

State of Texas Border Partnership Working Group Newsletter

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U.S. House of Representatives Approve Provision Limiting Cross-Border Trucking Pilot Program

Last week as the second round of the supplemental war funding bill was debated in the House— **a provision limiting the Bush administration's cross-border trucking program was incorporated as part of the funding bill.**

On May 1, President George W. Bush vetoed Congress's first supplemental spending bill, which contained a withdrawal deadline for troops in Iraq. **The veto sent Congress back to the drawing board to develop bill language the president would sign.**

On **Thursday, May 10, in a vote of 221-205, the House of Representatives approved a second version** of the supplemental spending bill, which still included a provision limiting the cross-border pilot program.

The provision would restrict spending any money that would allow Mexican motor carriers to operate beyond the border trade zone until three conditions are met. Those conditions are:

1. Granting such authority must first be tested as part of a pilot program;
2. The pilot program must comply with the requirements of Section 350 of the 2002 appropriations legislation and the requirements of Section 31315(c) of Title 49,

U.S. Code, related to the pilot programs; and

3. Simultaneous and comparable authority to operate within Mexico is made available to motor carriers domiciled in the United States.

The cross-border provision is shown under **Section 5901 as part of the new supplemental bill.** Unfortunately, Section 5901 is facing an uphill challenge, because of other language contained in the bill.

The Democrats in the House have crafted a new version of the supplemental spending bill that includes **a deadline of July 13** for the president to submit a report to Congress on the progress of the war in Iraq.

The bill would allow Congress **to withhold funding if the president fails to submit a report.** The president has already announced his intention to veto the new bill, according to the Associated Press recently.

For additional information on the U.S. DOT's Cross Border Truck Inspection Program, please refer to the following HQ's web link for additional information:

<http://www.dot.gov/affairs/cbtsip/index.htm>

Environmental Progress Highlighted Along Mexico Border Cities Highlighted in Two New Reports by U.S. EPA

Two new reports highlight important health and environmental progress in the border region under the **U.S.-Mexico Border 2012 Environmental Program**.

"These reports show significant environmental progress despite substantial growth in the border's economy and population," said Jerry Clifford, EPA deputy assistant administrator for the Office of International Affairs and Border 2012 U.S. National Coordinator. "They also confirm that international collaboration improves the environment, human health, and the quality of life while making economic and environmental sense."

The two reports, **U.S.-Mexico Environmental Program: Border 2012 Implementation and Mid-Term Report 2007 and State of the Border Region: Indicators Report 2005**, were released today by EPA and its Mexican counterpart, the Secretariat of Environment and Natural Resources.

An example of environmental progress is the disposal of used tires. Over the past decade, explosive population growth and a steady demand for used American tires in Mexico has resulted in the accumulation of more than nine million discarded tires along the U.S.-Mexico border. Border cities such as Tijuana, Ciudad Juárez, and Mexicali have piles containing hundreds of thousands of tires, posing a significant air, water, and land contamination threat. **But through the efforts of the EPA's Border 2012 Program, more than three million tires have already been removed from the border region** and used for fuel or in highway paving projects.

Other environmental accomplishments cited include:

- **More than 2000 tons of hazardous waste was cleaned up** from the abandoned "Metales and Derivados"

lead recovery facility in Tijuana.

The site clean-up removed the risk of lead contamination for 10,000 people.

- **EPA's Border Environment Infrastructure Fund**, combined with funding from Mexico, provided \$1.5 billion for 54 projects that provided drinking water and wastewater benefits to over 6.7 million people.
- **Fourteen out of 15 U.S. and Mexico Sister Cities on the border (paired cities on either side of the border) have established Sister City Bi-national Emergency Response Plans.** The plans provide local emergency response teams with a mechanism for cooperatively addressing emergency response planning, exercises and training.

State of the Border Region 2005 is the first in a series of bi-national reports under the U.S.-Mexico Border 2012 Environmental Program. It informs the border communities and stakeholders about the state of the environment and progress made under the Border 2012:U.S.-Mexico Environmental Program, which was launched in 2002.

The U.S. - Mexico Border 2012 Program is a 10-year, bi-national program focused on making measurable improvements in environmental quality and health along the U.S.-Mexico border. It represents a partnership of cooperation among the federal governments of Mexico and the United States, the ten border-states, 26 American Indian tribes in the border region, local authorities, and academia and business interests.

For a copy of the report, please see the following web-link:

<http://www.epa.gov/border2012/>

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Transportation Bill May Impose 2-Year Moratorium on CDA Toll Road Leases in the State of Texas

Governor Rick Perry has told State of Texas lawmakers they should make plans to return to the Capitol for a special session if they don't re-write a nearly **60-page transportation bill** that is sitting on his desk.

The governor said state legislators need to work in the time remaining before the regular session ends to fix the bill, which is primarily intended to buy the state more time to review the effects of handing over roadways to private groups.

While a **two-year moratorium on toll road leases** with private groups is a major part of the bill and has drawn a lot of attention, Perry is focusing on another part of the bill. One of the biggest issues is a provision that would give local toll agencies priority in building toll routes. It also would put limits on tolling contracts between the state and private companies.

Those provisions could deal a serious blow to Perry's transportation policy. **The plan includes the proposed Trans-Texas Corridor project.** House and Senate lawmakers are said to be working on how to address concerns about the bill – HB1892. One leading senator predicted a solution within a few days.

"We are working carefully with the governor to resolve the conflict and avoid the veto of the legislation," Sen. John Carona, R-Dallas, chairman of the Senate Transportation Committee. "However, we feel very strongly that if we are unsuccessful in that effort there are sufficient votes in both houses to override the governor's veto."

The moratorium would exempt projects in Dallas-Fort Worth, San Antonio and El Paso. Advocates of the exemptions say the affected regions can't afford a delay in relieving traffic congestion.

Aside from the moratorium and local toll road provisions, the bill would require a study of the long-term effects of public-private partnerships. It also would reduce the length of leasing contracts from **70 years to 40 years.**

A formula also would be set up for the state to buy back roads and limit clauses that restrict new roads that compete with toll roads. Rep. Lois Kolkhorst, R-Brenham, said the protections are needed because of concerns the state is giving away too much in toll road leases.

"There are enough questions out there to tap the breaks and take time to look before we leap into these 50-year contracts that we're signing with private equity companies and tying up our ability to receive revenues off those roads," stated Rep. Kolkhorst.

"We need to make sure the Trans-Texas Corridor is viable. We need to look at the toll rates. We need to look at the non-competes in there. We need to look at the buy back clauses. There are tons and tons of questions," she said

Perry has until Friday, May 18, to sign the bill, let it become law without his signature, or veto it. If he chooses to use his veto stamp, lawmakers would have some time before the **scheduled May 28 adjournment for a veto-override vote.**

The margin of approval in the House showed it has more than enough support to withstand an attempt by the governor to veto it. The State of Texas' Senate vote of 27-4 in favor also is more than the **two-thirds majority that would be needed for an override.**

House Embraces Sweeping Homeland & Border Security Legislation

The State of Texas has made great strides in improving its efforts to provide homeland security. However, current law does not provide for strong executive authority to make broad homeland security strategic decisions.

House Bill (H.B.) 13 seeks to improve homeland security in Texas by creating the homeland security law enforcement integrity unit within the **Office of the Attorney General, the State Office of Homeland Security associated with the office of the governor, and the Border Security Council appointed by the governor**, and by setting forth the duties of such entities.

The H.B. 13 also provides that the Department of Public Safety has the sole responsibility to analyze and disseminate criminal intelligence information and to develop and operate a comprehensive intelligence database. H.B. 13 requires the Texas Department of Transportation to erect and maintain border inspection facilities in certain municipalities. This bill also authorizes private institutions of higher education to increase the security of their campuses and enforcement of state and local law.

The State of Texas house last week embraced sweeping legislation giving Gov. Rick Perry broader control of homeland and border security operations and the final say on deciding how more than **\$100 million for border security will be spent. The vote for H. B. 13 was 140-5**, with one member present but not voting. After an expected final approval last Monday, the bill heads to the Senate.

Earlier during the week, House members approved an amendment moving a controversial law enforcement database with information on more than one million Texans out of Perry's office to the Texas Department of Public Safety.

The measure also would direct **state money, and potentially millions more in federal funding as well, at border sheriffs**. Rep. Swinford reiterated last Monday that not keeping Perry's homeland security office in control of border security money would jeopardize millions in funding promised under an agreement he made with U.S. Rep. John Culberson, R-Houston.

House Bill 13 creates a Border Security Council appointed by the governor, which would advise how to distribute millions for more officers, overtime, equipment and other expenses. It also addresses local law enforcement and municipal and county immigration policies. For additional information on HB 13 please see the following web link:
<http://www.capitol.state.tx.us/tlodocs/80R/fiscalnotes/html/HB00013E.HTM>

Based on the fiscal note for similar legislation from the current legislative session, the Department of Transportation (TxDOT) indicates the bill would **require the relocation or establishment of a new border inspection facility in Laredo**. Based on the analysis of TxDOT, it is assumed the establishment of a new facility in Laredo would require three years of design and planning and result in a total cost of **\$27.9 million, the new facility is not expected to become operational until fiscal year 2010**.

U.S. District Court Blocks Rules from South Coast AQMD to Curb Diesel Emissions at Rail Yards

LOS ANGELES--Federal interstate commerce laws preempt rules the **South Coast Air Quality Management District adopted to reduce diesel emissions at freight rail yards**, according to a federal court (*Association of American Railroads v. South Coast Air Quality Management*, C.D. Cal., No. 06-01416, 5/1/07).

Entered May 1 in the U.S. District Court for the Central of District California, the decision is a major setback for the SCAQMD's long-standing effort to control diesel emissions in the Los Angeles air basin.

At issue in the lawsuit are two rules (Rules 3501 and 3502) that sought to curb unnecessary locomotive idling at 19 rail yards in the Los Angeles air basin and a third measure (Rule 3503) that would have required the facilities to assess the health risks diesel emissions pose to nearby residents.

The nation's two largest railroad companies, Burlington Northern Sante Fe Railroad Co. and Union Pacific Railroad Co., along with the Association of American Railroads sued alleging federal and state laws barred SCAQMD from adopting the rules.

Concurring with the plaintiffs, U.S. District Judge John F. Walter concluded that the rules were an attempt to **"directly regulate rail operations," therefore, preempted by the federal Interstate Commerce Commission Termination Act of 1995 (ICCTA).**

Section 10501(b) of the ICCTA "contains an express preemption clause" and gives the Surface Transportation Board exclusive jurisdiction over railroad operations, Walter wrote in the decision.

Walter ruled that preemption does not apply because it adopted the rules to comply with its obligations under the Clean Air Act and that ICCTA does not preempt federal environmental statutes. "SCAQMD was not acting under the authority of the CAA when it enacted the rules."

Judge Walter also rejected SCAQMD's argument that "police powers" provided under ICCTA allow local regulation of rail operations **as long as the rules do not impose "undue restriction" and "unreasonable burden."**

Past decisions by the Surface Transportation Board and the courts indicate that when local governments exercise the police powers provision it is to enact "nondiscriminatory regulations" ... "applicable to all businesses, including railroads, such as building and electrical codes."

In this case, SCAQMD "is attempting to directly regulate rail operations," so the rules do not fall within that category of regulations, Walter said.

"The court finds that the rules at issue in this case are exactly the type of local regulation Congress intended to preempt by enacting the CCTA in order to prevent a "patchwork" of such local regulation from interfering with interstate commerce," Walter said.

Walter ordered the parties to negotiate a proposed judgment and permanent injunction consistent with the **order before May 11th.**

International Registration Plan Board Meets in Arlington, Virginia

The Board of Directors of IRP, Inc., the repository of the International Registration Plan, met May 7-8 at IRP headquarters in Arlington, Virginia. Among other things, the Board established two new IRP task forces, one to consider issues involving state and provincial regulation of carriers operating across the U.S.-Canada border, and one to assess the structure of IRP's current audit function.

The American Trucking Association (ATA) will be represented on both these bodies. The Board agreed to include on IRP's website a program for the calculation of IRP fees that will be available to carriers wishing to calculate the registration fees applying to their interstate operations. IRP has long discussed providing a fee module of this kind, but has never before done so.

The Board heard a request from the Board of the new Unified Carrier Registration Agreement (the program that is later this year to replace the Single State Registration System) to serve as UCRA depository – **that is, to handle the processing and distribution of the UCRA fees collected by the states.** The Board also agreed to consider that and to give the UCRA Board an early answer.

The Board will likewise look into hosting a UCRA data processing system for an interim period. The Board, whose meetings are open, and which welcomes industry participation, will next meet in conjunction with the IRP Annual Meeting, to be held in Louisville, Kentucky, September 27 through October 1, 2007.

IRP is a method of registering fleets of vehicles that travel in two or more member jurisdictions. All states (except Alaska and Hawaii), Washington D. C., and all Canadian provinces (except Northwestern Territories, Nunavut, and Yukon) are members of the plan.

Motor carriers that qualify for **IRP must register fleets of vehicles in their home or "base" jurisdiction.** A fleet, for IRP purposes, is comprised of one or more vehicles that pay registration fees in multiple states. The base jurisdiction collects the appropriate registration fees and distributes them to the other jurisdictions in which the carrier requested IRP registration. IRP registration fees are determined by the type of operation requested (private, for-hire, or rental) and by the:

- **Percentage of miles traveled in each member jurisdiction**
- **Registered gross weight of each vehicle**
- **Number of vehicles in the carrier's fleet**

IRP distributes the registration revenue among the member jurisdictions. Each member jurisdiction receives its proportional share of registration fees for each vehicle registered under the IRP fleet. **For additional information about the IRP registration process, please see the following web link:**

<http://www.irponline.org/about/>

Senate Panel Approves Higher Fuel Economy Standards for Heavy Duty Trucks

A Senate panel recently approved a measure that would boost automobile fuel-economy standards and **set mileage standards for heavy trucks for the first time.**

The bill, passed by a voice vote of the **Senate Commerce, Science and Transportation Committee**, calls for raising the corporate average fuel economy, or CAFE, standard for automotive fleet production **to an average 35 miles per gallon by 2020.**

It would also require mileage improvement gains for medium- and **heavy-duty trucks of 4% per year**, marking the first time such mandates would be set for heavy-duty trucks of **more than 10,000 pounds.**

The U.S. automotive industry has opposed efforts to significantly boost

CAFE standards for years. The Big Three Auto Manufacturers including Ford, General Motors and DaimlerChrysler and their unions have argued that imposing such standards would **add cost burdens at a time** when they are struggling for market share.

The measure's outlook is uncertain, since the House has **not yet acted on its own version**, and some calling for either stronger, or weaker, measures. Allen Schaefer, president of the Diesel Technology Forum, which represents truck makers, indicated that it would be wrong **to regulate truck fleets the same as passenger cars.**

AASHTO Launches New Web Site for New Vision for U.S. Transportation

The American Association of State Highway and Transportation Officials (AASHTO) recently launched a web site to chronicle and facilitate the establishment of a new multi-decade vision for U.S. transportation. AASHTO, which represents the state departments of transportation nationwide, is planning a conference May 21-23 in which an estimated 150 people from public and private-sector groups will lay a conceptual framework for that transportation vision.

The new website can be accessed at <http://www.transportationvision.org>. It contains links to research, a set of recent reports created by AASHTO, conference information, and links to associated groups.

Eight national organizations will join with AASHTO in an effort to project the needs and societal changes that should drive a visionary framework for an improved and expanded national transportation system. The groups include AAA, the American Council of Engineering Companies, the American Public Transportation Association, the American Road and Transportation Builders Association, the American Trucking Associations, the Associated General Contractors, and the Association of American Railroads.

FHWA HQ's "Talking Freight" Seminar Series

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www.fhwa.dot.gov

The Federal Highway Administration Office of Freight Management and Operations and the Office of Planning host the "Talking Freight" web seminars. The web seminars are part of a broader Freight Professional Development Program aimed at providing **technical assistance, training, tools, and information to help the freight and planning workforce** meet the transportation challenges of tomorrow.

Seminars are held on a monthly basis throughout the year and are open at no cost to all interested parties in both the public and private sectors. The next Talking Freight webinar on May 16th (12:00 N-1:30 PM CDT) and will be discussing the **Freight Analysis Framework Forecasts and 2005 Provisional Estimates**.

For additional information, see the following FHWA HQ's website for future scheduled "Talking Freight" webinar events:

http://www.ops.fhwa.dot.gov/freight/FPD/talking_freight.htm.

Questions or comments? Please send your thoughts, comments, and/or suggestions related to this newsletter to Kirk Fauver of the FHWA Texas Division Office at: kirk.fauver@fhwa.dot.gov

Famous Quote for the day:

"It's not enough that we do our best; sometimes we have to do what's required."

[Sir Winston Churchill](#)

*British politician
(1874 - 1965)*

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