

**Legislative Study Committee on Private Participation in Toll  
Projects**

**Written Testimony by Jeff Austin III**

**Chairman, NET RMA**

**April 29, 2008**

Good morning Mr. Chairman, Committee Members. I am Jeff Austin III, Chairman of the North East Texas Regional Mobility Authority, headquartered in Tyler. I appreciate the opportunity to be here this morning and share some good news about how RMA's are working, and also address some obstacles we face.

The NET RMA was formed and approved by the Transportation Commission in October 2004, and we had our first meeting in April 2005. We have just celebrated our third anniversary and we are proud to have grown from the initial two counties to twelve counties. *\*\* I have submitted to you a packet that outlines our 2007 highlights, **three** maps of our area, and a copy of this testimony.*

The original two counties were Smith and Gregg and our initial project was Toll 49 in Tyler and the East Texas Hourglass which expands into the Longview and Marshall area. In 2006 we added Rusk, Cherokee, Harrison and Upshur Counties bringing our total to six. Last year, we added six more counties bringing our total to twelve counties in the RMA. Now, we encompass two TXDot Districts (Tyler and Atlanta) and three MPO's (Tyler, Longview and Texarkana).

**II. Local Success of the RMA Model**

The RMA has become a vital part of finding solutions to the transportation problems which affect our area. I will not try to pretend we have the same congestion or demographics that Houston, Dallas, or San Antonio have. However, just because we don't does not mean that rural and urban segments of the state should be neglected and underfunded. What we all share is a vision for better and

safer modes of transportation. Together, we are stronger as a region than as individual counties. It is not perfect, but we are listening and learning as we mature.

We are fortunate to have a very active board. Everyone is committed and involved. We have taken a different approach to modeling our organization to meet the needs of our constituencies....and in 12 counties, we have many. Perhaps some of the most misunderstood concepts within the state and even our area include what an RMA is and what it can do.

As you know, an RMA can own, operate, finance, acquire, build and develop tolled or not tolled roadways, a rail project, an airport, ferry, inter and multi-modal facility, any project that is within the air quality plan or be involved in the transmission of utilities. When you put brackets around those eligible projects, it equals = economic development, retention and future development at a local level. While I am a big proponent of local control and primacy, we have too many competing agencies and districts that may do the same thing, overlap and compete for funding and attention. The RMA is still a relatively new tool that has not been utilized to its fullest potential yet.

Just for fun – just think about the Dallas area. An RMA has all the tools and powers under one organization or umbrella that DART, DFW Airport, Love Field, the Rail District, and NTTA possess. I mention this to think of the possibilities within a region – not the turf wars. Perhaps we need fewer agencies and instead of more agencies and more bureaucracy, so any region of the state can maximize and leverage its funding possibilities for ALL modes of transportation – not just a single mode. Therefore, I submit: What if they were all under one umbrella as an RMA? Think of the efficiencies, the funding and the better coordination of real transportation hubs. We are no different in East Texas.

Within that framework, we have taken an approach with our RMA that we don't care who does the project or gets the credit; we are just concerned with getting the job done. To make sure we provide balance to all projects, we have formed and have the following active sub-committees of our board with each one led by a board member to listen, educate, identify and develop projects. Those committees include:

- Toll 49/East Texas Hourglass
- TTC/I-69
- Rail (to look at all three forms)
- Airports
- Multi-modal
- Audit
- Regional Transportation Planning (i.e. mini bus, etc.)
- Public Outreach
- Compliance and oversight
- Finance
- Long Range Planning

As it relates to the NET RMA, I'd like to refer you to the last map within your package. *It's the one with all the red lines on it.* This map of projects was developed by our member counties after requests were made to our County Judges, TXDOT Districts, and Chambers, EDC's, Cities and our Board members. We asked for a "bottoms up" listing of current and future projects that are critical and also on their wish list that would include ALL projects that are eligible for an RMA to consider. This list includes freight rail, high speed rail, toll roads, non-tolled roads, Interstate 20 expansion, and even one area in Texarkana for future multi-modal facilities. And also what lies on top of it would be the proposed study corridor for TTC I-69.

We have also fostered strong working relationships with our two TDot Districts and our three MPO's. While projects are at different stages, we are the new kid on the block and much of the work was already in progress. Our goal is to help coordinate and move the respective projects forward with the support of our local communities. At least for a region like ours with three MPO's to coordinate with,

it would be helpful if you considered legislation that allowed for a permanent voting seat on the MPO Policy Boards for an RMA representative.

I could spend time talking about relationships we have developed, but just because of their existence, they cannot be taken for granted. We have to continue to do a better job to educate, communicate and set priorities for our region. In addition, we need to be open to new funding ideas instead of continuing to wait on the traditional methods of funding.

Tolling is a new and not entirely popular concept for the area, but the fact that a local entity, under local control, is implementing the plan has helped to gain acceptance and build trust. In short, local control has been instrumental in making real progress toward solving the challenges that face our region.

The first segment of Toll 49 opened in 2006 and last December, we opened Segment 2 and traffic has doubled. We will not have a real project until we are open up to Interstate 20. We are working with TxDot and others on a financial plan. Like many others, we are crippled by the rescission of our MPO funds for this project. Our MPO and other entities all got together and made Toll 49 its Number One priority for current and future funding, and now we are left with delays with no immediate solution in sight. Our local elected officials went out on a limb to support tolling when it was not popular in order to expedite our project. In order for us to keep our team and coalition together, we need real solutions and the assistance of the State to give us additional and expanded tools.

### **III. Funding and Project Delivery Tools**

The biggest challenge facing the RMA is funding, both at the start-up stage and in connection with specific projects. To grow a start-up agency takes money. We need to hire staff and consultants to handle project development work. It is important to development and implement policies and procedures that guide the

RMA's operations in a transparent manner. It is also important to build a credible agency so as to gain acceptance in the community and acceptance on Wall-Street when we are ready to seek project funding from the capital markets. Finally, we need to fund public education and outreach to look at possibilities, not myths and misconceptions.

**Project Funding**--a significant part of initial project funding needs to come from loans or grants from TxDOT. No project is 100% bondable, and local contributions cannot usually make up the difference. It is extremely difficult to successfully finance a project if there is not some element of TxDOT funding.

**Funding Recommendations and comments:**

1. **Recommendation:** establish a fund within TxDOT that can provide credit assistance for RMA projects (i.e., loans, grants, guarantees, letters of credit, support for operations and maintenance, etc.).
2. **Recommendation:** restore funding for pass-through program (which under current law can be used for tolled or non-tolled projects)
3. **Recommendation:** consider dedicating certain funds within TxDOT to be made available solely to assist in the start-up activities of RMAs. Can be treated as loans and subject to repayment as projects develop.
4. **Recommendation:** consider authorizing optional vehicle registration fees for all counties with RMAs. (While this may not be supported statewide, we would like to implement this in our region. Currently we have over 750,000 registered vehicles and this could generate over \$7.5million per year in funds that would be dedicated for our counties and region's priority projects and the funds would stay local).
5. **Recommendation:** Expand the TRIZ, or transportation reinvestment zone concept, so that funds generated by a county can be used or leveraged with other financial partners rather than just through with a pass through

financing project with TXDot. **We would like to recommend this as one of your super priorities!**

Rusk County is a perfect example. They have a loop to finish, a couple of rail projects, that will actually provide a connector from a UP line to the BNSF line through the city and other projects including their airport expansion. They have the vision, they have the need but they don't have the flexibility to use those funds elsewhere if they form the TRIZ today. I support it and have encouraged them to go ahead and get it started to be the first in our area to use this tool. This modification can also help TxDot to remove these future commitments off their balance sheet and remove their funding commitments by allowing local entities to seek other methods of financing and partnerships.

6. **Recommendation: Increase or index the Gas Tax.** While this concept is not new, we must keep up with inflation. Many other popular programs and funding mechanisms do this: Social Security, VA Benefits, college tuition, electric and utility rates, postage stamps and indirectly, all of our local municipalities and schools have it through increased appraisal values. On another note, when we look at what we receive from the federal government as a donor state – maybe we don't have it all that bad. For every dollar of the gas tax we donate, we only receive about 70 cents back. You ask why is that ok – well, of the 20 cent state tax that a consumer pays for each gallon of gas, most probably think that it is dedicated to transportation construction and maintenance. Well – we know differently, we are only able to retain around 11 cents of the 20 cents because of diversions. Think about that, which is less than 60% of what is collected. The Feds give us 70 cents back...Either way, if we stop the diversions and let the other agencies and programs find their own funding, this would be a great stride to find funds for much needed road construction and planning. I support it – but do we all

have the guts to do it? Paying as we go is not a bad idea, but it is not the sole solution.

May I also note that we have partnered with TTI to perform a study on the Vehicular Mileage Tax or the VMT. This is a federally sponsored grant and there is a pilot program in Oregon and in Iowa. We are participating to bring a rural perspective. While this may have greater applicability in the future, the thesis is that as gas prices go higher and consumers drive less, and as vehicles become more fuel efficient, the gas tax revenue will be flat and possibly decline in the future. Yet, the pressure on our roads will not decline. In order to keep up with maintenance and add new capacity, perhaps another method such as the VMT could be a legitimate alternative in the future. This could also allow for part of the federal gas tax, or state if implemented at the state level, to remain local. In short – we are asking for additional tools or modified tools that will assist the local counties to fund themselves – and not always have our hand out. This may not be popular, but what used to work is no longer getting the job done!

### **Project Delivery Methods and (PPPs)**

Comprehensive Development Agreements (CDA's). They are an important tool for RMAs and are a form of public private partnership and so far, they have only been used to advance projects through design and construction – or a Design/Build CDA. They are DIFFERENT than a Concession CDA, which also incorporates finance, operations, and maintenance into the contract, which may last for up to 52 years.

### **PPP Recommendations:**

1. **Recommendation:** assure that RMAs continue to have the Design/Build CDA tool available.

2. **Recommendation:** remove the moratorium and allow decisions to be made at a local level as to whether to use a concession. This is true local control and local regions may be accepting of different tools. Please don't mandate one method over another.
3. **Recommendation:** Should we enter into any type of agreement (whether it is a loan, and equity investment, a partnership investment); it would be preferable to know the exit cost based on a predefined and mutually agreed calculation. The exit cost, or the prepayment penalty or the early buy back provision, should be well defined. I want to know that if conditions change, we can buy it back, yet provide a reasonable return to the investor or partner. After all, they will be the ones stepping up to the plate to fund our needs when TxDot and local entities cannot.

Toll 49 by itself will not be very strong until it is connected to Interstate 20. That is when we will begin our toll escalation as we agreed in our Terms and Conditions in the Valuation process. Given the need for and equity injection to complete the project, we are also considering another approach to our region – Packaging of projects.

The possibility of packaging Toll 49 and proposed Texarkana Toll project with the opportunity to develop other infrastructure in connection with transportation projects may attract more interest from investors and partners. For example, pipelines for water transmission may be valuable due to needs of other areas. While the RMA cannot provide water or other utility service, but they can develop the infrastructure in transportation corridors that providers need reach their markets. We are listening to our communities and thinking in a broader context in order to complete our short term priorities and begin to address the needs of our region long-term.



#### **IV. Market Valuation Process/SB 792**

The Benefits of Local Primacy is one of the most positive features of SB 792. It bolstered the concept of local control and gave confidence to communities that projects would be developed by and through local entities they know and trust. It has also encouraged a stronger working relationship between MPOs, as planning entities, and RMAs, as implementing entities.

#### **Now to the Market Valuation Process**

It has been difficult to implement and it is unclear as to how and why private sector-type features should be modeled to determine values when most regions cannot use a concession even if they wanted to. I question whether it is worth the time, effort, and cost involved.

TxDOT has indicated that their policy is to decline to waive market valuations- no clear reason why, when statute provides for it and some projects are so clearly negative. We requested a waiver on the Toll 49 project after Terms and Conditions were negotiated and it was declined. While both parties did agree that this would have a negative value, to continue further is only a waste of taxpayer money for high paid consultants. We could have used that money for plans, specs and construction.

It should also be said that because of our relationship with TXDOT, I can say with great confidence that because of the process and the questions that were asked and proposed to us on Toll 49 by Amadeo Saenz, Phil Russell and Doug Woodall, we were more than prepared for the Market Valuation process. In fact, we had virtually all reached consensus long before the process began since we were running different scenarios for our financial assistance agreement we submitted to TXDot over a year ago. Again, accolades should go to these gentlemen for their openness and approach. While we have not reached an answer,

and the ultimate answer may not be what we expect due to funding, it is the process and the preparation that should receive the attention.

During the Market Valuation process over the last month, I felt the consultant was trying to extend the process, or rather have more work than what was necessary. We virtually agreed to the terms and conditions within less than an hour, and most of that hour was spent by the consultant telling us how long the process should take. That was ridiculous. Together, with our team and TxDot, we could have done this on our own and saved a lot of money.

Since we have gone through the process, we should have a final document we can use as a beginning point to discuss with future investors, partners or lenders.

Last Friday, we presented the Terms and Conditions to the Tyler MPO. They were approved as presented. Just food for thought – Which MPO do we submit it to since we have three MPO's? We only submitted them the Tyler MPO since that is where the current project resides. Perhaps clarity for regions such as ours with more than one MPO could be helpful in the future.

5. **Recommendation:** Consider allowing local areas obtain a market valuation **if** they desire, but do not require it through an adversarial process.

6. **Recommendation:** Require/encourage waiver, at least where value is likely to be negative.

7. **Recommendation:** If it is to be left in place (non-waiver), add more guidance as to terms and conditions to consider (e.g., require that the resulting financial model be one that could achieve an investment grade rating, etc.)

8. **Recommendation:** Only require that we go to the MPO once for the project approval of Terms and Conditions.

## **V. Final Remarks**

We have made great strides in increasing local control, and that has helped to advance much needed projects. However, we have a long way to go. We appreciate the tools and the notion of primacy that the Legislature has given to local entities like ours and we look forward to continuing to work with you and our friends at TxDOT to further develop those tools.

Thank you and I will be happy to answer any questions.



## 2007 NET RMA ACCOMPLISHMENTS

### NET RMA

- Six new counties, Bowie, Cass, Panola, Titus, Wood, and Van Zandt, join the NET RMA. It is the second time the NET RMA has grown, bringing the total member counties to 12.
- Established NET RMA Executive Committee.
- Established Disadvantaged Business Enterprise policy.

### Toll 49

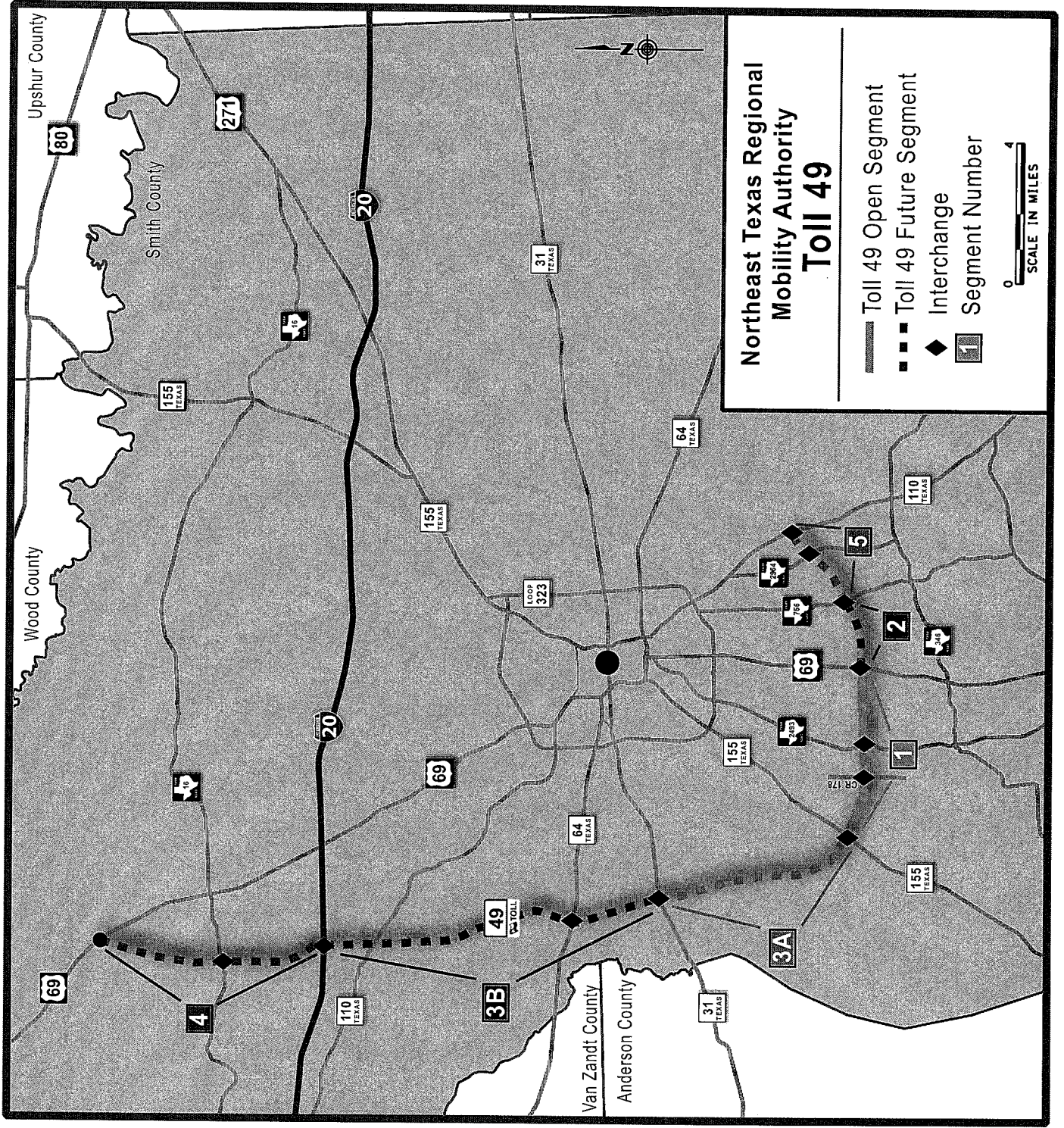
- Grand opening of Toll 49 Segment 2.
- Issued RFQ and selected consultants for design of Segment 3B.
- Became a "Participating Agency" for Toll 49/Lindale Reliever Route.
- Segment 5 engineering plans completed and accepted by TxDOT.
- Submitted Segment 3A 30% plans; 60% planning phase initiated.
- Extensive planning and project evaluation/refinement with NET RMA financial analysts.

### Rail

- Submitted Congressional appropriations request for the Northeast Texas Regional Rail Study to examine feasibility of expanding lines between Shreveport and Dallas.
- Submitted Congressional appropriations request to study feasibility of establishing a 20-mile rail spur into Gregg County/East Texas Regional Airport's Foreign Trade Zone (FTZ).
- Passed resolution in support of Memorandum of Understanding between North Central Council of Governments and East Texas Council of Governments to examine high-speed rail along I-20.
- Requested TxDOT assistance in pursuing abandoned rail corridor between Whitehouse and Troup.

### Airport

- Hosted meeting for member county local airport managers to discuss the future of air travel in East Texas.
- Assisted Harrison County Airport with financial alternatives and submittal of TxDOT grant applications for future projects.



**Northeast Texas Regional  
Mobility Authority  
Toll 49**

- Toll 49 Open Segment
- - - Toll 49 Future Segment
- ◆ Interchange
- 1 Segment Number

