U.S., twelve have revenues far exceeding Texas from coal taxes and fees, both overall and in rate per ton.<sup>xi</sup> Options for adopting a coal tax include:

- A Coal Use Tax. All coal and lignite either purchased or used in Texas could be taxed at the rate of 7.5 percent of purchase price, like natural gas, or alternatively at a rate of 4.6 percent like oil. The Comptroller of Public Accounts estimates it would generate about \$130 million per fiscal year at the 7.5 % tax rate.
- A Coal Production or Severance Tax. Rather than taxing coal use at industries and utilities, only coal mined in Texas would be taxed. The disadvantage to such a tax is that it might make coal produced in the state more expensive than coal imported from other states. Still, at 7.5%, it would generated some \$65 million per year.
- An energy efficiency tax based upon emissions per kilowatt generated (see section on energy efficiency tax). While not a direct tax on coal, the tax would fall highest on coal power plants and could generate as much as \$300 million per year.

**RECOMMENDATION:** The Legislature should examine energy taxes in general and make sure that coal producers pay their fair share. The current tax structure is fundamentally unfair and an inherent subsidy to coal to leave taxing coal off the table. All energy taxes should be reexamined to promote the cleanest fuel mix in Texas as well as energy conservation and efficiency.

#### **Higher Permit and Reclamation Fees**

Through programs at the Railroad Commission of Texas, the state and its taxpayers subsidize those strategies related to coal mining because of the lack of appropriate permit and reclamation fees paid by the coal mining industry. As an example, during the current budget cycle, the RCT was authorized to spend \$970,000 per year on inspecting and monitoring coal mining, but because sufficient fees were not raised from permit fees, the RCT fell short. In addition, coal mines pay a small federal coal production tax of \$15 per acre that eventually finds its way through federal grants into the Land Reclamation Fund No. 454. This fund has been supported by approximately \$750,000 per biennium in federal grants, an amount insufficient to clean-up abandoned mines throughout the state, as has the annual per-acre fee paid by active mining, currently set at \$390 per acre.

This budget cycle, there appears to be legislative recognition that the inspection, monitoring and reclamation of coal mines is under funded, and that the coal mining industry needs to pay more fees to support agency functions. The current proposed budget for example, earmarks approximately \$6.7 million for surface mining reclamation and \$4.7 million for surface mining monitoring and inspection. Nevertheless, the Railroad Commission is expected to raise only \$900,000 per year in permit fees from coalmines in FY 2006 and FY 2007. A legislative bill currently being considered (HB 472) revisits the permit fees and per-acreage fees by creating new fees for those mines currently not mining. The legislation would create an annual permit fee and a fee on land not being mined but part of a bonded mining project.

**RECOMMENDATION:** Adopt new annual permit fees and per-acre bonded fees, but assure that permit fees and per-acre fees are sufficient to cover the cost of both the inspection and reclamation program and that those presently mining pay the bulk of fees (approximately \$10 million per biennium).

Page 9

#### Raise Sporting Good Sales Tax Cap

Texas has always under funded one of the basic functions of the Texas Parks and Wildlife Department: running state parks. Every legislative session, political leaders struggle to give adequate funding to run the state parks we have, and have never authorized more than a pittance to acquire additional parkland – in large part because they do not want to fund the additional employees that would be needed. This budget cycle is no different, with Parks and Wildlife's park operations slashed by some \$15 million compared to present levels. While leaders are finding creative ways to restore some of this reduction, the fact remains that spending for state parks even at current levels is unacceptable. Support for local city and countyrun parks from the state has been even spottier, and matching grants for local parks has fallen substantially over the last six years, due in part to a decision to not appropriate monies supposedly earmarked for that purpose (See chart). Even before the recent cuts in these funds, during the 1992-2002 period, Texans' per capita annual investments in state parks and recreation averaged \$2.43 (in 1990 adjusted dollars), while the 50 state average was \$10.67 per capita.xii

In 1993, the 73<sup>rd</sup> Legislature decided to fund TPWD's park operations with a sporting goods sales tax, capped at \$27 million, In 1995, the 74<sup>th</sup> legislature raised the sporting goods sales tax cap to \$32 million, with \$15.5 million going to state parks, \$15.5 million going to local parks and \$1 million going for land acquisition. Since then, TPWD has continued to rely on the sporting goods sales tax, some general revenue, park fees and federal funds to run parks and provide grants to local parks. While TPWD's budget has been hamstrung with the \$32 million cap, an amount that at certain times has not even been fully appropriated, state sales tax collection from the sale of sporting goods have risen through the roof, from \$64 million in 1995 - twice the cap -- to an estimated \$104 million in 2007.<sup>xiii</sup> If the Cap had kept pace with this growth in sales tax revenue, it would be set at \$52 million, or \$20 million more.

There is a good economic reason to support more funds for state and local parks. A recent study of 80

state parks conducted by Texas A&M University showed that these parks generated \$873 million in sales and \$456 million in local income, while helping generate 11,298 jobs. Yet those same parks realized a net operating loss – and required state monies from the Sporting Goods Sales Tax. Under the current budget proposal – even with a five percent restoration in the park operations – some 27 employees will be cut from the bare-bones park. With better investment in parks, local and state economic impacts would be that much higher.

#### Chart 3. State Park Operations and Local Park Grants Funded by Biennium





#### Source: LBB, 77<sup>th</sup>, 78<sup>th</sup>, and 79<sup>th</sup> Legislatures.

With both the Senate and House considering a sales tax increase, and revenues from sporting goods increasing as more and more hunters, fisherman, birders and hikers purchase equipment to enjoy the great outdoors – including in state parks – Texas should make the investment in state and local parks.

Greening the State Budget

**RECOMMENDATION:** The sales tax cap on sporting goods should be raised from \$32 million per year to at least \$50 million per year, and potentially \$85 million per year. Yet the cap must not only be raised, the Legislature must actually appropriate the money generated.



Gorman Falls State Park

#### Appropriate Existing Clean Air Fees

Texas faces unique challenges because of its air quality problems in major urban centers such as Dallas-Ft. Worth and Houston-Galveston-Brazoria airsheds. In 2001, faced with the realization that Texas would not meet basic air quality standards for ozone in Dallas and Houston – even with major cuts in emissions required of local industries and power plants – state leaders created two new programs to reduce nitrogen oxide emissions.

The Texas Emissions Reduction Plan was intended to provide grants and rebates to diesel engines to fix them so they burned cleaner or put in new engines altogether. Although the first two years of the program were slow-going after one of the main funding sources was struck down as unconstitutional, the 78<sup>th</sup> Legislature fixed the problem, and sufficient fees were generated, largely through registration fees. From all accounts, the last two years have been successful, with enough money generated and significant reductions resulting from the TERP projects. Thus, after expending only \$24 million in FY 03, some \$257 million was earmarked and will be spent during FY 04-05. Without TERP, there is little doubt that Texas would not be able to meet required one-hour standards in Dallas and Houston, or meet future deadlines for the new 8hour ozone standard.

A much smaller program also created by the 77<sup>th</sup> Legislature was the Low-Income Vehicle Repair Assistance, Retrofit and Accelerated Vehicle Retirement Program. LIRAP uses a portion of the Inspection and Maintenance Fees paid by motorists in Houston and Dallas to pay low-income motorists to fix-up any vehicle which fails to pass air quality tests. The program may provide a small amount for purchase of a new vehicle. LIRAP has not been nearly as successful as TERP, partially due to a lack of dissemination about the program and some initial mismanagement. As an example, despite earmarking some \$21 million in FY 02-03 and \$17 million in FY 04-05, only a small portion was actually expended. Perhaps given this experience, the current proposal approved by the Budget Conference Committee is to earmark only \$4 million, a truly barebones program. Recent action appears to have raised that total to \$8

million, a welcome development. With even more funds appropriated, LIRAP could be an effective ways to fix up high-polluting cars or get smoking clunkers off the road.

This budget cycle, the Texas Commission on Environmental Quality -- based upon the monies that would be generated by the program requested a significant increase in TERP funds of \$54 million, but were instead granted only the same \$257 million. The question is why? If the program is generating the funds, and the program is working to reduce nitrogen oxide emissions, clearing the air for Texas, why not fund it? The answer is two-fold. One, legislators were told by TCEQ that they only needed \$257 million in the program to meet the one-hour standard by 2007, and the extra money was needed to begin work on the 8-hour standard. Perhaps a more immediate reason is that while the monies can only be used for TERP grants, administration and related programs, the monies can help the Texas Comptroller of Public Accounts certify the budget.

#### Chart 4. Texas Emissions Reduction Plan and Low-Income Vehicle Repair Program Funds Budgeted by Biennium



#### 🗖 TERP 📕 LIRAP

#### Source: LBB, Biennial Budgets

The problem with appropriating the same amount of TERP grant funds this biennium as in 2004 and 2005 is it will not be sufficient to move Texas toward compliance with clean air standards because it is based on false information.

The analysis conducted by TCEQ and provided to budget riders assumes that each reduction of ton of emissions of NOx emission will cost the program \$5,000. Yet, the first years of experience show that only projects related to locomotives cost less than \$5,000 per ton of NOx reduced. Indeed, through January of 2005, the average cost per ton of 282 TERP projects administered by TCEQ was \$5,714, and indications are that the types of projects to be funded over the next years - chiefly on and offroad projects -- will cost even more. Thus, the assumption that \$257 million will do the job leading to overall reductions in Houston of 38.8 tons per day by 2007 - is optimistic. By fully funding the TERP program - appropriating the money already generated - Texas would not only assure meeting these one-hour standards, but get a jump on reducing NOx emissions to comply with 8-hour standards, and help other areas of the state comply.

Chart 5. Cost-per-Ton of NOx Reduced in Texas Emissions Reduction Plan, through January of 2005



**RECOMMENDATION:** Appropriate and expend the TERP fees generated -- some \$311 million over the biennium --- to meet federal Clean Air Act requirements, help prevent Texans from breathing dirty air and get a jump on complying with 8-hour ozone standards. LIRAP will not have the same impact on reducing pollution that TERP will, but given that the program has generated over \$50 million since its inception, only authorizing \$8 million over the next two years seems shortsighted. If the program has not generated demand, than better marketing must be used in Houston, Dallas, and Travis and Williamson Counties, which recently set up a related program. Officials in Dallas and Houston have stated that expending \$14 million over the biennium should allow the program to work effectively.

**RECOMMENDATION:** Appropriate and expend \$14 million over the biennium – along with some statutory changes to make the program more flexible – to allow the program to provide its function of helping low-income residents clean up the air.

# End Polluter Subsidies: Reform Current Water Fees and Air Emissions Fees

Over the last ten years, the Texas Commission on Environmental Quality - and its predecessor agencies - have relied increasingly on fees paid by the public and regulated community to fund its budget. This is at is should be. The regulatory programs run by the agency - delegation of authority over the state and federal clean air act, solid and hazardous waste regulations, low-level radioactive waste management, assurance of safe drinking water at public utilities and meeting water quality standards in Texas's rivers and streams are all functions that should be paid by the regulated community - cities, industry and agriculture - that impact these programs. In fact, in the current biennium, 83 percent of the expended budget is expected to come from fees, and less than seven percent of the agency's budget comes from general revenue funds.

Not all the fees are equitably distributed between those who pollute more and those who pollute less, as is the case with the Air Emissions Fee. In addition, there is an exception to the general trend of funding TCEQ strategies with fees: water programs.

#### Chart 5. Millions by Funding Source for Water Programs at TCEQ, 2004-2005



#### ■ Fees ■ General Revenue ■ Federal Funds

While other major state programs rely almost entirely on fees, about 40 percent of water programs – including water rights programs, drinking water programs and the Texas Pollutant Discharge Elimination System – wastewater discharge permits – and related monitoring programs have been paid for by General Revenue: Texas taxpayers.

In essence, this has been a \$35 to \$40 million public subsidy to water rights holders, wastewater dischargers and other regulated entities.

This budget cycle, TCEQ again asked for approximately \$40 million in General Revenue Funds to finance its water programs and the Legislature said NO. Instead, they were told to use unexpended balances flowing through the years to their Water Management Account 153. While the charge to use unexpended balances in 153 rather than general revenue is positive it does not fix the issue, but merely delays it. If TCEQ water programs are funded at current levels, they will again need General Revenue funds in FY 2008.

There are actually several related policy issues. One is simply to make sure the various fees that flow into Water Management Account No. 153 pay for the TCEQ's program, not General Revenues. However, there is a related issue of equity - who pays the fees. Currently, the major fees supporting the Account – the Water Quality Fee paid mainly by wastewater discharge permit holders – and the Public Drinking Water Fees paid by utilities are tilted toward the largest cities and largest dischargers. The more you pollute, the less you pay (water quality fee), or the bigger you are, the less you pay on a per-connection basis. An example is the maximum fee that can be paid by a wastewater discharger is \$75,000 and the maximum fee for an aquaculture facility wastewater discharger is \$5,000.xiv Irrigators pay no water rights fee, while Confined Animal Feeding Operators are subject to a minimal nodischarge fee as part of the rules implementing the water quality fee. Finally, for many years, environmental groups have argued that not enough money supports basic water programs at the agency.

Markers of the program's insufficient resources abound. Significant data gaps remain in the Surface Water Quality Monitoring Program. A recent report found that only 43 percent of total perennial river miles were assessed in the latest reporting cycle and only nine percent of total miles if all intermittent streams are included.<sup>xv</sup>

Thus, little is known about the quality of 20,000 out of 40,000 miles of the state's permanent rivers and streams, as well as some 140,000 miles of "intermittent" streams, created during periods of high rainfall. And these coverage estimates are based upon on the least expensive and most indirect method of monitoring -- instantaneous field measurements sampled quarterly or monthly at state fixed monitors, a "snapshot" approach.

In the recent report, only 1,800 miles -- less than ten percent of the streams and rivers surveyed -had sufficient toxic data to determine compliance with metal water quality standards, while only 55 miles was assessed for overall water toxicity, and 80 miles for organics like pesticides. Even less monitoring was done to assess sediments or fish tissue. Thus, only 147 miles were assessed for sediment concerns, and 192 miles were assessed for fish tissue concerns.<sup>xvi</sup> While the state has a fee to test shellfish, there is no fee and virtually no funds to test in-stream fish. This is despite the fact that 13 lakes or water bodies in Texas are on consumption advisory or bans for high levels of mercury in fish, while other some 10 other bans are in place for selenium, PCBs and dioxins.<sup>xvii</sup>

Thus, in summary, not only do water fees not cover the costs, providing a subsidy to polluters, but the total amount appropriated is insufficient to assure safe drinking water, assessment of water quality standards, review of wastewater discharge permits and fish testing.

**RECOMMENDATION:** The Legislature should direct the TCEQ to review its water fees, assess their distribution among the industrial, agricultural and municipal sectors and come back with recommendations on how to raise \$40 million more in water fees over the next biennium, as well as an additional \$10 million for water and fish testing.

#### Air Emissions Fee

Every year major manufacturing and energy facilities in Texas are required to pay an annual emissions fee based upon emissions of nitrogen oxide, sulfur dioxide, carbon monoxide, lead, particulate matter and a variety of toxic emissions, including volatile organic compounds. However, the fee is only assessed on the first 4,000 tons of any particular pollutant emitted by the facility. In effect, this means that the more tons of emissions above 4,000 tons of a particular pollutant a facility has, the less they pay on a per ton basis. The fee – known as the Air Emissions Fee or Federal Operating Permit Fee – supports the Title V federal operating permit program delegated to TCEQ. There are three problems with the current fee structure: inequity, insufficient resources and a disincentive to pollution prevention.

**Equity**. First, because of the fee cap, those that pollute the most, pay the less. For example, in FY 2005, the nine facilities that emitted the most emissions emitted more than 866,000 tons and paid \$3.81 million in fees, or \$4.39 per ton. The 1,491 facilities that emitted less than 8,000 tons, on the other hand, paid \$21.99 million, or \$29.51 per ton. If the emissions fee cap were doubled to 8,000 tons per pollutant, then there would be considerable more equity in the fee structure.

Chart 6. FY 2005 amount paid per ton by facilities with current 4,000 cap and what they would pay under an 8,000 cap





Greening the State Budget

Resources. Unfortunately, as facilities have cut their emissions, and with the 4,000 cap, the amount of money generated in the program has been reduced substantially. In the current 2004-2005 biennium, the agency was authorized to spend some \$61.7 million for the Title V program, although the total amount spent was about \$68 million because some monies must flow to other accounts for staff benefits. In SB 1 - in its current version in Senate Finance - the agency is only authorized to spend \$54.7 million over the next biennium. The Finance Committee decided to only allow the agency to spend what it could raise from the fee, and the amount that is projected to be raised in the next biennium is about \$7 million less. This is due in part to a reduction in emissions by smaller facilities that pay the fee, some mergers, and some facilities that are paying the inspection fee instead. The loss of \$7 million in the program has meant that TCEQ's budget for compliance assistance and enforcement will be less than they requested. For example, in its LAR exceptional items, TCEQ requested about \$1.2 million more for enforcement and \$3 million more for field inspections. The agency has come under serious criticism for not adequately enforcing the laws, inspecting major air facilities and responding to citizen complaints about upset emissions and other events related to air pollution. After a recent series of articles by the Houston Chronicle found dangerous levels of toxics in some area neighborhoods, TCEQ executive director was quoted as saying the agency lacked resources to do toxic monitoring in some neighborhoods.

**Disincentive to Pollution Prevention**. The current fee structure serves as a disincentive toward pollution prevention because a facility is not penalized.

Instead, the legislature could approve a change in the fee structure, raising the fee cap per pollutant to 8,000 tons. Alternatively, the legislature could remove the cap altogether, so that every facility paid the full emissions fee of approximately \$30 per ton. A recent state auditor report recommended this change. By raising the cap to 8,000 tons per pollutant, the fee would generate an additional \$6 to \$7 million per year (see Chart). Recent legislation this session – SB 484 and HB 911 – would make that change, though there does not seem to be the political will to pass these measures.

#### Chart 7. FY 2005 Monies Raised by Air Emissions Fee Under Different Proposals

■ 4,000 Cap ■ 8,000 Cap ■ No Cap



**RECOMMENDATION:** Raise the annual air emissions fee cap to 8,000 tons per pollutant, raising \$6 .5 million per year for the Federal Air Operating Permit Program to increase inspections, monitoring and enforcement.

# Create Fees for Broad-based Water Conservation and Energy Efficiency

Energy and water consumption are not - in themselves - taxed.<sup>xviii</sup> A recent report by the Comptroller of Public Accounts, for example, found that if water had been subject to the current state sales tax, some \$257 million would have been generated in FY 2005, and \$263 million \$268 million would be generated in the years making up the next biennium. Similarly, while energy is taxed - through severance taxes, regulatory fees and gross utility receipts among other taxes - the actual use of gas and electricity is not. Thus, that same Comptroller report found that if residential consumption of gas and electricity were subject to a state sales tax, then \$645 million would have been generated in FY 2005, and \$656 million in FY 2006 and \$670 million in FY 2007<sup>xix</sup>. Taxing manufacturing, agricultural and mining electricity and gas use would generate some \$500 million per vear.

The reasons for which electricity and water are exempt from state-level taxation in Texas as well as in most states is because gas, electricity and especially water are considered basic necessities. Taxing such basic necessities would be particularly regressive, since the very poorest tend to pay a greater share of their income in sales tax than the middle and upper income populations. Nonetheless, there are reasons for considering possible energy and water consumption fees or taxes as a way to raise revenues for specific programs and discourage wasteful use of electricity and water.

#### Water Fee or Tax

Water is one of Texas' most precious natural resources. From the deep sands of the Ogallala Aquifer to the wide rivers of East Texas, from the crystal clear springs of the Texas Hill Country to the muddy flow of the Rio Grande, for thousands of years water has nourished our diverse Texas culture.

Texans have undoubtedly paid a price for using water however. Springs have gone dry. Aquifers

are lower and some wells no longer pump. On dry years the Rio Grande flow stops short of the Gulf of Mexico. Many of our rivers carry pollution. Water from some wells is no longer safe to drink.

As Texas grows, we are using more water and the cost is getting higher. Natural areas that are essential to sustain high-quality spring flow, stream flow, and aquifer recharge are rapidly becoming homes and businesses. Furthermore, private companies now propose to mine our aquifers and add their profit to the cost of Texas water. Texans are concerned about attempts to privatize public water systems.

Thus, water is of vital importance to the state, and if proper incentives and funding for water programs are not put in place, future generations may face scarcity and severe water pollution problems. During the 78<sup>th</sup> Legislature, a Water Infrastructure Fund was created in an attempt to create a fund for basic infrastructure for the state in terms of providing adequate water supply. There is currently, however, no money in the fund since no revenue source has been agreed upon among political leaders. This may actually be a blessing because the creation of a large fund has the potential to lead to costly, environmentallydamaging projects in the name of increasing water supplies.

In fact, the cheapest, most cost-effective and environmentally-friendly way to extend water supplies for the thirsty state is to conserve water, not market it or promote it through reservoirs or pipelines. In 2003, the Legislature created a water conservation implementation task force to come up with ideas of how to better manage and conserve the state's most vital natural resource. Among the important of the Task Force's most recommendations was creation of a statewide conservation public awareness campaigns. That group advocated the creation of such a campaign and estimated it would cost approximately \$16 million to be run by the Texas Water Development Board. In addition to the campaign, making loans for water conservation projects more readily available for agricultural users, manufacturers and cities could also help lessen water demand.

Several proposals for the creation of broad-based water fees have been considered in the Senate. First, SB 3 would create a Water Conservation and Development Fee to fund the Water Infrastructure Fund. As originally filed, SB 3 would have taxed residential water use at 13 cents per 1,000 gallons used, but exempted the first 5,000 gallons used per household.<sup>xx</sup> In essence, the fee would have been less regressive than a normal tax because it would not penalize those using smaller amounts of water. Because those economically well-off tend to use more water - particularly those with large lawns this approach may be a reasonable way to discourage water waste and create monies for water conservation and infrastructure. It is important to note that agricultural water use was also exempted from the fee. SB 3 also created the afore-mentioned Statewide Conservation Public Awareness Campaign.

After receiving significant criticism, however, the proposed fee mechanism was removed in favor of the creation of a committee to look at all options of creating a fee and to report back to the Legislature.

SB 964, on the other hand, created a per-tap fee of between one and two cents per month per residential connection to be used to pay back interest on bonds for water and wastewater infrastructure for unincorporated colonias – neighborhoods outside of city limits lacking basic infrastructure.

However, the creation of such a per-connection fee was also dropped on the Senate Floor, and no funding source – other than having to appropriate General Revenue to pay back bonds issued under the Economically Distressed Areas Program – was identified.

Both the consumption fee originally considered in SB 3 and the per-connection fee contemplated in SB 964 are worthy of consideration.

**RECOMMENDATION**: A public process at the TWDB or Legislature should be used to develop recommendations for a broad-based water fee, with an emphasis on water conservation on both how the fee is applied and what the money is used to fund. In addition, while water is a

necessary input to agricultural and livestock production processes, potential contributions from these sectors should also be considered when creating such a fee mechanism, particularly if some of the benefits would flow back to that sector.

#### **Energy Efficiency/Inefficiency Fee**

Energy consumption is not taxed in Texas. Some state, such as Ohio, have moved toward energy consumption taxes and away from utility gross receipts tax in an effort to better capture the actual use of energy, particularly as local property tax has declined with the advent of electric deregulation. One issue, however, with taxing electricity is that the amount of the tax will vary with the price, not just the amount of energy consumed. Instead, a tax could be placed the on energy efficiency/inefficiency of the generated electricity. One environmentally responsible way to measure inefficiency is through pollution. Electricity that produces more emissions of air pollution can be said to be less efficient than electricity that produces little or no air pollution.

This report has already highlighted how the lack of a tax on coal production or use creates a subsidy to polluting activities. Taxing the actual emissions – or better put the rate at which emissions are generated per megawatt-hour --- rather than the coal itself would tax an output rather than a business input.

In 2001, the Public Utility Commission proposed the creation of a generator dispatch fee paid by the utility based upon the total megawatt hours and the NOx emissions generated per megawatt hour to fund fuel cell development and clean energy.<sup>xxi</sup> In this way, electricity would be taxed according to its efficiency (and by extension cleanliness) and would be based on the unit of electricity used and its pollution, not upon the value or price of the electricity. Based upon the cleanliness and efficiency of the electrical generating process, the fee would have ranged between zero and \$0.55 cents per megawatt times the rate at which pounds of NOx were generated per megawatt hour. This legislative session, legislation has been introduced that would instead create an energy efficiency tax at a rate of \$0.60 cents per megawatt hour has been proposed, although rather than funding fuel cell development the resulting revenues would be earmarked for public schools.<sup>xxii</sup> Such a tax might:

- Encourage existing plants to clean up their emissions by putting an added cost on emissions.
- Encourage development of solar and wind power since they do not produce nitrogen oxide emissions and would not be subject to the tax; and
- Encourage consumers to pick cleaner energy options since the cost would be comparatively less.

Based upon generation data from 2002, this efficiency tax would generate about \$350 million per year (see Chart), or nearly \$700 million over the biennium and would be collected from utilities. Alternatively, the tax could be charged directly to the retail consumer, based upon the NOx emissions rate (lbs emitted/MWHs) times the number of megawatt hours utilized by the customer. This would give consumers an incentive to choose power from electric power generators that emit less pollution. Based on 2003 residential rates for an average use of 1,000 kilowatt hours per month, customers in Texas would pay an average of \$1.30 cents more per month.

According to the TCEQ Emissions Inventory Database, facilities with SIC Code 4911 – electric generating facilities – generated over 253,655 tons of nitrogen oxide for the latest year available (CY 2002). According to the Energy Information Administration, utilities in Texas produced 299,688,716 megawatt hours or electricity in 2002. Thus, the rate of pounds of nitrogen oxide produced per megawatt hour would be 1.69 pounds of nitrogen oxide per megawatt hour. Multiplying this times 0.60 times the megawatt hours would have generated an estimated \$304 million in 2002. An analysis conducted by the Comptroller of Public Accounts, however, estimated the tax would generate about \$150 million per year. Interestingly, that same report found that the tax fell nearly equally on the very poor, the middle class and slightly higher on the very rich, due to higher electricity consumption rates.

Chart 8. Net Utility Electricity Generation in (million MWHs), Nitrogen Oxide Emissions (Thousand Tons), and Estimated Electric Efficiency Tax (in annual millions) of Selected Utilities Based on 2002 rates



Megawatts NOX Emissions Tax

Source: TCEQ and EIA, DOE

**RECOMMENDATION:** Texas leaders – with public input – should review energy taxes paid by the natural gas, utilities, oil and coal industries, Texas leaders should consider the implementation of an energy efficiency and/or consumption tax to raise revenues for the State and encourage both energy conservation and emissions reductions.

### Recover Economic Benefit from Environmental Law-Breakers

Most businesses play by the rules. However, those who do not jeopardize our health and safety, and they should be punished accordingly. Unfortunately, independent studies and a recent report by the Office of the State Auditor found that the enforcement process by the Texas Commission on Environmental Quality (TCEQ) "does not consistently ensure that violators are held accountable"<sup>xxiii</sup>.

TCEQ has been assessing fines that are so low that the violator actually gains economically while not complying with the law. Under its current policy for example, if the agency calculates that the economic benefit received by a company is less than \$15,000 they do not even consider augmenting the fine or penalty. If the economic benefit gained is more than \$15,000, then they will increase the base penalty by 50% regardless of whether the economic benefit gained was \$20,000 or \$200,000. With few violations resulting in fines and with fines assessed considerably lower than the economic benefit derived by ignoring the law, polluters have incentives to break the law over and over again. A weak penalty policy encourages pollution, deprives the state of critical revenue and puts law-abiding businesses at a competitive disadvantage. Weak enforcement is a subsidy to polluting activities.

From FY 2001 to FY 2003, the State Auditor reviewed 80 cases where the TCEQ did assess penalties against environmental law-breakers, but found that polluters derived an economic benefit from noncompliance of \$8.6 million. These polluters were assessed penalties of only \$1.7 million. Polluters were on average allowed to keep 81% of the money they earned by breaking environmental laws.<sup>xxiv</sup> In March 2002, for example, Amoco Oil paid an \$11,893 fine for violating clean air standards. According to TCEQ, the firm's violations padded its profit by \$123,000.

In response to the State Auditor's December 2003 report, TCEQ did begin a yearlong assessment of its permitting and enforcement functions. While

the internal review has led to changes, rulemaking and recommendations to improve both basic functions, the agency has not taken a position on economic benefit recovery. They are currently beginning more public meetings and a rule-making process, but it appears unlikely that TCEQ will decide what both the EPA and many other states have done: recover economic benefit when assessing penalties.

#### Chart 9, Penalties Assessed and Economic Benefit Gained for 80 Law-Breaking Companies, FY 2001-03



TCEQ has insufficient resources for enforcement, so many major facilities go without inspections, citizen complaints are ignored and many violations go without response. The agency is famous for deferring penalty payments or not even collecting them, issues also highlighted in the recent SAO report. Now, efforts by TCEQ to speed the enforcement process will further strain resources.

Fortunately, there are solutions. TCEQ – by its inaction – is asking for direction from the Legislature. TCEQ could be directed to recover economic benefit. Alternatively, through the rulemaking process, TCEQ could recover economic benefit when assessing penalties.

**RECOMMENDATION:** The TCEQ should "to the extent practicable, ensure that the amount of the penalty is at least equal to the value of any economic benefit gained by the alleged violator through the violation."<sup>xxv</sup>

### **Cut and Green Wasteful Projects**

Since 2003, four new projects – all of them promoted to some extent by the Governors' Office -- have received substantial attention and debate. All four projects are not without some merit, yet the failure to apply basic environmental requirements, performance and fiscal safeguards make them fiscally irresponsible and potentially dangerous to natural resources, public health and the environment. They are in essence subsidies to private industries and concerns, even if the ultimate goal is the public good.

This report recommends putting a hold on these projects, pending further debate, or "greening" them through Environmental Impact Assessment, green purchasing requirements, environmental compliance checks and other means. The four programs or projects are the Governor's existing Technology Enterprise Fund and Texas Emerging Technology Fund; the Clean Coal and related FutGen Project; the Texas Mobility Fund and the Trans-Texas Corridors. None of these have been assessed for their green performance either fiscally or environmentally.

#### The Governor's New Funds: Subsidies to Polluting Industries or Sources of Environmental Innovation?

In 2003, the 78th Legislature created the Texas Enterprise Fund (TEF) as a fund within the Governor's Office to provide incentives to businesses to expand in or relocate to Texas. The fund received an initial appropriation of \$295 million FY 2005 and FY 2005 from the economic stabilization (rainy day) fund. The current version of the budget currently in Conference Committee allocates some \$260 million for the TEF in the next biennium.

Over the first two years of the program, some 18 entities have been awarded grants of approximately \$212.4 million, most of which have gone for direct business incentives. According to information from the Governor's Office, these incentives have helped create some 23,000 jobs throughout the state and generated \$6 billion to the Texas economy.<sup>xxvi</sup> Under the current version of the fund, the lieutenant governor, speaker of the House and governor all must approve any contract, and the governor has the option of including "clawback" provisions in contracts that require an enterprise to repay monies back to the state if it fails to create the promised number of jobs or to invest a minimum amount in the state. Nonetheless, to date this provision has not been used, and a recent 2005 Staff Performance Report concluded that in at least two of the 18 cases should have included stronger provisions to hold grant recipients accountable for the promises they made.<sup>xxvii</sup>

In its 2005 report, the LBB found that current state law governing the TEF does not require the governor to report to the Legislature – or for that matter the public -- on the fund's grants, activities, or performance. The Center for Public Policy Priorities also analyzed the first two years of the TEF, and found that the TEF:

- "Includes the largest annual appropriation of any cash-based economic development incentive program in the nation
- Lacks standards to promote high-quality jobs Lacks adequate safeguards to foster compliance Provides a limited picture of the state's subsidy for a particular project
- Plays a secondary or uncertain role in site selection Prefers projects in major metropolitan areas over rural and border regions
- Lags behind other states in reporting, public disclosure, and post-award compliance measures "xxviii

There are no specific environmental performance requirements or any specific look at compliance history when a facility is seeking TEF grants. Among the facilities gaining direct money from the TEF are chemical-giant Huntsman Corporation, which was provided a grant of \$3 million for expansion, BP Chemical in League City, which was provided a TEF grant of \$750,000 and oilleader Citgo Houston, which was provided a \$5 million grant. Even non-manufacturing TEF grants, such as those to the outlet stores run by Cabela's in Fort Worth and Buda have the potential to impact natural resources through the tourism, car trips and sprawl they are expected to help generate. Recent legislation introduced in the House and Senate would: create performance standards to demonstrate the effectiveness of projects funded by the TEF; hold companies accountable for the money that they receive; require grant recipients to meet specific performance measures, which could include job creation or capital investment mandates; and force a grantee to repay funds if those goals were not met. They would also require a biennial report to the Legislature.<sup>xxix</sup>

Nonetheless, none of these proposed legislative solutions actually would require any specific environmental compliance history check, nor require exemplary environmental performance, or an assessment of their potential impacts.

Other states with similar economic development funds do require some attention to environmental performance. Thus, North Carolina specifically requires a check with the state environmental agency to make sure the project will meet requirements and not pose an undue risk. <sup>xxx</sup> Again, the Texas Enterprise Fund contains little or no restrictions to awarding grants to companies with sub par workplace safety or environmental protection records.

In January, Governor Perry cited the progress made in the TEF, proposed a new economic development program-the Emerging Technology Fund (\$300 million)—that would be administered by the Office of the Governor. This new fund would assist research and development of new technologies and create regional collaborations between the private sector and university researchers. Under this proposal, these centers would incubate start-up firms and attract existing companies commercialize that can their development.

While no money has thus far been earmarked for the Emerging Technology Fund in the budget process, legislation creating the new Fund is expected to pass the Senate and House. Among the emerging technology industries which would be eligible for funding through private-public partnerships would be semiconductors, information, computers, energy, nanotechnology, biotechnology, petroleum refining and defense industries. While no industry is specifically exempted from the Fund, it is interesting that industries which could help promote a "greener" Texas such as alternative energy sources, fuel cells or advanced water conservation initiatives are not specifically addressed by the legislation. In addition, priority is given to those projects that "have a demonstrable economic development benefit to the state."<sup>xxxi</sup> No priority is given for solving pollution or natural degradation challenges.

The Texas Emerging Technology Fund shares many of the same potential problems identified with the TEF: no automatic repayment of funds if performance measures are not met; no specific reference to environmental compliance and performance and no consideration of potential impacts.

**RECOMMENDATION:** Both the Texas Enterprise Fund and Texas Emerging Technology Fund must be cut back or substantially reworked so they do not become corporate slush funds and include specific environmental performance reviews. compliance history and consideration of possible natural resource and environmental impacts. In addition, priority should be given to projects that actually help promote environmental stewardship and solve environmental challenges such water as conservation and energy efficiency.

#### **Preventing Subsidies to "Clean Coal"**

There is considerable interest in the creation of clean coal technology – that is, electricity produced by coal that is less polluting and more efficient. While there appears to be no standard definition of clean coal, the Department of Energy has begun a "FutureGen" hydrogen-based clean coal project to control emissions – and sequester green-house carbon dioxide gases – through injection wells. In the near future, the DOE may award up to \$800 million in subsidies to help one state produce such a FutureGen plant.

Texas obviously wants this investment. However, in wanting to attract a new technology to Texas, there is a danger that Texas leaders will give away grants and tax incentives that may be too broad, and actually take away from the development of clean energy production that already works: renewable energy like wind, solar and biomass.

Currently, the Texas tax code has a number of exemptions and tax breaks intended to encourage the development of renewable energy. For example, under the Texas Tax Code, Section 171.056, solar energy companies are exempt from paying the Texas Franchise Tax – which caused about \$300,000 less to the state in FY 2005 – while under Section 171. 107 – the cost of solar energy devices can be deducted from the franchise tax which only cost the state a tiny amount of tax revenue.

Finally, under Section 11.27, about \$3.3 million in local property tax has been exempted to solar or wind-powered energy devices. The devices must be used for on-site production and distribution of renewable energy.

While there are currently no sales tax, franchise tax or property tax exemptions or rebates for clean coal- largely because as already mentioned coal itself is not taxed -- there are proposals being introduced during the legislative session that would help utilities using coal.

For example, wind and solar projects and other alternative energy producers are eligible for grants under Section 2305.037 of the Government Code for renewable demonstration projects. Nonetheless as part of the effort to attract a FutureGen clean coal project to Texas, legislators are proposing to open this renewable program to clean coal and provide up to \$20 million in grants.<sup>xxxii</sup>

In addition, under the proposal, a "clean coal" project could apply to have 10 percent of the amortized cost of its equipment taken off the franchise tax role and also open up the local property tax deduction available to wind and solar operators to clean coal operators.

The authors of this report oppose any subsidies or tax breaks to coal – clean or otherwise – and are particularly concerned that the current definitions of clean coal technology are too broad, meaning that coal plants with a small portion of "clean coal" technology could use proposed tax breaks and grants to make their coal eligible for such fiscal benefits.

Furthermore, there have been various attempts to expand the definition of renewable energy, which could open up tax breaks to other industries. The definition of renewable energy should be kept clean, and should not include clean coal, gasification projects or other waste-to-energy schemes.

**RECOMMENDATION:** Legislators should make sure that any tax deductions, exemptions or direct grants to clean coal projects are narrowly defined and that this effort does not undercut funding intended to promote renewable projects. We recommend not making clean coal projects eligible for demonstration grants, since it would undercut such efforts.



**Padre Island Dunes** 

Greening the State Budget

Page 22

#### **Increase Green Purchasing for Highways**

According to the non-governmental organization, Worldwatch, "greening" procurement means that in addition to specifying basic requirements for quantity, price, function, or safety, institutions such as state governments make demands on their suppliers that entail the following:

- Products display one or more positive environmental attributes, such as recycled content, energy or water efficiency, low toxicity, or biodegradability.
- Products generate less waste, including by having less packaging or being durable, reusable, or remanufactured;
- Products meet certain environmental criteria during manufacturing or production, such as that paper be processed chlorine-free or be made out of timber from a sustainably managed forest.
- Suppliers reclaim or take back items such as batteries, electronics equipment, or carpeting at the end of their useful lives.
- Suppliers themselves have environmental credentials, such as putting in place environmental management systems.

The State of Texas has approximately five years of coordinated efforts to create, sustain and expand its program for green procurements. During the current legislative session, the State Legislature has proposed that the effort should be directed through the Texas Building and Procurement Commission and Texas Environmental Commission on Environmental Quality. It remains for the governor to put the final touches on the new direction for green purchasing in the state.

Figures for the last three years of green procurement indicate a relatively small decline in the amounts of budget authority that has been dedicated to recycled purchases (less than .1 %). Much of the "green procurement" success during the last three years was concentrated in three agencies; the Texas Building & Procurement Commission (TBPC), the Texas Commission on Environmental Quality (TCEQ) and the Texas Department of Transportation (TxDOT) and specifically in the category of remanufactured products.<sup>xxxiii</sup> Between FY 2002 and FY 2004, total purchases at these three state agencies fell from \$662 million to \$632 million, while the use of remanufactured goods increased by 26 percent over the period for the lead RMDB agencies.

Minimal progress was made in the promotion of green purchasing by the State of Texas. In terms of dollar expenditures, the Remanufactures category recycled purchases grew by roughly 1.5 percent during the period when only the three RMDB agencies are considered. On the other hand, Remanufactured Goods grew significantly during the period. However this category of products represents a very small portion (\$ 6.78 million) of total green purchases (\$708.4 million) in FY 2004.

The sharpest drop in expenditures relative to the 2002 base year is found in the Environmentally Sensitive category. Total expenditures fell to \$ 59.8 million in FY 04 from \$ 98.9 million in 2002. \*\*\*\*

# Chart 10. TxDOT Purchase of Recycled Content Products

• Other Environmental Purchases (millions)



#### Recycled Materials for Roadways (millions)

No agency is more important in terms of green purchasing than the Texas Department of Transportation. In fact, in FY 2004, about 89 percent of all "green" purchases were made by TxDOT. One definite measure of this trend toward green purchasing at TxDOT is the amount of "recycled" materials being used in roadways, embankments and even TxDOT facilities. Thus, the amount of crushed concrete rose from 700,000 tons to over one million tons between FY 01 and FY 04, while the use of steel increased by ten-fold, from some 35,000 tons to some 286,000 tons. A positive development has also been the increased use of money expended by TxDOT for scrap tires, crumb rubber and other tire-derived products used both for embankments and actual road cover.

# Chart 11. Scrap Tire Usage (in Scrap Tire Units)



SOURCE: 2004 SCRAP TIRE PROGRESS REPORT

In FY 1999, for example, TxDOT only spent \$9.8 million, and by FY 2004, the agency spent \$90.7 million on rubber paving and crack sealant<sup>xxxv</sup> In terms of actual Scrap Tire Units, there has been a fundamental shift away from landfilling scrap tires in Texas and toward their use for secondary markets, including TxDOT projects. Thus, the amount of scrap tire units disposed of in landfills was reduced by nearly 70 percent between FY 2000 and FY 2002, even while the amount of crumb rubber products - mainly used for road cover – increased by over 1,500%. While the entire amount of scrap tire units going to landfills was still three times as great as those being used for highway and other crumb rubber projects in FY 2002, TxDOT played a major role in promoting an alternative market for scrap tires. It is also important to note that the largest use of scrap tires continues to be as tire-derived fuel, as the state has even provided grants to cement kiln operators to burn tires, despite opposition from citizen groups (Some 11 million tire units were burned at cement and other industrial kilns in FY 2002). We believe reusing tires is a far superior use to burning tires, which not only wastes the resource, but has the potential to create particulate matter and toxic emissions.

TxDOT use of scrap tires rose from 13,633 tons of material in FY 2001 to 23,904 tons of rubber material in FY 2004<sup>xxxvi</sup>. Other materials like crushed concrete and fly ash dwarf this total, but it shows how a societal bad – scrap tires – can become a societal good through green purchasing programs. And the rubberized pavement and sealant appear to be working. TxDOT recently reported that its use of "Permeable Friction Course" had positive results for a stretch of road near New Braunfels. TxDOT reported:

"The Rubber Pavement Association recognized the San Antonio District's overlay of Asphalt-Rubber Permeable Friction Course (PFC) on a stretch of old concrete pavement for its improved drainage and resulting increased visibility during rainy conditions, in addition to its improved surface and dramatic noise reduction."\*\*\*\*\*\*

Just why is green purchasing important to the State of Texas? Because the major highway projects being contemplated – the Trans-Texas Corridor as well as the new Texas Mobility Fund<sup>xxxviii</sup> – will be largely funded through private contracts and toll roads. The Texas Mobility Fund now has a dedicated funding source, but the funding source is meant to serve as a debt service tool for paying back bonds to build roads.

Reports indicate that some \$2 billion in road bonds could be floated for roads through the Texas Mobility Fund in FY 06-07. There are currently no provisions for any of these roads to include recycled materials. This means that billions of dollars spent will likely be spent on traditional highway materials – sand, gravel, aggregate, cement, asphalt and concrete. All of this production implies more quarries, rock crushers and other needed infrastructure to provide materials, which has the potential to impact rivers, groundwater and clean air. **RECOMMENDATION:** The TCEQ, Texas Building & Procurement Commission and TxDOT should work with the Legislature to create specific guidelines for the use of green materials in new highway projects, so that alternative recycled materials can be used more easily and efficiently.

# **Trans-Texas Corridor: Boondoggle to Destruction?**

Perhaps no project has caused so much discussion this legislative session as the Trans-Texas Corridor, proposed by Governor Rick Perry during the 78<sup>th</sup> Legislature and passed into law then. To its supporters, the corridor concept is an innovative transportation system featuring highways, pipelines, rail lines, electric transmission lines, broadband and other telecommunication infrastructure all in one. To its detractors - and there are many from the Texas Cattlewomen's Association to Sierra Club, Lone Star Chapter - it is potentially a huge boondoggle to destruction.

While no Trans-Texas Corridors have yet to be built, the first two are well on their way. TTC-35 would stretch from south of San Antonio to north of Dallas in a corridor parallel to I-35 has already begun, while 1-69/TTC, which would stretch around Houston from Louisiana to Mexico is in the final stages of planning.

What makes assessing the TTC concept difficult fiscally is that it does not involve significant outlays through the budgetary process. Instead, the roads would be built privately through contracts, with toll roads providing the financial award to private companies. Essentially, TxDOT and its contractors would sell revenue bonds with no citizen approval and pay them back with the toll proceeds. The budget issue will only come to play if (some would say when) the toll roads don't work and then the taxpayers would have to pay the bill.

The first phase of the Trans Texas Corridor private-public partnership was signed in March 2005 with Cintra, a Spanish conglomerate.<sup>1xxxix</sup> The fund will be supplemented by \$1.2 billion dollars in concession fees from the negotiated deal with Cintra.

The master development and financial plans for the initial segments of Trans Texas Corridor System (TTC\_35 & TTC-69) are not available and will not be finalized before the FY 06-07 budget is signed by the governor. The environmental assessment

required by the National Environmental Policy Act of 1969 is now underway by both TxDOT and the Federal Highway Administration. The alignment of the corridors will have vast consequences on future population growth and the environment. This information will become available in the spring of 2006. We believe that it is necessary to put a moratorium on the Trans-Texas Corridor from both a financial and environmental perspective because:

- a) the purpose of toll roads in the present transportation matrix has not been adequately targeted to the needs of Texas major population centers; Dallas, Houston and San Antonio.
- b) the idea of creating a permanent revenue stream for the state and for the private investor will require cities, both large and small to misallocate local road dollars towards connections to the "for-profit system". This expansion will reduce the monies available for addressing the existing road infrastructure.
- c) the plan doesn't reduce air pollution; it simply pushes vehicle pollution away from the large urban district into rural Texas. In doing so it increases the number of travel miles required to reach and leave the corridor from urban areas which in-turn increases the generation of air pollutants by inducing travel.

Other issues that must be addressed before approving any Trans-Texas Corridor include:

**Loss of habitat and open space.** TxDOT projects the Trans-Texas Corridor alignments to require 580,000 acres. That's a land area six times greater than the Big Thicket National Preserve in Texas.

The National Resources Inventory released by the Natural Resources Conservation Service in 1999 lists Texas as having the highest land consumption rate of any state. The TTC and ancillary developments will certainly accelerate Texas' land consumption rate.

Habitat fragmentation. Fences and barriers required to protect high-speed vehicle lanes and

particularly rail tracks will prohibit the movement of wildlife across vast areas of Texas. The affect could be a reduction in the diversity of species.

Alternatives.<sup>xl</sup> There is certainly a need for a more modern transportation system particularly given Texas's place along the North American Free Trade Agreement major routes for freight. Nonetheless, others have said a modern system should emphasize high-speed rail – rather than highways – as the backbone of such a modern transportation system.

**RECOMMENDATION:** Put a moratorium on the Trans-Texas Corridor until more debate and discussion about its potential impacts are considered, including a more thorough public input process and environmental review.

# **Endnotes**

According to the Environmental Protection Agency's 2000 Toxics Release Inventory, Texas manufacturing facilities released 248 million pounds of toxics on and off-site in 2000, followed by Ohio manufacturing facilities, which released about 144 million pounds of toxics. In 1997, Texas facilities generated 46.6 percent of all hazardous wastes in the U.S. according to the U.S. EPA, National Biennial RCRA Hazardous Waste Report, August 99. A 1990 study found that Texas released 553 million metric tons of carbon dioxide, while California, the second leading state, released 310 million metric tons (Daniel Lashof and Eric Washburn, The Statehouse Effect: State Policies to Cool the Greenhouse (Washington, D.C.: Natural Resource Defense Council, 1990), A-3. According to the U.S. EPA, Houston, Dallas-Ft. Worth, El Paso, Beaumont-Port Arthur and Tyler-Marshall-Longview all fail the one-hour standard for ozone pollution. Only California-led by Los Angeles and San Diego - has more people living in areas that fail the one-hour ozone standard. U.S. EPA, Ozone Greenbook, 2001,

<sup>ii</sup> Texas Natural Resource Conservation Commission, Texas Water Quality Inventory 2000, Draft Report, May of 2002.

<sup>iii</sup> Includes the Department of Agriculture, Animal Health Commission, General Land Office, Texas Natural Resource Conservation Commission, Texas Parks and Wildlife, Railroad Commission of Texas, Texas River Compact Commissions, Texas Soil and Water Conservation Board, and Texas Water Development Board among other agencies.

<sup>iv</sup> Stacy Tomas and John L. Crompton, The Economic Contribution of Texas State Parks (Austin: Texas Coalition for Conservation, January 2003), pages 9-12.

<sup>v</sup> Southwick Associates, The 2001 Economic Benefits of Hunting, Fishing and Wildlife Watching in Texas, March of 2003

<sup>vi</sup> Federal Energy Regulatory Commission, FERC Form 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants."

<sup>vii</sup> Texas Commission on Environmental Quality, FY 2005 Air Emissions Fee Database, provided to authors in October, 2004. <sup>viii</sup> The top 16 include 14 power plants burning coal or lignite and two carbon black producers. TCEQ, FY 2004 Air Emissions Fee Database.

<sup>ix</sup> 6 Pope III, C. Arden, et al. "Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution," Journal of American Medical Association, Vol. 287, No. 9 (March 6, 2002).

<sup>x</sup> SEED Coalition, "Children at Risk: How Air Pollution from Power Plants Threatens Health of America's Children," 2002.

<sup>xi</sup> A recent review of other state's excise, severance and other fees on coal mining found, for example, found that New Mexico had an effective tax rate of \$1.82 per ton, \$0.98 per ton in West Virginia and \$0.85 per ton in Montana. At these rates, Texas would have generated roughly between \$50 and \$100 million per year. See Texas Center for Policy Studies and Public Citizen, *Making Polluters Pay: Environmentally Responsible Ways the 78<sup>th</sup> Legislature Can Raise New State Funds*, 2003.

<sup>xii</sup> Dr. John Crompton, *Parks and Recreation in Texas: Facts Sheet*, January 2005.

<sup>xiii</sup> Carole Keeton Strayhorn, Texas Comptroller of Public Accounts, letter to Representative Edmund Kuempel, October 19, 2004.

x<sup>iv</sup> Texas Water Code, §26.0291. Subsection (e) states "the amount of the fee may not exceed \$75,000 for each permit or contract." Water rights are subject to the same maximum, except for irrigation water rights, which are not subject to any fees. Aquaculture facilities are subject to maximum fee of \$5,000 in § 26.0292 (b).

<sup>xv</sup> TCEQ, Draft 2002 Water Quality Inventory and 303-D List, September 2002.

<sup>xvi</sup> TCEQ, Draft 2002 Water Quality Inventory and 303-D List, September 2002.

<sup>xvii</sup>Texas Department of Health, Seafood Safety Division, Fish Advisories & Bans, 2004.

<sup>xviii</sup> Water is specifically exempted under Sec. 151.315 of the Texas Tax Code, while most gas and electricity sales are exempt from state sales tax under Section 151.317. It is important to note that Cities and Counties, however, may choose to tax residential electricity and gas consumption.

<sup>xix</sup> Texas Comptroller of Public Accounts, *Tax Exemptions and Tax Incidence*, January 2005, Table 2.

<sup>xx</sup> Senate Bill 3, Introduced Version, Section 13.554 creates a fee on residential consumption above 5,000 gallons.

<sup>xxi</sup> Public Utility Commission of Texas, Staff White Paper on Stationary Fuel Cells for Power Generation, May 6, 2002. Under the PUC proposal for fuel cell development, the highest proposed dispatch fee assessment rate for fuel cell development would occur in the years of greatest total program cost. In these high cost years, power plants with a NOx emissions rate of zero would pay between zero and \$0.21 cents per megawatt hour, a power plant with a moderately low NOx emissions rate of 2 lb./MWH would pay between \$0.31 to \$0.37 cents per megawatt hour, and a power plant with a high emissions rate of 3.5 Ib/MWH would pay between \$0.49 cents and \$0.55 cents per megawatt hour. Our proposal is to simplify these rates to \$0.30 per pound of NOx per Megawatt hour and apply it beginning in 2004 to generate monies for both the fuel cell development program and the Texas Emissions Reduction Program. See PUC, Table 5, page 13.

<sup>xxii</sup> HB 3108 by Representative Lon Burnam was heard in the Ways and Means Committee in April, but left pending.

<sup>xxiii</sup> Texas State Auditor's Office, An Audit Report on Permitting and Enforcement Functions at the Commission on Environmental Quality, (SAO: Austin (Report 04-016), December 15, 2003).

<sup>xxiv</sup> Ibid, page 5. "For 80 fiscal year 2001, 2002, and 2003 cases we tested, the total economic benefit gained by violators during the period of noncompliance was \$8,647,005. However, these entities were fined only \$1,683,635, which is approximately 19 percent of the economic benefit gained from being out of compliance."

<sup>xxv</sup> Section 7.053 (3) (D) of the Water Code requires the TCEQ to consider the "economic benefit gained through the violation," but does not require that the penalty amount actually reflect that economic gain. The language referenced here was included in HB 910/SB 699 as filed this year in the 79<sup>th</sup> Legislative Session.

<sup>xxvi</sup> Governor's Office, Press Release, October 14, 2004.

<sup>xxvii</sup> Legislative Budget Board, Staff Performance Review, January 2005.

<sup>xxviii</sup> Don Baylor, Center for Public Policy Priorities, Enterprise Fund Policy Page: "High Road or Low Road", February 2, 2005.

<sup>xxix</sup> House Research Organization, Report on HB 1938, April 2005.

<sup>xxx</sup> North Carolina Job Development Investment Grant, Environmental Protection: "The ability of the Project to satisfy State, federal, and local environmental law and regulations. Inquiry will be made of the NC Dept. of Environmental and Natural Resources with respect to the nature of a Project being considered for a Grant. Projects that are at significant risk of being unable to satisfy State, federal, and local environmental law and regulations are unlikely to be awarded grants. Projects that pose significant risks to the environment are less likely to be funded."

<sup>xxxi</sup> 79<sup>th</sup> Legislature, SB 831 as engrossed, Section 49.153.

<sup>xxxii</sup> 79<sup>th</sup> Legislature, HB 2201, Committee Substitute Version.

xxxiii While defining the exact nature of green products can be a difficult task in practice, the agencies have focused upon motor oil & lubricants, toilet paper, seats & paper towels, printing paper, envelopes and trash bags in determining the success of the "1st Choice Program". The administrative rules for this program were adopted in October 2000. At that time, the state defined Recycled, Remanufactured and Environmentally Sensitive categories of "green products". As green purchasing programs were set up across the continuum of state agencies, a number of vendors were diligently selected to provide "1<sup>st</sup> Choice" Categorizing and quantifying the products. purchases came under the purview of the RMDB for FY 2000.

<sup>xxxiv</sup> Recycling Market Development Board (RMDB) Annual Reports of FY02-FY04.

xxxvTxDOT Recycling Annual Report & Progress Reports in 2004 and 2005

xxxvi 2004 TxDOT RECYCLES ANNUAL REPORT

<sup>xxxvii</sup> TxDOT and TCEQ, Progress Report on Using Scrap Tires and Crumb Rubber in Texas Highway Construction, January 2004.

<sup>xxxviii</sup> The Texas Mobility Fund was established by the 77<sup>th</sup> Legislature and approved by Texas voters, and allows TxDOT to issue bonds secured by earmarked revenue. TxDOT, Texas Mobility Fund Proposed Strategic Plan, June 24, 2004.

<sup>xxxix</sup> According to a PowerPoint presentation to the Texas Transportation Commission, the provisional schedule and concessions to be paid for the TTC-35 proposed by Cintra is:

1. South of Austin (TX130) to San Antonio, \$710m, construction 2007-2009, fee \$37m

2. South of Dallas to east of Dallas, \$1793m, 2009 to 2013, fee \$580m

3. East of Dallas to north of Dallas, \$775m, 2009 to 2012, fee \$408m

4. Georgetown (TX130) to Temple, \$986m, 2010 to 2013, fee \$116m

5. Temple to south of Dallas, \$1694m, 2010 to 2013, fee \$32m

6. South of San Antonio to east of San Antonio, \$489m, 2010 to 2014, no fee

7. UP railroad relocation Central Texas, \$852m, 2011 to 2014, no fee

<sup>xl</sup> For more information on Trans-Texas Corridor, see <u>www.corridorwatch.org</u>. For more information on rail as an alternative, see <u>www.TexasRailAdvocates.org</u>.