

CENTER POINT

A Dialogue on Issues from the ALEC Center for Innovation and Technology

Innovation in Transportation: Private Investment in Public Infrastructure in Texas

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INTRODUCTION

We live in an age of unparalleled innovation, and innovation effects all we do and how we do it. But at the forefront of the news and capturing the imagination of the public is innovation in transportation. From changes in business and industry processes like Uber, to changes in hardware with partial to fully automated vehicles, the world of the automobile is in rapid transition. However, exciting innovation in transportation is not limited to automobiles. From broadband connectivity on airplanes, to Carnival Corporation's cruise ships featuring a new vacation management system controlled from a guest's wrist, to a freight train's ultrasonic detection analysis, these innovations highlight the exciting changes already underway across the transportation industries.

KEY POINTS

- Transportation infrastructure is critical to the Texas economy, and when it deteriorates the economy is harmed and jobs are lost.
- Texas taxpayers pay a great deal for government to create and maintain transportation infrastructure, paying more directly when infrastructure deteriorates.
- Currently, Texas has the opportunity to innovate and lead the country in allowing the free market to operate where train travel is concerned.
- To realize a boon to taxpayers, Texas merely has to allow the free market to operate by not expanding government in the form of discriminatory legislation.

**“YOU AND I COME BY ROAD OR RAIL, BUT ECONOMISTS TRAVEL ON INFRASTRUCTURE.”
–MARGARET THATCHER**

For the most part such advances rely on an underlying infrastructure—whether ports, roads or tracks. As has been widely reported, the current condition of much of the nation’s infrastructure is suspect. This is why Americans, of whatever political persuasion and wherever located, with good reason, broadly agree the United States needs better infrastructure to be able to capture the benefits of an innovative, advanced 21st century economy.

The American Society of Civil engineers reports the economy could lose between \$4 trillion in GDP over 10 years if investments are not made. The loss to GDP only increases as infrastructure is allowed to further deteriorate. The impact on business is dramatic—loss of sales totaling \$7 trillion by 2025 and \$29.3 trillion by 2040. Ultimately, families bear the brunt of the negative economic winds. The Society projects between 2016 and 2025, every household will lose \$3,400 because of deteriorating infrastructure. But it gets worse. In addition, 2.5 million jobs will be lost in the next eight years.

Regardless of the exact impact or the exact timing, sooner or later all infrastructure deemed to be necessary

“Additionally, there is broad agreement that infrastructure is needed for the benefit of the economy and the taxpayers. Arguably, this was one message, or mandate, from the presidential election.”

will need to be replaced. Additionally, there is broad agreement that infrastructure is needed for the benefit of the economy and the taxpayers. Arguably, this was one message, or mandate, from the presidential election.

This challenge has hardly been addressed much less solved. Fundamental questions remain unanswered. What is the right approach? How much should be spent on new infrastructure and how much on reconstruction? What is priority? Who should pay for it all?

“MAY WE BUILD A TEXAS OF UNLIMITED POSSIBILITY.” –RICK PERRY

Texas transportation infrastructure, like the state itself, is sprawling. The Lone Star state has 47 freight railroads covering 10,384 miles, ranking Texas first nationally by mileage.

Texas has and maintains more than 79,000 miles of state, farm-to-market, ranch-to-market, U.S. and interstate highways—more than any other state. Of this, 60 miles are toll roads, the first of which began decades ago in Dallas and ran to Fort Worth. Along those roads are 100 safety rest areas, a variety of picnic areas and twelve centers filled with travel information for travelers. The roads pass by or under, approximately 25,678,000 square feet of signs and 45,552 reference markers, and make use of the state’s 50,000 bridges.

This transportation network connects eight large urban, 30 small urban and 37 rural transportation systems across the state. Special services abound as well with more than 135 operators in Texas providing transportation services to the elderly and to individuals with disabilities. There is even a bicycle advisory committee and supporting bicycle and pedestrian programs.¹

Texas has more than 1,000 miles of channels and 23 ports. Seven of the ports are amongst the largest in the country.² For air travel, Texas boasts more than 300 airports.

Of course this massive infrastructure system does wear out, and requires repair to stay useful. According to the Infrastructure Report Card by the American Society of Civil Engineers,³ Texas infrastructure rates a middling grade of “C.” They note that deteriorating infrastructure results in “\$5.7 billion a year in costs to motorists from driving on roads in need of repair” which is to say \$373 per year per motorist. So, first taxpayers pay government to build the infrastructure, then they pay government to maintain it and finally pay even more because government has a hard time keep up in maintenance.

Texans are on the move, particularly by train. According to the Texas Department of Transportation, “Texas has 10,384 route miles of railroad track—more than any other state. While the heyday of the iron horse may be over, rail traffic still plays a vital role in the state’s commerce and travel.” The Department adds, “Rail freight is a significant factor in the Texas economy, and passenger rail has a future here, as well.”⁴

Regardless of how they are travelling, they are doing it on infrastructure provided by the government, paid for by tax-payers—even paying for that Bicycle Advisory Committee. Most of the transportation solutions of the future also presume the continuation of government transportation infrastructure, whether automated cars or smart trains.

But what if there could be innovation not just in transportation but in how the infrastructure comes to be? What if Texas could be the best example of how to do infrastructure and provide transportation options the right way? What if some of the large capital projects were paid for with private funds rather than government largesse, so that taxpayers would not be on the hook for the huge investment or decades of maintenance? What if in fact Texas was built for unlimited possibility?

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**“I LOVE TEXAS BECAUSE TEXAS IS FUTURE-ORIENTED, BECAUSE TEXANS THINK ANYTHING IS POSSIBLE. TEXANS THINK BIG.”
—SENATOR PHIL GRAMM**

Innovators had a dream several years ago, to get into the business of providing fast, efficient, comfortable service to passengers who wanted to get from Dallas to Houston, or vice-versa. Instead of the four to five hour drive, or three hour or more total flight and check in time, passengers could be whisked between cities in less than 90 minutes.

These entrepreneurs also sensed a business opportunity given their evaluation of the market and decided to invest in not only the mode of transportation itself (the train), but also in the purchasing all of the necessary assets such as land and laying the tracks. The entrepreneurial venture called Texas Central has begun the real work to improve transportation options for Texans. Whether engineering overpasses for roads, working with landowners or designing inviting and comfortable train cars, Texas Central has invested millions of dollars of private funds already.

“Nothing can conduce more to the order and stability of a government than the simplicity of the laws, the proper definition of rights, and their impartial and consistent administration.”

So convinced of the opportunity and determined to be independent of government funding, the founders have repeatedly said that they will not seek public funding. Following the theme, Texas Central is not seeking any legislation to help its efforts. The only ask seems to be the company be free of discriminatory legislation or treatment by government.

However, some are not satisfied with that approach. Several pieces of legislation have been introduced targeting the project for discriminatory treatment. For example, one proposal would expressly discriminate against Texas Central by disallowing the use of eminent domain for any train that goes faster than a certain speed. In a nutshell these efforts are merely designed to use government to hinder the free market. Why would Texans be acting to place discriminatory regulations in the way of innovation?

As Sam Houston is famously quoted, “Nothing can conduce more to the order and stability of a government than the simplicity of the laws, the proper definition of rights, and their impartial and consistent administration.” Or maybe even more poignantly, “We now occupy the proud attitude of a sovereign and independent Republic, which will impose upon us the obligation of evincing to the world that we are worthy to be free. This will only

be accomplished by wise legislation, the maintenance of our integrity, and the faithful and just redemption of our plighted faith wherever it has been pledged.”

“...NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.” –FIFTH AMENDMENT, U.S. CONSTITUTION

Some absolutely hate the notion of eminent domain, and yet it is enshrined in the Bill of Rights, nestled right up against our precious Fifth Amendment right to silence in the face of accusations, due process and the outlawing of double jeopardy, that is, being tried again and again for the same instance of an accused crime. The amendment does require “just compensation” but otherwise grants an affirmative power to the government to take private property for a public use.

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Of course, a great many public use transportation infrastructure projects ultimately need to use eminent domain to be able to reach completion. Specifically, railroads, including those in Texas, have long had to resort to eminent domain to provide a benefit to the public as have highways and other public infrastructure. And the truth is that trying to build a railroad (or highway) without some sort of eminent domain is nearly impossible. As soon as people come to understand the proposed route some will refuse to budge, simply as a negotiating tactic, to demand payment in the multiples of actual value but realizing that they have been handed a windfall and a superior negotiating position.

The whole situation can become complicated for free market thinkers, as a privately-funded infrastructure project, a good thing alleviating a burden on the taxpayers, runs up against the also-important impulse to make sure eminent domain is constrained to things that are for public use.

But the Constitution is clear.

Like the authority or not, eminent domain is a constitutional guarantee given to the government and assumed by the states. Constitution and Bill of Rights originalists—a conservative approach to understanding the authorities and protections—are correct in understanding that the power is legitimate as written: “...nor shall private property be taken for public use, without just compensation.”

The Texas Conservative Coalition Research Institute has published a paper entitled *Eminent Domain in Texas: A review of a decade long effort to protect landowners’ rights* that is an examination of “the law of eminent domain in Texas, the protections those laws provide to landowners, and how a project like the Bullet Train will affect property owners within that context and legal framework.” Their paper does a deeper and more thorough analysis of eminent domain, with a particular focus on Texas.⁶

“THE AMERICAN FREE MARKET SYSTEM IS THE GREATEST ENGINE FOR PROSPERITY AND OPPORTUNITY THAT THE WORLD HAS EVER SEEN. FREEDOM WORKS.” –U.S. SENATOR TED CRUZ

Opponents to the railway often assert arguments that stand in stark relief to a free market.

The Texas Central rail project does not seek federal or state money to build or maintain the line. That fact, and if the Texas legislature will allow it to compete freely against other forms of transportation, virtually defines a free market. And in a free market, conservatives should not care about whether the business will be a success. In other words, true conservatives should embrace the free market allowing the market to define success, and separate winners from losers.

Yet, some justify government action to block the market based on their assertion that this project could fail. The correct response is “so what?” What business is that of government? Private funds are being spent, not taxpayers’. There is little risk, virtually none, to either state or federal taxpayers.

If Texas Central does indeed fail, then any valuable assets will be scooped up at fire sale prices by a company or other interest ready to redeploy the assets as they see fit. This process takes place continuously across the country, and in Texas, as various entrepreneurs risk their own capital and equity for the chance to make their dream real.

Those who assert that if the project goes bust the government will step in and take it over have a right to be concerned but do not have a concern with the project. Instead, they should be concerned about a government that would step in and compete in the private sector. Taxpayers have a handy remedy for reigning in such a government at every election. The American Legislative Exchange Council (ALEC) is strongly opposed to such action as a clear violation of free market principles.

True conservatives should similarly reject various legislative efforts clearly designed to target a free market effort and instead opt for a more limited government and less personal laws. This is particularly true where innovation, creativity and invention are in play so as not to deprive taxpayers of a better future—a future that may

“A true free market is about allowing those who are willing to compete in the marketplace without government interference.”

even include reduced taxes if private industry were to continue a similar investment streak into places typically paid for entirely by government.

Some have argued there are other transportation options for Texans, whether rail, plane, bus or car and so government should stop this railway. But, one might still puzzle over why government would be involved in dictating how many competitors, direct or otherwise, are the right number to comprise a free and open market.

The whole notion of government opening, much less acting, in such a situation is the antithesis of a free market. A true free market is about allowing those who are willing to compete in the marketplace without government interference. A free market is not having to ask government permission, or to merely be allowed to provide a product in a market “box” built by government.

Milton Friedman summed up well the true reason for most of these objections, “Indeed, a major source of objection to a free economy is precisely that it... gives people what they want instead of what a particular group thinks they ought to want. Underlying most arguments against the free market is a lack of belief in freedom itself.

“TEXAS MUST BE DEFENDED AND LIBERTY MAINTAINED.” –SAM HOUSTON

Texas has a long and strong history of believing in freedom, protecting freedom and encouraging freedom. This is not the time, nor the issue on which it should suddenly pursue restrictive, discriminatory and liberty limiting ways.

Texas has the opportunity to lead in yet another area by allowing the free market to operate freely. The very clear beneficiaries are the people of Texas who will see increased competition in transportation as well as some relief from exposure to more government expenditure on infrastructure. The state can help define the age of innovation if it believes in freedom itself.

“Texas has a long and strong history of believing in freedom, protecting freedom and encouraging freedom.”

[ENDNOTES]

1. Texas transportation infrastructure statistics provided by the Texas Department of transportation at <http://www.txdot.gov/>
2. Statistics from the Texas Port Association at <https://www.texasports.org/>
3. <http://www.infrastructurereportcard.org/texas/texas-overview/>
4. <http://www.txdot.gov/inside-txdot/modes-of-travel/rail.html>
5. <https://www.brainyquote.com/>
6. "Eminent Domain in Texas: A review of a decade long effort to protect landowners' rights" at <http://txccri.org/wp-content/uploads/2016/11/Eminent-Domain-Protections-in-Texas-.pdf>

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