THE NEED FOR SPEED? THE EFFECTS OF THE NEW 85 MILES PER HOUR SPEED LIMIT ON THE TEXAS STATE HIGHWAY 130 TOLLWAY

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I. INTRODUCTION

In the past decade, the Texas traffic has increased significantly due to both rapid population growth and the signing of the North American Free Trade Agreement (NAFTA).[1] As a result, the state's highways have become severely congested.[2] In order to remedy this problem, and with the failure of the Trans-Texas Corridor (TTC) behind them, the Texas legislature passed House Bill (H.B.) 1201.[3] H.B. 1201 is the answer to the growing congestion problem because it allows the Texas Transportation Commission (Commission) to set a

1. *State Highway 130*, TEX. HIGHWAY MAN, http://www.texashighwayman.com/sh130.shtml (last updated Oct. 24, 2012).

2. *Id.*

3. Frank Heinz, *House OKs 85 MPH Highway Bill*, NBCDFW.COM (Apr. 8, 2011), http://www.nbcdfw.com/news/politics/Texas-Legislators-Push-to-Drive-85-119411149.html.

maximum speed limit of 85 miles per hour (mph) on highways in Texas.[4] Specifically, the Commission could set an 85 mph speed limit on a "highway system [that] is designed to accommodate travel at that established speed or a higher speed . . . after an engineering and traffic investigation . . . ."[5] This highway, the Commission determined, would be State Highway 130 (SH 130).[6]

On October 24, 2012, segments five and six of the SH 130 tollway opened to the general public.[7] This tollway's opening will not only aid in relieving the heavily congested Interstate 35 (I-35), but it will also mark the day Texas will have the highest speed limit posted in the United States and possibly the Western Hemisphere.[8] This is a significant milestone Texas has been on the path towards.[9]

With this "new bragging right[of] the fastest speed limit in the country," there are concerns over whether faster is indeed better.[10] Specifically, concerned citizens question whether traveling at 85 mph is safe.[11] Answering this question, however, is difficult because conflicting data exists on whether higher speed limits increase both the number of accidents and the severity of crashes.[12] Along with these safety concerns, other concerns include the effects speed limits will have on insurance rates, fuel consumption, and other roadways within the State of Texas.[13]

This comment will discuss the legislation that went into changing the set maximum speed limit in the Texas Administrative Code, which resulted in making an 85 mph speed limit available on segments five and six of SH 130.[14] Specifically, this comment will delve into the state's re-enacted power to set speed limits and the different agencies that carry out this process.[15]

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4. *Id.* (stating that on Thursday, April 7, 2011, the Texas legislature passed H.B. 1201); *see* Rosanna Ruiz et al., *Trans-Texas Corridor Plans Dropped After Public Outcry*, HOUS. CHRON. (Jan. 6, 2009), http://www.chron.com/neighborhood/cyfair-news/article/Trans-Texas-Corridor-plans-dropped-after-public-1745411.php.

5. TEX. TRANSP. CODE ANN. § 545.353(h-2) (West Supp. 2012), *amended by* Tex. S.B. 1093, 83d Leg., R.S. (2013).

6. Aman Batheja, *TxDOT Approves 85 MPH Limit for Stretch of Toll Road*, TEX. TRIB. (Sept. 6, 2012), http://www.texastribune.org/texas-transportation/transportation/texas-officials-approve-85-mph-limit-toll-road/.

7. *News*, MYSH130.COM, http://mysh130.com/newsnews-releases/news-releases/ (last visited Aug. 19, 2013).

8. *Id.*; *TxDOT Approves 85 MPH Limit for Stretch of Toll Road*, *supra* note 6.

9. *See Higher Speed Limits Approved on Central Texas Highways*, KBTX.COM (Mar. 29, 2012, 11:07 AM), http://www.kbtx.com/news/local/headlines/Higher_Speed_Limits_Approved_on_Central_Texas_Highways_144912055.html (stating that "Texas now has more than 3,000 miles zoned at 75 mph or higher, and 575 miles posted at 80 mph," some of the highest speed limits in the country).

10. *TxDOT Approves 85 MPH Limit for Stretch of Toll Road*, *supra* note 6.

11. *See id.*; Aman Batheja, *Plan for 85 MPH Road Draws Safety, Fairness Concerns*, TEX. TRIB. (Sept. 12, 2012), http://www.texastribune.org/texas-transportation/texas-department-of-transportation/plan-85-mph-road-draws-safety-fairness-concerns/.

12. *Plan for 85 MPH Road Draws Safety, Fairness Concerns*, *supra* note 11.

13. *See TxDOT Approves 85 MPH Limit for Stretch of Toll Road*, *supra* note 6.

14. *See* discussion *infra* Part II.

15. *See* discussion *infra* Part II.

Additionally, this comment will analyze the issues and concerns that led to the creation of the SH 130 tollway as well as the agreement made between the Texas Department of Transportation (TxDOT) and the private tollway company building SH 130.[16]

Further, this comment will discuss the possible effects of the 85 mph speed limit on a driver's safety.[17] This includes a discussion on the effects of wireless device use on high-speed roads.[18] Finally, this comment will suggest possible alternatives to posting an 85 mph speed limit on other roads and specific safety changes that the Texas legislature should consider.[19]

II. TEXAS SPEED LIMITS GENERALLY

A. A Brief History

On January 2, 1974, President Richard Nixon signed the Emergency Highway Energy Conservation Act (EHECA) in response to rising oil prices brought on by the Arab-Israel conflict and the oil embargo set by the Organization of Petroleum Exporting Countries (OPEC).[20] The purpose of the EHECA was to "encourage State governments to establish maximum speed limits . . . of 55 [mph]."[21] Though the government stressed that the set 55 mph speed limit was not a "national speed limit," federal aid for state highways was dependent on compliance with the EHECA.[22] If the states complied, the federal government believed the set speed limit would help stabilize gas prices and "save nearly 200,000 barrels of fuel a day . . . ."[23]

After the signing of the EHECA, the federal government had control over the states' speed limits for the next decade.[24] A shift from federal control to state control would not occur until 1987, when Congress passed the Surface Transportation and Uniform Relocation Assistance Act of 1987.[25] This legislation permitted the states to increase the speed limit past the 55 mph maximum to 65 mph on rural interstate routes.[26] Then finally in 1995,

16. *See* discussion *infra* Part III.
17. *See* discussion *infra* Part IV.
18. *See* discussion *infra* Part IV.
19. *See* discussion *infra* Part V.
20. William Schultz, *Would You Drive 55?*, TIME (July 25, 2008), http://www.time.com/time/nation/article/0,8599,1826694,00.html; *see Frequently Asked Questions*, FED. HIGHWAY ADMIN., http://www.fhwa.dot.gov/interstate/faq.htm (last visited Aug. 19, 2013).
21. *Richard Nixon: Statement on Signing the Emergency Highway Energy Conservation Act*, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws/?pid=4332 (last visited Aug. 19, 2013).
22. *See id.* (stating distribution of funds would "be conditioned upon the establishment of [55 mph] speed limits"); *see also Frequently Asked Questions*, *supra* note 20 ("There never was a national speed limit of 55 mph.").
23. AM. PRESIDENCY PROJECT, *supra* note 21.
24. *Frequently Asked Questions*, *supra* note 20.
25. *Id.*
26. *Id.*

President Bill Clinton signed the National Highway System Designation Act, which returned full control of speed limits to the states on all public roads.[27]

B. State and Federal Speed Limit Regulation

After the signing of the National Highways System Designation Act, Texas was one of the first states to increase its speed limits.[28] In Texas, the Commission is the agency that has the power and authority to alter speed limits.[29] The Commission consists of five commissioners: four commissioners and one chair of the Commission.[30] To become a commissioner, each commissioner must be "appointed by the governor with the advice and consent of the senate to govern [TxDOT]."[31] As a whole, the Commission's responsibilities include the following:

> plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads; . . . lay out, construct, maintain, and operate a modern state highway system; . . . provide for the development and operation of toll projects on the state highway system; . . . approve a toll project constructed by a private entity or corporation if the project connects to the state highway system; [and] carry out such transportation functions as may be delegated by the governor pursuant to applicable federal law . . . .[32]

Another responsibility of the Commission is to elect an executive director of TxDOT.[33] Unlike the commissioners, the executive director is responsible for "the day-to-day operations of [TxDOT]."[34] Therefore, he serves as an important advisor to the Commission on "public road construction, public and mass transportation development, and . . . expenditures . . . ."[35] The Texas Administrative Code also allows for the Commission to delegate some of its functions to the executive director of TxDOT, thereby providing TxDOT some

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27. *Id.*; *Policy*, FED. HIGHWAY ADMIN., http://safety.fhwa.dot.gov/speedmgt/policy/ (last visited Aug. 19, 2013).

28. *Q&A: Speed—Speed and Speed Limits*, INS. INST. FOR HIGHWAY SAFETY (Apr. 2013), http://www.iihs.org/research/qanda/speed_limits.aspx#cite-text-0-20 (follow "What's the History of Speed Limit Laws in the United States?" hyperlink).

29. *See* TEX. TRANSP. CODE ANN. § 545.353 (West Supp. 2012), *amended by* Tex. S.B. 1093, 83d Leg., R.S. (2013).

30. *Texas Transportation Commission FAQs*, TEX. DEP'T OF TRANSP., http://www.txdot.gov/inside-txdot/administration/commission/faqs.html (follow "What Is the Texas Transportation Commission?" hyperlink) (last visited Aug. 19, 2013); 43 TEX. ADMIN. CODE § 1.1 (2012) (Tex. Dep't of Transp., Texas Transportation Commission).

31. *Texas Transportation Commission FAQs*, *supra* note 30; 43 TEX. ADMIN. CODE § 1.1.

32. 43 TEX. ADMIN. CODE § 1.1(b)(1).

33. *Id.* § 1.2(a)(1) (2012) (Tex. Dep't of Transp., Texas Department of Transportation).

34. *Id.*

35. *Id.* § 1.2(a)(3)(A)–(B) (stating that the executive director must "submit quarterly, annually, and biennially to the [C]ommission detailed reports . . .").

power over transportation regulation.[36] TxDOT as a whole consists of twenty-five district offices across the state, which serves as the direct connection to the local citizens.[37] Thus, these district offices are essential in providing information to TxDOT on the concerns and needs of local citizens.[38]

Texas legislation has also provided the Commission the authority to alter speed limits on state highways, provided that the speed limit is both reasonable and safe.[39] This authority, however, was not always a power privy to the Commission.[40] While the states originally had the power to set speed limits, the EHECA of 1974 gave the federal government control over speed limits.[41]

C. Establishing New Speed Limits

With the repeal of the EHECA, the Commission now has the authority to set the maximum posted speed limits within Texas.[42] The Commission may establish a speed limit of 75 mph anywhere on a state highway, while 80 and 85 mph speed limits are subject to certain restrictions.[43] Moreover, section 25.21 of the Texas Administrative Code lays out the requirements and responsibilities of both the Commission and TxDOT that are necessary for establishing speed limits on a state highway.[44] For instance, TxDOT is responsible for "conduct[ing] engineering and traffic studies associated with the establishment of speed zones and advisory speeds . . . ."[45] These traffic studies are essential for the Commission when authorizing a new maximum speed limit on a highway.[46] Therefore, there exists a vital interplay between TxDOT and the Commission when setting new speed limits.[47]

Under section 545.353 of the Texas Transportation Code, the Commission has the

> authority to alter speed limits . . . to any part of a highway officially designated or marked by the [C]omission as part of the state highway system[] and . . . both inside and outside the limits of a municipality,

36. *Id.* § 1.1(b).

37. *Districts*, TEX. DEP'T OF TRANSP., http://www.txdot.gov/local_information/ (last visited Aug. 19, 2013).

38. *See generally id.* (providing links to all twenty-five district offices in the state).

39. TEX TRANSP. CODE ANN. § 545.353(a) (West Supp. 2012), *amended by* Tex. S.B. 1093, 83d Leg., R.S. (2013).

40. *See* Shultz, *supra* note 20.

41. *Id.*

42. *See Frequently Asked Questions*, *supra* note 20; *see also* TRANSP. § 545.353 (giving the Commission the authority to alter speed limits).

43. 43 TEX. ADMIN. CODE § 25.21(b)(2)(A) (2012) (Tex. Dep't of Transp., Introduction).

44. *See id.* § 25.21.

45. *Id.* § 25.21(a)(3)(A)(i).

46. *Id.* § 25.21(b)(2).

47. *See id.* § 25.21.

> including a home-rule municipality, for a limited-access or controlled-access highway.[48]

Thus, the Commission "may determine and declare . . . a reasonable and safe prima facie speed limit," if it believes that it is necessary to alter a speed limit.[49] However, before the Commission can declare a speed limit as a "reasonable and safe prima facie speed limit," it has to consider the results from TxDOT's engineering and traffic investigation.[50]

In order to conduct the engineering and traffic investigation, TxDOT follows the Commission's "Procedures for Establishing Speed Zones" (Manual).[51] According to the Manual, when establishing a speed zone on a new road, the new road's design needs to be able to accommodate the set speed during operation, and the speed needs to coincide with "the roadway's initial or ultimate function."[52] Therefore, it is essential that TxDOT perform its engineering and traffic investigation, or "speed zone study," on the whole area of the highway in question.[53]

The speed zone study has five important components: (1) "determining the 85th percentile speed"; (2) "crash study"; (3) "developing of strip maps"; (4) "speed zone design"; and (5) "rechecks of speed zones."[54] Of these components, the 85th percentile speed is essential for testing the posted maximum speed limit on a given road.[55] It is the go-to standard that most of the nation uses to test maximum speed limits and follows "the theory that[] the large majority of drivers[] are reasonable and prudent[,] do not want to have a crash[, and] desire to reach their destination in the shortest possible time . . . ."[56] Thus, a speed set at or below the 85th percentile is the speed at "which 85 percent of people drive at any given location under good weather and visibility conditions" and is the most reasonable and safe maximum speed for that particular area.[57]

In order to collect data for the 85th percentile speed, TxDOT sets up speed check stations to perform speed checks.[58] How TxDOT sets up the speed check stations depends on the location of the road in question.[59] For instance, the

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48. TEX. TRANSP. CODE ANN. § 545.353(f) (West Supp. 2012), *amended by* Tex. S.B. 1093, 83d Leg., R.S. (2013).

49. *Id.* § 545.353(a); *see generally* 43 TEX. ADMIN. CODE § 25.21(b)(1) (defining prima facie limits as "those limits which on the face of it, are reasonable and prudent under normal conditions").

50. *See* TRANSP. § 545.353(e).

51. *See Procedures for Establishing Speed Zones*, TEX. DEP'T OF TRANSP. (Apr. 2012), http://onlinemanuals.txdot.gov/txdotmanuals/szn/szn.pdf.

52. *Id.* at 1-8.

53. *See id.* at 3-2.

54. *Id.* at 3-3.

55. *Id.* at 3-4.

56. *Id.*

57. *Id.*

58. *See id.* at 3-6.

59. *Id.*

Manual sets out separate requirements for urban areas and rural areas.[60] The location also depends on such factors as the "physical and traffic conditions," location of signals, and speed patterns.[61] Once the speed check stations are set up, TxDOT uses radar speed meters to measure the speeds of vehicles on the tested road.[62] The engineers then take this data and calculate the 85th percentile through formulas given in the Manual.[63] Typically, after TxDOT sets up the speed check stations, the engineers begin recording data immediately.[64]

On newly constructed highways, like segments five and six of the SH130 tollway, TxDOT does not perform a speed check until traffic speeds are stable.[65] Rather, TxDOT posts an interim speed limit before the highway is open to the public.[66] TxDOT still conducts a "traffic and engineering investigation [that] include[s] a review of[] the statutory prima facie speed applicable to the highway[,] the design speed applicable to the highway[, and] a trial run speed study for the highway."[67] Once the investigation concludes, TxDOT will then set and use the interim speed limit until the traffic stabilizes.[68] After the traffic stabilizes, TxDOT engineers will then proceed with the 85th percentile speed study.[69] Another option TxDOT has is establishing a new speed zone through "trial runs and engineering judgment in lieu of other speed check procedures provided in [the M]anual."[70] This option is only available, however, when the legislature increases the statewide maximum limit.[71]

Once TxDOT collects and records the speed check data, TxDOT then records the data onto a strip map.[72] A strip map details "the 85th percentile speed . . . for each speed check location for each direction of travel measured."[73] For speed zones outside of incorporated city limits, the engineers then submit the strip map to TxDOT's Traffic Operations Division (TRF).[74] Next, the TRF meets with the district and tries to reach an agreement on the proposed speed limits.[75] With the newly completed agreement, the TRF then drafts a commission minute order and submits it to the Commission for final

60. *Id.* at 3-6 to -7.
61. *Id.* at 3-6.
62. *Id.* at 3-7.
63. *Id.* at 3-7 to -8.
64. *Id.*
65. *Id.* at 3-6.
66. *Id.* at 3-2.
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 3-18; *see generally id.* at 3-20 (defining a trial run as "a drive through the speed zoned section of roadway at the chosen speed(s) to determine if the speeds are appropriate for the area").
71. *Id.* at 3-18.
72. *Id.* at 3-8.
73. *Id.*
74. *Id.* at 4-4.
75. *Id.*

approval.[76] Finally, the Commission then goes over the minute order, passes it, and establishes a regulatory speed zone.[77]

III. THE STATE HIGHWAY 130 PROJECT

A. A Brief Background of State Highway 130

SH 130, also known as "Pickle Parkway," is a ninety-one mile tollway that connects the San Antonio region to the Austin region.[78] SH 130 runs parallel to the overly congested I-35 and, until the construction of SH 130, "was the only expressway tying the San Antonio/Austin region together . . . ."[79] Due to the increased population in Texas and the signing of NAFTA, I-35's traffic counts "now exceed 80,000 vehicles per day, with over 100,000 [vehicles per day] now reported at the southern and northern ends of the corridor as well as in New Braunfels and San Marcos."[80] Thus, the construction of SH 130 is a possible solution to the I-35 congestion problem.[81]

While originally a part of the TTC plan, SH 130 is a standalone toll project consisting of six segments:

> [t]he first two segments . . . from I-35 at Georgetown east around Round Rock to US 290 east of Austin[; t]he third segment, from US 290 to SH 71 near Bergstrom Airport[; t]he fourth segment, from SH 71 to US 183 near Mustang Ridge south of Austin[; and t]he remaining 40 mile section from Mustang Ridge to Lockhart and from there to I-10 near Seguin, known as segments 5 and 6 . . . .[82]

Because SH 130 is a tollway, certain segments will have tollbooths while other segments will use an electronic toll collection method.[83]

B. The Trans-Texas Corridor

In 2002, Texas Governor Rick Perry introduced the TTC plan.[84] This plan set up a large network of corridors in order to link major cities through a series of toll roads run by private companies.[85] Proposed in response to the rapid

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76. *Id.* at 4-4 to -5.
77. *Id.*
78. TEX. HIGHWAY MAN, *supra* note 1.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.* Besides the six segments on SH 130, "[t]he remainder of the SH 130 tollway is operated by TxDOT as part of the Central Texas Turnpike System." *Id.*
83. *Id.*
84. *The Trans-Texas Corridor: Miles to Go*, ECONOMIST (Jan. 7, 2010), http://www.economist.com/node/15213418.
85. *Id.*

increase in the state's population and the increase in traffic from Mexico due to NAFTA, the TTC would have cost the state around $175 billion to build.[86] The proposed network included "toll roads for cars and trucks, tracks for freight and passenger rail, and space for pipelines and power lines."[87]

While an ambitious plan that a number of state officials supported, it was run rampant with problems from the start.[88] Private citizens, specifically rural property owners, ridiculed the idea and raised concerns that the corridor would cause and increase rural traffic and crime.[89] Other concerns included the use of eminent domain, increase in traffic from Mexico, and the probability of expensive tolls.[90] Additionally, critics raised concerns over the state contracting with a private Spanish company.[91] Voicing their concerns and discontent with the plan, private citizens gathered at town hall meetings across the state.[92] Thus, as a result of public pressure, in early 2009 TxDOT announced that "the [TTC] ha[d] been dropped in response to public outcry and will be replaced with a plan to carry out road projects at an incremental, modest pace . . . ."[93]

C. The Legislative Change to Transportation Code Section 545.353

With the TTC plan shelved, the state still needed a solution to the congestion problem.[94] The state's next solution came on Thursday, April 7, 2011, when the Texas legislature passed H.B. 1201.[95] Introduced by Representative Lois Kolkhorst (R-Brenham), the bill's main aim was "to repeal the [TTC and] raise the speed limit on certain lanes or stretches of road to 85 mph . . . ."[96] Therefore, H.B. 1201 enabled TxDOT to raise the speed limit while also "remov[ing] or repeal[ing] the authority for the establishment and operation of the TTC."[97] Additionally, H.B. 1201 set requirements for establishing an 85 mph speed limit.[98] Specifically, section 545.353 of the Transportation Code states that

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86. Ruiz et al., *supra* note 4.
87. *Id.*
88. *See* ECONOMIST, *supra* note 84.
89. Ruiz et al., *supra* note 4.
90. ECONOMIST, *supra* note 84.
91. Ruiz et al., *supra* note 4.
92. *Id.*
93. *Id.*
94. *Id.*
95. Heinz, *supra* note 3.
96. *Id.*
97. House Research Org., Bill Analysis, Tex. C.S.H.B. 1201, 82d Leg., C.S. (2011), *available at* http://www.legis.state.tx.us/tlodocs/82R/analysis/html/HB01201H.htm.
98. *See* TEX. TRANSP. CODE ANN. § 545.353(h-2) (West Supp. 2012), *amended by* Tex. S.B. 1093, 83d Leg., R.S. (2013).

> the [C]ommission may establish a speed limit not to exceed 85 [mph] on a part of the state highway system if: (1) that part of the highway system is designed to accommodate travel at that established speed or a higher speed; and (2) the [C]ommission determines, after an engineering and traffic investigation, that the established speed limit is reasonable and safe for that part of the highway system.[99]

Therefore, H.B. 1201 removes all authority regarding the TTC, while keeping "two . . . provisions by adding them to other sections of the Transportation Code."[100] The first provision is the establishment of the 85 mph speed limit, while the second provision involves the authorization of "oversize/overweight vehicles on an exclusive lane," following a study.[101]

Under the original TTC plan, chapter 227 of the Transportation Code gave the Commission the authority to establish the TTC.[102] Additionally under section 545.351 of the Transportation Code, the Commission could authorize an 85 mph speed limit on a particular TTC corridor.[103] H.B. 1201 allows for the continuation of the Commission's authorization power for an 85 mph speed limit.[104] The Texas legislature felt the continuation was important because this speed limit is an essential tool for "maximiz[ing] mobility with limited resources" in response to the rapidly growing Texas population.[105] Further, the 85 mph speed limit could help with the "heavy congestion on the very heavily-traveled road between Austin and San Antonio."[106] Thus, as stated by TxDOT TRF director Carol Rawson, the "'higher speed limits on SH 130 [will] provide travelers a safe and efficient alternative to the congestion on I-35 in Austin' . . . ."[107]

Since the bill's introduction, opponents of H.B. 1201 raised concerns over whether a driver can safely operate a vehicle at such a high speed.[108] As support for their arguments, the opponents addressed topics such as the severity of crashes at high speeds, whether tires can maintain such constant high speeds, and whether people can safely operate vehicles at such high speeds.[109] Supporters of the bill dismissed these concerns, however, and stated that higher average speeds do not increase the rate of collisions; rather, drivers "that have larger speed differentials—that is, where some vehicles are traveling much

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99. *Id.*

100. House Research Org., Bill Analysis, Tex. H.B. 1201, 82d Leg., R.S. (2011), *available at* http://www.hro.house.state.tx.us/pdf/ba82r/hb1201.pdf [hereinafter H.B. 1201 Bill Analysis].

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Samantha Grossman, *Texas Considers 85 M.P.H. Speed Limit*, TIME (June 9, 2012), http://newsfeed.time.com/2012/06/09/texas-considers-85-m-p-h-speed-limit/.

107. *Higher Speed Limits Approved on Central Texas Highways*, *supra* note 9.

108. H.B. 1201 Bill Analysis, *supra* note 100.

109. *Id.*

faster than others," increased the probability of collisions occurring.[110] Additionally, H.B. 1201 includes certain precautions Texas must take—such as an engineering and traffic study and the bill's limitation to only highways designed to accommodate the speed set—in order to help keep motorist safety.[111]

Along with driver safety, another concern raised by opponents is the fear that there will be a boom in private toll roads in central Texas.[112] At the time of the bill's passing, SH 130 was the only highway capable of being able to maintain an 85 mph speed, but it only had a posted speed limit of 70 mph.[113] SH 130's speed limit changed to 85 mph as part of an agreement with a private toll company (Cintra).[114] In exchange for raising SH 130's speed limit, Cintra would provide a greater share of the tollway's profits to TxDOT.[115] The agreement, however, had its limits.[116] While addressing these concerns, the house stated that the benefit of the 85 mph speed limit would only apply to "certain toll roads, [and] it could be [later] amended to apply only prospectively."[117] The senate also placed a limitation in the form of a companion bill "requir[ing] the necessary engineering and traffic study to take place no earlier than a year after a roadway opened."[118]

D. The State Highway 130 Segments Five and Six Tollway Agreement

With the failure of the TTC and the signing of H.B. 1201, TxDOT could now move forward with the proposed SH 130 project.[119] On March 22, 2007, TxDOT signed a Facility Concession Agreement (FCA) with SH 130 Concession Company, LLC (SH 130 CC) in order to begin construction on the proposed SH 130 tollway.[120] The SH 130 CC is a private developer jointly owned and operated by two independent companies, Cintra and Zachary American Infrastructure.[121] As part of the partnership agreement with TxDOT, the SH 130 CC will "finance, develop, design, construct, operate[,] and maintain segments [five and six] of SH 130" with the help of TxDOT.[122] Once

110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.* Today the agreement is with the SH 130 Concession Company, LLC, which Cintra is now a part of with Zachary American Infrastructure. *About Developer*, MYSH130.COM, http://mysh130.com/about-developer/ (last visited Aug. 19, 2013).
116. H.B. 1201 Bill Analysis, *supra* note 100.
117. *Id.*
118. *Id.*
119. *See id.*
120. *See Facility Concession Agreement: SH 130 Segments 5 and 6 Facility*, TEX. DEP'T OF TRANSP. (Mar. 22, 2007), ftp://ftp.dot.state.tx.us/pub/txdot-info/tta/sh130_cda/facil_concession_agmt.pdf.
121. *About Developer*, *supra* note 115.
122. *Segments 5 & 6*, MYSH130.COM, http://mysh130.com/segments-5-6/ (last visited Aug. 19, 2013).

SH 130 is complete, the SH 130 CC's responsibilities will also include collecting tolls, routine and capital maintenance, and overseeing all tolling equipment.[123]

Thus, while the SH 130 CC will primarily be responsible for the maintenance and operations of the tollway, TxDOT is responsible for "the acquisition of property and property rights for the new roadway."[124] TxDOT possesses these responsibilities because "the State of Texas is the record titleholder to all of the right of way and roadway acquired for [the] project."[125] Therefore, TxDOT is essential in ensuring that property disputes do not occur during the construction and operation of the tollway.[126] Along with preventing property disputes, TxDOT is also responsible for "ensur[ing] contract compliance and [that] the facility is operating in a safe and efficient manner."[127]

According to some reports, the project is believed to cost the state approximately $1.75 billion, with costs totaling as much as $1.35 billion thus far.[128] Construction for the project began in spring 2009, with an agreed service commencement for November 11, 2012; however, an "early opening" was set for October 24, 2012.[129] The total length for segments five and six on SH 130 is forty-one miles, with a minimum of two tolled main lanes in each direction.[130] Segment five extends "[f]rom north of Mustang Ridge to FM 1185 north of Lockhart (approx. 12 miles), following the current US 183 alignment."[131] Meanwhile, segment six extends "[f]rom FM 1185 to I-10 northeast of Seguin (approx. 29 miles), along (approx. 3 miles) existing and (approx. 26 miles) new right-of-way."[132]

One unique aspect in the design of SH 130 is that rather than having traditional tollbooths along the road, the SH 130 CC will collect tolls through "open road tolling."[133] This type of tolling allows for the SH 130 CC to electronically collect tolls at designated points along SH 130 and enables "100% free flowing" traffic.[134] Currently there are three types of "tags" that could be used for the electronic tolling: TxTag, the Dallas TollTag, and the Houston EZ TAG.[135] Each electronic toll tag company provides prepaid

123. Frank P. Holzmann, *Closing Out the SH 130 Concession Project: Construction to Operations*, TEX. A&M TRANSP. INST. (Oct. 17, 2012), http://tti.tamu.edu/conferences/tsc12/program/presentations/strategic-projects/holzmann.pdf.

124. *Segments 5 & 6*, *supra* note 122.

125. *Id.* (emphasis removed).

126. *See id.*

127. Holzmann, *supra* note 123.

128. *Id.* (breaking down the projected costs including amounts for construction, rights of way, utilities, operations, maintenance, and up-front concessions); *Segments 5 & 6*, *supra* note 122.

129. Holzmann, *supra* note 123 (defining service commencement as "the opening of the facility for normal and continuous operations and use by the traveling public").

130. *Segments 5 & 6*, *supra* note 122.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

stickers that allow for easier access through tollways.[136] For example, an individual with a prepaid TxTag sticker can pass through the tollway station without stopping.[137] In the event that an individual does not own a TxTag sticker, the TxTag's Pay-By-Mail service will bill the cars and trucks using the tollway.[138]

In addition to participating parties' responsibilities and general design specifications of SH 130, the FCA also contains specifications for items such as drainage, roadway, and structural designs; bicycle and pedestrian facilities; and signing, marking, lighting, and traveling information systems.[139] The SH 130 CC included these specifications in the FCA in order to show an emphasis on the aesthetics and landscaping on SH 130.[140] The SH 130 CC believed that it was important for the company to build "[s]egments [five and six] with attention to aesthetics and the established natural and historic character of Central Texas."[141] This includes attention to such factors as "landscaping, including plant and tree selection, irrigation methods and systems, and compatibility with existing natural features."[142] In order to follow through with its commitment, the SH 130 CC set aside approximately $11 million of the total cost of the project for aesthetics.[143]

On October 24, 2012, with the project on schedule, segments five and six of SH 130 opened to the public with an 85 mph speed limit.[144] As part of the grand opening, segments five and six of SH 130 were toll free until November 11, 2012.[145] After, the toll rate rose to "$0.15 per mile for passenger vehicles using TxTag" or other electronic tags.[146]

With regard to toll rates, the FCA sets out how the SH 130 CC can set the toll rates.[147] While the SH 130 CC has the authority to set the toll rates, it must notify TxDOT before doing so.[148] As detailed in article three of the FCA, the SH 130 CC must notify TxDOT ninety days before implementing any change

136. *See How TxTag Works*, TXTAG, http://www.txtag.org/txtag_basics.php (last visited Aug. 19, 2013).

137. *See id.*

138. *News*, *supra* note 7.

139. *See Technical Requirements: SH 130 Segments 5 and 6 Facility*, TEX. DEP'T OF TRANSP. (Mar. 22, 2007), ftp://ftp.dot.state.tx.us/pub/txdot-info/tta/sh130_cda/tech_requirements.pdf.

140. *See id.* (detailing the aesthetic requirements of segments five and six on SH 130); *Aesthetics of the Roadway*, MYSH130.COM, http://mysh130.com/segments-5-6/aesthetics-of-the-roadway/ (last visited Aug. 19, 2013).

141. *Aesthetics of the Roadway*, *supra* note 140.

142. *Id.*; *see generally Technical Requirements: SH 130 Segments 5 and 6 Facility*, *supra* note 139 (detailing in attachment ten the landscaping and aesthetic design standards for segments five and six of SH 130).

143. *Aesthetics of the Roadway*, *supra* note 140.

144. *News*, *supra* note 7.

145. *Id.*

146. *Id.*

147. *See Facility Concession Agreement: SH 130 Segments 5 and 6 Facility*, *supra* note 139.

148. *Id.*

to a toll rate.[149] The FCA also sets restrictions on what the SH 130 CC can use tollway revenues for.[150]

IV. THE STATE HIGHWAY 130 TOLLWAY'S BUMPY ROAD AHEAD

A. Initial Problems

Finally, after the rigorous planning and construction of segments five and six of SH 130, the tollway opened to the public on October 24, 2012.[151] The grand opening, with a "mix of anticipation and celebration," was not without its bumps.[152] While no problems occurred during the daytime, one problem arose at night.[153] As a result of the construction of SH 130, the tollway displaced various types of wildlife in the area.[154] One type in particular was wild (feral) hog packs.[155] Consequently, four crashes due to hogs crossing SH 130 occurred within the first night of its opening.[156] Luckily none of the crashes resulted in serious injury; however, it did raise concerns over what will occur when traffic eventually increases on the roadway and the effect daylight savings time will have on driver visibility.[157] Since hogs are low to the ground and the vehicles are traveling at a higher speed, it is difficult to see the hogs before collision.[158] In response to this problem, the SH 130 CC is now temporarily displaying warnings of animal crossings on electric signs until the company installs more permanent signs on the roadway.[159]

As of December 2012, only one automobile accident on segments five and six of SH 130 ended with a fatality.[160] On November 30, 2012, an automobile traveling on SH 130 blew out a tire, causing the vehicle to rollover.[161] The

149. *Id.*

150. *Id.*

151. *News*, *supra* note 7.

152. Vianna Davila, *Texas 130 Toll Road: Life in the Fastest Lane*, HOUS. CHRON. (Oct. 24, 2012, 10:18 PM), http://www.chron.com/news/houston-texas/houston/article/Texas-130-toll-road-Life-in-the-fastest-lane-3979397.php.

153. *Drivers Hit Wild Hogs on New Section of SH 130*, KXAN.COM, http://www.kxan.com/dpp/news/drivers-hit-wild-hogs-on-sh-130 (last updated Oct. 26, 2012, 11:16 AM).

154. Davila, *supra* note 152.

155. *Drivers Hit Wild Hogs on New Section of SH 130*, *supra* note 153 (stating that before the opening of SH 130, "officers used their dashboard cameras to capture video of packs of feral hogs crossing the road").

156. *Id.* (stating that three crashes occurred in Lockhart city limits and one occurred in Caldwell County).

157. *Id.*

158. *Id.* Lockhart Police Chief Michael Lummus stated, "'Anyone that's ever struck a deer, they know that they're in the ditches and you don't see them until they're in front of you and it's the same with these [hogs]. But they're even lower (to the ground and hard to see).'" *Id*.

159. *Watch for Hogs Signs Going Up on SH 130 Toll Road*, KXAN.COM (Oct. 30, 2012), http://www.kxan.com/dpp/news/local/austin/watch-for-hogs-sign-going-up-on-sh-130-toll-road.

160. *Morning Rollover Kills One on SH 130*, KXAN.COM (Nov. 30, 2012), http://www.kxan.com/dpp/news/local/austin/morning-rollover-kills-one-on-sh-130.

161. *Id.*

accident resulted in one fatality and three individuals sustaining serious injuries.[162]

B. Safety Concerns

One of the major concerns of the 85 mph speed limit is safety.[163] Rational thought leans toward a strong correlation between a higher risk of accidents and fatalities occurring with higher speeds.[164] Thus, this leads to an important question: how safe is an 85 mph speed limit for motorists?

According to the Center for Transportation Safety, a strong correlation exists between speed limits and crashes when determining the severity of injury to the driver.[165] In fact, "[t]he probability of severe injury increases sharply with the impact speed of a vehicle in a collision, reflecting the laws of physics."[166] Applying this logic, an automobile traveling at a speed of 85 mph is more likely to result in a more severe—possibly even fatal—injury than that of an automobile traveling at 70 mph.[167] Thus, people do not necessarily question that higher speeds lead to more severe injuries brought on by an automotive crash.[168] Therefore, a harder question requiring an answer is whether higher speed limits increase the probability of an accident occurring.[169]

Trying to determine whether a set speed limit plays a role in the probability of an accident occurring is difficult because the relationship between the two is complex.[170] The probability of an accident occurring involves a number of factors including "driving under the influence of alcohol or other drugs, age, attitudes toward risk, and experience of the driver," as well as roadway characteristics.[171] Despite these factors, however, some studies have shown areas that experienced an increase in posted speed limit (by at least 10 mph) also experienced a change in the number of fatal injuries.[172] The impact of this change in posted speed limit and number of fatalities, however, is also dependent on the type of road the driver is on.[173] Certain "roadway characteristics, such as shoulder width or horizontal curve design," can factor into the probability of a crash occurring.[174] For example, rural roadways with

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162. *Id.*
163. H.B. 1201 Bill Analysis, *supra* note 100.
164. *Speed Limits*, TEX. A&M TRANSP. INST., 1 (2011), http://tti.tamu.edu/group/stsc/files/2011/03/Speed-Limits-Final.pdf.
165. *Id.* at 2.
166. *Id.*
167. *See id.*
168. *Id.*
169. *Id.*
170. *Id.*
171. *Id.*
172. *Id.* (reporting that in a 2006 study, "[a]n increase in the speed limit of 10 mph was calculated to be associated with a change in fatal injury count between 13 and 28 percent").
173. *Id.*
174. *Id.*

narrower shoulder widths and sharper curves tend to have higher crash rates than their interstate counterparts.[175]

Due to the complexity of determining the probability of car accidents, advocates for higher speed limits have scoffed at the notion that higher speed limits raise safety concerns.[176] The issue of safety, however, is not a novel one when concerning speed limits.[177] The issue first came about with the repeal of the national 55 mph speed limit.[178] According to a 1991 study conducted by Stephen Moore of the Cato Institute, the increase in speed limits did not increase the number of injuries to motorists.[179] Rather, it resulted in a reduction in both injuries and death rates nationally.[180] Further, Moore argued that one of the reasons why the lower 55 mph speed limit resulted in lower traffic fatalities was because of the high gas prices at the time, causing motorists to limit the amount of time spent on the road.[181] Additionally, motorists rarely followed the 55 mph national speed limit.[182] "The [Department of Transportation] estimate[d] that about 70 percent of American drivers exceeded the 55[]mph speed limit."[183]

Another cause to automobile accidents, Moore argued, is that it is not the increasing speed limits that contribute to the number of automobile accidents, but rather speed variance.[184] Speed variance occurs when vehicles on a select road are traveling at different speeds from one another.[185] However, this argument of "'[v]ariance kills, not speed,'" is not without its critics.[186] The Insurance Institute for Highway Safety (IIHS) points out that variation is not the sole factor to consider in automobile crashes.[187] Rather, the IIHS claims "[t]he risk of death and severe injury is a direct exponential function of speed, not

175. *See id.* at 2–3 (stating that interstates have lower crash rates, but it may be due to "design features such as limited access control and wide clear zones").

176. *See* Stephen Moore, *Speed Doesn't Kill: The Repeal of the 55-MPH Speed Limit*, POL'Y ANALYSIS no. 346 (CATO INST.), 1 (May 31, 1991), http://www.motorists.org/speed-limits/55-mph-study.pdf.

177. *Id.*

178. *See* discussion *supra* Part II.A; Moore, *supra* note 176.

179. Moore, *supra* note 176.

180. *Id.* (stating that "in 1997 there were 66,000 fewer road injuries than in 1995") (emphasis omitted). Texas, however, saw an increase of forty-five percent in crash rates. *Id.* at 6. Moore argues that these findings are isolated, however, and concedes that speed limits should be lower on certain rural roads in Texas. *Id.*

181. *Id.* at 7.

182. *Id.* at 17.

183. *Id.*

184. *Id.* at 16–17.

185. John DellaContrada, *Speed Kills, but on Interstates, Speed Variance Is More Deadly*, UNIV. AT BUFF. (Oct. 31, 2006), http://www.buffalo.edu/news/releases/2006/10/8236.html.

186. Moore, *supra* note 176, at 16–17 (quoting Professor Charles A. Lave's study on speed variance); *see generally* INS. INST. FOR HIGHWAY SAFETY, *supra* note 28 (follow "Isn't Speed Variation—Not High Speed—the Real Problem?" hyperlink) (arguing that speed variance is not the sole reason for automobile crashes).

187. INS. INST. FOR HIGHWAY SAFETY, *supra* note 28 (follow "Isn't Speed Variation—Not High Speed—the Real Problem?" hyperlink).

speed differences."[188] In fact, approximately "half of those [crashes] resulting in occupant deaths are single-vehicle impacts in which differences among vehicle speeds play no role or only a minor one."[189] Therefore, when taking into account both speed variance and higher speed limits as factors into car collisions on highways, a higher probability of automobile accidents is still possible with an 85 mph speed limit.[190]

A higher probability of auto-collisions is also possible because the highway may have motorists speeding over the posted 85 mph speed limit; thus, leading to speed variances at higher speeds.[191] Most Americans have at one point exceeded the speed limit posted on a given highway.[192] Therefore, it is not unreasonable to conclude that motorists will significantly exceed the 85 mph speed limit set on SH 130.[193] In fact, since the repeal of the national speed limit—which allowed Texas to set its speed limits to 70 mph—"the percent of passenger vehicles traveling faster than 70 mph increased from 15 to 50 percent[and] the percent exceeding 75 mph increased from 4 to 17 percent."[194] These statistics suggest that Texas will see an increase in the percentage of motorists driving over 85 mph and quite possibly 90 mph.[195] Factoring this into the speed limit-speed variance evaluation, motorists will have speed variances that are at higher speeds on the 85 mph posted speed limit and, thus, possibly increasing the likelihood of automobile accidents, than that of a highway with a posted speed limit of 70 mph.[196]

C. Factoring in Modern Technology as a Distraction

One problem with Moore's and the IIHS's studies is that they both fail to take into account a troubling new factor that contributes to automobile accidents: distractive driving.[197] The National Highway Traffic Safety Administration defines distracting driving as "any activity that could divert a person's attention away from the primary task of driving."[198] The types of distractions include the use of cell phones, navigation systems, DVD players,

188. *Id.*
189. *Id.*
190. *See id.*
191. *See id.*
192. *Id.* (follow "Who Speeds?" hyperlink).
193. *See id.*
194. *Id.* (follow "How Has Abolishing the National Speed Limit Affected Speeds?" hyperlink) (citation omitted). Additionally, another study conducted in 2006, after Texas raised the daytime speed limit to 80 mph on I-20, showed that the average speed of motorists traveling on the highway increased by 9 mph. *Id.*
195. *See id.*
196. *See id.*
197. *See generally What Is Distracted Driving?*, DISTRACTION.GOV, http://www.distraction.gov/content/get-the-facts/facts-and-statistics.html (last visited Aug. 19, 2013) (defining distracted driving and providing statistics of injury crashes as a result of distracted driving).
198. *Id.*

music, and talking to passengers.[199] From this list of possible distractions, however, the one that is of the most concern is cell phone use.[200] Within the past decade, the use of cell phones has increased, and with that came an increase in the number of motorists using cell phones on the roads.[201] Thus, with this rapid development of wireless technology, distracted driving is increasingly a contributing factor to automobile accidents.[202]

A possible reason why cell phones play a substantial factor in automobile accidents is because cell phone activities, such as text messaging, require the use of multiple senses of the human body to work at once, thus reducing a motorist's "brain activity associated with driving by 37%."[203] Additionally, when motorists are sending or looking at a text message, they are taking their eyes off the road for approximately 4.6 seconds.[204] This causes a reaction time equivalent to that of a motorist with a "blood alcohol concentration at the legal limit of .08 percent."[205] Therefore, an individual operating a motor vehicle while on a cellular device is the equivalent of an individual who is drinking and driving.[206]

These recent statistics demonstrate that distracted driving is a serious problem with motorists across the nation.[207] Not only will Texas motorists be traveling on roads with a posted speed limit of 85 mph—a speed limit that results in more severe injury—but they may also be freely engaging in reckless distractive activities, thereby increasing their chances of ending up in an automobile accident.[208] Thus, without proper distracted driving statutes in Texas, it is probable that distractive driving at higher posted speed limits could pose an increase in automobile accidents.[209]

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199. *Id.*

200. *See generally Driving While Distracted: Statistics to Know*, NATIONWIDE, http://www.nationwide.com/newsroom/dwd-facts-figures.jsp (last visited Aug. 19, 2013) (stating that the use of a wireless device is the number one source of distraction for motorists).

201. *See* Peter Leo, *Cell Phone Statistics that May Surprise You*, PITT. POST-GAZETTE (Mar. 16, 2006, 12:00 AM), http://www.post-gazette.com/stories/local/morning-file/cell-phone-statistics-that-may-surprise-you-425838/ (reporting that in 1996 the amount of cell phone users in the United States was 34 million; however, a decade later the number increased to 203 million).

202. *See generally* DISTRACTION.GOV, *supra* note 197 (noting that according to a study conducted in 2011, approximately "3,331 people were killed in crashes involving a distracted driver[; a]n additional, 387,000 were injured in motor vehicle crashes involving a distracted driver").

203. *Five Fatal Mistakes of Young Drivers*, AM. ACAD. OF PEDIATRICS, http://www.pakidstravelsafe.org/young-drivers/item/18-young-driver-safety (last visited Aug. 19, 2013).

204. DISTRACTION.GOV, *supra* note 197.

205. NATIONWIDE, *supra* note 200 (emphasis omitted).

206. *See* DISTRACTION.GOV, *supra* note 197.

207. *Id.*

208. *See Speed Limits*, *supra* note 164; DISTRACTION.GOV, *supra* note 197.

209. *See* DISTRACTION.GOV, *supra* note 197; *see also* INS. INST. FOR HIGHWAY SAFETY, *supra* note 28 (reasoning that higher speeds and speed variance increase the probability of automobile crashes). Texas only has a few wireless communication bans, including a ban for drivers under the age of eighteen and individuals with learner's permits. *Texas: Cell Phone Laws, Legislation*, HANDS FREE INFO, http://handsfreeinfo.com/texas-cell-phone-laws-legislation (last updated Aug. 19, 2013).

V. SHOULD THERE BE A SPEED LIMIT INCREASE IN TEXAS?

A. The Pros and Cons of a Higher Speed Limit

A motivating factor in the Texas legislature's decision to increase the maximum speed limit to 85 mph is to relieve congestion in heavily populated cities like Austin.[210] As the old adage goes, "[t]ime is money."[211] With a speed limit of 85 mph on SH 130, motorists can get to their destinations quicker and relieve congestion on other roads, allowing for other motorists to reach their destination faster.[212] Additionally, in order to have SH 130 built, TxDOT agreed to have the speed limit posted at 85 mph in exchange for a $100 million payment by the SH 130 CC.[213] By signing this deal, TxDOT would save tax payers money on the SH 130 project while receiving extra compensation.[214]

While on the surface this appears to be a win-win deal for all, there are a number of consequences that will possibly arise with raising the speed limit.[215] Since 1995, the current trend in Texas is increasing the speed limit more and more.[216] With the most recent speed limit increase for the SH 130 tollway, it is reasonable to infer that future tollways may also have a posted speed limit of 85 mph.[217] As a result of this, the number of crashes and fatal crashes could increase.[218]

One consequence to an increase in fatalities and automobile crashes with an 85 mph speed limit is that insurance companies may increase their rates.[219] This is especially likely if more roads in Texas have the posted speed limit of 85 mph.[220]

Along with increasing insurance rates, another consequence is an increase in fuel consumption.[221] In the past couple of years, there has been a growing concern in the United States over energy conservation and increasing gas prices.[222] According to a study conducted by the United States Government Accountability Office, "[t]he speed limit is only one tool among many for

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210. *See* TEX. HIGHWAY MAN, *supra* note 1.

211. Moore, *supra* note 176, at 20.

212. *See id.* at 17; *see also* TEX. HIGHWAY MAN, *supra* note 1 (stating that one of the reasons for the SH 130 tollway is to relieve traffic congestion).

213. *TxDOT Approves 85 MPH Limit for Stretch of Toll Road*, *supra* note 6.

214. *See id.*

215. *See* INS. INST. FOR HIGHWAY SAFETY, *supra* note 28.

216. *See id.*

217. *See generally* TEX. TRANSP. CODE ANN. § 545.353 (West Supp. 2012), *amended by* Tex. S.B. 1093, 83d Leg., R.S. (2013) (allowing the maximum speed limit to be 85 mph).

218. *See* INS. INST. FOR HIGHWAY SAFETY, *supra* note 28.

219. *See* Allan Turner, *House OKs Hiking Speed Limit to 85 MPH on Some Texas Roads*, HOUS. CHRON. (Apr. 7, 2011), http://www.chron.com/news/houston-texas/article/House-OKs-hiking-speed-limit-to-85-mph-on-some-1688337.php.

220. *See id.*

221. *See* Schultz, *supra* note 20.

222. *See generally id.* (stating that in 2008 Senator John Warner of Virginia wanted to reinstate the national speed limit due to increasing gas prices).

potentially conserving fuel."[223] While there are many factors that contribute to fuel efficiency in a car, the logic behind speed limits as a factor is that the faster motorists travel the more fuel they burn.[224] Thus, an 85 mph speed limit increases the inefficient use of fuel with more motorists traveling at that speed.[225]

B. Possible Legislative Changes and Alternatives

1. Wireless Device Statutes

Since the 85 mph speed limit is obviously not going away anytime soon, the Texas legislature could make some changes in order to increase the safety of Texas motorists.[226] In the event that more highways will have an 85 mph speed limit, a greater need to limit distractions is pertinent.[227] One change in particular that the Texas legislature can make is passing stricter wireless device laws for motorists on highways.[228] Currently, Texas prohibits motorists from using wireless devices in school zones, prohibits use by individuals under the age of eighteen, and prohibits use by individuals with a learners permit.[229] Additionally, Texas is one of eleven states in the United States that does not have a ban on text messaging while operating a motor vehicle.[230]

In the 2013 Texas Legislative Session, house representatives plan to introduce a number of house bills concerning wireless communication bans.[231] These house bills include Tom Craddick's H.B. 63, which would prohibit the sending of text messages on wireless devices, and Trey Martinez Fischer's H.B. 27, which would ban the use of wireless devices while operating a motor vehicle.[232] Though Governor Rick Perry vetoed Craddick's H.B. 242—statewide plan to ban texting while driving—back in 2011, Craddick is hopeful for the 2013 session because H.B. 63 "'will provide a uniform statewide approach to curb this unsafe practice and will go a long way in helping educate drives on the dangers posed by texting while driving and save lives.'"[233]

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223. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO–09–153R, ENERGY EFFICIENCY: POTENTIAL FUEL SAVINGS GENERATED BY A NATIONAL SPEED LIMIT WOULD BE INFLUENCED BY MANY OTHER FACTORS (Nov. 7, 2008), *available at* http://www.gao.gov/products/GAO-09-153R.

224. *Id.*; Schultz, *supra* note 20.

225. *See* Schultz, *supra* note 20.

226. *See* Davila, *supra* note 152.

227. *See* discussion *supra* Part IV.C (discussing the effects of distracted driving on motorists).

228. *See* HANDS FREE INFO, *supra* note 209.

229. *See* TEX. TRANSP. CODE ANN. § 545.424–.425 (West Supp. 2012).

230. HANDS FREE INFO, *supra* note 209.

231. *See id.*

232. *Id.* The 2013 Legislative Session will also review three other house bills (H.B. 41, H.B. 69, and H.B. 108) as well as Senate Bill 28, all of which concern wireless device use by motorists. *Id.*

233. *Id.*

If the 2013 session manages to pass one of these bills, this may help curb one contributing factor to automobile accidents and hopefully make highways with higher posted speed limits a little safer.[234]

2. High-Speed Rails

A possible alternative to increasing speed limits in Texas is the erection of high-speed rails. The idea of high-speed railways first appeared in the failed TTC plan.[235] Though the TTC plan ended, the movement for high-speed rails has picked up momentum in recent years.[236] Back in 2011, the federal government provided Texas with a $15 million grant to research the potential of a high-speed rail connecting Houston to Dallas.[237] Since then, high-speed rail advocates are hopeful that Texas will be able to have a bullet train connect the Houston and Dallas-Fort Worth areas as early as 2020.[238] Much like the SH 130 tollway, a private company will build the high-speed rail and funding for the $10 billion project will be through private investors.[239]

Since one of the reasons for the speed limit increase is heavy congestion on Texas highways, the use of high-speed rails could greatly reduce the amount of vehicles on roads.[240] While reducing traffic, high-speed rails will also enable individuals to get to their destinations faster than motor vehicles and are three times more energy efficient than cars.[241] Another benefit to high-speed rails is the promotion of new jobs and economic growth.[242] Studies have shown that with the development of train terminals, areas surrounding the terminals experience beneficial redevelopment and substantial new growth.[243]

Therefore, even though a high-speed rail comes with a high price tag, the long term benefits Texas receives from it will outweigh the initial costs.[244]

VI. CONCLUSION

The Texas population is growing at a faster rate than the roads can efficiently handle.[245] As a consequence of this, the highways in the major cities

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234. *See id.*

235. Clinton R. Snow, Comment, *Meeting Texas Infrastructure Needs in the Face of a Burgeoning Population and Declining Tax Revenues: The Trans-Texas Corridor*, 8 TEX. TECH ADMIN. L.J. 195, 198 (2007).

236. Gordon Dickson, *Officials Wrangle over High-Speed Rail Study*, STAR-TELEGRAM (Jan. 10, 2013), http://www.star-telegram.com/2013/01/10/4539292/officials-wrangle-over-rail-study.html.

237. *Id.*

238. *Id.*

239. *Id.*

240. *See Benefits of High Speed Rail*, ENVTL. L. & POL'Y CTR., http://elpc.org/benefits-of-high-speed-rail (last visited Aug. 19, 2013).

241. *Id.*

242. *Id.*

243. *Id.*

244. *See id.*

of Texas are jam-packed, thus causing an increase in frustration among citizens.[246] In order to alleviate this problem, TxDOT authorized both the construction of the SH 130 tollway and the posting of an 85 mph speed limit.[247] While a higher speed limit will help alleviate congestion problems and help motorists get to their destinations faster, it also raises questions over safety issues.[248]

To help protect future motorists' lives, the Texas legislature should adopt distractive driving statutes.[249] By adopting these statutes, the legislature will help remove one factor that increases the probability of a resulting crash for a vehicle traveling at higher speeds.[250] Along with distractive driving statutes, TxDOT should support the building of high-speed rails.[251] High-speed rails could be an alternative to increasing speed limits across the state and provide many economic and social benefits to Texas.[252] Taking these considerations into mind, the state could realize substantial benefits and help make Texas both safe and economically beneficial to its citizens.

by Colleen Ferrall

245. *See* discussion *supra* Part III.A.
246. *See* discussion *supra* Part III.A.
247. *See* discussion *supra* Part III.C–D.
248. *See* discussion *supra* Part IV.B.
249. *See* discussion *supra* Part V.B.1.
250. *See* discussion *supra* Part V.B.1.
251. *See* discussion *supra* Part V.B.2.
252. *See* discussion *supra* Part V.B.2.