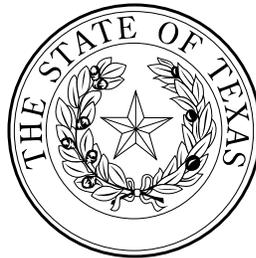


**Texas Department of Transportation  
Texas Turnpike Authority  
Automobile Theft Prevention  
Authority**

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**Staff Report**



**Texas Sunset  
Advisory Commission**

**1996**

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**TEXAS DEPARTMENT OF TRANSPORTATION**

**TEXAS TURNPIKE AUTHORITY**

**AUTOMOBILE THEFT PREVENTION AUTHORITY**

**SUNSET STAFF REPORT**

# Table of Contents



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	PAGE
<b>EXECUTIVE SUMMARY</b> .....	1
<b>APPROACH AND RESULTS</b> .....	5
<b>TEXAS DEPARTMENT OF TRANSPORTATION</b>	
<b>ISSUES</b>	
1 Authorize the Department's Use of Infrastructure Banks to Take Full Advantage of Federal Highway Funding Flexibility .....	17
2 Improve TxDOT's Ability to Link Contractor Timeliness to Eligibility for Future Contracts .....	31
3 Remove Obstacles to Automating the Department's Contracting Bidding System .....	41
4 Use the Council on Competitive Government to Help TxDOT Balance In-House and Contracted Engineering Services .....	51
5 Improve Motor Vehicle Division Hearings Through Transfer to the State Office of Administrative Hearings .....	59
6 Require TxDOT and the Comptroller to Study Moving the Point-of-Accountability for Collecting Motor Fuels Taxes .....	65
7 Include Transportation Needs of Health and Human Service Clients in TxDOT's Public Transportation Planning Efforts .....	73
8 Continue the Texas Department of Transportation for 12 Years .....	81

---

<b>ACROSS-THE-BOARD RECOMMENDATIONS</b>	87
.....	
<b>BACKGROUND</b>	95
.....	
<b>APPENDICES</b>	125
.....	

## **TEXAS TURNPIKE AUTHORITY**

### **ISSUE**

1 Consolidate the Functions of the Texas Turnpike Authority within the Texas Department of Transportation and Transfer Bonding Authority to the Texas Public Finance Authority .....	137
--	-----

<b>BACKGROUND</b>	151
.....	

## **AUTOMOBILE THEFT PREVENTION AUTHORITY**

### **ISSUES**

1 Continue the Automobile Theft Prevention Authority within the Texas Department of Transportation .....	165
2 Maximize Earnings on Auto Theft Prevention Assessment Collections .....	175

<b>ACROSS-THE-BOARD RECOMMENDATIONS</b>	181
.....	

<b>BACKGROUND</b>	183
.....	

# **EXECUTIVE SUMMARY**



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# Executive Summary

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The Texas Department of Transportation (TxDOT), the state's umbrella agency for transportation planning and development, reflects Texas' coordinated approach to providing more than \$3 billion a year in transportation projects and services. Because of the size of this investment and the importance of transportation in Texans' daily lives, the state must ensure that TxDOT effectively meets its responsibilities and efficiently spends tax dollars. The staff review focused on ways to help TxDOT do more with less and use innovative methods of financing to meet increasing transportation needs. This report also focused on whether to consolidate two related transportation agencies, the Texas Turnpike Authority and the Auto Theft Prevention Authority, into TxDOT. The following material describes the results of our review efforts.

## TEXAS DEPARTMENT OF TRANSPORTATION

### 1. Authorize the Department's Use of Infrastructure Banks to Take Full Advantage of Federal Highway Funding Flexibility.

The Department's financial ability to meet state transportation needs has begun to erode, while current statutory restrictions prevent TxDOT from taking full advantage of new federal highway funding flexibility. Without the use of more creative financing, Texas risks falling further behind in meeting transportation needs.

***Recommendation:*** Provide TxDOT with authority to create a State Infrastructure Bank to use in making loans or other credit enhancements for local government transportation projects. The Department should report back to the Legislature on the status and usefulness of the Bank in four years.

### 2. Improve TxDOT's Ability to Link Contractor Timeliness to Eligibility for Future Contracts.

TxDOT's contracting process lacks a direct link between contractor on-time performance and the ability to bid on future highway contracts. Contractors who fall behind on constructing projects can still bid and receive new contracts.

The state should only receive bids from contractors ready and able to deliver timely service.

***Recommendation:*** Require TxDOT to link performance, in terms of timeliness, to the existing contractor prequalification process. Except under special circumstances, contractors would be prevented from bidding unless they meet timeline standards on current projects.

### 3. Remove Obstacles to Automating the Department's Contract Bidding System.

The Department contracts for construction through an extremely labor intensive process. TxDOT needs to make use of available technology to reduce paperwork and administrative costs while better serving the contracting community.

***Recommendation:*** Authorize the Department to establish an automated bidding system and remove statutory barriers such as the public opening of bids.

#### 4. Use the Council on Competitive Government to Help TxDOT Balance In-House and Contracted Engineering Services.

TxDOT has not significantly increased its use of outside consultants since the Legislature mandated a balance between the use of in-house and contracted engineering services. However, before the Department outsources preliminary and construction engineering services, a full examination of costs and quality should occur. The Council on Competitive Government (CCG) can help ensure these factors are fully considered.

***Recommendation:*** Require TxDOT to use CCG to study the costs of in-house and outside engineering services and authorize CCG to take action to achieve a balance if costs are equivalent.

#### 5. Improve Motor Vehicle Division Hearings Through Transfer to the State Office of Administrative Hearings.

The Legislature has clearly expressed its intent to consolidate the hearings function of state agencies. Although other TxDOT hearings have been transferred, Motor Vehicle Division administrative hearings for enforcement, lemon law, and dealer/manufacturer disputes remain with the Department.

***Recommendation:*** Transfer all Motor Vehicle Division administrative hearings to the State Office of Administrative Hearings.

#### 6. Require TxDOT and the Comptroller to Study Moving the Point-of-Accountability for Collecting Motor Fuels Taxes.

TxDOT receives more than \$1.6 billion in state motor fuels taxes each year. Such revenues are essential for the state to meet transportation needs. While Texas is among the leaders in preventing tax fraud and evasion, the incentive to defraud the state is significant. The federal government and other key states have recently changed their point of tax accountability to further reduce fraud. Texas should continue to examine such options.

***Recommendation:*** TxDOT and the Comptroller should jointly study the cost and benefits of moving the point of motor fuels tax collection and report to the Legislature no later than January 1, 1998.

#### 7. Include Transportation Needs of Human Service Clients in TxDOT's Public Transportation Planning Efforts.

Current state efforts do not always meet the transportation needs of health and human services clients. Services provided by public transit and human service agencies are often disconnected. While combining client and public transportation efforts may eventually be needed, immediate action to coordinate client and public transportation services, and to lay the groundwork for any subsequent consolidation, is necessary.

***Recommendation:*** Require TxDOT to include the transportation needs of the clients of health and human service agencies in its public transportation planning and funding activities. Staff also recommends several management actions to improve coordination between TxDOT and the Office of Client Transportation Services.

#### 8. Continue the Texas Department of Transportation for 12 Years.

A continuing needs exists to plan, develop, and manage the state's transportation interests. This function is best served by TxDOT.

***Recommendation:*** Continue the Department for 12 years.

## TEXAS TURNPIKE AUTHORITY

### 1. Consolidate the Functions of the Texas Turnpike Authority within the Texas Department of Transportation and Transfer Bonding Authority to the Texas Public Finance Authority.

In certain regions, toll facilities have been an essential element of the state's transportation system. Since toll projects are financed by revenue bonds and supported by toll revenues, turnpikes offer advantages over traditionally financed transportation projects. While the state benefits

from the ability to build toll projects, a separate agency is not required to perform this function. The state already has agencies to build highways and to manage bond financing.

***Recommendation:*** Consolidate the functions of Texas Turnpike Authority within TxDOT and transfer bonding authority for toll projects to the Texas Public Finance Authority.

## AUTOMOBILE THEFT PREVENTION AUTHORITY

### 1. Continue the Automobile Theft Prevention Authority within the Texas Department of Transportation.

Despite decreases in auto theft rates and comprehensive insurance premiums, auto theft in Texas continues to be a serious problem. Continuing the Automobile Theft Prevention Authority's (ATPA) function would allow the continued funding of local auto theft prevention task forces. However, administering a grant program through a separate agency is inefficient. TxDOT should more fully assume the administrative functions of ATPA.

***Recommendation:*** Expand the administrative relationship between ATPA and TxDOT and cap non-grant expenditures at eight percent. ATPA would continue to make all grant related decisions.

### 2. Maximize Earnings on Auto Theft Prevention Assessment Collections.

Current statutory collection dates for ATPA assessments allow insurance companies to retain money collected for state auto theft prevention efforts for many months. Matching ATPA payments to premium tax payment dates would increase revenue for the state while having a minimal administrative impact on insurance companies.

***Recommendation:*** Require insurers who collect ATPA assessments to remit those collections on a semi-annual basis.

## Fiscal Impact Summary

Although savings or revenue gains cannot be estimated for the TxDOT recommendations, the Department should be able to improve its ability to meet transportation needs with existing resources. The consolidation of TTA with TxDOT would have no direct fiscal impact to the State Highway Fund or the General Revenue Fund, but would stretch existing revenue for non-toll highways. Additionally, changing the timing of collection for the ATPA assessment would result in a revenue gain to general revenue of \$26,334 in fiscal year 1998 and \$184,340 in fiscal year 1999 and each year thereafter.



## **APPROACH AND RESULTS**

# Approach and Results



## Approach

The mission of the Texas Department of Transportation (TxDOT) is to provide for the safe, effective, and efficient movement of people and goods. For such an apparently simple mission, TxDOT is responsible for an array of activities from planning, building, and maintaining roadways and bridges throughout the state to regulating auto salvage yards.

Obviously, the largest of these activities is the construction and operation of the state's 77,000-mile highway system. The need for an agency to build and maintain a safe and efficient system of roads and bridges in the state is undeniable. The economic and social well being of almost every Texan depends on it. Highways have been the cornerstone of the state's transportation system, and Texas' highways have been recognized as among the best nationwide.

However, the transportation landscape has begun to change. Resources required to meet transportation demands have not kept pace and highways can no longer meet all transportation demands. Alternatives to traditional modes of transportation must be found if Texas is to continue to be a leader in economic development, growth, and quality of life. Challenges such as using information technology to manage traffic and coordinating a variety of transportation modes to meet demands have already begun to confront TxDOT.

The state first recognized the need for a more comprehensive approach in addressing transportation needs in 1975 with the merger of the State Highway Department with the Texas Mass Transit Commission to form the State Department of Highways and Public Transportation (SDHPT). This shift in thinking continued in 1991 with the creation of TxDOT from the consolidation of SDHPT with the Texas Aviation Department and the Motor Vehicle Commission. These changes, along with the transfer of motor carrier regulations from the Texas Railroad Commission in 1995, have positioned TxDOT to be the leader in meeting the state's future transportation needs.

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*TxDOT faces the challenge of finding creative ways to design and pay for a transportation system to meet the state's ever increasing needs.*

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Sunset staff considered the evolution of TxDOT as a transportation agency in developing an approach to the Department's review. The staff also took into account the review work that has recently been conducted on the Department and its predecessor agencies. Both SDHPT and the Motor Vehicle Commission had gone through Sunset reviews for the 1991 legislative session. These agencies had gone through further review with the Texas Performance Review, also in 1991, leading to TxDOT's creation. Many issues were developed and debated in the course of these reviews and subsequent legislative sessions. For the most part, Sunset staff did not revisit these issues in the current review.

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*Sunset staff considered TxDOT's evolution as a transportation agency in developing the review approach.*

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Building on these most recent changes to the Department and its authority and anticipating future challenges, the Sunset review of TxDOT focused on three primary areas: its role as a true transportation agency; its ability to accomplish more with existing resources; and its method for planning and selecting roadway projects.

In addition to TxDOT, Sunset staff reviewed two other agencies that share either an operational or administrative history with the Department. The Texas Turnpike Authority (TTA), the state's toll authority headquartered in Dallas, shares an increasingly close operational relationship with TxDOT. Beginning with its creation in 1953, TTA has been able to finance, construct, and operate toll projects with revenue bond proceeds backed by toll revenues. However, because of higher construction costs and other factors, future toll projects will likely require substantial financial involvement by TxDOT to be feasible. Despite these changing economic conditions, the use of toll facilities, highways or bridges, will play an increasing role in meeting future transportation demands. The review of TTA focused on the best way to use this toll authority statewide.

Finally, staff reviewed the Automobile Theft Prevention Authority (ATPA), the entity responsible for distributing grant funds to local governments and law enforcement agencies to combat auto theft in Texas. The uniqueness of the Authority has resulted in various administrative relationships from residing in the Governor's Office, being attached to TxDOT, to its seeking to be an independent agency. The review assessed ATPA's role in preventing and reducing auto theft in Texas. Considerable time and effort was also spent understanding the organizational and administrative structure of ATPA and trying to identify examples where an independent decision-making body is attached to another state agency. The review focused on clarifying ATPA's administrative structure and ensuring that it is able to deliver this important service.

## Review Activities

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In conducting the three reviews contained in this report, the Sunset staff performed several common activities:

- Worked extensively with agency staff at TxDOT, TTA, and ATPA;
- Worked with staff of the Legislative Budget Board and Comptroller of Public Accounts;
- Researched agencies in other states with common functions;
- Reviewed legislative committee reports and attended hearings of the Senate International Relations, Senate State Affairs, Trade, and Technology Committee and House Transportation Committee;
- Reviewed state statutes, state constitution, past legislative reports and studies, and reports by the State Auditor's Office and the Legislative Budget Board;
- Attended public meetings of the Texas Transportation Commission, Motor Vehicle Board, and the Automobile Theft Prevention Authority; and
- Met, upon request, with members of the three boards.

In addition to the above efforts, Sunset staff engaged in several activities specific to the three reviews:

### Texas Department of Transportation

- Visited TxDOT district offices in Dallas and Laredo;
- Met with officials at the Federal Highway Administration;
- Attended the State Transportation Conference, the semi-annual State Public Transportation Conference, and an Intelligent Transportation Systems Conference;
- Attended an administrative hearing involving the Lemon Law in the Motor Vehicle Division;
- Met with Metropolitan Planning Organizations from Dallas, Houston, El Paso, and Laredo, and attended a meeting of the Austin Transportation Study;

- Met with various interest groups and trade associations, including Associated General Contractors, Texas Automobile Dealers Association, Public Citizen, Consulting Engineers Council of Texas, and the American Association of State Highway and Transportation Officials; and
- Worked with agency staff from the Texas Railroad Commission, Texas Water Development Board, Texas Department of Information Resources, State Auditor's Office, Council on Competitive Government, and the Office of Client Transportation Services at the Health and Human Services Commission.

### **Texas Turnpike Authority**

- Interviewed a bond rating firm, Standards & Poor's;
- Toured toll facilities in Dallas;
- Worked with Texas Public Finance Authority staff;
- Interviewed officials with the Harris County Toll Authority and officials with other state toll authorities, including Florida, Maine, and Ohio;
- Interviewed officials with the International Bridge, Tunnel, and Turnpike Association, the professional association for toll authorities; and
- Attended a working session of the Dallas Regional Mobility Coalition.

### **Automobile Theft Prevention Authority**

- Met with ATPA grantees from El Paso, Fort Worth, Laredo, and Midland/Odessa;
- Met with agency staff from the Governor's Office, Texas Department of Public Safety, Texas Department of Insurance, Office of Public Insurance Counsel, and the State Treasury;
- Reviewed statutory authority for agencies in other states with similar missions, including Michigan, Illinois, Arizona, and Wisconsin;
- Reviewed committee reports and hearings to confirm the legislative intent behind the creation of ATPA; and
- Reviewed ATPA documents and reports, previous legislation, grant administration procedures, and grant award criteria.

## Results

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### Texas Department of Transportation

The Sunset review of the Department started with answering the fundamental question of whether the functions TxDOT performs continue to be needed. As long as social and economic development are linked to an efficient transportation system, a continuing need exists to have an agency to operate that system.

Once the determination was made to recommend continuing TxDOT's function, the review focused on:

- TxDOT's role as a true transportation agency to address statewide transportation needs;
- TxDOT's ability to accomplish more with existing resources; and
- TxDOT's method for planning and selecting roadway projects.

*Addressing State Transportation Needs* - As mentioned earlier, the creation of TxDOT in 1991 continued an evolution of a highway agency into a transportation agency with a larger scope than highway construction and operations. The Sunset review assessed whether the Department is appropriately structured to meet all of the state's transportation needs.

The review found that in many respects the Department is a transportation agency in name only. The Texas Constitution drives the approach that TxDOT is a highway construction and maintenance organization. The Constitution dedicates 75 percent of state motor fuels taxes and most of vehicle registration fees to the State Highway Fund and prevents spending these revenues on non-highway purposes. Under the constitution, these revenues can only be used to acquire right of way and to construct, maintain, and police public roadways. In addition, a significant percentage of federal funds are earmarked specifically for roadway construction or maintenance. Fully 96 percent of the Department's revenues can only be used on roadway activities.

This limitation on the use of funds essentially requires TxDOT to look at highway construction and improvements as the primary means to meet transportation demands. While additional highways continue to be needed to meet today's transportation demands, this situation could change as future needs and technology change. The constitutional funding structure may need to be amended to address such changes in the future.

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*Funding restrictions essentially require TxDOT to primarily use highway construction to meet transportation needs.*

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*The Sunset review included a look at transportation-related programs in other state agencies for possible transfer to TxDOT.*

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The Sunset review also looked to see if the Department had the ability to meet the state's transportation needs by evaluating transportation-related programs in other state agencies. Specifically, the review considered the appropriateness of administering other transportation programs outside of TxDOT, including rail, client transportation services, and turnpikes.

Currently, the Texas Railroad Commission (RRC) has the responsibility to administer rail safety and planning programs. Under these programs, RRC is responsible for enforcing track safety regulations, investigating rail accidents, and administering the Local Rail Freight Assistance program. The RRC is also responsible for the improvement of at-grade rail crossings and enforcement of Federal Rail Administration rules. These activities account for most of state efforts regarding rail; however, the federal government is generally responsible for regulating railroads. While TxDOT does include rail in its statewide transportation plan and has some rail crossing safety responsibilities, RRC remains the lead agency. Sunset staff did not recommend removing this responsibility from the agency overseen by the three statewide-elected Railroad Commission members. The limited rail activities under the state's jurisdiction would not significantly change TxDOT's ability to address state transportation needs.

The client transportation services program is administered by the Office of Client Transportation Services (OCTS), located in the Texas Health and Human Services Commission. OCTS is responsible for the statewide coordination of the special transportation needs of people receiving services from the state's health and human services agencies. While client transportation may be considered an important aspect of public transportation, TxDOT has not fully incorporated client needs into public transportation planning or programs. The result is wasted resources and ineffective movement of people. The Sunset review examined the relationship between OCTS and TxDOT to identify ways to improve the delivery of client transportation services and the feasibility of consolidating these functions. TxDOT **Issue 7** provides guidance to OCTS and TxDOT to work together more closely to serve these needs and sets in motion efforts to further examine the feasibility of consolidation.

The responsibility for toll roads also exists outside TxDOT. Currently, the Texas Turnpike Authority is the only state agency that may finance and construct toll projects. The staff recommendation concerning TTA is contained in its section of the report and is discussed later in this summary.

*Maximizing Existing Resources* - The Sunset staff looked for ways to improve operations to allow TxDOT to do more with existing resources. Several aspects of the Department's business, including right-of-way acquisition, financing, contracting, and other business aspects were researched. While staff does not recommend changes to the current right-of-way acquisition process, it makes other significant recommendations in this area.

Despite its dedicated funding stream, the Department still has a strong need to maximize its existing resources if it is to have the financial ability to meet future transportation demands. As a "pay-as-you-go" agency, TxDOT's ability to pay for needed transportation projects has begun to erode. TxDOT reports that it is now only able to meet 40 percent of highway needs. Rising construction cost and population growth strongly affect TxDOT's ability to meet projected needs. However, the agency is specifically limited by the constitution from using debt to help finance or leverage the financing of transportation projects. Additionally, several statutory provisions limit the Department from loaning highway funds to other entities for use in planning, constructing, or maintaining transportation projects. The review looked at ways to assure TxDOT the full advantage of increases and innovations in federal highway financing. TxDOT **Issue 1** addresses one of these innovative financing opportunities.

In addition to using existing resources to better leverage transportation projects, staff examined ways to increase revenues available from existing sources. Federal changes in the point of tax collection for motor fuels has resulted in significant revenue increases. States, following the lead of the federal government, are also seeing positive results. While Texas has taken alternative steps in the past to strengthen the enforcement of motor fuels tax collections, the possibility of significant revenue gains may exist by moving the tax collection point. TxDOT **Issue 6** recognizes the need for additional study of this issue by the Comptroller and TxDOT to fully assess the potential gains and costs associated with such a change.

Beyond extending or recommending additional resources, staff looked for improvements in the way TxDOT conducts business, especially in its contracting processes. Specifically, staff examined the link between contractor on-time performance with the contractor prequalification process. Currently, TxDOT does not link timeliness with a contractor's ability to obtain additional highway construction contracts. As a result, contractors that fail to complete highway projects on time can continue to bid on new contracts. TxDOT **Issue 2** deals with linking contractor timeliness with the ability to obtain future contracts.

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*As a "pay-as-you-go" agency with limited resources, the review focused on ways to allow TxDOT to do more with current funding.*

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*In the area of contracting for services, the review checked on the Department's progress at balancing in-house and outside engineering.*

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The review also addressed ways to increase the efficiency of TxDOT's contracting process. The current process of receiving contract bids is unnecessarily labor intensive. TxDOT **Issue 3** discusses ways for TxDOT to receive contract bids electronically, reducing paperwork and administrative costs, while improving service to the contracting community.

The Legislature has directed TxDOT to use outside consultants to provide preliminary and construction engineering. The review looked to see if the Department has achieved the required balance between outside and in-house engineering. TxDOT **Issue 4** addresses this issue and provides guidance to the Department in how to achieve an appropriate balance in the use of engineering services.

The review also examined the administrative hearings function of the Motor Vehicle Division (MVD) to assure that these hearings meet the state's goals of independence, cost effectiveness, and quality. While other hearings functions of the Department have already been transferred to the State Office of Administrative Hearings (SOAH), MVD continues to conduct hearings on enforcement cases, the Lemon Law, and dealership/franchise matters. TxDOT **Issue 5** discusses the advantages of moving these hearings to SOAH.

*Planning and Selecting Roadway Projects* - The final focus area for the TxDOT review was the Department's process for choosing the roads it builds. The staff sought to understand how roadway projects are selected and how financing relates to this process. A brief summary of the selection process is contained in the background to the TxDOT section of the report. A series of appendices describes in more detail the financial aspects of this process and provides statistical information regarding the agency's construction and maintenance spending statewide.

### **Texas Turnpike Authority**

The review of the Texas Turnpike Authority began by addressing the fundamental question of whether the function, planning and constructing toll projects, is necessary. The staff concluded that the combination of limited financial resources and growing transportation demands requires that the state maintain the ability to construct transportation projects that are financed through revenues other than motor fuels taxes. However, while the state benefits from the ability to build toll projects, a separate agency is not needed to perform the function. Based on the following information, the staff recommended consolidating TTA into TxDOT. In

addition, TTA's bonding authority should move to the Texas Public Finance Authority.

The analysis of the need for a separate toll authority was influenced by previous legislative intent to consolidate TTA and TxDOT. In 1991, the Legislature clearly stated its intent to merge the two agencies in 1997, contingent on the passage of a constitutional amendment that would ease financial restrictions between the two agencies. The constitutional amendment passed in November 1991. However, before the consolidation occurs, the Sunset Commission was to evaluate the feasibility of the merger based on an evaluation of cost, impact on the availability of federal funds for turnpike construction, and the need for future toll projects. The staff also looked at TTA's ability to construct future toll projects independently of TxDOT. The review of these criteria led to the conclusion that a consolidation of the two agencies would have no negative cost impact, but could improve the flexibility and use of available federal funds and help the state meet future transportation needs.

The Sunset staff, as required by statute, also considered the possibility of a partial consolidation. However, fragmenting toll authority by region would not help meet statewide transportation demands and could result in the inability to fully use available federal funds for toll projects. The results of this analysis are contained in TTA **Issue 1**.

### Automobile Theft Prevention Authority

As with the other two reviews included in this report, the staff first examined the need to continue the agency's functions. While a direct correlation between ATPA efforts and auto theft rate decreases is difficult to make, rates have significantly declined over the past few years. The staff review did find that ATPA grants successfully helped local law enforcement agencies put 235 officers on the street in 1995, strengthening auto theft efforts statewide. For these reasons, the staff found that the function of administering automobile theft prevention grants should continue. The review then focused on determining the most effective and efficient administrative structure to perform the function. The Legislature clearly stated its intent that ATPA share administrative costs and services with TxDOT, and not operate separately as an independent agency. The evolution of ATPA into a quasi-independent agency raises concerns over the administrative efficiency of the program. ATPA **Issue 1** provides a framework for ATPA and TxDOT to work together more effectively without affecting the independence of the Authority to make grant award decisions.

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*The review of the Turnpike Authority started with the premise that consolidation should occur unless the staff found evidence to the contrary.*

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*ATPA's review found an effective grant program that did not need to be run by an independent agency.*

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The review also examined ways to maximize the state's earnings from ATPA assessments. Currently, state law allows insurance companies to retain these assessments for long periods of time before remitting them to the state. ATPA **Issue 2** addresses the timing of these collections, to allow the state to earn more interest on the assessments and thus increase the funds available for auto theft prevention efforts.

As a result of the Sunset review activities described above, the staff offers the following recommendations concerning the Texas Department of Transportation, the Texas Turnpike Authority, and the Auto Theft Prevention Authority. These recommendations are discussed in detail in the issues presented in this report.

## Recommendations

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### Texas Department of Transportation

1. Authorize the Department's use of infrastructure banks to take full advantage of federal highway funding flexibility.
2. Improve TxDOT's ability to link contractor timeliness to eligibility for future contracts.
3. Remove obstacles to automating the Department's contracting bidding system.
4. Use the Council on Competitive Government to help TxDOT balance in-house and contracted engineering services.
5. Improve Motor Vehicle Division hearings through transfer to the State Office of Administrative Hearings.
6. Require TxDOT and the Comptroller to study moving the point-of-accountability for collecting motor fuels taxes.
7. Include transportation needs of Health and Human Services clients in TxDOT's public transportation planning efforts.
8. Continue the Texas Department of Transportation for 12-years.

### Texas Turnpike Authority

1. Consolidate the functions of the Texas Turnpike Authority within the Texas Department of Transportation and transfer bonding authority to the Texas Public Finance Authority.

## Automobile Theft Prevention Authority

1. Continue the Automobile Theft Prevention Authority within the Texas Department of Transportation.
2. Maximize earnings on Auto Theft Prevention assessment collections.

## Fiscal Impact

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### Texas Department of Transportation

Although precise savings or revenue gains cannot be estimated, the recommendations in the report relating to TxDOT will improve the Department's ability to serve transportation needs with existing resources. The creation of a State Infrastructure Bank (SIB) would allow TxDOT to gain revenue through interest earned on loans to participating governments or private entities for the construction of transportation infrastructure projects. By providing a financing mechanism for constructing transportation projects, a SIB would also enable the Department to meet more of its transportation needs without incurring debt or diverting highway funds for non-highway purposes.

Automating the contract award process will streamline the way it awards construction contracts. This change, along with preventing tardy contractors from future bidding, should improve the cost effectiveness of the Department's large highway construction activity. In addition, the study of the point of collection of the motor fuels tax could lead to a significant revenue gain.

The recommendation to continue the Department would require its annual appropriations of approximately \$3.2 billion to continue.

### Texas Turnpike Authority

The consolidation of TTA with TxDOT would have no direct fiscal impact to the State Highway Fund or General Revenue Fund, but would improve the flexibility and use of federal funds and further stretch highway construction dollars. The costs associated with TxDOT's administering this new toll function would be paid from toll revenue. The costs relating to TPFA's issuing revenue bonds for toll projects would continue to be paid from bond proceeds.

### Automobile Theft Prevention Authority

The recommendation clarifying the status of ATPA would result in the more cost efficient administration of auto theft efforts, but any savings cannot be estimated. The recommendation in the ATPA report changing the timing of the collection of the automobile theft assessment would result in a revenue gain to the General Revenue Fund of \$26,334 in fiscal year 1998 and \$184,340 in fiscal year 1999 and each year thereafter.

<b>Fiscal Year</b>	<b>Revenue Gain to General Revenue Fund</b>	<b>Change in Number of FTE from Fiscal Year 1996</b>
1998	\$26,334	+1
1999	\$184,340	+1
2000	\$184,340	+1
2001	\$184,340	+1
2002	\$184,340	+1

**TEXAS DEPARTMENT OF TRANSPORTATION**

# ISSUES

# Issue 1



## Authorize the Department's Use of Infrastructure Banks to Take Full Advantage of Federal Highway Funding Flexibility.

### Background

Texas is a large and geographically diverse state that relies heavily upon transportation systems to meet its economic and social needs. As a result, the Texas state highway system is among the largest in the country, with 77,000 miles of highways and approximately 48,000 bridges. Despite its size, the highway system continues to be stressed by economic development and population growth. New demands, ranging from urban congestion to the anticipated increase in truck traffic from the North American Free Trade Agreement (NAFTA), have grown dramatically. The ability to finance these transportation needs will be strained and innovative or creative alternatives to existing traditional financing methods will be required.

The Texas Department of Transportation (TxDOT) is responsible for addressing state transportation needs. Resources to meet these needs come mainly from a constitutionally-dedicated State Highway Fund, supported largely by state and federal motor fuels taxes. These resources must be used primarily for highway purposes and are used to plan, design, construct, and maintain the state highway system. TxDOT also attempts to meet increasing needs through assistance to public transportation and improvements to aviation and waterway infrastructure.

Over the past decade, the federal government has authorized ways to leverage existing surface transportation resources. Until recently, these efforts have focused primarily on loosening control over federal funds for use in toll projects. In anticipation of these pending federal changes, the Texas Legislature and the voters approved a constitutional amendment in 1991, authorizing loans from the State Highway Fund to the Texas Turnpike Authority (TTA), for the construction of toll projects. With the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991, the limit of

*Portions of the highway system are stressed by economic development and population growth.*

toll project costs that could be paid from federal funds increased from 30 percent to 50 and 80 percent for toll roads and bridges, respectively.

In 1995, Congress enacted the National Highway System Designation Act, further changing the role of federal-aid in financing highway construction. This Act was developed in response to pressure placed on Congress by states needing additional funding options to meet the public's transportation needs. While once again increasing the percentage of toll project costs that can be paid from federal highway funds, the Act also increased highway financing flexibility by authorizing the use of a number of new financial mechanisms. These options and Texas' ability to use them are shown in the chart, *NHS Act Authorized Financing Options*.

<b>NHS Act Authorized Financing Options</b>		
<b>Financing Option(s)</b>	<b>Implementation Status in Texas</b>	<b>Description</b>
State Infrastructure Bank (SIB) Pilot Program	Statutory Limitations	Allow creation of a bank using federal funds to make loans, enhance credit, subsidize interest rates for highway, transit and rail projects.
Bond and other Debt Instrument Financing for Reimbursement as Construction Expenses	Constitutional Limitation	Allow state to use federal funds for bond principal, interest costs, issuance costs, and insurance on Title-23 projects.
Advance Project Construction	No Limitations to Implementation	Removes restrictions on advancing construction projects prior to federal approval as long as the project is in the State Transportation Improvement Plan (STIP).
Donations of Funds, Materials, or Services	No Limitations to Implementation	Expands the types of private funds, materials, or assets that can be donated to federally assisted projects.

*Recent federal legislation has authorized new financial mechanisms with more flexible approaches to highway financing.*

In response to the financing alternatives available under the Act, TxDOT applied, and has been accepted by the U.S. Department of Transportation, to be one of the ten designated states in the State Infrastructure Bank (SIB) pilot program. A SIB is a revolving investment fund established to facilitate and encourage investment in eligible transportation infrastructure projects sponsored by public or private entities. Through a SIB, a state can use initial capital to make

loans, provide credit enhancements, subsidize interest rates, issue letters of credit, or provide other forms of financial assistance for transportation projects. All disbursements would be repaid with interest and re-deposited into the SIB.

The SIB may loan funds to any project that is eligible for federal funds, including mobility, rehabilitation, and safety projects. Activities such as transit capital projects, freight rail, and port access would also be eligible based on the availability of non-highway funds. The NHS Act requires separate SIB accounts for highway and non-highway funds. Potential users include municipalities, counties, and county transportation districts such as Road Utility Districts (RUDs), transportation authorities such as the Dallas Area Rapid Transit (DART), private interests, and transportation corporations.

The NHS Act authorizes the use of up to 10 percent of federal highway apportionment funds and federal transit funds as initial capital for a SIB. States participating in a SIB would be required to provide a minimum match equal to 25 percent of federal funds used in establishing the bank.

The review focused on the flexibility of current funding sources and assessed whether TxDOT's current statutory authority allows the state to take full advantage of new and innovative federal funding options, specifically SIBs.

## Findings

- ▼ **Transportation needs are going unmet because of limited financial resources and increased demand.**
  - ▶ The gap nationwide between needed transportation infrastructure investment and available resources is significant and growing. According to the 1995 *Status of the Nation's Surface Transportation System: Conditions and Performance* report, highway and transit systems require an additional 41 percent in funding over present levels to maintain current conditions. Improving systems to optimal levels would require a doubling of current capital investment in highways and transit.<sup>1</sup>
  - ▶ Although the Texas state highway system is highly regarded and its quality typically ranks among the best in the nation, signs that the system is deteriorating are evident.

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*TxDOT has rated almost 14,000 bridges in Texas as functionally or structurally deficient.*

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TxDOT has classified an estimated 6,600 of 33,000 bridges in the state's highway system and an additional 7,100 of 14,400 off-system bridges as functionally or structurally deficient and in need of repair or replacement. Texas currently ranks 23rd among all states in bridge sufficiency.<sup>2</sup>

Between 1993 and 1995, the condition of statewide highway pavement conditions has generally declined. The pavement condition for all categories of highway pavement have generally worsened. For fiscal year 1995, an estimated \$1.55 billion would be needed to fix all roads needing repairs, up from \$1.10 billion in 1993.<sup>3</sup>

Congestion costs, or the costs associated with traffic delays and excess fuel consumption, are also increasing. In 1992, the latest year available, congestion in the seven Texas urbanized areas resulted in a cost of approximately \$4.2 billion, an eight percent increase from 1991. Dallas and Houston both exceeded \$1 billion. In addition, both Dallas and Houston ranked in the top ten cities nationally for congestion costs per registered vehicle and per capita.<sup>4</sup>

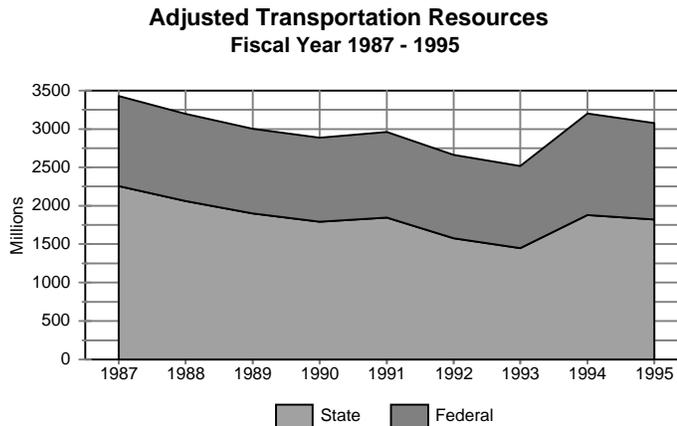
- ▶ Infrastructure needs associated with congestion have outpaced available resources. TxDOT estimates restoring and maintaining the current highway system will cost more than \$20 billion for fiscal years 1995 through 1999.<sup>5</sup>
- ▶ As demands on the state highway system have increased, traditional revenues for the construction and maintenance of the state highway system, state and federal motor fuels taxes, have not increased. In fiscal year 1995, TxDOT received approximately 78 percent of its revenue from these sources. The remaining resources are derived from registration and titling fees and sales taxes on lubricants. The chart, *Adjusted Transportation Resources, Fiscal Year 1987 - 1995*, shows that, when adjusted for inflation, highway resources have decreased slightly since fiscal year 1987.
- ▶ The federal government may add to the State's funding crisis for highway system improvements and transportation programs. Congress is indicating that it may decrease federal funding for transportation by targeting both transit and the Airport Improvement Programs for funding cuts.<sup>6</sup>

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*While highway demands have increased, revenues for construction and maintenance have decreased slightly.*

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In addition, Congress may eliminate the federal motor fuels tax, allowing states to increase state taxes to replace lost



Amounts adjusted for inflation; base year 1995

revenue.<sup>7</sup> If this were to happen, Texas transportation programs would not fully recoup losses in revenues because 25 percent of state motor fuels tax revenues are constitutionally dedicated to the Permanent School Fund. Therefore, increases in the state tax would have to be greater than the existing federal tax just to maintain the current level of revenue.

- ▮ The likelihood of a tax increase to generate additional revenues is remote given the relatively high tax burden already on a gallon of gas, approximately 35 percent of the cost to the consumer, and the unpopularity of tax increases.
- ▼ **Constitutional and statutory restrictions limit the full use of resources available to meet transportation needs.**

  - ▮ Other than authorizing loans to TTA, the Texas Constitution and the Transportation Code still strictly limit the purpose and use of the State Highway Fund. Revenues from the fund may be used for the sole purpose of acquiring right-of-way, constructing, maintaining, and policing public roadways — ensuring that motor fuels tax revenues are not diverted to non-highway purposes. Additionally, the Transportation Code further limits the use of these revenues to the improvement of the state highway system. This restricts TxDOT's ability to fund projects for public transit, rail, or other modes of transportation. The state constitution also prohibits the pledging of the state's credit.
  - ▮ TxDOT has no statutory authority to provide grants or loans to other political subdivisions of the state or to private entities for

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*State law does not authorize TxDOT to provide grants or loans for most transportation projects.*

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transportation project purposes except for certain aviation projects. These restrictions prevent TxDOT from using many innovative financing methods for projects, other than toll projects.

- ▼ **TxDOT's inability to enhance existing resources to meet state transportation needs has caused municipalities and other political subdivisions to pursue innovative financing methods for transportation system improvements.**
  - ▶ Municipalities, counties, and other political subdivisions of the state have begun using creative financing to allow needed transportation infrastructure to be built quickly. The state directly benefits from these locally initiated projects through reduced congestion, improved air quality, and enhanced trade and economic development.

The shortfall in state transportation resources prompted the Dallas Metropolitan Planning Organization (MPO) to offer TxDOT the use of \$5 million, in federally-apportioned funds controlled by the MPO, to leverage an equal matching share of state money to finish an extension of Highway 360, through Mansfield. This action has been praised as a demonstration of how local governments can encourage the state to provide necessary infrastructure through cost sharing.<sup>8</sup> The Texas Transportation Commission recently received the proposal.

The explosion of economic and population growth in Harris County in the 1980's outpaced TxDOT's ability to address expansion and congestion mitigation needs. The absence of Texas Turnpike Authority (TTA) projects prompted Harris County to establish a County Toll Authority to construct needed infrastructure. Since 1983, the Authority has built approximately 50 miles of highway in the Houston metropolitan area, supported through tolls and backed by the county's ad valorem tax base. These projects were primarily constructed using locally-generated revenues, reducing the need for state highway funds and allowing TxDOT to better address other needs with the "unused" funds. In addition, Harris County plans to construct more than 32 additional miles of toll road.<sup>9</sup>

- ▶ The construction or improvement of highways and bridges by local governments, while beneficial, would work better if

coordinated and supported by the statewide transportation agency — TxDOT. Coordination is essential to ensure local projects meet transportation needs and compliment the existing state highway system. Examples of poor coordination are the Houston Ship Channel Bridge and the Solidarity Bridge in Laredo. A lack of coordination resulted in the bridges being underused due to inadequate roadways leading to the bridges.

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*TxDOT does have the flexibility to loan funds to supplement toll projects.*

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- ▼ **The state has recognized the need, in transportation as well as other state programs, to provide financial flexibility to meet pressing state needs or priorities.**
  - ◆ The Legislature has taken steps to reduce barriers to highway funding flexibility. Efforts to date have focused on providing funds for toll projects, specifically, allowing TxDOT to loan state and federal funds to supplement toll revenues.

An example of how the state benefits through loans to toll entities is the State Highway 190 project in the Dallas metropolitan area. When TxDOT planned to construct the project entirely with state highway funds, the anticipated completion date was 2015. However, by loaning TTA \$135 million and donating interchanges and right-of-way, the state believes the project can be completed 14 years earlier. The remaining cost, an estimated \$500 million, will be paid through revenue bonds and surplus funds from existing TTA toll projects.<sup>10</sup> The state benefits by paying approximately 50 percent of the project cost and having an earlier completion, and the Dallas area benefits through reduced congestion and increased mobility.
  - ◆ In 1993, the Legislature authorized TTA to establish a revolving fund. The provisions of the revolving fund allow TTA to deposit in the fund advances it receives from TxDOT and other sources. These advances can then be leveraged to finance new projects, provide matching funds for federal grants, provide credit enhancement for bonds, provide security for or payment of debt for TTA projects, and for any other reasonable purpose. Advanced funds must be reimbursed to the revolving fund if the project is successful.<sup>11</sup> To date, the revolving fund has not been activated.

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*The Legislature has authorized alternative financing options for economic development such as the revolving fund operated by the Texas Water Development Board.*

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- ▶ The Legislature has also authorized the use of financing options that increased the flexibility of existing program resources to address needs other than transportation. A good example is the State Revolving Fund (SRF), administered by the Texas Water Development Board (TWDB). The value of the SRF has increased from \$650 million to over \$1 billion. Currently, TWDB believes it can loan up to \$250 million annually. TWDB may accept applications from all state political subdivisions, including cities and counties.<sup>12</sup> The SRF operates as follows:

- Provides loans at interest rates lower than the market can offer to any political subdivision with the authority to own and operate a sewage system.
- Provides loans for the planning, design, and construction of sewage treatment facilities, recycling and reuse facilities, collection systems, stormwater pollution control projects, and nonpoint source pollution control projects.
- Provides loan term choices for borrowers: (1) a traditional long-term, fixed rate loan at the beginning of construction, or (2) a short-term, variable rate construction period loan that converts to a long-term, fixed rate loan within 90 days of project completion. Repayment of the loans occurs over a maximum of 20 years.<sup>13</sup>

Nationally, a federal investment of \$8.5 billion in wastewater SRFs has translated into \$15 billion available at the state level for loans. Unlike direct grants, this capitalization can potentially be reused in successive generations of projects. The 18 states that chose to establish an SRF for wastewater programs have almost twice the loan dollar volume as the 32 states that chose not to leverage funds through an SRF.<sup>14</sup>

- ▼ **Through SIBs, TxDOT would be able to address funding limitations while meeting its mandates to enhance existing resources and establish public-private partnerships.**
- ▶ The Texas Transportation Commission is statutorily charged to enhance existing resources by maximizing the generation of revenue from existing assets of the Department and increasing the role of the private sector through public-private projects. The creation of a SIB would help address this mandate by:

- allowing TxDOT to use limited funds more creatively, which would free up funds for projects that most need traditional funding;
  - enabling financial assistance for transportation or transit projects to be tailored for specific project and community needs; and
  - moving up the completion of needed projects that otherwise would be delayed because of unfavorable or limited financial terms, allowing a community to capitalize on any economic and congestion relief benefits associated with the completion of the project.
- ▶ Creating a SIB would also help address a statewide goal, as expressed in the Statewide Strategic Plan, to increase the use of public/private partnerships in meeting the needs of the state. Currently, private entities or investors are reluctant to become involved with transportation projects due to high front end costs associated with engineering studies and environmental assessments. Loans from a SIB could be used to concentrate state financial assistance during these phases of a project, helping stimulate private interest and investment.
- ▼ **SIBs would complement traditional transportation resources and provide flexibility regarding project selection and management.**
- ▶ Beyond simply authorizing the use of existing federal apportionments in SIBs, recent proposals indicate that additional federal highway funding may become available to those states that have established and are using SIBs. In the President's proposed fiscal year 1997 budget, \$250 million has been earmarked for SIBs.<sup>15</sup>
  - ▶ Establishing a SIB would not require any additional state appropriations or diversions of existing highway resources for non-highway purposes. The NHS Act requires separate accounts within the SIB to ensure transit and highway funding are not mixed.

As discussed previously, TWDB has experienced good success with a similar type of revolving fund. Based on that experience, the SIB fund could be expected to grow over time, providing additional resources for transportation projects.

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*Additional federal funds may be available for states with SIB programs.*

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- ▶ TxDOT's current project selection process relies upon two basic principles: available funding and project priority based generally on a cost efficiency ranking. Even if the project meets these criteria, several years may pass before funds are available to fund the project. Currently, the only way to enhance a project's standing is for a political subdivision to donate essential elements of the project, such as right-of-way or pledge local money to supplement funding. Through the use of a SIB, a loan could help support the construction of a project.
- ▶ TxDOT would also be able to manage its scarce resources through loans to eligible projects, preserving funds for projects that may require total state financial support. This would allow TxDOT to stretch its use of highway funds to meet more state transportation needs and improve the timeliness of project completion.

## Conclusion

TxDOT is responsible for meeting the majority of the state's transportation needs. However, the Department's financial ability to meet current and future transportation needs has begun to erode. Historically, TxDOT has been a "pay-as-you-go" agency and is constitutionally limited from using debt to help finance or leverage the financing of transportation projects. Additionally, TxDOT has no statutory authority to loan state highway funds to other entities, except for turnpike projects, for use in planning, constructing, or maintaining transportation systems.

Use of a newly available financial tool, a State Infrastructure Bank, could allow TxDOT to better meet the transportation needs of the state without authorizing state debt or increasing taxes. Without the use of this creative financing option, Texas risks falling further behind in meeting its transportation needs.

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*The Department could use a SIB to finance more projects without increasing debt or taxes.*

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## Recommendation

### Changes in Statute

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- **Authorize TxDOT to use federal funds and any required state match, within constitutional limitations, to create a State Infrastructure Bank.**

- Authorize TxDOT to use funds in the State Infrastructure Bank for loans, interest rate subsidies, or other constitutionally acceptable forms of credit enhancements to local, county, or approved private entities for the construction of transportation infrastructure projects, including transit.
- Require that SIB funds may be used only for projects with a demonstrated public benefit.
- Require that funds in the State Infrastructure Bank be maintained in the State Treasury for investment purposes.
- Require TxDOT to report to the Legislature by January 1, 2001 on the status and use of the State Infrastructure Bank.

These recommendations would significantly increase TxDOT's statutory authority to use flexible financing methods for state transportation projects. The chart, *Current and Recommended Financing Authorizations*, summarizes the recommended changes.

Initial start-up funds for the SIB will be federal funds and non-federal matching funds. The non-federal match would be provided from state highway funds. Additionally, local and private sources of matching funds may be available based on the projects ultimately financed through the SIB. These recommendations do not authorize TxDOT to incur debt. Constitutional restrictions would still be applicable.

<b>Current and Recommended Financing Authorizations</b>		
	Current Authorization	New Authorization
Forms of Financial Assistance	Loans Credit Enhancement Interest Rate Subsidies	None
Eligible SIB Assistance Recipients	TTA or Successor	Quasi-public Entities (RUDs) Public Entities (Cities, Counties) Private Entities
Eligible Projects	Toll Roads	Non-toll Roads Transit Intelligent Transportation System Waterway Intermodal Projects Rail
Source of Capitalization	Federal-aid Highway Funds State Highway Funds Loan Repayments	Interest Earnings

Separate accounts for the SIB, for highway, transit, or other transportation modes, would be created within the State Highway Fund so no diversion of highway funds for non-highway purposes would occur. Constitutional protection of highway funds would not change with this recommendation. Investment of funds in the SIB would be done through the State Treasury and restricted to low-risk, government-backed securities to minimize any risk of losing state highway funds through poor investment decisions. Additionally, all interest earned by the SIB would accrue to the SIB and its individual accounts. Funds management systems and procedures for the SIB would be established by TxDOT, and the administrative costs would be limited to two percent of the SIB corpus, as allowed under the NHS Act. Federal funds, such as Congestion Mitigation and Air Quality funds, attributable to air quality non-attainment urbanized areas over 200,000 and controlled by their Metropolitan Planning Organization, cannot be used for the SIB without permission.

The SIB would primarily provide financial assistance to highway toll and non-toll projects because the majority of transportation resources are dedicated for highway purposes. However, if other financial resources, other than the highway fund become available, TxDOT would be able to use the SIB for all transportation modes, including transit, rail, and waterway, as well as intermodal and intelligent transportation system projects.

The SIB would provide assistance at interest rates comparable to or below market rates, at the discretion of TxDOT and the Texas Transportation Commission. Rates would be determined by the specific needs and capabilities of project sponsors. The SIB would provide applicants with flexible repayment terms. The terms should be consistent with the NHS Act provisions requiring that repayments occur no later than five years after either project completion or when the facility is open to traffic. A repayment period could not exceed 30 years.

The state constitution allows state highway funds to be loaned to TTA or any successor agency. Therefore, regardless of legislative action on the possible consolidation of TTA and TxDOT, the Department's ability to make loans or other financial incentives available for toll projects would continue to exist.

TxDOT would be required to report to the 77th Legislature on the status of SIB funded projects and on the use of the SIB. The report should specifically address:

- financial and operational status of assisted projects;
- financial condition of the SIB, including fund balances;
- cumulative value of investments made; and
- extent that SIB projects helped meet transportation needs in the state.

This report would provide the Legislature with a track record on the SIB on which to base a decision on its long-term future. If the Legislature determines that the benefits

derived from the SIB are insufficient to warrant its continuation, all funds in the SIB shall be transferred to the State Highway Fund, including interest earned.

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## Fiscal Impact

These recommendations would have no direct fiscal impact on the State Highway Fund. The creation and maintenance of a SIB would be financed through existing resources appropriated to TxDOT. The majority of the start-up costs for the SIB would be borne through use of federal highway funds. If appropriated, TxDOT could deposit additional state funds, beyond any required match, into the bank.

Using funds from the State Highway Fund to match federal contributions to the SIB would reduce the dollar volume of projects that could be completed during the time that TxDOT builds the nucleus of funds needed to make the SIB operational. This may result in some projects that are ready for funding to be temporarily delayed.

A positive gain to the SIB through interest collected on loans can be expected. The gain from interest cannot be estimated without knowing the amounts loaned and at what interest rates. Additionally, gains would be realized through the investment of funds located in the SIB. These amounts also cannot be estimated at this time.

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<sup>1</sup> U.S. Department of Transportation, *State Infrastructure Banks: A Primer*, November 1995, p. 1.

<sup>2</sup> Texas Department of Transportation, *Bridge Replacement and Rehabilitation Program (BRRP), Information Booklet - "Pocket Facts"* for FY 1996.

<sup>3</sup> Texas Department of Transportation, *Condition of Texas Pavements Report - 1995*, pages 7.9 and 9.1.

<sup>4</sup> Texas Transportation Institute, *Urban Roadway Congestion - 1982 to 1992, Volume 1: Annual Report, Research Report 1131-7*, p. 27-29.

<sup>5</sup> Texas Department of Transportation, testimony regarding interim charges before the House Committee on Transportation, March 20, 1996.

<sup>6</sup> Texas Department of Transportation, Federal Flyer, March 1, 1996 Volume II, No. 6.

<sup>7</sup> Texas Department of Transportation, Federal Flyer, March 7, 1996, Volume II, No.7.

<sup>8</sup> Fort Worth Star - Telegram, *Local Action*, Editorial, February, 23, 1996.

<sup>9</sup> Harris County Toll Road Fact Sheet, January 1995.

<sup>10</sup> Texas Department of Transportation, Application to U.S. Department of Transportation for State Infrastructure Bank Program Designation, January 30, 1996.

<sup>11</sup> Texas Turnpike Authority, History of the Texas Turnpike Authority.

<sup>12</sup> Telephone Interview, Kevin Ward, Development Fund Manager, Texas Water Development Board, April 4, 1996.

<sup>13</sup> Interview, Kevin Ward, Development Fund Manager, Texas Water Development Board, February 23, 1996.

<sup>14</sup> U.S. Department of Transportation, *State Infrastructure Banks: A Primer*, November 1995, p. 3.

<sup>15</sup> Texas Department of Transportation, Federal Flyer, March 25, 1996, Volume II, No. 8.



## Issue 2



### Improve TxDOT's Ability to Link Contractor Timeliness to Eligibility for Future Contracts.

#### Background

The Texas Department of Transportation (TxDOT) is the largest state contractor of goods and services. In fiscal year 1995, TxDOT entered into approximately 3,000 contracts worth more than \$2 billion for highway construction or maintenance projects. The Texas Transportation Commission's policy is to protect the interest of the citizens of Texas by ensuring that contracts for highway improvements are awarded only to contractors who qualify as the lowest responsible bidder. The Department has established procedures and criteria, focused on bid accuracy and the calculation of the lowest bid, to determine who will be awarded contracts. Additionally, TxDOT uses a pre-qualification process to identify contractors qualified to bid for a contract and to determine a contractor's bidding capacity.

To be considered a qualified bidder, a contractor must show adequate financial resources, available equipment, and the ability to successfully perform the requirements of the proposed project in a timely manner. In addition, audited financial statements must show that the contractor has a positive net working capital, or current assets greater than current liabilities. TxDOT uses the amount of a contractor's working capital to determine bidding capacity, and a contractor survey to assess experience and available workforce and equipment.

TxDOT is statutorily required to competitively bid each contract for highway improvements or for materials used in improving the state highway system. If an award is made, the Texas Transportation Commission must award it to the lowest bidder, except in the following circumstances:

- lack of required certification signatures;
- insufficient guaranty check;

*TxDOT enters into more than \$2 billion worth of construction and maintenance contracts each year.*

- incomplete or inaccurate bid items and prices;
- the submission of a mathematically unbalanced bid;
- evidence of collusion among the bidders; or
- a lowest bid higher than TxDOT's estimate.

In addition, the Department may prevent contractors from bidding on a project if they have been suspended or debarred. Debarment is the disqualification of a contractor's ability to bid on highway improvement contracts or participate as a subcontractor. TxDOT may only debar contractors on construction projects for involvement in a bidding crime such as bid rigging or collusion. The Department may debar contractors from maintenance contracts for performance reasons, such as abandonment of a project.

Once TxDOT accepts the lowest bid, it awards a contract to the contractor. In executing contracts with TxDOT, contractors attest to their capability to perform the required work and to complete the project within the specified time.

Provisions in the contract, as laid out in the TxDOT specification manual that establishes standards for all contracts, require the contractor to complete the project:

- with diligence as necessary to finish the project on time;
- without starting new operations to the detriment of work already begun; and
- with minimum interference to traffic.

The standards also state that the contractor will be expected to accelerate work at their own cost until the project is on schedule.

Once work begins on the project, the TxDOT Area Engineer conducts monthly assessments. The Department uses the project assessments to rate current projects based on eight criteria, including quality of work, contract compliance, and project execution and progress.

The review of TxDOT's process of accepting bids and awarding contracts focused on methods used to prequalify bidders and monitor contractor performance, as well as the Department's ability to use performance in bidder qualifying.

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*Contractors attest to their ability to finish a project on time.*

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## Findings

- ▼ **Highway construction delays are costly to communities and highway users.**
  - ▶ In 1992, TxDOT and the Texas Transportation Institute, calculated that costs associated with congestion in the seven largest urban areas in Texas were approximately \$4.2 billion. This cost estimate is based on all causes of congestion. While construction delays certainly are not responsible for all congestion in Texas cities, they are one source of the problem that TxDOT could successfully address.<sup>1</sup>
  - ▶ The specific costs imposed on the traveling public and local businesses by highway construction are difficult to calculate. However, TxDOT is aware of these costs and has attempted to account for them by using time-sensitive contracting for projects causing significant traffic or business disruption. These projects are bid on both the cost in materials and labor, along with the time required to complete the project. While TxDOT must still take the lowest bidder, this form of contracting allows TxDOT to account for the time involved in completing a project. TxDOT has estimated the daily cost for completing a project as high as \$25,000.<sup>2</sup> Therefore, in instances of project completion delays, businesses and highway users are incurring a cost.
- ▼ **TxDOT does not link contractor project performance, including timeliness, with the determination of future bidding qualifications.**
  - ▶ TxDOT bases its determination of a responsible bidder on the financial ability of the contractor to complete the project. The Department does not consider a contractor's past performance of completing projects in a timely manner in its assessment of qualified or responsible bidders, nor does it maintain a central file or record of project assessments by contractor.
  - ▶ Since TxDOT does not consider the past performance of a contractor, a contractor who routinely fails to complete projects in a timely manner or has received a poor or marginal rating from TxDOT, still retains full bidding capacity and the ability to be awarded state highway construction or maintenance contracts.

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*A contractor who routinely fails to complete projects on time can still be awarded more state highway contracts.*

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- ▶ A November 1994 report by the State Auditor's Office (SAO) identified TxDOT's failure to link monthly project performance assessments to contract awards.

SAO recommended that the Department conduct overall performance assessments of contractors and use project assessments in determining contractor's bidding capacity. In addition, the report recommended that contractors who are late in completing a project should not be allowed to bid on other contracts. Despite these recommendations, TxDOT has not changed the use of the monthly project performance assessments. In its response to the SAO report, TxDOT stated that overruns of contract time is not a measure of standard or substandard work.<sup>3</sup>

- ▶ The Legislature has a continuing interest in state agency contracting procedures, as evidenced through the interim charges given the Joint General Investigating Committee. A specific charge of the committee is to study and make recommendations regarding precontract procedures, including:
  - investigating potential contractor's qualifications, background and past performance;
  - developing clearly-stated contract performance measures;
  - auditing of contractor performance and payments to contractors; and
  - assessing contract payment methods to ensure the state gets full value for taxpayer funds.

▼ **Some highway contractors are consistently involved in project time overruns, but still obtain additional contracts.**

- ▶ While most contractors meet timeliness requirements, a review of recent projects, comparing the percentage of project time charged versus percentage of project completion, showed notable exceptions.

A review of 51 lengthier projects (three months or longer) that exceeded the time allowed in fiscal year 1995, showed that 25 exceeded the completion date by more than 10 percent, and 12 by more than 25 percent. In one instance, a project exceeded the completion schedule by 187 percent, requiring 224 days of extra construction activity.<sup>4</sup>

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*In fiscal year 1995, one contractor had 25 contracts, six of which were more than 50 percent behind schedule.*

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Based on information supplied by the Department, one contractor reviewed for fiscal year 1995 had 25 current contracts with the state, 13 of which were more than 10 percent behind the project completion schedule. Six of the contracts were more than 50 percent behind, including one that exceeded the completion schedule by more than 260 days.<sup>5</sup>

A review of construction projects in the TxDOT Partnering Program — a routine meeting between contractor and Department to address project specific concerns to reduce costly delays and changes — showed contractors still exceeded project completion schedules. Of 137 partnered projects, 20 exceeded the time allowed, or over 14 percent of the projects. In one instance, a contractor exceeded the completion date by over 48 percent.<sup>6</sup>

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*Although contractors pay damages when late, the cost is often factored into contractor's bids.*

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- ▼ **TxDOT does not have effective incentives to persuade contractors to complete projects on time.**
  - ▶ TxDOT can do little to penalize contractors for untimely completion of a project other than the assessment of liquidated damages. TxDOT assesses liquidated damages against contractors who fail to meet the project completion schedule; however, damages are calculated before bidding, allowing contractors to factor these potential costs into a bid. If contractors are successful in incorporating possible liquidated damages into their bid, the incentive to complete a project in a prompt manner is reduced or eliminated. In essence, the state pays the penalty to itself.
  - ▶ Liquidated damages are only assessed for delays that are the contractor's responsibility, not for weather, Acts of God, or other excusable reasons as determined by the Department. In determining liquidated damages, TxDOT calculates a daily rate for each project that is intended to pay the Department's cost associated with project completion delays. Liquidated damages do not generally include costs associated with congestion, travel delays, or business inconveniences.

In fiscal year 1995, contractors paid approximately \$1.9 million in liquidated damages on 102 projects, or 8.7 percent of all projects completed during the year. Delays ranged from one day to 224 days and totaled 2,682 days for the year.<sup>7</sup>

- ▼ **Performance-based contracting for state highway construction contracts has been implemented by other states to increase construction project efficiency.**
  - ▶ Although a comprehensive survey of all states is not available, several states, including Florida, Virginia, Louisiana, and North Carolina may suspend a contractor's certification to bid for falling behind in the completion of a current project. Once a contractor demonstrates an ability to complete the work already under contract on time, certification is reinstated allowing bidding on future projects.
  - ▶ All four of the states have established contractor performance criteria based on the ability to complete a project in a timely manner.
    - In Florida, a contractor is delinquent if the contract time for completing the work has expired or the project is 15 percent or more behind the approved project schedule. Florida prohibits contractors considered delinquent from bidding on other projects until they meet applicable standards, including completion of work.<sup>8</sup>
    - Virginia has specified that a contractor may be temporarily disqualified from bidding on contracts when a current contract is 10 percent behind based on the latest approved progress schedule.<sup>9</sup>
    - Louisiana may disqualify a contractor from bidding on contracts, or working as a subcontractor, if progress on a project falls behind by a certain percentage, based on a sliding scale.<sup>10</sup>
    - North Carolina may remove a contractor's prequalification number for unsatisfactory progress on an existing project. Unsatisfactory progress is considered any project where the completed work is more than 15 percent behind the project schedule.<sup>11</sup>
- ▼ **Sound performance-based contracting is essential for TxDOT to maximize limited transportation resources and meet the state's needs as quickly as possible.**
  - ▶ Project delays hinder TxDOT's ability to use its limited financial resources in the most efficient manner. Managing projects past the anticipated completion date strains TxDOT personnel to oversee several projects simultaneously. The

efficient use of these state resources is essential given the increasing demand for transportation infrastructure.

- ▶ Allowing contractors with delinquent projects to receive new contracts may add to the time required for new projects. The contractor may delay starting the new project to try and catch-up on the first project. Under the current contracting system, this can continue for quite a while, contributing to traffic delays and inconveniences to the traveling public.
- ▶ Using minimum performance criteria would enable TxDOT to identify qualified contractors that would be best able to complete the job. Contractors would also have an incentive to perform efficiently to ensure their ability to compete for state construction contracts.

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*TxDOT's process does not ensure contractors are ready and able to deliver timely services.*

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## Conclusion

The current TxDOT project assessment process lacks a direct link between an assessment of contractor performance and the contractor's ability to bid on future contracts. As a result, the process does not adequately support efficient and effective service delivery. Currently, TxDOT may deny contractors from bidding on state projects only if they fail to provide a responsive bid or if they have been involved in a bidding crime. This does not ensure that the state only receives bids from contractors ready and able to deliver timely services.

## Recommendation

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### Changes in Statute

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- Require TxDOT to link monthly contractor performance assessments to the prequalification process for contractors.
- Require TxDOT to establish a system whereby:
  - failure to meet timeliness performance standards set by the Commission prevents a contractor from bidding on future contracts until those standards are met; and
  - the Commission would be authorized to exempt contractors under special circumstances.

- **Require that timeliness standards must allow for delays provided for in the contract, such as for weather delays, and for work stoppages requested by TxDOT.**

Under this approach, TxDOT would use its existing contractor performance information to develop a system to prevent contractors who are having significant problems meeting deadlines on existing projects from bidding on new projects until such problems are solved. Specifically, a contractor far behind schedule on one project should not be able to bid and shift resources to a new project. In setting up the system, TxDOT must allow for delays that are the responsibility of the Department, such as project design problems. Also, authorized delays already provided for in the contract, such as weather delays, must not affect a contractor's performance rating.

Contractors who are suspended would be able to protest the decision to the Department. Additionally, a contractor would be able to protest any work stoppage under current procedures established by the Transportation Commission. The Commission, if necessary, could temporarily exempt a contractor from the standards if needed to address special circumstances as determined by the Commission. These procedures allow a contractor to appeal to a claims committee within the Department. Contractors not satisfied with the result can request an administrative hearing.

These recommendations do not change the statutory requirement that the Department accept the lowest bid on a construction contract. The recommendations are not intended to prevent contractors from doing business with the state or to define what is considered substandard work, but outline what the state considers good business practices with regard to timeliness.

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## Fiscal Impact

These recommendations should improve the timeliness of project completion for those contractors wishing to continue doing business with TxDOT. As a result, a positive fiscal impact should occur from more efficient scheduling and use of TxDOT resources. Communities, particularly local businesses, should benefit from reduced traffic delays and congestion.

By preventing poor-performing contractors from bidding on new contracts, a theoretical argument exists that the potential low bidder may be excluded, thus driving up the cost of the project. If this were the case, indirect costs of poor performance and delays would likely outweigh direct costs. In addition, a poor-performing contractor would now have a greater incentive to improve present performance so as to remain eligible to become the low bidder on future contracts.

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<sup>1</sup> Texas Transportation Institute Urban Roadway Congestion - 1982 to 1992, Volume 1: Annual Report, Research Report 1131-7, pp. 27-29.

<sup>2</sup> Interview with Bobbie Templeton, Assistant Executive Director - Field Operations, March 4, 1996.

<sup>3</sup> Office of the State Auditor, An Audit on Management Controls at the Texas Department of Transportation, Report No. 95-021, November 1994.

<sup>4</sup> Information provided by Construction and Maintenance Division staff, Texas Department of Transportation, March 1996.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Florida Department of Transportation, Standard Specifications for Road and Bridge Construction, 1996.

<sup>9</sup> Virginia Department of Transportation, Road and Bridge Specification, January 1994.

<sup>10</sup> State of Louisiana Department of Transportation and Development, Louisiana Standard Specifications for Road and Bridges, 1992.

<sup>11</sup> North Carolina Department of Transportation, Standard Specification for Roads and Structures, July 1995.



## Issue 3



### Remove Obstacles to Automating the Department's Contract Bidding System.

#### Background

Increased computerization is triggering major changes in the private business workplace. Paper-driven processes are being re-engineered to capture the benefits of doing business electronically and businesses are turning to electronic commerce to meet the demands of an increasingly competitive world.

**Electronic Commerce:** Paperless exchange of business information, using electronic mail, bulletin boards, funds transfer, and electronic data interchange.

These trends are beginning to be mirrored by government, which often lags behind business community efforts. The identified benefits associated with electronic commerce are numerous and apply to both government and its private business partners and suppliers. The promise of increases in productivity and efficiency are increasingly attractive because of limited state and federal resources.

The Texas Department of Transportation (TxDOT) is the state's largest contractor for services, accounting for more than one-third of all state spending on goods and services.<sup>1</sup> TxDOT primarily contracts with independent contractors for highway construction and maintenance projects. In fiscal year 1995, TxDOT spent nearly \$2 billion on state highway construction contracts.

The Construction and Maintenance Division (CMD) within TxDOT receives all contractor bids. Every month, the Department lets contracts on a variety of highway construction and maintenance projects. CMD handles all bids and determines the low bidder. Currently, CMD receives all bids, in written form, on the contract letting day. Upon receipt of the bids, CMD staff open and review the bids to determine if all documents are correct, signed, and a guaranty check is included. CMD determines the low bidder and makes

*TxDOT's \$1.9 billion in highway construction contracts is more than one-third of the state's total spending for goods and services from private businesses.*

recommendations to the Texas Transportation Commission for adoption. The Commission makes all final contract awards more than \$300,000. The Executive Director, or designee, may award contracts less than \$300,000.

CMD uses several mainframe computer systems to manage and conduct contract letting. The primary system, Construction and Maintenance Contract System (CMCS), manages contracts from contract letting through close-out of the contract. This includes project specification, proposal preparation and distribution, letting and award, payment, and quality control procedures. CMCS also serves as a data entry system for three other letting systems:

- **Contractor Bidding System** - Collects and stores contractor information and determines contractor's bidding capacity;
- **Bidder Proposal System** - Creates, prints, and distributes bidding proposals; and
- **Letting System** - Produces bid tabulations and determines low bidder for each project.

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*TxDOT, with limited ability to engage in electronic commerce, receives and processes all contract bids manually.*

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In addition to mainframe contract management systems, TxDOT has a home page on the Internet and an electronic bulletin board system available through CompuServe. These information systems support TxDOT's contract management efforts. However, TxDOT does not currently have the authority to fully engage in electronic commerce and the receipt and opening of all contract bids is done manually.

Private business has already embraced the use and recognized the benefits associated with electronic commerce while governmental entities often lag in adopting new information technologies or updating outmoded processes. The review focused on TxDOT's ability to efficiently and effectively contract for highway construction and maintenance projects, and whether electronic processing could improve the contracting process.

## Findings

- ▼ **The current processing of bid applications for highway construction and maintenance contracts is labor intensive and inefficient.**
  - ▶ A TxDOT internal audit report in January 1994, and a follow-up in July 1995, recognized the need to use more automation in the bid letting system. The reports

recommended that the Department look into pursuing opportunities of using more advanced information technology in the letting process.<sup>2</sup>

The audit reports concluded that by not implementing technology where possible, the Department is missing out on opportunities to successfully use less resources in meeting its responsibilities.

- D
**CMD staff have expanded the use of automation in the contracted services area to disseminate information, yet the bidding process still relies heavily upon manual effort. While bid proposals and project specifications are available electronically, each bid must still be physically received by the Department and manually tabulated. More than 50 percent of the division’s entire staff is involved in the monthly letting process. CMD processes and analyzes over 4,000 bids annually. The letting team within CMD, composed of approximately 40 staff, including the Division Director, spend a minimum of 360 hours a month manually processing and tabulating bids. This time is in addition to the prequalification/proposal issuance section within the division, comprised of eight staff solely dedicated to the bidding process.**

The bid process at TxDOT has remained relatively unchanged, despite increases in the dollar volume of contracts and the number awarded. Since fiscal year 1991, the dollar volume has increased over 56 percent, from \$1.25 billion to almost \$2 billion. During that same time, the number of contracts has increased by over 60 percent, from 733 to 1,179.<sup>3</sup>

▼
**Statutory requirements limit the use of electronic commerce by TxDOT.**

- D
**The Transportation Code requires TxDOT to provide notice to interested parties, through published notices in newspapers, the time and place at which bids on a contract will be opened and the contract awarded. The Code further states that a bid submitted to the Department must be sealed and filed with the Director in Austin and shall be opened at a public hearing of the Transportation Commission. The Code provides a public opening of the bids so all bidders interested in the results may attend.**

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*The manual bid process has not changed despite significant increases in the number of contracts awarded and the dollar value of those contracts.*

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*The statute limits TxDOT's ability to reduce reliance on manual processing of bids.*

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- The State Comptroller of Public Accounts has an established system to receive sales tax returns electronically.
  - The Texas Department of Insurance receives the majority of insurance fees through electronic funds transfer.
  - The Texas Natural Resource Conservation Commission issues hazard materials transportation notifications electronically.
- ▶ At the federal level, a memorandum dated October 26, 1993 and signed by the President, mandates the federal government to simplify and streamline acquisition processes. The President directed that the exchange of information electronically, specifically acquisition processes, should be encouraged to the maximum extent possible. The goal is to promote customer service and cost-effectiveness.<sup>6</sup>

Several federal agencies are already engaged in electronic commerce and have realized benefits.

- The Department of Veterans Affairs (VA) found that using electronic processes for delivery orders can save an estimated \$75 million over the next five years. The VA also found that the implementation of electronic invoices reduces the per invoice costs from \$3.48 to \$1.55, for a savings of \$12 million over five years.<sup>7</sup>
  - The Department of Defense (DOD) identified \$1.2 billion in savings by automating its 16 most-used forms over a ten-year period. In fiscal year 1993 alone, DOD saved an estimated \$60 million through paperwork reduction efforts.<sup>8</sup>
- ▶ The private sector has also seen cost savings by reducing paperwork and conducting electronic commerce.
- Texas Instruments has gone to electronic procurement and reengineered its business process, lowering its average cost to process an order from \$49.00 to \$4.70.<sup>9</sup>
  - Pacific Telesis eliminated 51 percent of its paper-based systems and lowered its cost per transaction from \$78 to \$0.48.<sup>10</sup>

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*Both federal agencies and private businesses have realized significant savings from electronic processing and contracting.*

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- ▼ **TxDOT has the expertise and has demonstrated its interest in taking advantage of electronic commerce.**
  - ◆ TxDOT is the largest state government user of information technology in Texas. Over the past two bienniums, TxDOT has spent over \$480 million on information technology. The Department has two divisions that are responsible for information resources strategic planning and policies, making recommendations on TxDOT's Biennial Operating Plan, and supporting Department business and engineering efforts. In 1994, the TxDOT's Information Resource Management Office received national recognition for achievements in computer and information security.<sup>11</sup>
  - ◆ TxDOT's electronic bulletin board (BBS) experience has provided valuable insight into the benefits of providing information electronically, including a better informed contracting community. Interested parties with access to the BBS can receive bid results immediately after the bids are opened without having to be in attendance in Austin. The number of subscribers to the BBS has increased to approximately 700 since its creation in April 1994.
  - ◆ TxDOT has begun a retooling process designed to improve how it conducts business by streamlining policies and procedures and making technological improvements to support business activities.
  - ◆ TxDOT established a Contract Administration Review Team (CART) in November 1995 to find ways to reduce the overall administrative costs of complying with current contract specifications and existing federal and state policies. CART's goal is to improve contract management efficiency by identifying paperwork and documentation currently required of contractors and to eliminate those items that do not add sufficient value. The Department also plans to look at contracting in early 1997 as part of its retooling effort, including the letting system.
- ▼ **Electronic bidding would allow TxDOT to increase efficiency in its contracting and provide better service to the contracting community.**
  - ◆ Use of electronic bidding would help TxDOT meet state goals for reducing the number of state employees. The Legislature, in the General Appropriations Act, established goals for the

number of employees for state agencies, including TxDOT. While the Department has made progress in meeting these goals, instituting an electronic bidding system could help TxDOT redirect staff resources to reach and maintain state employment goals.

In addition, increased competition for state highway construction and maintenance contracts may result because more contractors from across the state, and out-of-state, could more easily bid on projects.

- ▶ Among the benefits for the contractor community are increased access to the bid process and reduced costs associated with bid submissions.
- ▶ Over a dozen states were identified that currently have some operational form of electronic bidding, including Ohio, Oklahoma, and Georgia.<sup>12</sup> While no state has gone to a completely paperless bidding system, several stated that it was a goal obtainable within the next five years. Most states have instituted a voluntary system, but some have mandated that contractors use the electronic bidding system.
  - Georgia has implemented a voluntary electronic bidding system. Contractors submit bids on disk in addition to providing a written proposal. Georgia has reduced the time required to tabulate bids and has noticed a decrease in contractor bidding errors.<sup>13</sup>
  - Wyoming has mandated that bids be submitted on disk and charges a fee for any proposal that is submitted in written form and manually processed. Wyoming has been able to reduce bid tabulation from two days per month to one hour each month.<sup>14</sup>
  - Oklahoma has implemented a voluntary electronic bidding system with the plan to make it mandatory in the near future. Using electronic bidding has saved an estimated 50 hours per month and could go as high as 100 hours if 80 percent of bids were received electronically.<sup>15</sup>

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*TxDOT should be able to receive contract bids electronically to reduce paperwork and administrative costs and improve service to the contracting community.*

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## Conclusion

The Department currently lets contracts through a primarily manual, labor-intensive process. TxDOT should be able to use automation to make the process as efficient and effective as possible. Existing procedures must be examined and changed when necessary, if government is to succeed in working better at a lower cost. TxDOT has taken several initiatives in this direction through its retooling efforts. However, statutory language currently prevents the Department from fully using cost-saving measures such as electronic receipt of contract bids. Removing statutory impediments will allow the streamlining of the bid process, benefiting the Department by reducing paperwork and administrative costs, and helping the contracting community through improved service.

## Recommendation

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### Changes in Statute

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- Authorize the Texas Department of Transportation to establish an electronic bidding system for highway construction and maintenance contracts.
- Allow TxDOT to receive bids from qualified vendors electronically, including submission of contracts, signatures, and verification of guaranty checks by a financial institution.
- Remove the requirement that all bids must be publicly opened, but require that all bids be publicly posted.
- Authorize TxDOT to recover the cost of manually processing bid proposals once an electronic bidding system has been implemented.

This recommendation could significantly change the way TxDOT conducts its contract bidding business. TxDOT would not be required to change its current system, but would no longer be mandated by statute to continue its labor-intensive, manual bid receipt, tabulation, and public opening procedures. If it chooses, TxDOT would have the flexibility to redesign its bidding and contract letting process to meet the needs of the contracting community.

The implementation of an electronic bidding system would most likely occur in stages, moving from submission of certain bids on disk to eventually submitting all bids electronically. The benefits of an electronic bidding system will increase as it moves closer to full electronic submission, reducing paperwork and personnel required to conduct the task. This recommendation would retain the Department's ability to prosecute for bidding crimes and address the legality of a contract.

Implementing an electronic bidding system could facilitate the use of performance-based contracting as recommended in this report. Any system implemented should be accessible to show contractors on-time performance for prequalification purposes. A contractor failing to meet the Transportation Commission's established standards would have the bid rejected because it was submitted by an unqualified bidder.

This recommendation would not require a contractor to submit bids electronically. Contractors wanting to bid on TxDOT projects would still be allowed to submit paper bid proposals to the Department.

Removing statutory impediments to electronic commerce will bring the Department in line with statewide efforts to take advantage of computer technology to improve government processes. These recommendations will also allow TxDOT to take full advantage of its efforts to retool procedures related to contracting.

Allowing TxDOT to recover the costs associated with manually processing bids, once an electronic bidding system is implemented, would encourage contractors to use the system and emphasize that the Department will conduct business in the most cost-effective manner possible. This recommendation only authorizes TxDOT to recover the cost, it does not mandate that a fee be charged.

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## Fiscal Impact

This recommendation will have a positive impact on the State Highway Fund. While efficiencies in the bidding process are likely, the fiscal impact cannot be determined at this time. Establishing an electronic bidding process will reduce the use of staff time dedicated to manual receipt and processing of contract bids. This effort could be redirected to other work of the Department which could affect TxDOT's need to hire additional staff in the future. Any costs associated with automating the bid process should be offset by anticipated savings.

In addition, TxDOT could generate revenue for the highway fund from any fees established for manual bidding.

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- <sup>1</sup> Texas Performance Review, *Gaining Ground - A Report from the Texas Performance Review, November 1994*, p 634.
- <sup>2</sup> Texas Department of Transportation, Audit on the Letting System, Internal Audit Report, January 10, 1994.
- <sup>3</sup> Texas Department of Transportation, Information obtained from Construction Management Division Staff, March 11, 1996.
- <sup>4</sup> Department of Information Resources, *Facing the Future - A Vision for Information and Technologies to Serve Tomorrow's Texans, State Strategic Plan for Information Resources Management*, November 1995, p. 3.
- <sup>5</sup> Texas Performance Review, *Procurement Reengineering Project: Final Report*, May 1993.
- <sup>6</sup> General Services Administration, *Streamlining Procurement Through Electronic Commerce*, December 1995, p. 3.
- Ibid.
- <sup>8</sup> Ibid.
- <sup>9</sup> Ibid.
- <sup>10</sup> Ibid.
- <sup>11</sup> Texas Department of Transportation, *Transportation News - Perspective*, January 1995, p. 82.
- <sup>12</sup> Telephone interview, Jan Machis, American Association of State Highway and Transportation Officials, April 9, 1996.
- <sup>13</sup> Telephone interview, Deb Walker, Georgia Department of Transportation, April 8, 1996.
- <sup>14</sup> Telephone interview, John Childers, Wyoming Department of Transportation, April 8, 1996.
- <sup>15</sup> Telephone interview, Joe James, Oklahoma Department of Transportation, April 9, 1996.

## Issue 4



### Use the Council on Competitive Government to Help TxDOT Balance In-House and Contracted Engineering Services.

#### Background

In fulfilling its responsibility to route and construct roadways, the Texas Department of Transportation (TxDOT) relies heavily on two kinds of engineering services. Preliminary engineering encompasses the design work on a roadway, including the road's alignment, and the plans, specifications, and estimates that provide the basic blueprint for the project. Construction engineering is the actual management and oversight of the project as the roadway is under construction.

TxDOT currently provides preliminary engineering both in-house, with its own engineering staff, and by contract with private consulting engineers. Preliminary engineering provides information to the construction contractors for bidding purposes and guides the construction itself. Major preliminary engineering activities include surveying and route, roadway, bridge, and drainage design. TxDOT district staff provides most of the Department's in-house roadway design, while the Austin headquarters provides most of the in-house bridge design. TxDOT often uses outside consultants when a project's design requirements exceed a district's ability to do the job.

TxDOT essentially performs all construction engineering in-house, with only a small percentage contracted to outside consultants. Construction engineering activities occur at the district level, typically through the 107 TxDOT area offices located throughout the state. Specifically, these activities include work inspections, construction surveys, design verification, and change orders.

In 1991, the Legislature required TxDOT to achieve a "balance" between Department employees and private contractors for needed preliminary and construction engineering work. The Legislature further specified that TxDOT should achieve this balance between in-house and outside engineering if the costs are equivalent, and it required the State Auditor's Office to determine the cost factors to be used in assessing this balance.

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*In 1991, the Legislature required TxDOT to achieve a balance between the use of Department employees and private contractors for preliminary and construction engineering.*

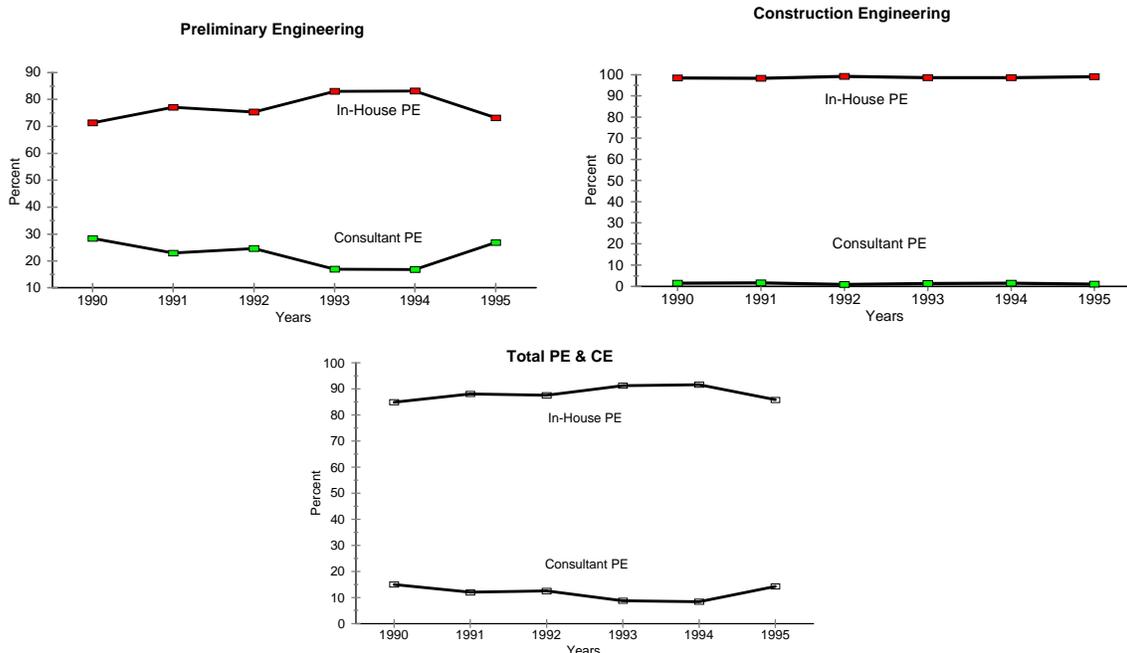
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The review of TxDOT’s preliminary and construction engineering activities focused on the agency’s efforts to achieve the required balance between the use of in-house and contracted engineering services. The review also sought to identify ways for the state to evaluate and clearly determine whether these engineering services should be provided by TxDOT staff or by outside consultants.

### Findings

- ▼ TxDOT has not met legislative intent to achieve a balance between in-house and contracted preliminary and construction engineering.
  - ▶ TxDOT expenditures for preliminary and construction engineering have remained virtually unchanged since the requirement for balance was added to the agency’s statute. The charts, *Comparison of Expenditures for In-House and Contracted Engineering, 1990-1995*, shows how the percentage of expenditures for in-house and contracted engineering has changed over time.<sup>1</sup> While the Department contracts for about a quarter of its preliminary engineering work, it continues to perform essentially all construction engineering with its own employees. In 1995, four years after the provision for balance was added to TxDOT’s

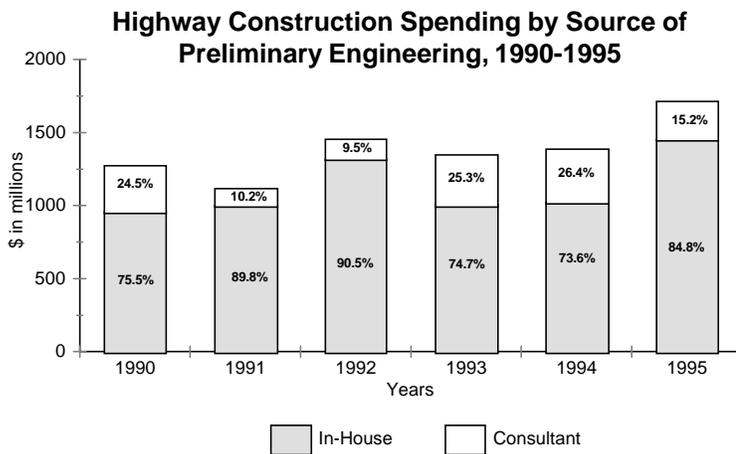
**Comparison of Expenditures for In-House and Contracted Engineering, 1990-1995**



statute, 26.8 percent of the agency’s preliminary engineering expenditures were for outside engineers, but only 1.0 percent of expenditures for construction engineering were for outside consultants. Overall, 14.2 percent of TxDOT’s engineering expenditures were for outside consultants, compared to 15 percent in 1990.

- Another way to examine the use of outside consultants is to look at how much of TxDOT’s construction spending had its beginning in preliminary engineering work performed by outside consultants. In terms of construction spending, TxDOT’s use of outside consultants for preliminary engineering has remained basically constant over time. The chart, *Highway Construction Spending by Source of Preliminary Engineering, 1990-1995*, shows the changes in the amounts of construction spending, and reflects how much of this construction was designed in-house or how much was designed by outside consultants.<sup>2</sup> While outside engineers performed preliminary engineering for 21.7 percent of construction spending over the years 1993 to 1995 (excluding donated preliminary engineering), that percentage actually dropped last fiscal year. In 1995, outside engineers performed preliminary engineering for 15.2 percent of highway construction spending, down from the 24.5 percent they provided in 1990.<sup>3</sup>

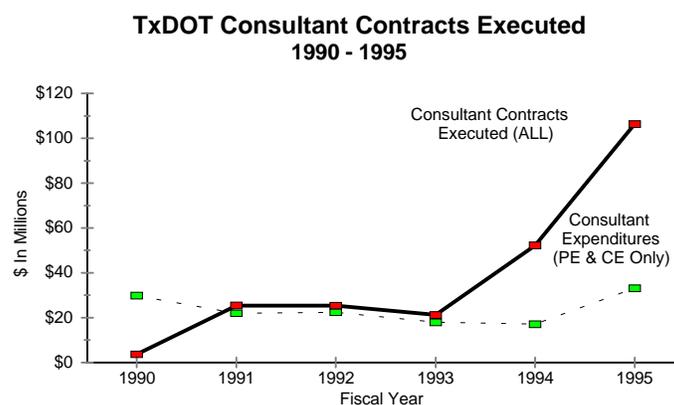
*While outside engineers performed preliminary engineering for 21.7 percent of construction spending from 1993 to 1995, that percentage dropped to 15.2 percent last year.*



- The State Auditor’s Office (SAO), in its May 1995 review of TxDOT’s cost accounting systems, also concluded that the Department has not taken steps to achieve the required balance.<sup>4</sup> While SAO said that TxDOT appeared to be in

overall compliance with the statute for preliminary engineering, it noted that additional opportunities existed to use private contractors for certain types of preliminary engineering projects, including road rehabilitation and interchanges. In addition, SAO concluded that, in recent years, private firms have provided essentially no construction engineering services and TxDOT had not achieved the mandated balance for these types of services.<sup>5</sup>

- ▼ **Although TxDOT is attempting to increase its use of outside engineers, it is doing so without full consideration of the costs and feasibility of contracting for these activities.**
  - ▮ TxDOT has significantly increased its consultant contracts executed in 1994 and 1995. Because of the time lag for the Department to receive the work and make payouts on these contracts, increases in expenditures for outside preliminary and construction engineering will not likely appear for several years. The chart, *TxDOT Consultant Contracts Executed, 1990-1995*, shows the consultant contracts executed and the level of preliminary and construction engineering expenditures.<sup>6</sup> The increase in the amount of consultant engineering expenditures in 1995 relates to the increase in contracts executed in 1994.



- ▮ TxDOT has established a Consultant Engineering Advisory Committee to coordinate and facilitate the use of the consultant engineering community in TxDOT operations. This advisory committee and other special task forces have



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*Costs and assurance of quality work are the key factors when deciding to outsource engineering work.*

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Commissioner of the Texas Workforce Commission. The Council is staffed by GSC and the Comptroller. The Council performs its function through the study of costs and quality of services provided by state agencies, and through its authority to require services be subject to competition with private commercial sources.

- ▶ CCG has the expertise to perform this complicated task of looking at TxDOT's use of consultant engineers. CCG is currently involved in several large, complex privatization matters, including the competition for the integrated enrollment process for health and human services and related workforce programs in Texas. In this competition, the Council will decide who should provide eligibility determination for the Department of Human Services in its long-term care and client self-support programs. The state will spend approximately \$526 million and employ 13,000 employees in this area in fiscal year 1996.
- ▶ CCG already has a role in implementing privatization efforts for other TxDOT functions. To help meet its requirement to privatize maintenance activities, TxDOT uses cost accounting procedures and instructions developed by the Council. In addition, the statute requires CCG, on request, to provide technical assistance to the Department about these procedures and instructions.

## Conclusion

TxDOT has not shown a significant change in its use of outside consultants since the Legislature added the requirement to achieve a balance between the use of in-house and consultant engineering services in 1991. In addition, comprehensive data regarding the cost of providing these services with Department employees or with outside consultants simply does not exist. Before TxDOT makes decisions regarding the outsourcing of preliminary and construction engineering services, it should have the benefit of full and accurate cost accounting and it should be confident that the quality of services will not be diminished. By involving the Council on Competitive Government in this decision, the state can be assured that these factors will be fully considered.

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*The Department needs assistance to achieve appropriate use of contracted engineering services.*

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## Recommendation

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### Changes in Statute

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- **Require the Council on Competitive Government to conduct a comprehensive study to determine if the costs of providing engineering services by both in-house and outside engineers are equivalent.**
- **Authorize the Council to take action to help TxDOT achieve an appropriate balance between in-house and outside engineering services if it finds that the costs of providing these services are equivalent.**

This recommendation would provide for the full analysis of the costs of providing TxDOT's engineering services by a qualified, objective third party. This analysis would cover TxDOT's services and those provided by outside engineers. The recommendation would also empower CCG to take actions to help TxDOT achieve the legislatively-mandated balance between in-house and outside engineers if costs of providing these services are equivalent and quality would not be diminished. In this way, decisions significantly affecting the Department's major activities relating to roadway design and construction oversight would be made only after a complete evaluation of the cost and quality of those activities.

By maintaining the statutory directive to achieve a balance between in-house and outside engineering services, TxDOT will continue to provide many of these important services in-house and will not be required to completely privatize these activities. In addition, keeping the provision that the costs of using outside engineers be equivalent with in-house engineers assures these services will continue to be selected on the basis of quality and not be subject to low bid.

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### Fiscal Impact

This recommendation would have no fiscal impact. Because the use of contracted engineers would be on the basis of cost equivalency, no fiscal impact would result from any action to achieve a balance between in-house and outside engineering services. Any costs associated with evaluating these engineering services and implementing measures to achieve a balance would be paid using the existing resources of CCG.

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<sup>1</sup> Derived from an internal memorandum from Robert L. Wilson to William G. Burnett, Texas Department of Transportation, Chart 1, Preliminary Expenditures, March 21, 1996.

<sup>2</sup> Ibid, Chart 2, Highway Construction Letting Dollars and Source of Preliminary Engineering.

<sup>3</sup> Ibid.

<sup>4</sup> Letter from Lawrence F. Alwin, State Auditor, to Members of the Legislative Audit Committee, May 15, 1995.

<sup>5</sup> Office of the State Auditor, *A Review of Cost Accounting Methodology at the Texas Department of Transportation*, Report No. 95-130, April 1995.

<sup>6</sup> Internal memorandum from Robert L. Wilson to William G. Burnett, TxDOT, Chart 7, Department-wide Consultant Contracts Executed and PE & CE Expenditures, March 21, 1996.

<sup>7</sup> Ibid.

<sup>8</sup> Office of the State Auditor, *A Review of Cost Accounting Methodology at the Texas Department of Transportation*, Report No. 95-130, April 1995.

# Issue 5



## Improve Motor Vehicle Division Hearings Through Transfer to the State Office of Administrative Hearings.

### Background

As part of the consolidation of agencies to form the Texas Department of Transportation (TxDOT), the Legislature merged the Texas Motor Vehicle Commission into TxDOT on September 1, 1992. In this merger, the Motor Vehicle Board retained policy and decision-making authority and the Motor Vehicle Division (MVD), a division of TxDOT, implements the policy of the Board with regard to the Motor Vehicle Commission Code. MVD's main functions are to license and regulate the distribution and sale of motor vehicles in the state and to enforce the Lemon Law and other consumer affairs provisions in the Code. MVD conducts three types of hearings governed by the Administrative Procedure Act (APA):

- Lemon Law and warranty complaint hearings;
- enforcement hearings; and
- dealership and manufacturer hearings.

The Lemon Law and warranty complaint hearings address complaints brought by consumers generally against motor vehicle manufacturers under the Lemon Law and warranty complaint provisions in the Motor Vehicle Commission Code. Under the Lemon Law and warranty provisions, the administrative law judge (ALJ) issues a written decision and final order. If dissatisfied with the decision, either party may file a motion for rehearing with the Motor Vehicle Board or the MVD Director.

Enforcement hearings against used and new car dealers address alleged violations of the Motor Vehicle Commission Code, such as deceptive advertising or the brokering of new motor vehicles, and violations of the Transportation Code, such as failing to pass title to a vehicle or failing to maintain license qualifications. Manufacturers, distributors and converters are also subject to enforcement actions under both codes. The ALJ submits recommendations regarding

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*The Motor Vehicle Board regulates the distribution and sale of motor vehicles in Texas.*

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Transportation Code violations to the MVD Director for final decision and to the Board for final decision on Motor Vehicle Commission Code violations.

Dealership and manufacturer hearings address complaints brought by either a new car dealership against another new car dealership or a dealership against a manufacturer. For example, a new car dealership can protest the establishment of another same-make new car dealership in its vicinity. In addition, a new car dealership can protest the manufacturer's proposed termination of its franchise. The Board reviews the ALJ's recommendations and makes a final determination.

Dissatisfied parties may appeal any MVD hearing decision in state district court in Travis County. In addition, parties may appeal cases governed by the Motor Vehicle Commission Code directly to the Court of Appeals for the Third Court of Appeals District.

MVD employs five full-time ALJs, three dedicated to Lemon Law and warranty complaint cases and two dedicated to the other areas. In addition, attorneys employed by the Division may conduct administrative hearings. As a result, the MVD Director, Deputy Director and Assistant Director of Consumer Affairs are qualified to conduct hearings. MVD conducted 240 Lemon Law and warranty complaint hearings, 38 enforcement hearings, and 31 dealership and manufacturer hearings for a total of 309 hearings in fiscal year 1995.<sup>1</sup>

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*MVD conducted a total of 309 regulatory hearings in 1995.*

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In 1991, the Legislature created the State Office of Administrative Hearings (SOAH) to conduct administrative hearings for state agencies. The Sunset Commission has routinely included administrative hearings conducted by agencies in its reviews to determine whether this service could be better performed by SOAH. The review focused on whether transferring the Division's administrative hearings to SOAH would improve the independence, quality, or cost effectiveness of the hearings.

## FINDINGS

- ▼ **MVD's administrative hearings process would be more independent if located at SOAH.**
  - ▶ Independence would likely improve for all three MVD hearings, but particularly for enforcement hearings. The majority of the participants in MVD enforcement hearings — the administrative law judge, the MVD attorney, and the staff that investigated and brought the charge against the



are very similar to the Texas Catastrophe Property Insurance Association (CATPOOL) hearings SOAH conducts for the Texas Department of Insurance (TDI).<sup>5</sup> In CATPOOL hearings, a consumer may bring a complaint against an insurer, a TDI licensee, who refuses to pay a claim for damages. Similarly, Lemon Law hearings allow a consumer to bring a complaint against a manufacturer, an MVD licensee.

▼ **SOAH would provide more cost-effective regional hearings than MVD.**

- ◆ By hearing cases regionally, SOAH would give affected persons convenient access to the hearings process and would reduce costs by eliminating travel time of an ALJ being sent from Austin.
- ◆ Currently, MVD's ALJ's travel throughout the state to hold administrative hearings on Lemon Law and warranty cases. The chart, *Location of Lemon Law and Warranty Hearings, FY 95*, shows the different locations where the hearings have been conducted in TxDOT facilities throughout the state in 1995.<sup>6</sup> In fiscal year 1995, MVD spent more than \$20,000 on travel costs associated with those hearings.<sup>7</sup>
- ◆ In 1995, SOAH employed 28 ALJs at 13 regional offices and 20 remote office locations around the state.<sup>8</sup> The ALJs travel to locations within their regional areas to hold hearings.

▼ **SOAH has reduced overall hearing costs for state agencies that have transferred their hearing functions to SOAH.**

- ◆ For fiscal year 1995, SOAH estimates that it saved more than \$260,000 in hearings costs that would have been incurred by 44 state agencies had the hearings been conducted in-house. This savings represents a 27 percent reduction in the cost of hearings.<sup>9</sup>
- ◆ In fiscal year 1995, MVD spent \$284,159 to conduct hearings, which includes salaries and related costs such as travel and overhead.<sup>10</sup> The average cost of conducting a hearing or prehearing at SOAH was \$695 for fiscal year 1995, compared to an average of \$919 at MVD.<sup>11</sup> While the estimates do not compare the same kind of hearings, MVD and SOAH both conduct hearings of varying type and duration, so the estimates provide a useful reference point.

<b>Location of Lemon Law and Warranty Hearings - FY 95</b>	
Abilene	1
Amarillo	6
Arlington	3
Atlanta	3
Austin	28
Beaumont	2
Brownsville	4
Bryan	2
Corpus Christi	4
Dallas	44
El Paso	6
Fort Worth	10
Houston	81
Longview	4
Lubbock	0
Lufkin	2
McAllen	4
Midland	2
Odessa	0
Paris	0
Pharr	0
San Angelo	1
San Antonio	21
Tyler	6
Victoria	2
Waco	3
Wichita Falls	1
<b>Total</b>	<b>240</b>

▼ **SOAH has provided state agencies and citizens with a fair and efficient administrative hearings process.**

- ▶ Results from a survey conducted by the Senate State Affairs Committee indicated that 43 out of 46 agencies for which SOAH held hearings, including TxDOT, believed that SOAH was fulfilling its mission as the state's hearing office.<sup>12</sup>
- ▶ Ninety-five percent of the participants surveyed by the Legislative Budget Board for fiscal year 1995 were satisfied with the overall process of SOAH.<sup>13</sup>

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*In keeping with the intent of the Legislature, motor vehicle hearings should be transferred to the State Office of Administrative Hearings.*

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## Conclusion

The Legislature has clearly expressed its intent to consolidate the hearings function of state agencies if such a transfer improves the independence, quality, or cost-effectiveness of the hearings. The review of MVD's APA hearings process indicated that SOAH has the ability to conduct the hearings and that a transfer would provide more independence, both real and perceived, particularly for the enforcement hearings; would provide an equal level of quality; and would improve the cost effectiveness of the hearings process.

## Recommendation

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### Change in Statute

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- **Transfer the Motor Vehicle Division administrative hearings to the State Office of Administrative Hearings.**

This recommendation would transfer MVD's hearing function to the State Office of Administrative Hearings. In conducting hearings, SOAH would consider the applicable substantive rules or policies of the Motor Vehicle Board. In this way, the Motor Vehicle Board would still determine how broader policy matters or recurring issues will be treated by administrative law judges.

As with the current hearings process, decisions by an ALJ would be final for Lemon Law cases, subject to a motion for rehearing. The ALJ decisions on enforcement and franchise cases would remain proposals for decisions. The MVD Director or the Motor Vehicle Board must make the final decision, but could alter the ALJ's proposal only for policy reasons.

As with most transfers of hearings to SOAH, the cost of conducting hearings would be paid through an interagency contract between the two agencies.

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## Fiscal Impact

Historical data indicates that costs related to administrative hearings transferred to SOAH have been reduced by approximately 27 percent. The fiscal impact of this transfer of duties cannot be determined at this time, as the specific costs to conduct the hearings will depend on the structure of the interagency contract between MVD and SOAH. The elimination of the ALJ function at MVD would provide savings of approximately \$284,159, MVD's total hearing expense in fiscal year 1995. This money would be available to pay for the interagency contract with SOAH to conduct MVD hearings. Any savings based on the contract with SOAH would be reallocated within MVD.

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<sup>1</sup> Memorandum from Brett Bray, Director of Motor Vehicle Division, Texas Department of Transportation, February 26, 1996.

<sup>2</sup> Letter from Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, January 30, 1996.

<sup>3</sup> Phone Interview with Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, February 7, 1996.

<sup>4</sup> Letter from Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, January 30, 1996.

<sup>5</sup> Phone Interview with Philip Holder, Director of Central Hearings Panel, State Office of Administrative Hearings, March 26, 1996.

<sup>6</sup> Memorandum from Brett Bray, Director of Motor Vehicle Division, Texas Department of Transportation, February 26, 1996.

<sup>7</sup> Ibid.

<sup>8</sup> Interview with Steven L. Martin, Chief Administrative Law Judge, Phillip A. Holder, Central Hearings Panel, and Charmaine J. Rhodes, Senior Administrative Law Judge, State Office of Administrative Hearings, January 29, 1996.

<sup>9</sup> Letter from Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, March 5, 1996.

<sup>10</sup> Memorandum from Brett Bray, Director of Motor Vehicle Division, Texas Department of Transportation, February 26, 1996.

<sup>11</sup> Information provided by State Office of Administrative Hearings, March 14, 1996, and Memorandum from Brett Bray, Director of Motor Vehicle Division, Texas Department of Transportation, February 26, 1996, respectively.

<sup>12</sup> Data derived from Senate State Affairs Survey Results, February 28, 1996.

<sup>13</sup> Summary Assessment of Agency Performance, Fiscal Year 1995, Legislative Budget Board, Page VIII-5.

## Issue 6



### Require TxDOT and the Comptroller to Study Moving the Point-of-Accountability for Collecting Motor Fuels Taxes.

#### Background

State motor fuels taxes are a primary funding source for transportation programs. In Texas, 46 percent of all transportation funding, or more than \$1.6 billion, is derived from these sources. Additional revenue comes from state fees on vehicle registrations and titles and sales taxes on lubricants. The Texas Department of Transportation (TxDOT) is appropriated these constitutionally dedicated revenues for use in constructing and maintaining the state highway system.

Motor fuels taxes, unlike most other taxes, can be accounted for and collected at several points in the distribution and sale of the fuel. The most common practice, and the one used in Texas, is to account for the taxes due at the time of delivery to a service station or retail business. The distributor who delivers the fuel to the station pays the tax. However, following the lead of the federal government, several states have recently shifted the point of collection from the distributor to the terminal, or what is known as the rack. The terminal is usually a tank farm where distributors bring their tanker trucks to fill with fuel.

The reasons to consider a shift in the point-of-collection are two-fold. First, the tax is much easier to collect from a small number of terminals compared to a much larger number of distributors. Second, opportunities for fraud are reduced. The tax is paid earlier in the distribution chain, resulting in fuel changing hands fewer times before the tax is assessed and a clearer audit trail. The result can be less fraud and, therefore, more tax revenue.

*To reduce fraud and ease tax administration, the federal government and several states have recently changed how motor fuels taxes are collected.*

### **Federal Motor Fuels Tax Collection System**

In 1993, the Omnibus Budget Reconciliation Act (OBRA) strengthened the enforcement of federal diesel fuel tax collection by moving the tax collection point from the distributor to the terminal level. In addition, all tax-exempt diesel must be dyed before being removed from the terminal. Under this system, the owner of the fuel — the party that has contracted with the terminal operator to store the fuel — is liable for the diesel fuel tax when the fuel is removed from the terminal. The owner of the fuel forwards the tax to the Internal Revenue Service (IRS). If the tax-paid fuel is subsequently sold for a tax-free use, IRS refunds the tax to the purchaser. An additional \$1.2 billion in 1994 collections resulted from moving the collection point for federal diesel fuel tax, or 22.5 percent more than the amount collected in 1993.<sup>1</sup>

In Texas, the point-of-collection remains at the distributor level. The Comptroller's Office identified motor fuels tax evasion as a problem area in the mid to late 1980's and, as a result, the Legislature significantly changed the enforcement of motor fuels tax collection, including:

- moving the venue to prosecute motor fuels tax crimes to Travis County and establishing the Public Integrity Unit within the Travis County District Attorney's Office;
- increasing the criminal penalties for several motor fuels tax evasion and fraud offenses;
- restricting the amount of tax-free fuel any individual could buy in one delivery or during the course of a single month; and
- changing the minimum and maximum bonding requirements for individuals applying for permits to purchase tax exempt fuels.

These changes have made engaging in motor fuels tax fraud or evasion much more difficult and helped maximize revenues from state motor fuels taxes.

The Sunset review of moving the point-of-collection for state motor fuels taxes from the wholesaler to the terminal or distribution level focused on the potential benefits of the switch, other states' experience with the issue, and the feasibility of making this change in Texas.

## Findings

- ▼ **Incentives to evade motor fuels taxes continue to exist while current tax laws are cumbersome to enforce.**
  - ▶ The Comptroller collects state motor fuels taxes in addition to sales, franchise, insurance, and other taxes. In 1995, the Comptroller collected almost \$18.9 billion in state tax revenues, of which motor fuels taxes comprised 12 percent.<sup>2</sup> The Comptroller has a Criminal Investigating Division (CID) that investigates all tax fraud, including motor fuels. CID helps to ensure that the state maximizes motor fuels tax revenues. The Comptroller has 11 investigators and Texas is considered a lead state by the Federal Highway Administration for motor fuels tax enforcement and information.
  - ▶ Despite the Comptroller's extensive enforcement effort, an incentive to defraud the state still exists. For example, combined federal and state motor fuels taxes comprise a large share of the cost of a gallon of gasoline or diesel. Currently, the federal diesel tax is \$0.24 per gallon and the state tax is \$0.20. Evading the combined tax on an 8,000 gallon truckload of diesel fuel would yield an illicit profit of \$3,520.
  - ▶ Monitoring the motor fuels tax system can be cumbersome. Because taxes are not due until the fuel goes to a retailer, distributors can claim that a load of fuel is for a tax exempt purpose, such as delivery out-of-state or for agricultural use. As a result, the Comptroller's Office must attempt to know where every truckload of fuel went and whether it was used for a tax exempt purpose.
- ▼ **Maximizing the collection of state motor fuels taxes is essential to meeting state needs concerning transportation, public safety, and education.**
  - ▶ Revenues from the collection of state motor fuels taxes contributes directly to meeting state priorities in transportation, public safety, and education. The Texas Constitution dedicates 75 percent of all revenues from this source to the sole purpose of acquiring right-of-way, constructing, maintaining, and policing such public roadways. The remaining 25 percent is dedicated to the Available School Fund.

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*Evading state and federal taxes on a truckload of diesel fuel would yield about \$3,500 in illicit profits.*

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changes were made too recently to assess the impact on tax revenue collections.

- ▼ **Uncertainty exists over the level of benefits associated with moving the point-of-collection for state motor fuels taxes.**
  - ▶ TxDOT estimates that between \$100 and \$200 million in additional revenues from motor fuels taxes is possible by shifting the point of collection.<sup>10</sup> These figures are based on federal calculations of national motor fuels tax fraud. A study by IRS and the Federal Highway Administration determined that between three and seven percent of gasoline taxes and 15 to 25 percent of diesel taxes are being evaded nationwide.<sup>11</sup>
  - ▶ Based on proposals discussed during the 74th Legislative session, the Comptroller's Office estimates a net revenue gain of \$12 to \$15 million.<sup>12</sup> This estimate reflects higher levels of tax enforcement in Texas as well as increases in administrative costs to process rebates for persons eligible for tax exemptions.
- ▼ **Possible benefits of moving the point-of-collection for motor fuels taxes warrants a study of current tax collection policies.**
  - ▶ Both the Comptroller and TxDOT agree that additional revenues are possible by shifting the point of collection from the distributor to the terminal level. However, the estimates vary significantly, suggesting that further study of the issue may be necessary.
  - ▶ Every state that has shifted the point of collection for motor fuels taxes has seen a corresponding increase in tax revenues, or fully anticipates an increase. In addition, the federal government has experienced net gains in tax receipts directly attributable to the change in the point of collection. These results would appear promising during a time of limited resources.
  - ▶ The costs of moving the collection point also need studying. Oil and gas producers, wholesalers, and distributors, and major users of tax exempt fuels, such as the agriculture industry, would be affected by changing when and where fuels taxes are collected. This impact should be included in any study on the subject.

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*The costs and benefits of moving Texas' collection point for motor fuels taxes needs examination.*

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## Conclusion

Revenues from state motor fuels taxes are significant and essential for the state to meet transportation, public safety, and education priorities and needs. The incentive to defraud the state of a portion of these revenues is significant and is possibly resulting in the loss of revenue. Changing the tax collection mechanism to further minimize tax fraud should be evaluated to determine if the potential financial benefits outweigh any costs and tax administration problems.

## Recommendation

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### Management Actions

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- The Texas Department of Transportation and the State Comptroller should jointly evaluate the costs and benefits of moving the point of collection for state motor fuels taxes to the terminal level. The study should address:
  - increases in revenues from moving the point of collection;
  - costs, including administrative costs, associated with moving the point of collection;
  - impact on tax-exempt status for agricultural and other non-highway uses; and
  - the impact on industries and businesses affected by changing the point of collection.
- Require TxDOT to report to the Legislature no later than January 1, 1998 on the results of the study.

This recommendation would encourage all interested entities in motor fuels taxes to assess the benefits and costs of changing the current state policy for collecting state motor fuels taxes. The study would build off past enforcement experiences of the Comptroller and approaches used by other states. TxDOT would lead the study effort and report the results to the Legislature in time for consideration in its 76th Session.

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## Fiscal Impact

This recommendation would have no fiscal impact. The agencies involved in the study would use existing staff resources as necessary. Any cost associated with conducting the study would come from current appropriations.

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<sup>1</sup> United States General Accounting Office, *Tax Administration: Diesel Fuel Excise Tax Change*, January 1996, GAO/GGD-96-53, p.2.

<sup>2</sup> Texas Comptroller of Public Accounts, Texas 1995 Annual Cash Report, Volume 1, August 31, 1995.

<sup>3</sup> Ibid.

<sup>4</sup> TxDOT Office of Budget and Finance, Distribution of Total TxDOT Receipts and Disbursements for Fiscal Year Ended August 31, 1995, 1995.

<sup>5</sup> Texas Comptroller of Public Accounts, Texas 1995 Annual Cash Report, Volume 1, August 31, 1995.

<sup>6</sup> Information obtained from Texas Department of Transportation, Finance Division Staff, February 29, 1996.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> U.S. Department of Transportation, Federal Highway Administration, The Joint Federal/State Motor Fuel Tax Compliance Project, Fiscal Year 1993 Status Report, Report No. FHWA-PL-94-017, February 7, 1994.

<sup>12</sup> Interview with Comptroller's Office Staff, March 5, 1996.



# Issue 7



## Include Transportation Needs of Health and Human Service Clients in TxDOT's Public Transportation Planning Efforts.

### Background

Individuals who are aged or disabled often have special transportation needs. Programs created to meet these needs are generally referred to as client transportation services. These services are administered primarily by the state health and human service agencies and operated by a network of public, private, and non-profit transportation providers. Many rural transit agencies also provide client transportation services; further, these programs were most often initiated under the sponsorship and funding of a health or human service agency.

The growth of client transportation needs over the past two decades has resulted in various agencies developing a wide range of transportation resources in virtually every community of the state. Federal funding regulations typically restrict agency services only to clients of the sponsoring agency. The result is a set of services that tend to be uncoordinated with public transit services, resulting in substantial unused capacity.<sup>1</sup>

In 1991, the Legislature created the Office of Client Transportation Services (OCTS) to deal with the rapidly growing number and variety of client transportation services, with a charge to reduce duplication and increase coordination. The Office was originally established in the Governor's Office and later moved to the Health and Human Services Commission (HHSC). OCTS created an Agency Transportation Coordinating Council (ATCC), comprised of nine state health and human service agencies and TxDOT, to improve the coordination of client transportation services in Texas.

TxDOT's role in public transportation has been limited to administering a variety of federal transit programs for public transportation, some of which include the above mentioned client transportation services. The three major programs include:

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*Many clients of the state's health and human service agencies have special transportation needs.*

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- **Section 9 Program:** provides federal and state funds for operating and capital assistance to transit systems that operate in urban areas with populations between 50,000 and 200,000.
- **Section 18 Program:** provides federal and state funds for operating and capital assistance to demand responsive (call for services) or fixed route services that are open to the general public in rural areas with a population of less than 50,000.
- **Section 16 Program:** provides federal funding to private, non-profit agencies for capital purchases to support the transport of elderly and disabled individuals.

Client transportation is also available in the metropolitan areas of the state through the public transit systems operated by most of the state's larger cities. Dallas, Fort Worth, San Antonio, Austin, Houston, El Paso, and Corpus Christi operate Metropolitan Transit Authorities (MTAs). Local sales taxes and federal funding from the Federal Transit Administration support MTA operations and TxDOT has little involvement in these programs.

Separate planning, administration and funding of client transportation and public transportation contribute to problems and inefficiencies in the delivery of transportation services. The Sunset review focused on ways to improve the coordination of these transportation programs.

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*The Transportation Code does not define the elements of public transportation.*

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## Findings

- ▼ **State law does not provide specific guidance to TxDOT on the definition of public transportation or how the Department should try to meet all public transit needs.**
  - The Transportation Code requires TxDOT to assist and foster the development of public and mass transportation in Texas, but does not define the elements of public transportation. TxDOT accomplishes its present duties primarily through the administration of federal transit grant programs for public transportation.
  - The Transportation Code does not specifically mention programs such as client transportation, although OCTS' statute requires the office to coordinate with TxDOT on the grant process for the Department's Section 16 program.
  - Administering public transportation programs without full consideration of the needs of all citizens, including

specialized populations, fails to efficiently use existing resources. The current system of separately administering public transportation and client transportation services often creates duplication of services, wasting limited resources. Both TxDOT and OCTS acknowledge that the programs should eventually be combined if the state is to effectively and efficiently meet the public transportation needs of the state.

▼ **TxDOT and OCTS have not effectively incorporated client transportation needs into public transportation efforts.**

- ▶ State law creates overlapping transportation programs to meet the needs of individuals who lack a means of transportation or who require assistance because of special needs. TxDOT administers public transportation programs while 13 health and human services agencies administer approximately 30 client transportation programs.
- ▶ OCTS is responsible for coordinating all of the 30 client transportation programs. OCTS is also responsible for determining the feasibility of consolidating all health and human services client transportation programs to create a system through which clients of any state or local health and human service agency or program could be matched with the most cost-effective and appropriate transportation service for their needs. While OCTS has made progress in this regard, each individual program is often subject to federal requirements that restrict the use of funding or access to the service. These federal restrictions also cause underuse of the resulting client transportation services.
- ▶ Even though individuals in need of client transportation services often rely upon public transportation to access health and human services, TxDOT does not significantly incorporate these programs into its public transportation planning or funding efforts. This is evidenced by the absence of client transportation services in TxDOT's statutorily mandated State Public Transportation Master Plan.<sup>2</sup> Consequently, transportation services, both public and client, are not adequately coordinated.<sup>3</sup>
- ▶ ATCC member agencies have stated their preference to use public transportation as the foundation for meeting client transportation needs. In its June 1994 report to the directors of member agencies, ATCC established a policy to use public

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*TxDOT does not incorporate client transportation programs into its public transportation planning or funding efforts.*

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transportation first, and specialized client transportation services only in the absence of available public transportation. ATCC prefers to use existing public transportation because it maximizes limited client transportation resources.<sup>4</sup> However in many areas of the state, even those served by TxDOT grant recipients, public transportation services do not meet the needs of health and human service clients.<sup>5</sup>

▼ **Past reviews and recent legislation have identified benefits of a more unified approach to meet the needs of both public transportation and client transportation users.**

- ▶ The Texas Transportation Commission initiated a study of TxDOT's public transportation efforts. This consultant's report concluded that client transportation was not adequately coordinated with other transportation services. The lack of coordination has resulted in unserved transportation needs because of underused capacity.<sup>6</sup>
- ▶ In addition, OCTS, in a 1994 report to the Commissioner of Health and Human Services, stated that Texas has no statewide policies to guide public and client transportation investments. OCTS also concluded long-term planning for improvement and coordination of public and client transportation has not been accomplished by TxDOT.<sup>7</sup>
- ▶ In 1995, the Legislature passed HB 2588 establishing rural and urban transit districts to facilitate greater coordination among existing providers and those areas of the state not presently served by a provider. TxDOT and OCTS both support using these districts to plan and deliver client and public transportation services; however, the two agencies have not reached consensus on their respective responsibilities or implementation.
- ▶ Lastly, Congress, in light of reduced resources for public transportation, has directed the Secretaries of Transportation and Health and Human Services to prepare a special report to Congress on strategies for achieving improved transportation coordination between their respective programs.<sup>8</sup> This report is due to be completed by late 1996.

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*Lack of coordination has led to unserved transportation needs and underused capacity.*

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## Conclusion

Current state efforts to meet health and human service client transportation needs are inefficient and sometimes ineffective. Each service agency is often left to hire transit providers to move clients from place to place. In some instances, TxDOT funds urban or rural transit providers to provide services in the exact same areas where human service agencies pay for transportation services. Although limited coordination efforts are in place, TxDOT does not have a clear statutory charge to work with its grant recipients to provide client transportation services.

Improving client and public transportation coordination efforts would allow health and human service agencies to concentrate limited resources on clients with the most pressing transportation needs. Greater use of existing public transportation resources to meet client needs will also reduce administrative problems associated with clients who must use several different transportation providers. Inefficiencies will remain if the state does not work toward ensuring that client and public transportation services are fully coordinated or combined.

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*Client transportation needs should be considered in the state's public transportation efforts.*

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## Recommendation

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### Change in Statute

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- **Include the transportation needs of the clients of health and human service agencies in TxDOT's public transportation planning and funding activities.**

This recommendation would require TxDOT to incorporate a broader definition of public transportation in all of its efforts in this area. TxDOT should attempt to expand its system to meet the transportation needs of clients of health and human service agencies. TxDOT should work with OCTS and ATCC to define these needs. Health and human service agencies have highlighted the need for this expansion by declaring their intention to use public transportation systems as the foundation of their transportation services. Efforts to take this intent and put it into practice will allow health and human service agencies to focus their efforts on serving clients for whom public transportation is not a viable option.

## Management Action

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- **TxDOT should work jointly with OCTS to:**
  - ensure that transit providers funded by TxDOT provide services to all citizens, including clients of health and human service agencies;
  - integrate the transit districts created in HB 2588 into TxDOT and OCTS client's plans and policies;
  - identify statutory barriers and funding requirements that prevent complete use of health and human service and public transportation resources;
  - develop a plan to fully coordinate or consolidate the funding of the different health and human service agencies' transportation budgets;
  - study whether the eventual consolidation of OCTS within TxDOT would provide for the most effective delivery of services; and
  - report to the Legislature by September 1, 1998 on changes needed to most effectively provide services to health and human service agencies' clients.

These management recommendations are intended to improve communication between TxDOT and OCTS by providing specific items that must be discussed and resolved. TxDOT and OCTS would be required to develop a strategy to integrate client transportation services and public transportation. The first step in doing so is to identify legal and funding impediments to consolidating the state's approach to serving all public transportation needs.

The use of regional districts, as provided through HB 2588, offer an opportunity to define service delivery areas and assess public and client transportation needs within the area. TxDOT and OCTS should develop a strategy to use this mechanism. These recommendations could provide the foundation for a comprehensive regional approach to meeting transportation needs.

TxDOT's public transportation function and OCTS may eventually need to be consolidated to be fully effective. The required study would examine whether this change is needed and would identify the changes required at TxDOT to effectively accommodate the assumption of OCTS responsibilities, if the study concludes that this is the best option. TxDOT and OCTS should report their findings as part of OCTS' biennial report to the Legislature.

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## Fiscal Impact

No fiscal impact would be associated with this recommendation. Both TxDOT and OCTS could incorporate the recommended actions in the course of their usual responsibilities.

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<sup>1</sup> John T. Doolittle & Associates, Inc., *A Comprehensive Assessment and Evaluation of Public Transportation's Contribution to Transportation in Texas*. Prepared for the Texas Department of Transportation. August, 1995. p. 6-1

<sup>2</sup> Texas Department of Transportation. *Public Transportation in Texas: Profiles and Projections 1996-99*. November 1994.

<sup>3</sup> *A Comprehensive Assessment and Evaluation of Public Transportation's Contribution to Transportation in Texas*. p. 6-1.

<sup>4</sup> Agency Transportation Coordinating Council Report, as included in *OCTS Report to the Commissioner of Health and Human Services*. September 1, 1994. Page F-12.

<sup>5</sup> Office of Client Transportation Services, *Report to the Commissioner of Health and Human Services*. September 1, 1994. Pages 15-16.

<sup>6</sup> *A Comprehensive Assessment and Evaluation of Public Transportation's Contribution to Transportation in Texas*. Page 6-1.

<sup>7</sup> *Report to the Commissioner of Health and Human Services*. p. vi.

<sup>8</sup> Letter from Wilbur E. Hare, Regional Administrator, Federal Transit Administration and Patricia Montoya, Regional Director, Department of Health and Human Services to Michael McKinney, M.D., Commissioner, Texas Health and Human Services Commission. March 6, 1996.



# Issue 8



## Continue the Texas Department of Transportation for 12 Years.

### Background

The Texas Department of Transportation (TxDOT) was established as the State Highway Department in 1917 with responsibilities exclusively tied to highway construction and maintenance. These responsibilities gradually expanded to include public transportation coordination, traffic safety promotion, registration and titling of motor vehicles and Gulf Intracoastal Waterway assistance.

In 1991, the Legislature created TxDOT by consolidating the State Department of Highways and Public Transportation with the Texas Department of Aviation and the Texas Motor Vehicle Commission. In 1995, the Legislature transferred motor carrier and vehicle storage facilities responsibilities from the Railroad Commission to TxDOT.

The Texas Transportation Commission, consisting of three governor-appointed members, oversees TxDOT and the majority of the agency's functions. A separate Motor Vehicle Board, consisting of six members appointed by the Governor, oversees motor vehicle dealer regulation, within TxDOT's organizational structure.

TxDOT's mission is to provide safe, effective and efficient movement of people and goods in the state. TxDOT's largest activity is the planning, designing, and managing of the state's 77,000-mile highway system. In this process, TxDOT works with local governments to plan for highway projects to meet the state's transportation needs. TxDOT selects the route for the project, designs the project either with its own engineers or through outside contracts, and acquires the necessary right of way. TxDOT then contracts for the construction of the project with private construction firms. TxDOT oversees the construction from the bidding process to the inspection and final acceptance of the project.

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*TxDOT's largest effort is planning, designing, and managing the state's 77,000 mile highway system.*

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In addition to constructing new projects, TxDOT performs preventive and routine maintenance on existing roadways. As part of its responsibility to maintain roadways, TxDOT issues permits for vehicles that exceed weight and size limits.

TxDOT also provides a number of non-highway transportation services, including a statewide system for issuing and recording vehicle registrations and certificates of title. In fiscal year 1995, TxDOT registered 15.4 million passenger and commercial vehicles, producing \$602.4 million in revenue.

Through its Motor Vehicle Division, TxDOT licenses and regulates new and used car dealers in the state under the direction of the Motor Vehicle Board. TxDOT also administers and hears complaints brought under the Lemon Law in the Motor Vehicle Commission Code. The Lemon Law provides remedies to owners with new cars who have repeated or continuing problems with their vehicles that cannot be repaired.

TxDOT administers transit funds from federal and state sources and provides technical assistance to the smaller urban and rural transit providers. TxDOT also serves as the state sponsor for the Gulf Intracoastal Waterway along the Texas coast. As part of this responsibility, TxDOT acquires land needed for the disposal of material dredged by the Army Corps of Engineers. TxDOT also operates a toll-free ferry system connecting Galveston with Port Bolivar and Port Aransas with Aransas Pass.

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*TxDOT provides many non-highway related services such as issuing and recording vehicle registrations and titles.*

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TxDOT's aviation division supports Texas air transportation primarily by providing financial and technical assistance to communities for aviation facility improvements. The six-member Aviation Advisory Committee advises the division and the Transportation Commission on aviation needs and policy.

TxDOT supports and promotes tourism in Texas by publishing pamphlets, bulletins, maps and documents to serve visiting as well as Texas drivers. In addition, TxDOT operates 11 travel information centers and the Judge Roy Bean Visitor Center to provide road information, travel guidance, and various descriptive materials designed to aid and assist the traveling public and to stimulate travel to and within Texas. TxDOT also publishes the subscription supported *Texas Highways* magazine.

To justify the continuation of an agency's functions, certain conditions should exist. A current and continuing need should exist for the state to provide the functions or services; the functions should not duplicate those currently provided by any other agency; and the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to any other state agency.

## Findings

- ▼ **The main functions of TxDOT, including highway construction and maintenance, motor vehicle registration, motor vehicle dealer regulation, aviation support, and public transportation coordination, continue to be needed.**
  - ▶ TxDOT's continuing effort to improve and expand the highway system is paramount to the state's economic and social interests. The state heavily relies on its transportation infrastructure to maintain and promote economic and social progress in the state. The movement of the vast majority of goods and people in Texas takes place on highways built and maintained under the direction of TxDOT. In fiscal year 1995, TxDOT oversaw a 77,000-mile highway system, on which vehicles traveled an average of 328,000,000 miles per day. As a result, maintaining the highway system is a continuing job.

The state also needs to address new demands on the highway system, ranging from urban congestion, to the anticipated increase in truck traffic from the North American Free Trade Agreement. Improving systems to optimal levels would require a doubling of current capital investment in highways and transit. Although funding will not be available to reach this optimal goal, TxDOT's continuing efforts are necessary to address these infrastructure needs.
  - ▶ Motor vehicle registration and titling is also an essential function for state government. In addition to providing a means of identification for law enforcement purposes, issuing license plates generated \$602.4 million to construct and maintain highways in fiscal year 1995. Although counties act as registration fee collecting agents for the state, this activity must be coordinated on a statewide level. For law enforcement reasons especially, the state must have a collective statewide database on vehicle registrations.

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*TxDOT's functions continue to be needed to provide essential services for the citizens and businesses in the state.*

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they purchase. If Texas did not receive federal funds for highways, this tax revenue paid by the citizens of Texas would go to build and maintain highways in other states. In addition, without the infusion of federal funds, the contractors, construction workers and other local businesses that rely, in part, on federal funds, would suffer.

- ▼ **While organizational structures may vary, all other states use statewide transportation agencies to plan, build and maintain their transportation systems.**
  - ▶ Each state has recognized that transportation infrastructure plays a vital role in economic development. While some states have established separate agencies, or a combination of agencies, to oversee highways, public transportation, and motor vehicle dealer regulation, all states oversee these functions on a statewide level.
  - ▶ Cities, counties, and other local governments are ill-prepared to assume responsibilities for the vast statewide transportation system. While these entities are fully capable of serving the smaller, more localized transportation needs in their jurisdiction, they do not have the resources or the expertise to serve larger, statewide needs.
- ▼ **An examination of the agency's functions led to the conclusion that the agency could not be combined with another agency and achieve any substantial savings or other benefits.**
  - ▶ Placing the oversight of transportation in a single agency is an essential step towards meeting the goal that the state provides the public and commerce with an overall transportation system to meet their needs, whether by highways, aviation, or public transportation. In addition, a single agency fosters an efficient distribution of funds, within constitutional limitations, to highways, aviation, and public transportation, depending on the demands on each system.
  - ▶ A recommendation in the Sunset Staff Report on the Texas Turnpike Authority suggests consolidating the functions of that agency into TxDOT. The Turnpike Authority is the only other agency with statewide authority for roadway construction.

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*Texas must have an agency for transportation, and TxDOT should be continued to serve that purpose.*

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## Conclusion

The functions currently assigned to TxDOT are appropriately placed in that agency. As long as social and economic development continue to be linked to an efficient transportation system, a continuing need exists to have an agency safeguard and promote the different transportation interests in the state, spanning from motor vehicle dealer regulation to the construction of highways. The state would lose over \$1 billion dollars in federal funds if it abolished TxDOT and did not transfer its functions to another agency. Sunset staff did not identify any other agencies that could assume TxDOT's functions with increased benefits to the state or with significantly reduced costs.

## Recommendation

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### Change in Statute

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- Continue the Texas Department of Transportation for 12 years.

This recommendation would continue the Department for the usual 12 years with a new Sunset date of September 1, 2009.

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### Fiscal Impact

If the Legislature continues the current functions of TxDOT, using the existing organizational structure, the Department's annual appropriation of approximately \$3.2 billion in fiscal year 1996 would continue to be required for the operation of the agency.

# **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Department of Transportation</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Update	1. Require at least one-third public membership on state agency policymaking bodies.
Already in Statute	2. Require specific provisions relating to conflicts of interest.
Already in Statute	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Already in Statute	10. Provide for notification and information to the public concerning agency activities.
Apply	11. Require the agency to comply with the state's open meetings law and administrative procedures law.
Update	12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Already in Statute	13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Update	14. Require information to be maintained on complaints.
Update	15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Update	16. Require development of an equal employment opportunity policy.
Update	17. Require the agency to establish career ladders.
Update	18. Require a system of merit pay based on documented employee performance.

<b>Salvage Vehicle Dealers Licenses</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Update	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Apply/Modify	6. Authorize agencies to use a full range of penalties.
Update	7. Specify disciplinary hearing requirements.
Apply	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

<b>Motor Carriers Licenses</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Already in Statute	5. Authorize the staggered renewal of licenses.
Update	6. Authorize agencies to use a full range of penalties.
Update	7. Specify disciplinary hearing requirements.
Apply/Modify	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

<b>Vehicle Storage Facilities Licenses</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Update	6. Authorize agencies to use a full range of penalties.
Update	7. Specify disciplinary hearing requirements.
Apply	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

<b>Outdoor Advertising Licenses</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Update	6. Authorize agencies to use a full range of penalties.
Apply	7. Specify disciplinary hearing requirements.
Apply	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

<b>Motor Vehicle Board/Division</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Already in Statute	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Not Applicable	10. Provide for notification and information to the public concerning agency activities.
Update	11. Require the agency to comply with the state's open meetings law and administrative procedures law.
Not Applicable	12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Already in Statute	13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Update	14. Require information to be maintained on complaints.
Update	15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Update	16. Require development of an equal employment opportunity policy.
Update	17. Require the agency to establish career ladders.
Update	18. Require a system of merit pay based on documented employee performance.

<b>Motor Vehicle Commission Code Licenses</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Already in Statute	6. Authorize agencies to use a full range of penalties.
Issue #5	7. Specify disciplinary hearing requirements.
Not Applicable	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

<b>Transportation Code Licenses (Motor Vehicles)</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Not Applicable	6. Authorize agencies to use a full range of penalties.
Not Applicable	7. Specify disciplinary hearing requirements.
Not Applicable	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

# **BACKGROUND**

# Background

## Agency History

The Texas Department of Transportation (TxDOT) has its roots in the creation of the State Highway Department in 1917 to take advantage of federal funds made available by the Federal Highway Act of 1916. The Department's initial responsibilities were to grant financial aid and direct the road construction programs of the counties, to make sure that proper materials were used in the highway construction process, and to ensure that engineers were qualified.

Over time, the Department's activities have begun to reflect a broader mission to address the state's overall transportation needs. In 1975, the State Highway Department was merged with the Texas Mass Transportation Commission to form the State Department of Highways and Public Transportation. With this merger, the Department became responsible for providing assistance to local communities in developing and maintaining public transportation. Also in 1975, the Department was assigned the responsibility to find sites for the disposal of dredge material from the Gulf Intracoastal Waterway. In 1976, the Governor's Office on Traffic Safety was transferred to the Department.

The Legislature created the Texas Department of Transportation in a special session in the summer of 1991 as a result of a recommendation by the Comptroller's Texas Performance Review. TxDOT was formed by the consolidation of the State Department of Highways and Public Transportation with the Texas Department of Aviation and the Texas Motor Vehicle Commission. The Legislature also declared its intention to merge the Texas Turnpike Authority (TTA) with TxDOT in 1997, subject to voter approval of a constitutional amendment allowing TxDOT to loan money to TTA for toll roads or toll bridges. The state's voters approved the constitutional amendment in 1991.

In 1995, the Legislature largely deregulated motor carriers and transferred the remaining motor carrier regulation responsibility from the Railroad Commission (RRC) to TxDOT. Under this transfer, TxDOT is now responsible for registering motor carriers and maintaining insurance information on registered commercial carriers.

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*Although still commonly referred to as the State Highway Department, since 1991, TxDOT is the state's transportation agency.*

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The same legislation also transferred the regulation of vehicle storage facilities from RRC to TxDOT.

TxDOT's mission is to provide safe, effective and efficient movement of people and goods in the state. While this mission may seem basic, TxDOT accomplishes it through many separate programs, as shown in the chart, *Major Program Areas of the Texas Department of Transportation*.

<b>Major Program Areas of the Texas Department of Transportation</b>
Planning, designing and managing highway construction and maintenance projects
Acquiring and leasing right-of-way
Maintaining highways and roadsides
Managing operations on the state highway system, including improving traffic safety and issuing oversize/overweight permits
Inspecting and replacing bridges both on and off the state highway system
Registering all vehicles, issuing certificates of title
Licensing new and used vehicle dealerships and enforcing the Texas Lemon Law
Promoting and providing financial assistance to public transportation systems
Providing financial and technical assistance to general aviation airports
Serving travelers through travel information centers, rest and picnic areas, travel literature, maps and a toll-free travel hotline and an internet web site
Providing dredge material disposal sites for the Gulf Intracoastal Waterway
Controlling outdoor advertising and junkyards along the highways
Registering motor carriers

## Policymaking Structure

TxDOT is governed by the Texas Transportation Commission (TTC). A separate Motor Vehicle Board regulates motor vehicle distribution industry.

The Texas Transportation Commission consists of three members appointed by the Governor with the advice and consent of the Senate. The Governor designates one member as Commissioner of Transportation to serve as presiding officer. Appointments to the TTC must reflect the population diversity of the state as a whole and one member must

represent rural interests. Members receive an annual salary of \$15,914 plus actual expenses incurred while performing their official responsibilities. TTC is required to meet at least once each month.

The primary role of TTC is to provide policy direction regarding statewide transportation needs. The Commission appoints the Executive Director of the agency; adopts administrative rules governing operations; administers the State Highway Fund; formulates plans and policies for the location, construction and maintenance of the state highway system; and selects general aviation improvement projects for funding. Finally, all three members serve as ex officio members on the Texas Turnpike Authority Board.

The Motor Vehicle Board (Board) of TxDOT consists of six members appointed by the Governor with the advice and consent of the Senate. The Governor designates one member of the board to serve as presiding officer. The Board is the policy body for the regulation of the motor vehicle industry. These policies are implemented by the Motor Vehicle Division within TxDOT.

The Board regulates all aspects of the distribution and sale of motor vehicles by administering the state's motor vehicle laws. The Board provides for compliance with warranties and otherwise prevents fraud, unfair practices, discrimination and other abuses in connection with the distribution and sale of new motor vehicles. In addition, the Board provides advice to TxDOT on personnel, budgetary, equipment and data processing needs of the Board and the Motor Vehicle Division.

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*The Department is funded primarily out of the state's constitutionally dedicated highway fund.*

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## Funding and Organization

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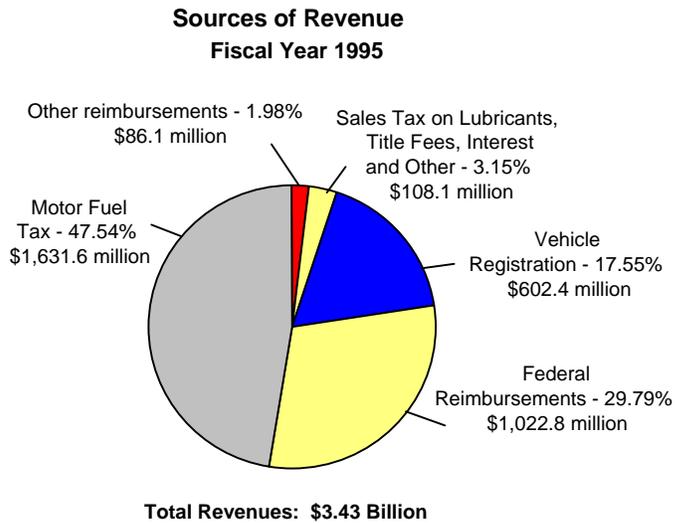
### **FUNDING**

The Department is funded primarily by the revenues dedicated to the highway fund. The revenue in the highway fund is comprised of a 20-cent-per-gallon state tax on gasoline and diesel fuels used on roadways, a motor lubricant sales tax, vehicle registration fees, interest on state funds, and federal receipts. One-fourth of state motor fuel tax revenues is allocated by the Texas Constitution to the Available School Fund. The state constitution dedicates the remaining three-fourths for “acquiring rights-of-way, constructing, maintaining and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads.” The Department of Public Safety (DPS), the state agency with responsibility for policing the state highway system, also receives funds

from the highway fund. In fiscal year 1995, DPS received \$260.5 million from the highway fund.<sup>1</sup> TxDOT collects a small amount of revenue from fees and miscellaneous sources. Portions of these fees and permits go to General Revenue, and some are deposited in the highway fund and are not constitutionally dedicated. These non-constitutionally dedicated funds may be appropriated for any function performed by the Department.

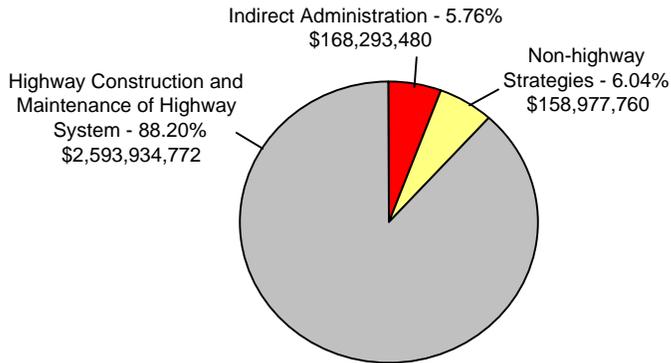
*Texas paid more in federal gas taxes than it received from 1966 through 1994.*

The federal government collects a tax of 18.4 cents on each gallon of gasoline and 24.4 cents on each gallon of diesel fuel, which is used to provide funding for the federal-aid highway program. The federal government actually authorizes the use of these funds by apportionments to TxDOT which it draws upon, much like a line of credit. TxDOT then pays the initial construction cost with state funds and the federal government reimburses the state for the federal share of construction costs. According to information from the Federal Highway Administration, Texas paid more in federal gas taxes than it received from 1966 through 1994.<sup>2</sup> In addition to funds for construction and rehabilitation, TxDOT also receives federal funds for traffic safety, public transportation, and aviation. The chart, *Sources of Revenue - Fiscal Year 1995*, shows the funding data in more detail.



Although the Department had 17 budgeted strategies in the 1994-1995 biennium, these were reduced to 15 for the 1996-1997 biennium. The report reflects fiscal year 1995 data that the Department has reported based on the 15 current strategies. The chart, *Expenditures by Highway - vs- Non-highway Strategies - Fiscal Year 1995*, provides the actual amounts expended.

**Expenditures by Highway - vs- Non-highway Strategies  
Fiscal Year 1995**



**Total Expenditures: \$2.92 Billion**

The chart, *Expenditures by Strategy - Fiscal Year 1995* shows expenditures by TxDOT's 15 budgeted strategies. TxDOT has almost 94 percent of its operating budget allocated to its first five strategies: designing, acquiring right of way, constructing, providing routine and preventive maintenance of the state highway system.

<b>Expenditures by Strategy - FY 1995</b>	
<b>Construction &amp; Maintenance of Highway System</b>	
Highway Design	\$278,978,098
Right-of-Way Acquisition	\$128,119,629
Highway Construction	\$1,428,701,800
Preventive Maintenance	\$205,006,367
Routine Maintenance	\$535,595,297
Ferry Systems	\$17,533,581
Subtotal - Highway	\$2,593,934,772
<b>Non-Highway Strategies</b>	
Aviation Services	\$19,694,169
Public Transportation	\$46,553,903
Gulf Waterway	\$478,363
Registration and Titling	\$37,624,976
Vehicle Dealer Regulation	\$984,725
Research	\$20,219,663
Traffic Safety	\$17,646,170
Travel & Information	\$15,313,195
Advertising & Junkyard Enforcement	\$462,596
Sub-total Non-Highway	\$158,977,760
<b>Total</b>	<b>\$2,752,912,532</b>
Indirect Administration	\$168,293,480
<b>Grand Total</b>	<b>2,921,206,012</b>

The Legislature has established a statewide goal of 30 percent of all agency contracts to be made with Historically Underutilized Businesses (HUBs). The Legislature also requires the Sunset Commission, in its reviews, to consider agencies' compliance with laws and rules regarding HUB use. The chart, *Purchases from HUBs - Fiscal Year 1995*, shows TxDOT's HUB participation.

TxDOT has more than 14,000 employees working out of Austin and 25 district offices.

Purchases from HUBs Fiscal Year 1995	
Total goods and services contracted	\$1,991,326,142
Amount of HUB participating share	\$348,963,025
Percent of HUB participation	17.52%
State goal	30.0%

A more detailed breakdown of TxDOT purchases is found in the chart, *TxDOT Underutilized Business Report Fiscal Year 1995*.

TxDOT Underutilized Business Report Fiscal Year 1995			
Business Conducted Fiscal Year 1995	Total Value	With HUBs	Percent with HUBS
Spot purchase orders	\$69,734,858	\$15,344,827	22.00
Open market purchases	\$174,368,662	\$9,840,592	5.64
Emergency and distributor purchases	\$693,835	\$28,185	4.06
Purchase of services	\$29,161,218	\$5,724,111	19.63
<b>Purchases paid</b>	<b>\$273,958,573</b>	<b>\$30,937,715</b>	<b>11.29</b>
Architectural contracts	\$4,803,454	\$529,867	11.03
Engineering contracts (Includes surveying)	\$31,503,962	\$7,626,990	24.21
Consulting contracts other than architecture and engineering	\$312,553	0	0.00
<b>Professional and consultant services paid</b>	<b>\$36,619,969</b>	<b>\$8,156,857</b>	<b>22.27</b>
Maintenance contracts	\$108,404,293	\$18,651,774	17.21
Right-of-way services	\$4,014,678	\$678,879	16.91
Highway construction contracts	\$1,547,340,148	\$288,995,796	18.68
Miscellaneous contracts	\$20,988,481	\$1,542,004	7.35
<b>Construction, maintenance, other contracts paid</b>	<b>\$1,680,747,600</b>	<b>\$309,868,453</b>	<b>18.44</b>
<b>Total Expenditures</b>	<b>\$1,991,326,142</b>	<b>\$348,963,025</b>	<b>17.52</b>

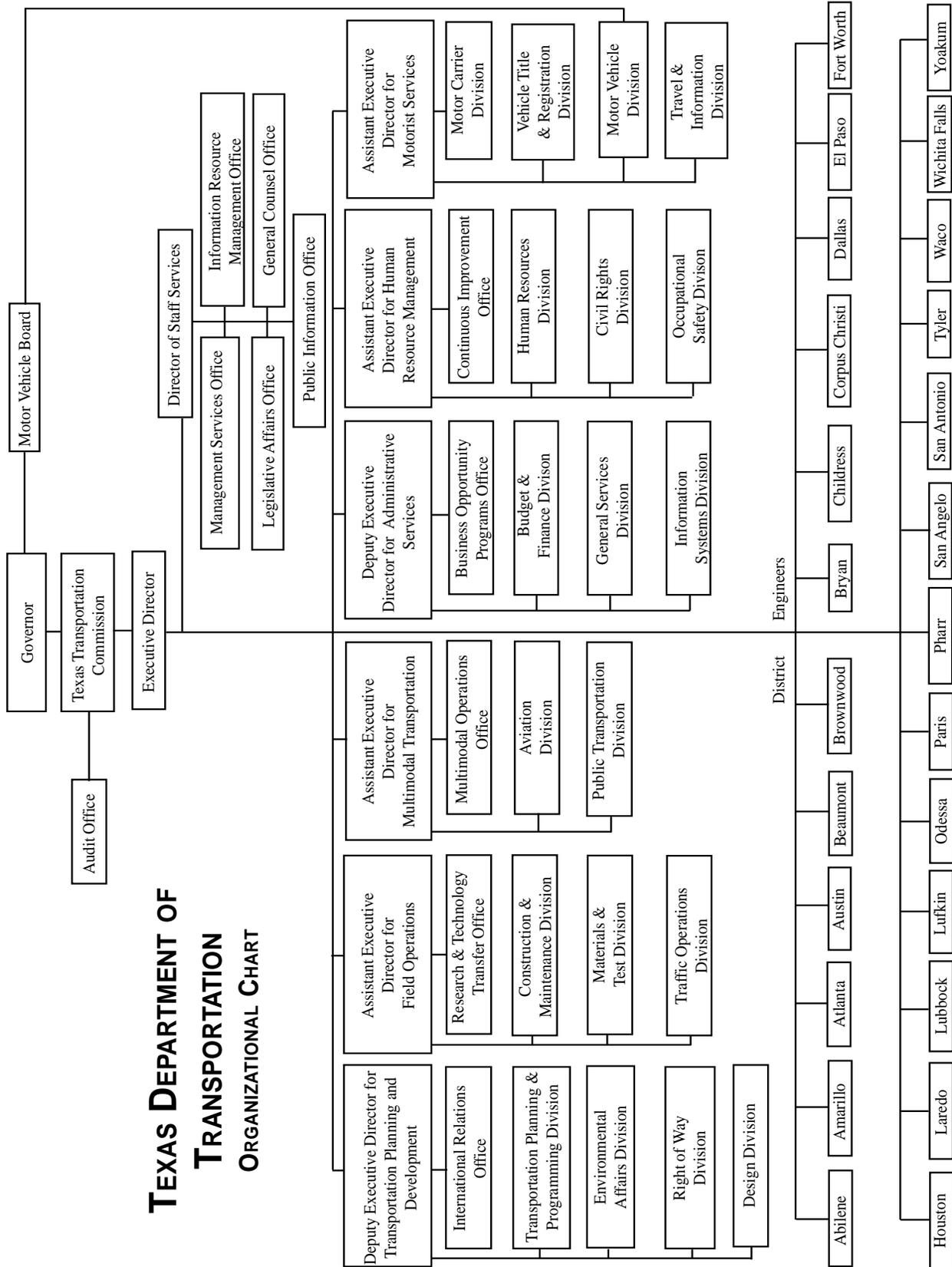
## ORGANIZATION

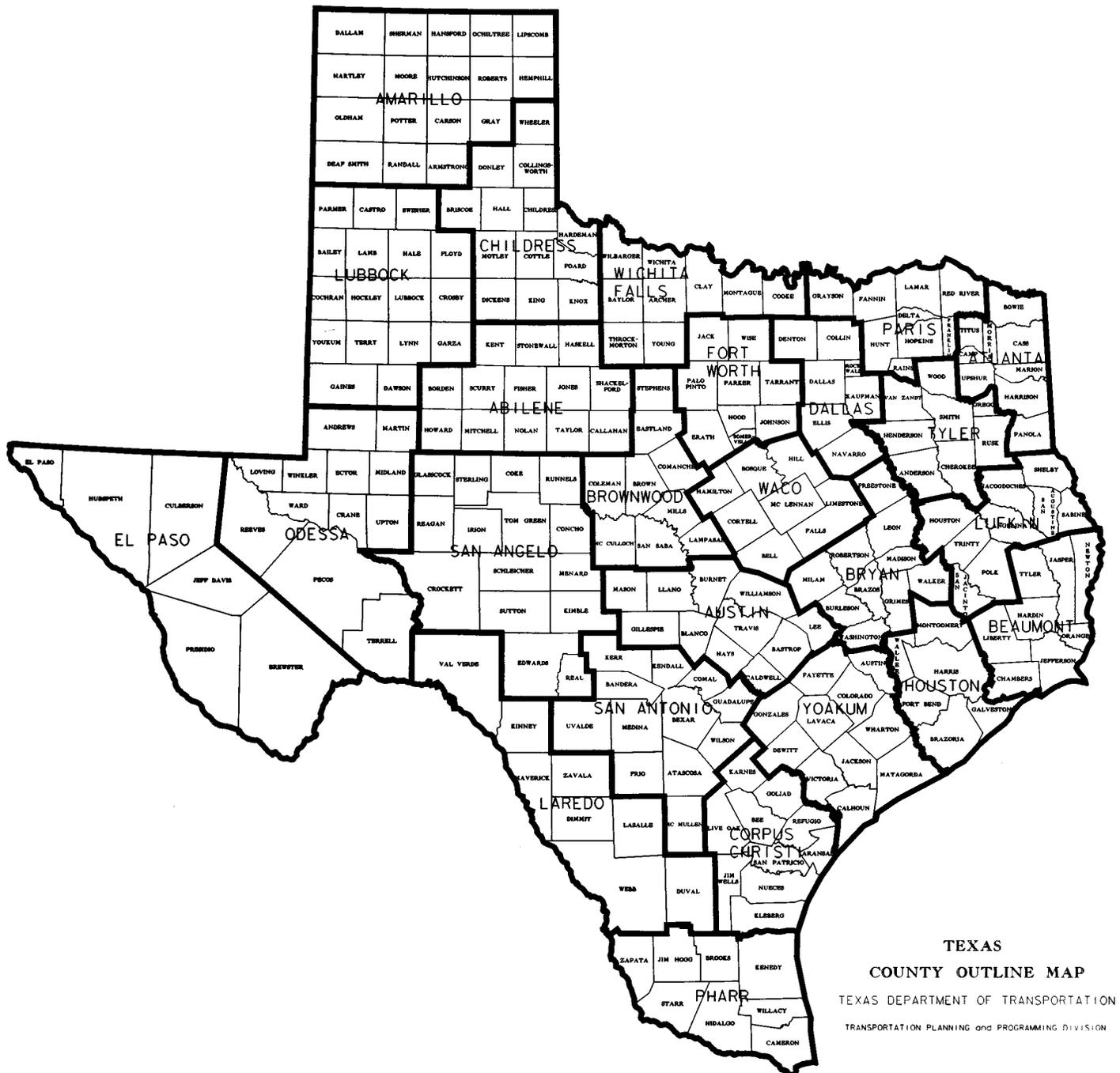
The Department maintains its headquarters in Austin. Headquarter's staff develop and implement policy, manage statewide programs, and provide administrative and technical support to the districts. Twenty percent of all TxDOT employees work in the Austin headquarters. TxDOT headquarters is divided into seven functional administrative units, each headed by a deputy executive director or an assistant executive director that reports directly to the Department's Executive Director. Average agency employment for the first quarter of fiscal year 1996 was 14,179. The charts, *TxDOT Equal Employment Opportunity Statistics - 1995* and *TxDOT Organizational Chart*, show the workforce composition and organization of the Department.

**Texas Department of Transportation  
Equal Employment Opportunity Statistics - 1995**

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	State Goal	Agency	State Goal	Agency	State Goal
Officials/Administration	277	2.9%	5%	10.8%	8%	13.4%	26%
Professional	3,978	6%	7%	13.0%	7%	36%	44%
Technical	3,032	6.3%	13%	15.8%	14%	15.1%	41%
Protective Services	8	37.5%	13%	37.5%	18%	12.5%	15%
Para-Professionals	636	8.3%	25%	16%	30%	81.4%	55%
Administrative Support	610	10.5%	16%	21.3%	17%	81.8%	84%
Skilled Craft	5,397	9%	11%	24.1%	20%	1.9%	8%
Service/Maintenance	361	12.7%	19%	34.1%	32%	7.2%	27%

The Department conducts its primary business in 25 geographic districts throughout the state. Each district is managed by a district engineer who is responsible for the design, location, construction, maintenance, and operation of federal and state highways in the district. The districts range in size from the smallest, Laredo, with 232 employees, to Houston, with 1,557 employees. The Laredo district is also the newest district, created in 1993 by redrawing the boundaries of the San Angelo, Pharr and San Antonio districts. The map, *TxDOT District Offices*, shows the location of each of TxDOT's 25 districts.





TxDOT supports vehicle titling and registration through 17 field offices throughout the state. In addition, TxDOT maintains 12 travel information centers, mostly located at or near the major highway entrances to the state. TxDOT also has regional supply centers in Athens, Seguin, and Post, and 14 materials and tests field offices statewide.

Finally, TxDOT has initiated several efforts to streamline business processes and improve operations. The chart, *TxDOT Business Improvement Efforts*, provides greater detail.

### TxDOT Business Improvement Efforts

**Continuous Improvement** - TxDOT created the Continuous Improvement (CI) office in 1992 to help implement quality management initiatives through training, facilitator assistance for teams, workshops, and retreats, and measurement evaluation. CI places an emphasis on building working relationships and increasing employee involvement in decisions.

**Partnering** - The CI office administers a partnering program to improve working relationships with contractors and product suppliers in an effort to reduce the number of claims and change orders on construction projects. Since 1992, partnering has been used on 137 different construction projects at an average time savings of four percent on each contract.

**Scrub the Budget** - Budget scrubbing teams were formed in 1994 to make Department activities more efficient and identify potential cost savings. The teams use continuous improvement techniques, process re-engineering, and performance auditing. The teams have looked at overtime policy, inventory management, and the utilization of the equipment fleet. New reviews are looking at materials and testing procedures, budgeting, and building and equipment needs and policies.

**Retooling** - Retooling is an organized effort to improve the business operations of TxDOT. Each Department process is examined and particular attention is paid to the needs of external and internal customers. Objectives of the retooling effort include improving operations, streamlining policies and procedures, and making technological improvements to support business activities.

## Agency Operations

TxDOT has adopted one principal goal in its strategic plan that reflects the Department's major functions: to provide the state of Texas with transportation services and systems that work together; are safe, comfortable, durable, and affordable; are environmentally sensitive; are efficient and effective; and support economic and social prosperity. To accomplish this goal, TxDOT's budgeted strategies may be divided into four broad functional areas: Transportation Systems; Motor Vehicle Regulation; Research; and Economic Development. TxDOT's operations to meet these goals are described in the following material.

### *Operate Transportation Systems*

The operation of transportation systems contains four distinct modes of transportation and the Department's first nine strategies. The largest transportation system operated by TxDOT is the state highway system, a 77,000 mile network of state highway, farm to market, U.S., and interstate highways. The chart, *Texas Department of Transportation Highway System Statistics*, provides information regarding the Texas Highway System. The first six program strategies included in this functional area directly relate to the state highway system. TxDOT also includes three non-highway transportation strategies for its aviation, public transportation, and Gulf Intracoastal Waterway.

<b>TxDOT Highway System Statistics</b>	
<b>Category of Highways</b>	<b>Centerline Miles</b>
Farm to Market	40,747
State Highway	16,170
U.S.	12,106
Interstate Frontage	4,508
Interstate-Highway	3,233
Total	76,764

#### *Plan, Design, and Manage Highway Projects*

The Department uses a complex and detailed process, involving public participation, interaction with local governments across the state, and both Austin and district staff, to plan, design, and manage highway projects. TxDOT's planning process begins with the development of the Statewide Transportation Plan. This plan provides the 20-year policy framework for the state's overall transportation needs. Identified transportation needs must address the goals and objectives contained in this 20-year plan, but they do not appear as distinct projects until they appear in TxDOT's ten-year Project Development Plan (PDP). The PDP basically provides an orderly method for TxDOT to see that enough roadway projects are ready for bid letting to use every dollar that is available for construction.

As part of this planning process, TxDOT works closely with Metropolitan Planning Organizations (MPOs) in urban areas to ensure consideration and coordination of local needs. MPOs are locally-created bodies specified in federal law to coordinate urban transportation planning.

The project selection process is described in some detail on the next two pages. Additional information is also provided in the Appendices at the end of the TxDOT section of this report.

As a project progresses through this planning process, TxDOT staff is also involved in its design. Through its in-house design engineers or through outside engineers, TxDOT completes preliminary engineering plans for new highway construction, rehabilitation of existing roadway, and the replacement and rehabilitation of bridges both on and off the state highway system. In 1991, the Legislature required TxDOT to achieve a

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*TxDOT, primarily uses in-house engineers for highway design.*

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# The Transportation Commission

The Department's large, complex process for allocating almost \$2 billion each year among its 25 district offices for some three dozen separate categories of highway and bridge projects is little understood outside the Department. However, the process for selecting transportation projects can be simplified by breaking it into two basic processes the Department uses, depending on the size and scope of the project. Generally, the Texas Transportation Commission makes decisions on a statewide basis for larger projects that add new roads or expand existing ones. The districts make decisions on the more common, recurring needs such as maintenance and rehabilitation, and smaller mobility projects through what TxDOT calls its bank balance program. The following material briefly describes both processes. Additional information about how TxDOT funds this process is contained in the Appendix 1, Project Selection Financing.

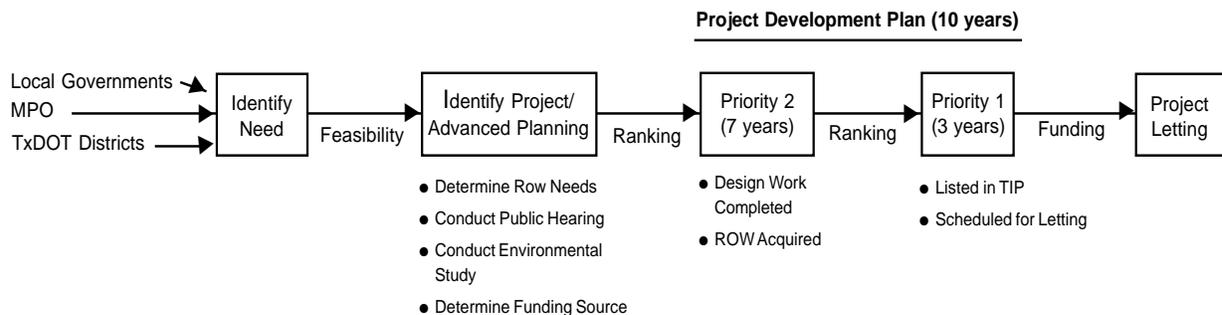
## Texas Transportation Commission Project Selection Process

The Commission's process for selecting transportation projects is depicted in the flow chart, Texas Transportation Commission Project Selection Process, and is described below.

**Identify Need for Improvements** In cooperation with the state's Metropolitan Planning Organizations (MPO) and local governments, TxDOT identifies transportation needs. Typically, these needs result from increases in traffic and congestion due to growth, but may also result from safety concerns. Improvements must be consistent with TxDOT's goals in its statewide Texas Transportation Plan and an MPO's regional plans.

**Identify Specific Projects** TxDOT district offices and MPOs begin planning specific projects to meet transportation needs. Planning activities include identifying solutions such as adding lanes or building new roads, holding public hearings, conducting environmental studies, and routing new roads. At this time, TxDOT also tries to match the proposed project with a specific state or federal funding source or program. Most of these activities occur at the district level.

**Project Development Plan (PDP)** The PDP is divided into two stages: Priority 1 (final three years of project development) and Priority 2 (projects from three to ten years from development).



## Project Selection Process

**Priority 2:** As districts identify specific projects ready for development, TxDOT ranks the projects based on cost/benefit. Staff estimates project costs based on preliminary design work and assesses need based on traffic data. As a result, greater congestion or safety problems lead to higher rankings. Efforts to reduce a project's cost, such as donation of right-of-way or construction dollars, will also improve the ranking. Based on estimates of available future funding, the Transportation Commission determines the threshold for projects that will enter Priority 2.

**Priority 1:** Based on cost/benefit, Priority 2 projects compete to enter Priority 1, according to the threshold set by the Commission. Federally-funded projects in metropolitan areas must be included in the local MPO's Transportation Improvement Plan. This process ensures that federal funds will be spent only with adequate input from the community. TxDOT then completes remaining design and environmental work and obtains remaining right-of-way. When a project is ready and has funding available, TxDOT schedules it for bid letting—in essence, a request for contract proposals. TxDOT receives bids from contractors and the Commission awards the contract to the lowest bidder.

### Transportation Commission Discretionary

**Funds** In addition to this process for selecting projects, the Commission has flexibility to select projects for construction statewide that may not meet other program criteria, but promote economic development, provide system continuity with adjoining states and Mexico, or address other strategic needs of the state as determined by the Commission.

### TxDOT's Bank Balance Program

In its bank balance programs, TxDOT has delegated decision-making authority to its district engineers to address more routine transportation needs that are common to all districts. In this program, TxDOT allocates funds to each district by specific formulas designed to reflect each district's needs for each type of transportation project. For example, TxDOT allocates rehabilitation funds to districts by formulas that consider axle loads, lane miles, and pavement condition.

TxDOT calls this a bank balance program because it allows districts to save or borrow against future allocations to manage their own spending over time for eligible roadway projects. Districts may save their allocations for several years to finance a project they could not afford with a single year's funding. Conversely, districts may borrow from future years' allocations to finance large, more cost-effective projects.

**MPO Projects** Under ISTEA, certain funding decisions have been delegated to MPOs which then select projects in consultation with TxDOT. MPOs make decisions on metropolitan mobility and rehabilitation projects and for Congestion Mitigation and Air Quality (CMAQ) Improvement projects. TxDOT allocates funds as a bank balance program. Urban areas of greater than 200,000 population receive metropolitan mobility funds on the basis of population, while districts in air quality non-attainment areas receive CMAQ funds on the basis of population and air quality factors outlined in ISTEA. Texas currently has four non-attainment areas: Houston-Galveston; Dallas-Ft. Worth; El Paso; and Beaumont.

balance between in-house and outside engineering not only for preliminary design engineering but also for construction engineering.

Following completion of engineering plans, TxDOT provides project specifications, estimates, conducts the bid letting for the project, and is also responsible for managing project construction. This activity is described on the following pages.

#### Right of Way Acquisition

**Environmental Clearance.** Before beginning the right-of-way acquisition process, TxDOT must complete a federal environmental review process under the National Environmental Policy Act (NEPA). If the project is funded completely by state or local funds, Commission rules still require TxDOT to perform an environmental assessment that generally follows federal environmental requirements. Alignment selection and final design of a project are not complete until environmental clearance has been received.

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*All projects, regardless of funding source, must receive an environmental clearance to proceed in the planning process.*

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The environmental assessment process requires early coordination with local governments, soliciting public involvement and conducting public hearings at different intervals in the process. During the environmental assessment, TxDOT must determine whether the proposed construction will affect not only the environment, but also natural, cultural, recreational, historic or other resources.

All projects, regardless of funding source, receive an environmental analysis. A project will fall into one of three defined classes depending on the extent of its environmental impact. If a project is likely to have a significant impact on the environment, an Environmental Impact Statement (EIS) is prepared. This is the most detailed and extensive form of environmental analysis, and requires a thorough analysis of feasible alternatives. An Environmental Assessment (EA) is prepared for projects that are anticipated to have a Finding of No Significant Impact (FONSI), but which do require some examination of alternatives. Categorical Exclusions (CE) are granted for projects that have an insignificant impact on the environment such as traffic signal placement and shoulder construction projects. For non-federal aid projects and in accordance with the Texas Administrative Code, the Environmental Affairs Division of TxDOT certifies environmental clearance. For federal aid projects, environmental clearance is received from the Federal Highway Administration. In fiscal year 1995, the Environmental Affairs Division received such clearance on 672 projects.

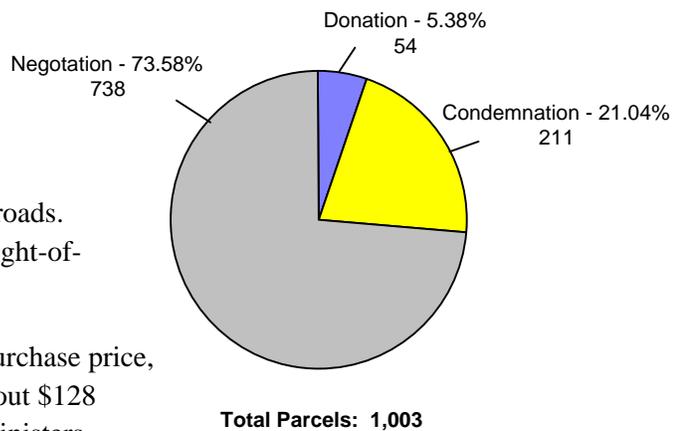
**Right-of-Way Acquisition.** As TxDOT goes through the process of selecting projects and determining the appropriate routes for highways or expansion projects, it also maps out the right of way that will be required for the project. Current state law authorizes TxDOT to acquire or condemn property necessary for state highway purposes. On average, TxDOT can acquire all of the necessary right of way in 27 months from the time it issues the FONSI.<sup>4</sup>

After environmental clearances, TxDOT appraises the fair market value of the necessary property (which includes the value of the property acquired and any damages to the remaining property), provides the appraisal to the owner and makes an offer based on that appraisal. If the property owner accepts the offer, TxDOT conducts the title transaction and can proceed with the project. If the property owner rejects the offer, the Department may invoke its power of eminent domain and condemn the property. In a condemnation proceeding, three special commissioners, appointed by a judge with eminent domain jurisdiction, hear evidence and determine the amount of the award to the property owner (the appraised value plus any damages to the remaining property). The state and the property owner have the right to appeal the special commissioners' decision to a jury. However, TxDOT has a right of possession to the property at the time a state warrant, in the amount of the special commissioners' award, is deposited with the court.

In fiscal year 1995, TxDOT acquired 1,003 parcels of right-of-way. The chart, *Right of Way Acquisitions Fiscal Year 1995* summarizes how these parcels were acquired. This number includes parcels for which a locality paid a share of the purchase price. During fiscal year 1995, the Transportation Commission changed the matching requirements to require 100 percent contribution on new location farm-to-market roads. The Department now pays for 90 percent of right-of-way costs on existing farm-to-markets.

TxDOT's total right-of-way cost, including purchase price, utility adjustment and relocation cost, was about \$128 million in fiscal year 1995. TxDOT also administers relocation and advisory assistance to those displaced by construction of highways constructed with federal funds. TxDOT also works with utility companies for the relocation or adjustment of utilities affected by highway construction.

**Right of Way Acquisitions  
Fiscal Year 1995**



Provide for Construction of the Highway System and Facilities

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*TxDOT does not actually build highways, but oversees construction by private firms.*

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After new projects are designed, selected and right-of-way is acquired, TxDOT oversees construction of these projects. This activity includes the construction of new lanes and for the rehabilitation of existing lanes. TxDOT does not actually perform this work, but contracts with private construction firms. The Construction and Maintenance Division is responsible for overseeing the bidding process and the construction. TxDOT districts are responsible for inspection and final acceptance of the project. TxDOT devotes over half of its operating budget to Highway Construction, more than \$1.4 billion in fiscal year 1995 alone.

The Construction and Maintenance Division prequalifies contractors and issues bid proposals. The division requires audited financial statements of 600 construction contractors a year and issues 500 bid documents a month to contractors. Once a month, TxDOT opens bids in a public meeting. TxDOT staff review the bids to ensure that the bidding is competitive, and that the lowest bid complies with all Department policies. Staff then makes recommendations to the Commission on whether to accept the bid. The Commission must approve all construction contracts, except those under \$300,000.

Once a bid is accepted, Department staff forward additional project plans and drawings to the contractor. TxDOT administers all aspects of the contracts for approximately 1,200 ongoing construction projects a year. This construction engineering involves working with the contractors on a day-to-day basis. TxDOT staff help to develop change orders, supervise construction, and perform ongoing inspections of construction projects. TxDOT staff resolve claims that are submitted according to Commission rules.

As part of this strategy, TxDOT performs bridge inspections and contracts for the repair or replacement of deficient bridges. TxDOT will replace or repair 187 deficient bridges in fiscal year 1996. In fiscal year 1995, TxDOT performed 16,090 bridge inspections on state-operated highways and 3,063 bridge inspections off the state system. Finally, this strategy includes funds to construct various warning and protection devices at grade rail crossings.

Provide a Preventive Maintenance Program to Prevent State Highway Deterioration

Preservation of the highway system is a major priority for the Department. TxDOT expended \$205 million in fiscal year 1995 for the preventive maintenance strategy. Each of the 25 districts receives an allocation of funds for preventive maintenance based on the number of highway miles, the amount of traffic, and pavement conditions. Each district then develops its own plan to preserve and prevent deterioration on the roads and bridges in its district.

Roadways are preserved primarily by applying seal-coat resurfacing and concrete pavement overlays. The seal-coats protect a roadway that is still in good condition while an overlay, consisting of a light layer up to 1 1/2 inches thick, is used on surfaces that have experienced more wear. A treatment in excess of 1 1/2 inches would generally be considered reconstruction, and not preventive maintenance. In fiscal year 1995, TxDOT contracted for 237 seal-coat resurfacing and concrete pavement overlay contracts.

In addition to roadways, preventive maintenance includes bridge painting, joint cleaning and sealing of bridges. Maintenance of non-pavement items in the right-of-ways is also included. This includes repairing shoulders, drainage facilities, bridges, and tunnels. Regular maintenance of signs, markings, and lighting fixtures are also preventive maintenance activities.

Provide for Routine Maintenance and Operation of the State Highway System

Routine maintenance involves both on-going maintenance as well as unscheduled maintenance that may result from storms or traffic accidents. District offices each receive allocations for maintenance and each district decides how to spend those funds. On-going maintenance includes mowing the right-of-ways, re-striping pavement, maintaining rest and picnic areas, controlling litter, repairing signs, installing and maintaining lighting fixtures, and repairing guardrails. Maintenance to repair damage to pavement and bridges includes patching holes and cracks in the roadway, removing snow and ice, and replacing guard rail damaged in automobile accidents. TxDOT collected \$94,829 in fiscal year 1995 from motorists' insurance policies to pay for damage by traffic accidents to TxDOT equipment, and \$2.2 million in fiscal year 1995 for damage to TxDOT structures and property.

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*TxDOT spent \$205 million in 1995 on preventive maintenance, one of its major priorities.*

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TxDOT district staff perform many of the routine maintenance activities, although an increasing number of activities, such as mowing, are being contracted out. In fiscal year 1995, TxDOT contracted out for 47.5 percent of all routine maintenance work.<sup>5</sup>

Roads on the state highway system are built to different specifications and as a result they can withstand different levels of traffic and weight. To preserve the roads and limit damage, TxDOT requires permits for vehicles that exceed weight and size limits established by law. TxDOT issues a permit if it determines the commodity cannot reasonably be dismantled and believes that material damage to the roadway will not occur. TxDOT may, in cooperation with a city, establish the route to be traveled.

Certain classes of vehicles have statutory authority to exceed legal weight limits. For example, vehicles transporting ready-mix concrete with a tandem axle weight not to exceed 46,000 pounds and a gross weight not to exceed 69,000 pounds may be operated on public highways other than interstates without a permit. Vehicles transporting solid waste or recyclable materials, seed cotton modules, and milk may operate without permits subject to specified tandem axle and gross weight limits.

In 1989, the Legislature established a type of overweight permit based on weight tolerance allowances. This "2060 permit," named for HB 2060 which established it, provides for TxDOT to issue permits for vehicles exceeding the allowable axle weight by up to 10 percent and exceeding the allowable gross weight by up to five percent. TxDOT may only issue the permit if the vehicle is registered for the maximum gross weight applicable to the vehicle, not to exceed 80,000 pounds in total gross weight. Federal law establishes 80,000 pounds as the maximum gross vehicle weight allowed, without exception, on interstate highways.

<b>Overweight and Oversize Vehicle Permit Fees</b>	
Single trip permits	
manufactured housing	\$20
portable buildings	\$7.50
general oversize	\$30
overweight: 80,001 - 120,000 lbs.	\$50
overweight: 120,001 - 160,000 lbs.	\$75
overweight: 160,000 to 200,000 lbs	\$100
overweight: exceeding 200,000 lbs	\$125
Total revenue collected as a result of the issuance of oversize/overweight permits in fiscal year 1995	\$19.8 million

In fiscal year 1995, TxDOT issued over 420,000 oversize/overweight permits, generating \$19.8 million in revenue. The chart, *Overweight and Oversize Vehicle Permit Fees*, provides cost information on permits other than the 2060s.

Finally, the operation of traffic management systems is included in this strategy. TxDOT operates traffic management systems in San Antonio, Dallas, Fort Worth, El Paso, and Houston. All of these systems manage freeway traffic but have different capabilities and are different sizes. Traffic management systems can provide information to police and EMS on traffic conditions and incidents, and allow better use of existing lane capacity. In

addition, information on accidents and construction delays can be relayed to drivers via electronic messaging boards.

*Maintain and Operate Ferry Systems in Texas*

TxDOT maintains and operates two 24-hour, toll-free ferry systems on the Gulf Coast connecting Galveston with Port Bolivar and Aransas Pass with Port Aransas. At Port Bolivar, TxDOT operates five ferries, each with a capacity of 70 vehicles. At Port Aransas, it operates five ferries, each with a capacity of 20 vehicles. The 20-minute crossing between Galveston and Port Bolivar transported 2.1 million vehicles at an average cost of \$3.28 per vehicle in fiscal year 1995.<sup>6</sup> The five-minute trip between Aransas Pass and Port Aransas transported approximately two million vehicles at a cost of \$.60 per vehicle in fiscal year 1995.

*Support and Promote General Aviation*

TxDOT's Aviation Division supports Texas air transportation primarily by providing financial and technical assistance to communities for aviation facility improvements. The division distributes both federal aviation and state non-dedicated highway funds for capital improvements at publicly-owned airports. These improvements include runway repair and extensions, installation of lighting systems, fencing, and land acquisition.

The six member, Aviation Advisory Committee, appointed by the Commission, advises the division and the Commission on aviation needs and aviation policy. In addition, the Committee advises the Commission on the preparation and adoption of a Texas Airport System Plan (TASP). In 1995, TxDOT spent \$19,694,169 on aviation programs. Of this amount, \$13,427,490 was from federal funds, \$4,899,947 came from non-dedicated highway funds, and the remainder was the local government share of aviation projects. Both federal and state grant programs are 90/10 matching programs, with either the state or federal funds comprising the 90 percent and a local contribution of 10 percent.

The division receives applications for assistance and makes determinations on whether federal or state funding is more appropriate. To be eligible for state funding, an airport must be a part of the TASP. The 1994 TASP includes 307 airports, 293 of which are in existence and 14 are proposed. These airports include commercial and general aviation airports. General aviation airports consist of all civilian facilities that do not provide scheduled commercial service. The division provided \$4.5 million in state grants to 20 general aviation airports in fiscal year 1995.

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*TxDOT supports aviation through funding of capital improvements at publicly-owned airports.*

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Texas was selected as one of seven states to receive and distribute federal aviation funds under a State Block Grant Program. To be eligible for federal aid, a Texas airport must be included in the National Plan of Integrated Aviation Systems (NPIAS). Most of the airports in the TASP are also a part of the NPIAS. The division distributed \$10,675,869 in federal financial assistance to 13 general aviation airports in fiscal year 1995. The size of the grants in either the federal or state program varies significantly. The grant awards range from a large award of a \$5 million multi-year grant for the Del Rio Airport to \$200,000 for runway repairs at Dryden.

TxDOT has no role in funding commercial airports, like Dallas-Fort Worth International and Houston Intercontinental Airports, which receive funding directly from the Federal Aviation Administration.

The Aviation Division also operates a small loan fund for operators of airports for capital improvements. Currently, the division has seven outstanding loans worth a combined \$400,000. The interest rate on the loans is five percent.

Finally, TxDOT personnel inspect general aviation airport runways for the FAA. The Aviation Division is scheduled to inspect approximately 300 airports in 1996.

#### Support and Promote Public Transportation

TxDOT plays an important role, especially in rural, small urban, and urbanized areas under 200,000 in population, in the development of public and mass transportation. TxDOT's primary functions are to administer funds from federal and state sources and to provide technical assistance to the smaller urban and rural transit providers. Each TxDOT district has a Public Transportation Coordinator to assist and coordinate public transportation activities, although many have additional responsibilities. The Department is assisted in its efforts by the Public Transportation Advisory Committee appointed by the Governor, Lieutenant Governor, and the Speaker.

TxDOT provides technical assistance but no funding to the transit authorities in Dallas, Fort Worth, Houston, Austin, San Antonio, El Paso and Corpus Christi. In addition to farebox receipts and federal funds received directly from the Federal Transit Administration, these transit authorities collect a local sales tax to help fund operations. All cities of 50,000 population or greater have the authority to levy a transit authority

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*TxDOT plays a role in developing the state's public transportation programs, especially in rural areas of the state.*

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tax. The chart, *TxDOT Public Transportation Programs* lists information about the different transit programs administered by TxDOT.

TxDOT administers three federally-funded programs under the Federal Transit Act. The first program provides capital funding to purchase modified vans, buses, and other improvements for transportation services for elderly and/or disabled persons. Texas' share of federal funds is determined by a formula that includes the percentage of elderly and disabled population in Texas. Public transportation coordinators in the districts and MPOs in the large urbanized areas award the funds to eligible non-profit transportation providers. In fiscal year 1995, TxDOT distributed \$3.1 million in federal funds for this program.

<b>TxDOT Public Transportation Programs</b>		
<b>Federal Program</b>	<b>FTA Funds FY 1995</b>	<b>Number of Grant Recipients</b>
Capital purchases for elderly and disabled	\$3,089,856	81
Rural Transit	\$8,263,324	41
Small urban areas between 50,000 and 200,00 population	\$18,079,975	22
Section 8 (planning)	\$2,810,509	25

A second program provides federal and state funds to public transportation programs in rural areas and small cities less than 50,000 population. This program provides funds for operating expenses, administration, and capital expenditures. The federal government allocates these funds to the states according to a formula that accounts for the rural population in each state. Providers apply directly to TxDOT which makes funding decisions based on rules adopted by the Commission. In fiscal year 1995, Texas received and distributed \$8.3 million to 41 recipients across the state.

A third program provides federal funding for transit operations in urbanized areas of 50,000 to 200,000 population. TxDOT establishes maximum allocations for each of these small urban areas after consulting with the transit industry. The recommended allocation amounts are forwarded to the FTA. The transit systems within the small urban areas then apply for federal funding directly from the FTA, which administers the program and manages the individual grants. State funding for the small urban systems, which is generally used to match federal dollars, is administered by TxDOT.

In addition, TxDOT distributes federal funds to MPOs statewide for transportation planning. These funds are used by the MPOs to support transit planning activities as well as general transportation planning. TxDOT receives these funds and distributes them the state's 25 MPOs based on Commission rules that reflect the population served by the MPO. In fiscal year 1995, TxDOT distributed \$2.8 million in federal funds to MPOs statewide for transit planning.

### Support the Gulf Intracoastal Waterway

TxDOT serves as the non-federal sponsor for the Texas segment of the Gulf Intracoastal Waterway (GIWW), an inland waterway that borders the Gulf Coast from Florida to Mexico, including 423 miles along Texas' Gulf Coast. Between 70 and 80 million tons of goods moved through the Texas segment of the GIWW in 1992.<sup>7</sup> As a non-federal sponsor, TxDOT's main responsibility is to provide all land needed for the disposal of material dredged by the Army Corps of Engineers. TxDOT funds engineering studies to determine suitable sites for the disposal of dredge material. The Corps undertakes periodic dredging of the waterway to maintain a 12-foot depth. In fiscal year 1995, TxDOT purchased 180 acres for the placement and disposal of dredge material. The Texas Coastal Waterway Act of 1975 authorizes TxDOT to acquire right of way for dredge material disposal, coordinate acquisition with appropriate state and federal agencies, and continuously evaluate the GIWW and report specific recommendations to the Legislature.

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*TxDOT administers a statewide system for issuing and recording vehicle registrations and certificates of title.*

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### **Motor Vehicle Regulation**

In addition to maintaining transportation systems, TxDOT is responsible for most aspects of motor vehicle regulation. This activity involves the registration and titling of motor vehicles in the state and the regulation of motor vehicle dealers, including enforcement of the state's Lemon Law.

#### Administer the Provisions of the Motor Vehicle Registration and Titling Statutes

TxDOT administers a statewide system for issuing and recording vehicle registrations and certificates of title. In performing this activity, TxDOT provides training and assistance to the 254 county tax-assessor-collectors who act as TxDOT's agents to issue motor vehicle registrations, accept title applications, and collect and report applicable fees. TxDOT mails registration notices to vehicle owners and examines title applications that are submitted by the public through the counties.

In fiscal year 1995, TxDOT registered 15.2 million passenger and commercial vehicles, producing \$608.6 million in revenue. The registration fee is a sliding scale, starting at \$58.80 for vehicles which are three years or less, and reducing to \$50.50 for vehicles between three and six years old, and \$40.50 for vehicles over seven years old. Fees for vehicles in excess of 6,000 lbs are calculated on a weight-based formula. TxDOT splits registration fees with the counties--the state receives 67 percent and the counties receive 33 percent--approximately. In addition,

counties may add an additional \$10 fee for maintaining county roads and bridges.

TxDOT contracts with the Texas Department of Criminal Justice for the manufacture of license plates and vehicle registration validation stickers. TxDOT also operates a program for specialty license plates. In fiscal year 1995, the Department issued approximately 200,000 special license plates in 47 different categories. Examples of special license plates include collegiate license plates, amateur radio license plates, and Pearl Harbor survivor license plates. These specialty plates generated \$1 million in revenue in fiscal year 1995.

TxDOT is nearing completion of a project to automate its registration and title system (RTS). RTS is a point-of-sale system designed to provide a more efficient and timely method of issuing titles and updating registration records for vehicles in Texas. As of March 1996, RTS has been installed in 212 counties in the state.

The Department issued 3.95 million vehicle titles in fiscal year 1995. A certificate of title costs a vehicle owner \$13. TxDOT estimates that the average number of days to issue and mail titles will decrease from 50 days in 1995 to seven days in fiscal year 1996 as a result of the implementation of the RTS.

*Administer the Provisions of the Texas Motor Vehicle Commission Code*

TxDOT administers state motor vehicle laws, including licensing motor vehicle dealers, manufacturers, distributors, converters and representatives, and administering consumer protection laws. In fiscal year 1995, TxDOT issued 3,936 licenses to motor vehicle dealers, manufacturers, and representatives. The Motor Vehicle Board, an independent Board within TxDOT, promulgates rules governing activities of licensees. TxDOT staff implement the policies of the Board.

Administrative Law Judges in the Motor Vehicle Division conduct enforcement hearings, dealer location protest hearings, and Lemon Law consumer protection hearings. Enforcement hearings generally address complaints that a dealer has engaged in illegal activities. These complaints are brought by other motor vehicle dealers and consumers, and often involve false or deceptive advertising, fraudulent sales practices, or unlicensed sales. In fiscal year 1995, TxDOT received 961 complaints, of which 265 resulted in an agreed order and 49 in a hearing. The remainder were either investigated and dismissed or are pending. TxDOT collected \$319,381 in administrative penalties against motor vehicle dealers in

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*Since 1991, the state's motor vehicle laws, including the Lemon Law, have been administered through the Department.*

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fiscal year 1995. Administrative law judges issue proposals for decision on enforcement hearings. By statute, the director of the Motor Vehicle Division makes the final decision on Transportation Code violations, such as failing to maintain license qualifications. The Motor Vehicle Board makes a final decision on Motor Vehicle Commission Code violations, such as deceptive advertising.

The Motor Vehicle Commission Code allows an existing dealer of new motor vehicles to protest the proposed establishment or relocation of another dealership of the same manufacturer in the same market area. Specifically, dealers of the same manufacturer located in the same county or within a 15-mile radius of the proposed location are given the opportunity to protest. If a dealer protests, TxDOT staff conduct hearings to determine whether to authorize the location. In fiscal year 1995, TxDOT issued 312 licenses that could have been protested. Of these, dealers filed protests in 31 cases and seven went to hearings. The average length of a case that went to hearing was almost 11 months. The Motor Vehicle Board did not deny any licenses as a result of those protests. In addition to dealers protesting the location of another dealership, the Motor Vehicle Commission Code also allows a dealer to protest a proposed termination of its franchise by the manufacturer.

TxDOT also administers the state's Lemon Law, enacted by the Legislature in 1983. The law provides remedies to new vehicle owners who have repeated or continuing problems with their vehicles that they are unable to have repaired, including problems covered by warranty. The law does not cover used vehicles and problems that do not substantially affect the use or market value of the vehicle. TxDOT also administers the vehicle warranty provision of the Code. Under this provision, the Board may require a manufacturer or dealer to repair a vehicle in accordance with the terms of the warranty in question.

TxDOT held 412 hearings in fiscal year 1995 on violations of the Lemon Law and vehicle warranty. TxDOT resolved an even greater number informally without a hearing, through mediation or informal settlement action, as shown in the chart, *Motor Vehicle Complaints and Hearings*. Lemon Law complaints took an average of 29.3 weeks to resolve.

<b>Motor Vehicle Complaints and Hearings</b>				
	Lemon Law	Vehicle Warranty	Misc.	Totals
Total number of complaints received in fiscal year 1995	730	233	129	1092
Complaints closed prior to hearing	355	146	135	606
Hearings held	342	70	0	412
Relief granted as a result of hearing	242	37	0	279
Total complaints closed in fiscal year 1995	697	217	141	1055

Note: The total number of complaints received does not correspond with the total number of complaints closed in fiscal year 1995 for two reasons. Some hearings were the result of complaints filed in fiscal year 1994 and some complaints filed in fiscal year 1995 were not heard until fiscal year 1996. Miscellaneous complaints became either a lemon law or vehicle warranty complaint by the time they went to a hearing.

### ***Promote Transportation Research***

TxDOT uses state and federal funds to contract with colleges and universities to conduct research on a variety of technical subjects relating to transportation planning, and the design, construction, operation and maintenance of transportation facilities. TxDOT selects research projects according to needs in a long-range research plan. The research efforts consist of two programs. The State Planning and Research Program is funded using FHWA and state highway funds. This program funds mid- and long-term projects. Examples of long-range research include: a three-year study of motorist understanding of traffic control devices, such as regulatory signs, warning signs, pavement markings and signal indications; the impact of highway construction and operation on surface water quality and on recharge of groundwater aquifers; and the effects of super heavy loads (greater than 250,000 lbs) on pavement.

The second research effort, the State Research Funded Program, addresses immediate and short-term research and is based on TxDOT division, district, and special office requests. TxDOT develops an annual work program and selects projects as funds allow. Examples of state-funded research projects include studying the use of recycled pavement in asphaltic concrete and using a mobile load simulator to predict the failure of different types of pavement at construction sites.

In fiscal year 1995, 48 percent of the Department's \$21 million research budget came from federal sources, with the state contributing the rest from the State Highway Fund. Sixty-four percent of the research budget was allocated by contract to the Texas Transportation Institute at Texas A&M University, 30 percent to the Center for Transportation Research at the University of Texas, and the remaining six percent divided among 14 other state universities.

#### *Improve Traffic Safety*

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*The federal government provided \$14.5 million in traffic safety funds in 1995.*

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TxDOT provides grants-in-aid and awards contracts to other state agencies, local governments, educational institutions, and other organizations to improve traffic safety and reduce traffic accidents and the resulting deaths, injuries and property damage. The Department seeks to enhance traffic safety through traffic law enforcement and education programs designed to improve driver behavior and by projects that eliminate unsafe road conditions. The Department also investigates new engineering techniques and safety products to make roads safer.

TxDOT identifies problem areas affecting traffic safety and makes plans for addressing these problems through the Highway Safety Plan. This plan is approved by the Commission and becomes effective on October 1st of every year. The federal government provides funding to implement this plan from the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA).

In fiscal year 1995, the federal government provided \$14.5 million in traffic safety funds. Texas receives its allocation of federal traffic safety funds based on a formula of 75 percent population and 25 percent mileage. TxDOT considers current safety priorities and needs within federal program guidelines and determines how to allocate these funds among 12 traffic safety program areas, as shown in the chart, *Texas Highway Safety Programs*.

The overall program for fiscal year 1995, including grants and contracts from all funds, totaled \$17.6 million. These funds were provided through 631 grants to other state agencies, cities, counties, and schools. Although a direct correlation is difficult to make, several key indicators of traffic safety have shown improved traffic safety in Texas from 1985 to 1994. Motor vehicle fatalities decreased from 3,682 in 1985 to 3,142 in 1994. The fatality rate per 100 million vehicle miles decreased from 2.57 fatalities to 1.8 fatalities. In addition, the number of DWI fatalities decreased from 1,402 fatalities to 1,170 fatalities from 1990 to 1994.<sup>8</sup>

Texas Highway Safety Programs		
Program Area	Federal Funds	State
Police Traffic Services and Speed Control	\$2,836,000 NHTSA	\$94,500
Alcohol and Drug Countermeasures	\$2,495,000 NHTSA	\$92,000
Emergency Medical Services	\$382,000 NHTSA	\$1,550,000
Occupant Protection	\$1,800,000 NHTSA	\$92,000
Traffic Records	\$630,000 NHTSA and \$653,000 FHWA	\$653,000
Roadway Safety	\$1,087,000 FHWA	- 0 -
Motorcycle Safety	\$0	\$580,000 to Tx Dept. of Public Safety from motorcycle license fees
Planning and Administration	\$30,000 NHTSA	\$1,700,000
Community/Corridor and College Traffic Safety Programs	\$306,000 NHTSA	- 0 -
Public Information Education	\$488,000 NHTSA funds	\$1,046,000
School Bus Safety	\$126,000 NHTSA	- 0 -
Pedestrian Bicycle Safety	\$187,000 NHTSA	\$100,000

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*TxDOT operates 11 travel information centers and the Judge Roy Bean Visitor Center, near Langtry.*

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### ***Economic Development***

TxDOT implements two strategies “to facilitate economic and social prosperity through the efficient movement of people and goods.” To accomplish this goal, TxDOT encourages the use of the state transportation system to promote tourism in Texas. TxDOT also regulates the use of outdoor advertising and vehicle salvage yards.

#### *Support and Promote Tourism*

TxDOT plays a key role in supporting and encouraging tourism in the state. In conjunction with the Texas Department of Commerce (TDOC), TxDOT operates a program to attract visitors to Texas. Specifically, TxDOT publishes pamphlets, bulletins, maps and documents to serve the motoring public and road users. TxDOT operates 11 travel information centers and the Judge Roy Bean Visitor Center, near Langtry, to provide road information, travel guidance, and various descriptive materials designed to aid and assist the traveling public and to stimulate travel to

and within Texas. The Department also publishes *Texas Highways* magazine, which is fully funded by subscriptions. The Department supplies motorists with a toll-free hotline that provides routing assistance and emergency road conditions. TxDOT administers the anti-litter campaigns “Don’t Mess with Texas” and “Adopt-a-Highway.” TxDOT has estimated that its travel and information activities have generated over \$31 million in fuel tax revenue in fiscal year 1995.<sup>9</sup> During that same year, TxDOT spent \$15.3 million from the state highway fund to carry out this activity.

TxDOT, like TDOC and Texas Parks and Wildlife (TPWD), has certain statutory responsibilities involving the promotion of tourism. TDOC develops promotions and campaigns to promote Texas as an attraction for tourists from other states. TxDOT provides tourist information and maps for the visitors. TPWD provides information to the public relating to wildlife management, conservation, public parks and water safety. In an effort to coordinate the activities, TxDOT entered into a memorandum of understanding with TDOC and TPWD. The three agencies agreed to form a tri-agency marketing group that meets quarterly to guide and coordinate statewide travel-related advertisements, promotions, media relations, and any written public information of the three agencies. One benefit of the coordination effort has been the consolidation of TDOC’s and TxDOT’s photo libraries.

#### *Regulate Outdoor Advertising Signs and Vehicle Salvage Yards*

TxDOT controls the use of outdoor advertising signs and vehicle salvage yards adjacent to transportation systems. TxDOT also regulates outdoor advertising signs along interstates, state highways, and county roads, as specified in federal and state law. Before placing outdoor advertising signs next to a highway, a license must be purchased for \$125, which may be renewed annually for \$60. The business then must purchase a permit for each sign. The permits cost \$96 for the first year and \$40 for the annual renewal. Businesses must also purchase a surety bond to ensure compliance. In fiscal year 1995, TxDOT issued and renewed sign permits and licenses for over 13,000 signs.

Legislation passed in 1995 required the Department to license the operators of auto salvage yards, as well as any person or business that purchases or sells salvaged vehicles beginning March 1, 1996. TxDOT issues six different licenses and an agent’s license. Many of these licenses are for new and used auto dealers who will also buy or sell salvage vehicles, and for salvage vehicle parts dealers. Any employee of a license

holder that purchases or sells salvage vehicles for that company must also obtain an agent's license. The annual fee for each of the licenses is \$95. TxDOT estimates that they will issue 13,000 licenses per year, 4,000 to salvage yard operators, and another 9,000 to motor vehicle dealers and brokers.

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<sup>1</sup> Office of Budget and Finance, TxDOT *Distribution of Total TxDOT Receipts and Disbursements for Fiscal Year Ended August 31, 1995*, 1995.

<sup>2</sup> Gabriel Roth, *Should the Federal Highway Trust Fund be Reauthorized?* Transportation Quarterly, Vol. 49, No. 4, Fall 1995 p. 12.

<sup>3</sup> TxDOT *Quarterly Underutilized Business Report for Business Conducted September 1, 1994 through August 31, 1995*.

<sup>4</sup> Interview with Right of Way division staff, TxDOT, February 1996.

<sup>5</sup> Telephone interview with Jefferson Grimes, TxDOT, March 13, 1996.

<sup>6</sup> Telephone interview with Joe Graff, Construction and Maintenance Division, TxDOT, April 4, 1996.

<sup>7</sup> Office of Multimodal Transportation, TxDOT *Gulf Intracoastal Waterway in Texas 1994*, p. 7, 1994.

<sup>8</sup> Telephone interview with Susan Bryant, Traffic Operations Division, TxDOT, April 2, 1996.

<sup>9</sup> Travel and Information Division, TxDOT, *Briefing Materials for Sunset Staff*, October 1995.



# **APPENDICES**

# Appendix 1



## Project Selection and Financing

### Introduction

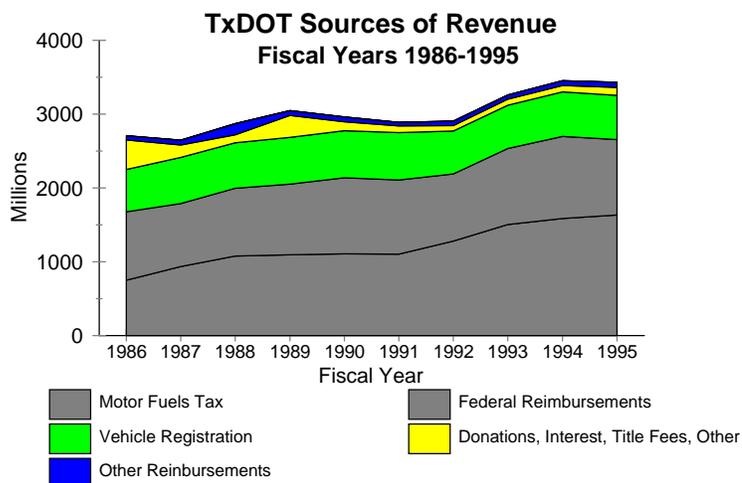
The background section of this report on the Texas Department of Transportation (TxDOT) contained a brief description of the process for selecting roadway projects. That description did not include a discussion of the financial aspects that are an integral part of the project selection process.

Ultimately, how TxDOT finances transportation projects determines the shape and scope of the entire process.

TxDOT identifies and develops projects largely on the basis of the projected funding that is available for different transportation programs. Because TxDOT does not have the funding to meet all identified transportation needs, it has established a financial plan to demonstrate the financial feasibility of the proposed transportation program. Under this plan, the transportation program must be “financially constrained,” with some indication as to which projects can be implemented using current revenue sources and which projects are to be implemented using anticipated revenue sources. To understand how needed transportation projects match up with available revenue, an understanding of TxDOT’s funding for transportation construction and its distribution of transportation funds statewide is necessary.

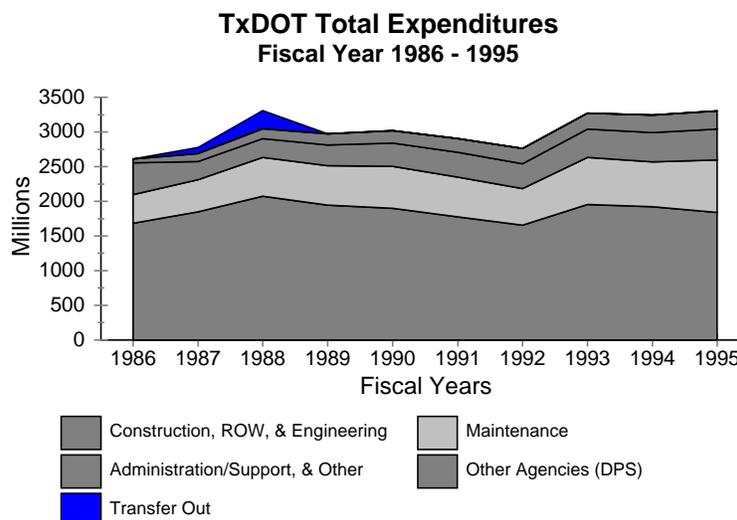
### TxDOT Revenues and Expenditures

Historically, TxDOT has received more than 90 percent of its revenue from three sources: the motor fuels tax, federal reimbursements, and motor vehicle registration and title fees. The chart, *TxDOT Sources of Revenue*, shows changes in the sources of revenue from 1986 to 1995 and reflects the changes in revenues resulting from the consolidation of transportation agencies in 1991 and funds consolidation in 1995. Funds consolidation eliminated separate funds for traffic safety, highway



beautification, public transportation, and aviation and combined them with the General Revenue Fund. In 1995, TxDOT received \$3.4 billion in total revenue.

Over this same period, total spending for construction projects has risen slightly from approximately \$1.7 billion to \$1.8 billion, but as a percentage of total spending, construction spending has declined from 64.5 percent to 56 percent. The chart, *TxDOT Total Expenditures*, shows the changes in expenditures for TxDOT construction compared with other major Department activities over this same time period. This chart shows that as the percentage of spending on construction has declined, spending for maintenance and other agencies has increased from almost 19 percent in 1986 to over 30 percent in 1995.



## Transportation Funding Categories

### *FEDERALLY-FUNDED CATEGORIES*

While this large pool of money may appear to give TxDOT and the Transportation Commission considerable discretion in deciding the projects that ultimately are funded, these decisions frequently depend on spending guidelines in the transportation program providing the funding. TxDOT receives much of its federal funding through an apportionment process that largely determines how the funds are to be used. These apportionments authorize states to use a specified amount of federal funds, much like a line of credit, for each transportation program according to formulas and procedures prescribed in federal law. The apportionment formulas for the various categories are intended to reflect the states' needs, but they also address concerns regarding funding equity among the states and funding consistency from year to year.

The specific transportation programs and categories for using federal funds change largely according to Congressional actions to shape and redirect the Federal-Aid Highway Program. With the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991, the federal government established several new programs, including the National Highway System (NHS) and the Surface Transportation Program (STP). Most mobility projects that add capacity to existing roads or that locate new roadways are part of NHS or STP. ISTEA also created a program for Congestion

Mitigation and Air Quality Improvement (CMAQ) for projects in air quality non-attainment areas. Other federally-funded transportation categories include the bridge replacement and rehabilitation program and federal demonstration projects.

In addition to these apportionments, Congress frequently directs how states further distribute the funds, such as the requirement that 10 percent of all STP funds apportioned to the state must be used for safety projects and that another 10 percent must be used for transportation enhancement activities. Other federal requirements target the use of federal funds on the basis of population.

Because Congress has recognized that states have differing needs and priorities, it has provided some flexibility in the use of federal funds by allowing transfers between certain categories. For example, TxDOT usually takes advantage of a provision in ISTEA allowing it to transfer 20 percent of Interstate Highway Maintenance funds to NHS for mobility projects. In 1995, TxDOT transferred \$41.8 million from Interstate Maintenance to NHS. TxDOT has also taken advantage of federal flexibility to transfer bridge funds to either NHS or STP.

The federal government also provides additional funding to the states to maintain consistency in funding from year to year and to assure greater equity among “donor” states like Texas that receive less in federal apportionments than they pay in federal highway taxes. Although some of these funds are earmarked for specific uses by ISTEA, the states have more flexibility in the use of these funds. TxDOT generally uses these funds for NHS mobility projects and for the Commission’s Strategic Priority projects. This last category is a discretionary pool of money that the Commission can use for special projects that may not meet the criteria in other transportation categories. Appendix 2, *Federally-Funded Transportation Program Categories*, shows the federal apportionment and provides summary information for each category.

While these federal funding categories largely prescribe the types of roadway projects that must be built with each source of funds, TxDOT has some latitude in determining which funding category to use in building a project. For example, an identified need for a new bridge may be identified as a bridge replacement/rehabilitation project, using bridge funds, or it may be identified as an expansion project for additional capacity, to be financed with NHS mobility funds. In this case, the district must weigh its more immediate need to have a bridge replaced with a longer range need to accommodate anticipated traffic volumes.

The federal government generally does not pay for the entire cost of construction or improvement of Federal-aid highways. Federal funds are normally matched with state and/or local government funds to account for the necessary dollars to complete the project. Most projects will have an 80 percent federal share, although Interstate Construction and Maintenance projects are generally funded with a 90 percent federal share.

As mentioned, the federal apportionment to the states is not a cash advance, but a line of credit against which they can draw to build federal-aid projects. The states must provide the initial cash to get the project started, and the federal government reimburses them for their expenses.

### STATE-FUNDED CATEGORIES

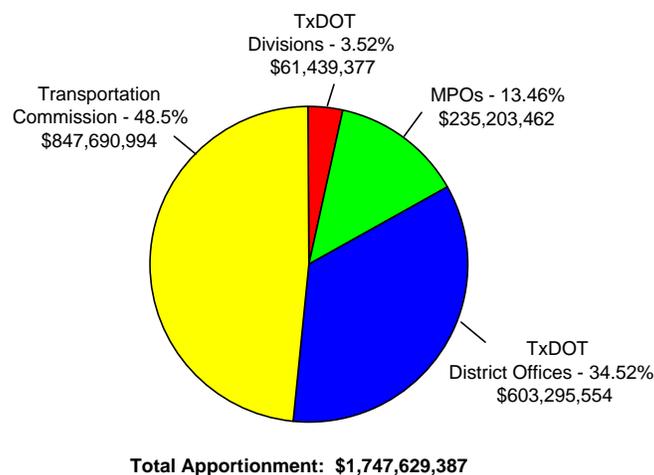
In addition to these federal categories, TxDOT has added categories to address transportation needs of particular interest to the state. Examples of these categories included state preventive maintenance and rehabilitation, farm-to-market roads, and state-funded mobility projects, such as those to address the needs of border areas resulting from NAFTA. TxDOT districts have discretion to select miscellaneous projects on the state highway system through a separate district discretionary category.

TxDOT also allocates funds among the transportation categories that are 100 percent state funded. In allocating these state funds, TxDOT decides what state needs are and how best to allocate state funds to meet those needs. Appendix 3, *State-Funded Transportation Program Categories*, shows the allocation of state funds and provides summary information for each state-funded category.

### Project Selection Decisions

As mentioned in the background section, project selection decisions are made by either the Transportation Commission, the districts, or the Metropolitan Planning Organizations (MPOs). The Transportation Commission makes decisions on a statewide basis for larger transportation projects that add capacity to the state's roadway system. TxDOT district engineers make decisions on the more common or recurring projects, such as maintenance and rehabilitation or smaller mobility projects. MPOs make decisions on two large federally-funded programs established in ISTEA. The chart, *Transportation Program Decision Making*, shows the percentage of all construction and maintenance spending that was controlled by each entity based on fiscal year 1995 apportionments.

**Transportation Program Decision Making  
Based on Fiscal Year 1995 Apportionments**



As the chart shows, the Commission had decision authority for \$847.7 million worth of roadway projects or 48.5 percent of all construction and maintenance spending. The Commission makes decisions on specific projects through a ranking system that generally identifies the most needed projects on the basis of cost effectiveness in serving the traffic in the area and in reducing congestion. Formulas differ according to the type of project, but they typically relate to a comparison of costs and benefits, or an analysis of costs per vehicle for the length of the proposed project.

In response to concerns that the most needed mobility projects would be built almost exclusively in urban areas where traffic counts are highest, TxDOT established a system in January 1995 for segmenting the competition for NHS Mobility funds according to population. In this way, TxDOT has divided these funds on the basis of population so that metropolitan, urban, and rural areas only compete among themselves for roadway expansions, new locations, and interchanges.

In 1995, TxDOT districts made decisions on \$603.3 million worth of roadway projects, or 34.52 percent of all construction and maintenance spending. TxDOT allocates these funds to the districts by specific formulas designed to reflect each district's needs within each transportation category. For example, TxDOT allocates rehabilitation funds to districts by separate formulas that consider axle loads, lane miles, and pavement condition, and it allocates other funds to districts on the basis of population.

MPOs make decisions on metropolitan mobility and rehabilitation projects and for CMAQ projects. TxDOT allocates these funds as a bank balance program. Urban areas of greater than 200,000 population receive metropolitan mobility funds on the basis of population, while districts in air quality non-attainment areas receive CMAQ funds on the basis of population and air quality factors outlined in ISTEA. Texas currently has four non-attainment areas: Houston-Galveston; Dallas-Fort Worth; El Paso; and Beaumont. In 1995, MPOs controlled \$235.2 million worth of projects, or 13.46 percent of total construction and maintenance spending.

The results of this process may be seen in Appendix 4, *TxDOT Construction and Maintenance Spending, 1992-1995*, which shows total spending for each TxDOT district for the last three years. The chart also provides statistical information about each district to help put this construction and maintenance spending in perspective.



# Appendix 2



Federally-Funded Transportation Program Categories				
Transportation Category	Programming Authority	Ranking Index or Allocation Formula	Description	1995 Apportionment
Interstate Construction	Commission selects projects on statewide basis with concurrence of MPO.*	None	Interstate highway projects to complete system.	\$21,463,526
Interstate Maintenance	Commission allocates funds to districts which select projects through bank balance program with concurrence of MPO.*	Allocations to districts based on formula including axle load, lane miles, and pavement condition.	Rehabilitation and maintenance of existing Interstate Highway System, including installation of HOV lanes, signs, raised reflective pavement markers and striping.	\$170,871,321
National Highway System (NHS)	Commission selects projects on statewide basis with concurrence of MPO.*	Mobility projects selected through cost effectiveness ranking; projects ranked in three sub-groups, based on population (counties > 200,000; counties < 200,000 but > 50,000; counties < 50,000).	Roadway expansions, new locations, and interchanges to address mobility needs on urban and rural principal arterials including the Interstate Highway System. Also includes traffic management systems in air quality non-attainment areas and miscellaneous projects.	\$288,774,812
NHS Texas Trunk System	Commission selects projects on statewide basis with concurrence of MPO.*	Projects selected through ranking by Cost Effectiveness Index.	Added capacity projects on Texas Trunk System--outside cities of 50,000 or more. Because specific policies for Texas Trunk System are still being developed, this category is currently limited to expansions of rural highways from two lanes to four lanes divided.	\$45,006,162
Surface Transportation Program (STP) Safety	Commission allocates funds to districts; projects selected by Traffic Operations Division through bank balance program with concurrence of MPO.*	Safety improvement projects selected through ranking by Safety Improvement Index using three years of accident data.	Safety projects on roadways on and off state highway system. Besides the Federal Highway Safety Improvement Program, programs include Federal Railroad Signal and School Bus Signal Programs.	\$31,439,377
STP Transportation Enhancements	Commission selects projects on statewide basis with concurrence of MPO.*	Projects selected through ranking by committee composed of representatives from TxDOT, GLO, TDoC, THC, TPWD and TNRCC.	Non-traditional transportation projects in 10 activity areas, including facilities for pedestrians and bicycles, scenic preservation and historic preservation.	\$28,295,439
STP Metropolitan Mobility/Rehabilitation	Commission allocates funds to districts; projects selected by MPO* in consultation with districts.	Allocations to districts with urbanized areas with population greater than 200,000, on basis of population.	Mobility and rehabilitation projects within urbanized areas with populations of 200,000 or more.	\$123,794,105

\*MPO concurrence or consultation needed only on projects within the MPO's jurisdiction.

Federally-Funded Transportation Program Categories				
Transportation Category	Programming Authority	Ranking Index or Allocation Formula	Description	1995 Apportionment
STP Urban Mobility/ Rehabilitation	Commission allocates funds to districts which select projects through bank balance program with concurrence of MPO.*	Allocations to districts based on percent of combined population of qualifying cities within district compared to state population in the category.	Mobility and rehabilitation projects within urbanized areas with population between 5,000 and 200,000.	\$66,529,201
STP Urban Mobility/ Rehabilitation	Commission allocates funds to districts which select projects through bank balance program with concurrence of MPO.*	Allocations to districts based on percent of rural population within district compared to state's rural population.	Mobility and rehabilitation projects within rural areas (cities of less than 5,000 population and areas outside city limits).	\$46,287,130
STP Rehabilitation districts which select projects through bank balance program with concurrence of MPO.*	Commission allocates funds to formula including axle load, lane miles, and pavement condition.	Allocations to districts based on roads on state highway system.	Rehabilitation projects on urban and rural	\$96,107,902
STP Railroad Grade Separations	Commission selects projects on statewide basis with concurrence of MPO.*	Projects selected through ranking by cost-benefit analysis considering vehicle and train traffic, accident rates.	Replacement of existing highway-railroad grade crossings and rehabilitation or replacement of deficient railroad underpasses	\$20,000,000
Congestion Mitigation and Air Quality	Commission allocates funds to districts; projects selected by MPO* in consultation with TxDOT and TNRCC.	Allocations to districts with air quality non-attainment areas on basis of population and air quality severity.	Projects to improve air quality in non-attainment areas (Houston-Galveston, Dallas-Ft. Worth, Beaumont, and El Paso); cannot add capacity for single occupancy vehicles.	\$111,409,357
Bridge Replacement or Rehabilitation	Commission selects projects on statewide basis.	Projects selected through ranking that considers traffic, cost per vehicle, and bridge condition and severity.	Replacement or rehabilitation of functionally obsolete or structurally deficient bridges both on and off the state highway system.	\$104,034,383
Commission Discretionary Funding	Commission selects projects on statewide basis in concurrence with MPO.*	Projects selected at discretion of Commission.	Projects that do not meet other program criteria, but promote economic development, provide system continuity with adjoining states or Mexico, or address other strategic needs of state.	\$134,110,393
Federal Demonstration Projects	Commission approval to participate. state matching funds are available.	Projects contracted as soon as districts develop them and when	Projects listed in ISTEA or other federal legislation.	\$59,077,477

\*MPO concurrence or consultation needed only on projects within the MPO's jurisdiction.

# Appendix 3

State-Funded Transportation Program Categories				
Transportation Category	Programming Authority	Ranking Index or Allocation Formula	Description	1995 Apportionment
State Preventive Maintenance	Commission allocates funds to districts which select projects through bank balance program with concurrence of MPO.*	Allocations to districts based on formula considering lane miles, vehicle miles traveled, and lane miles of substandard surfacing; additional consideration to cost of roadway materials in each district.	Preventive maintenance work to preserve existing state highway system, including seal coats and thin overlays.	\$125,000,000
State FM/RM Road Expansions	Commission selects projects on statewide basis with concurrence of MPO.*	Projects selected through cost effectiveness ranking.	Construction of new FM and RM Roads and added capacity of existing FM and RM Roads outside urban areas with population of 50,000 or more; also includes construction of roads to prison locations.	\$23,000,000
State Park Roads	Commission allocates funds through statewide bank balance program with projects prioritized and selected by TPWD.	None. Projects selected by TPWD.	Construction and rehabilitation of roadways within or adjacent to Texas State Parks.	\$5,000,000
Rehabilitation of Signs, Signals, Pavement Markings, and Traffic Management Systems	Commission allocates funds to districts which select projects through bank balance program with concurrence of MPO.*	Allocations to districts for traffic control devices based on formula considering district percent of total state non-Interstate lane miles and district percent of total state population. Allocations for traffic management systems based on roadway miles under traffic management control center.	Rehabilitation of non-Interstate signs, pavement markings, and traffic signals, including minor roadway modifications to improve operations. Also, rehabilitation and maintenance of existing freeway traffic management systems and coordination of traffic signals on arterial system into traffic management control center.	\$8,500,000
State Funded Discretionary	Commission allocates funds to districts which select projects through bank balance program; projects in non-attainment areas may need to be included in TIP.	Allocations to districts based on formula considering vehicle miles traveled on and off state highway system and number of registered vehicles. Each district receives minimum allocation of \$1 million.	Miscellaneous projects selected at the district's discretion. Projects must be on state highway system and funds should not be used for ROW acquisition.	\$30,000,000
State Funded Mobility	Commission selects mobility projects on statewide basis; projects in non-attainment areas may need to be included in TIP; special selection provisions for hurricane, NAFTA, and urban street projects.	None. Projects have already been identified; Commission reviews and re-authorizes projects each year.	Previously-approved state funded projects throughout the state. Projects include general mobility, hurricane evacuation routes, NAFTA infrastructure needs, and urban streets.	\$123,928,802

\*MPO concurrence or consultation needed on projects within the MPO's jurisdiction.

State-Funded Transportation Program Categories				
Transportation Category	Programming Authority	Ranking Index or Allocation Formula	Description	1995 Apportionment
State Funded Rehabilitation	Commission allocates funds to districts which select projects through bank balance program; projects in non-attainment areas may need to be included in TIP.	Allocations to districts based on formula considering axle load, lane miles, and pavement condition; additional consideration to cost of roadway materials in each district.	Rehabilitation needs on state highway system that may not qualify for federal funding.	\$40,000,000
Miscellaneous	Commission allocates funds through statewide bank balance program with projects selected by appropriate TxDOT division.	Projects selected by TxDOT division responsible for different programs affected.	Projects that do not fit in other categories, including railroad grade crossing replanking and signal maintenance; construction landscaping; and truck weigh stations.	\$25,000,000
Principal Arterial Street System (PASS) Metro Match	Past Commission allocation to districts; projects must have concurrence of MPO.*	Allocations to districts based on degree of participation of transit organizations in a city.	Projects previously approved under Urban System/Principal Arterial Street System (PASS). TxDOT match for work by transit organization on the PASS to reduce congestion. Insufficient state funds to continue this program beyond existing commitment. MPOs encouraged to use federal STP funds to reprogram PASS projects.	\$20,000,000

\*MPO concurrence or consultation needed on projects within the MPO's jurisdiction.

# Appendix 4



District Construction, Maintenance, and Contracted Preventive Maintenance Expenditures									
TxDOT District	Percent Pop.	Percent Vehicle Miles	1995 - Construction	Percent	1995 - Maintenance and CPM	Percent	Total 1995 Expenditures by District	Total 1995 Percent	5-Year Ave. Percent
Abilene	1.43	1.81	29,499,749	1.52	24,858,983	3.16	54,358,732	2.00	1.78
Amarillo	1.88	2.24	23,049,550	1.19	34,379,125	4.37	57,428,675	2.11	1.84
Atlanta	1.65	2.48	47,643,080	2.45	28,873,869	3.67	76,516,949	2.75	2.09
Austin	5.42	6.20	161,967,944	8.34	33,178,129	4.22	195,146,073	7.15	7.4
Beaumont	2.92	3.51	73,495,551	3.79	26,248,772	3.34	99,744,323	3.66	3.49
Brownwood	0.69	1.03	15,390,315	0.79	15,998,976	2.03	31,389,291	1.15	1.18
Bryan	1.82	2.81	46,176,824	2.38	36,042,459	4.58	82,219,283	3.01	2.15
Childress	0.26	0.67	14,396,086	0.74	19,489,545	2.48	33,885,631	1.24	1.15
Corpus Christi	2.92	2.95	69,366,920	3.57	26,692,568	3.39	96,059,488	3.52	3.24
Dallas	15.27	13.38	290,556,753	14.97	62,071,973	7.89	352,628,726	12.93	12.65
El Paso	3.62	2.69	57,949,771	2.99	19,671,658	2.50	77,621,429	2.85	1.19
Fort Worth	8.60	8.90	142,494,359	7.34	39,733,725	5.05	182,228,084	6.68	7.29
Houston	21.54	16.89	497,637,961	25.63	65,653,820	8.35	563,291,781	20.65	25.53
Laredo	1.48	1.16	30,056,532	1.55	14,972,242	1.90	45,028,774	1.65	0.31
Lubbock	2.43	2.32	31,670,807	1.63	37,920,330	4.82	69,591,137	2.55	2.76
Lufkin	1.44	2.11	24,121,250	1.24	29,477,956	3.75	53,599,206	1.96	1.83
Odessa	1.81	1.79	16,482,702	0.85	20,808,419	2.65	37,291,121	1.37	1.56
Paris	1.71	2.27	30,253,829	1.56	34,581,924	4.40	64,835,753	2.38	2.01
Pharr	4.27	3.38	57,216,889	2.95	29,165,686	3.71	86,382,575	3.17	2.72
San Angelo	0.87	1.26	9,654,657	0.50	21,308,103	2.71	30,962,760	1.13	1.77
San Antonio	8.72	8.08	127,384,765	6.56	44,434,710	5.65	171,819,475	6.29	5.77
Tyler	3.03	3.90	45,500,465	2.34	33,862,625	4.31	79,363,090	2.91	3.77
Waco	3.14	3.72	43,873,283	2.26	32,315,381	4.11	76,188,664	2.79	2.20
Wichita Falls	1.34	1.70	21,235,193	1.09	23,758,064	3.02	44,993,257	1.65	1.67
Yoakum	1.74	2.75	34,384,933	1.77	31,085,210	3.95	65,470,143	2.41	2.24
<b>Total</b>	100.0	100.0	1,941,460,168	100.0	786,584,252	100.0	2,728,044,420	100.0	100.0



**TEXAS TURNPIKE AUTHORITY**

**ISSUE**

# Issue 1



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## Consolidate the Functions of the Texas Turnpike Authority within the Texas Department of Transportation and Transfer Bonding Authority to the Texas Public Finance Authority.

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### Background

In 1953, the 53rd Legislature passed the Texas Turnpike Act, creating the Texas Turnpike Authority (TTA). The Act authorized TTA to build toll roads and bridges in the state, financed by revenue bonds issued by TTA and supported entirely by tolls collected from its projects. TTA has statewide jurisdiction and has its headquarters in Dallas. Since its creation, TTA has undertaken four major projects:

- Dallas-Fort Worth Turnpike, which had its bonds retired in 1977 and was transferred to TxDOT to operate as part of the interstate highway system;
- Dallas North Tollway, which extends 21.4 miles from downtown Dallas into Collin County (includes 2 subsequent extension projects);
- Mountain Creek Lake Bridge in southeast Dallas County; and
- Houston Ship Channel Bridge, which was transferred to the Harris County Toll Authority in 1994.

In addition, TTA is currently overseeing construction of two projects as part of the Dallas North Tollway System. The 26-mile President George Bush Turnpike will link Garland with Irving, running through Dallas, Collin, and Denton counties when it is completed in 2004. The Addison Airport Tunnel project will provide an additional link with the Dallas North Tollway when it is completed in 1998.

At the time TTA was created, the Texas Constitution prohibited the state from appropriating money or in any other way lending its faith or credit to the building of toll roads. For this type of road to be built, the Legislature needed to create a separate state agency, with its own funding mechanism, that would be solely responsible for building toll projects. Until its most recent project, TTA has built all its projects by issuing revenue bonds backed solely by the pledge of tolls to be

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*Until recently, TTA has built all its projects by issuing revenue bonds backed by the pledge of toll revenues.*

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collected. TTA has never received an appropriation from the Legislature.

Since the creation of TTA, the changing economics of roadway construction have highlighted the need for more flexible financing methods to provide transportation infrastructure. In 1991, the Legislature and the state's voters amended the state constitution to allow TxDOT to loan funds to TTA from any source with the condition that any money from the state highway fund would be repaid. The constitutional amendment and the implementing legislation allowed TxDOT and TTA to enter into joint ventures to share the cost of tollway projects. However, the constitutional prohibition against lending the faith and credit of the state for toll projects still remains. In 1995, the Legislature also made it easier for the two agencies to enter joint ventures by giving the Transportation Commission the authority to transfer a highway to TTA if a transfer would accomplish needed expansions, improvements, or extensions to the state highway system.

At the same time Texas was changing state law regarding toll road financing, the federal government was changing its approach through approval of the Intermodal Surface Transportation Efficiency Act (ISTEA). This Act, passed in 1991, allowed states to use federal funds on toll projects. The federal government expanded this provision in 1995 to allow federal funds to be used for up to 80 percent of the cost of a toll project.

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*A constitutional amendment in 1991 allowed TxDOT to loan highway funds to TTA for toll roads.*

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In a Sunset review, continuation of an agency depends on certain conditions being met, as required by the Sunset Act. A current and continuing need for the agency's functions and services should exist; those functions and services should not duplicate those currently provided by any other agency; and any potential benefits of maintaining a separate agency must outweigh any advantages of transferring its functions and services to any other state agency.

In the review of TTA, Sunset staff was faced with looking at continuation from a different starting point. As will be discussed below, the Legislature in 1991 instructed the Sunset Commission to look at consolidation of TTA with TxDOT in the 1997 Sunset reviews of the two agencies in light of the Legislature's clear intent that consolidation should occur. The staff's approach for the TTA review was to start with the premise that consolidation was appropriate unless evidence showed this to be incorrect. These changes in 1991, in effect, reversed the

burden of proof from the previous Sunset review of TTA. The results of the staff's analysis are included in the following findings.

## Findings

- ▼ **The functions of a toll authority are needed to help meet statewide transportation needs.**
  - ▶ Turnpikes allow tax dollars to be spent on other highway needs. Historically, Texas has used motor fuels taxes, federal reimbursements, and vehicle registration fees to finance the construction and maintenance of the state highway system. However, these sources of revenues are not sufficient to meet current transportation demands. TTA builds toll projects using bond revenues supported entirely by tolls paid by users. By relying on user financing for these projects, the toll authority provides an additional source of revenue for building needed transportation infrastructure. As a result, toll financing enhances the traditional funds earmarked for highway construction, allowing the state to better meet its other transportation needs.
  - ▶ Toll projects can serve pressing state transportation infrastructure needs by relieving congestion that results from economic and population growth in urban or newly urbanized areas. Toll projects can generally be built faster because projects receive funding in advance from bonds and do not have to wait for a share of scarce tax dollars. As a result, both Dallas and Houston have found the use of toll facilities essential to meeting mobility needs that have accompanied growth — growth that has outpaced the ability of TxDOT to address resulting traffic problems.
  - ▶ Recent studies and surveys have recognized the importance of toll facilities in meeting future transportation needs. The Texas Transportation Plan, which details the state's transportation strategy for the next 20 years, identified 11 potential actions which deal directly with turnpike issues.<sup>1</sup> In addition, a statewide survey conducted by University of Texas at Austin has revealed that 61.7 percent of Texans favor toll roads over motor fuel tax increases to address transportation needs.<sup>2</sup>

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*A 1995 survey showed that 61.7 percent of Texans favor toll roads over motor fuel tax increases to meet transportation needs.*

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*TTA's role of building and maintaining a system of toll roads and bridges is basically the same as TxDOT's for state highways.*

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- ▼ While the functions of TTA continue to be needed, a separate agency is not required to perform these functions.
  - ▶ With the passage of a constitutional amendment in 1991, the state, for the first time, allowed TxDOT funds to be used on TTA toll projects. By allowing these funds to be used for toll projects, the Legislature and the state's voters removed one of the factors that had led to a separate state agency to build or operate toll projects.
  - ▶ As shown in the chart, *Comparison of TTA and TxDOT Road Building*, TTA's role of building and maintaining a system of toll roads and bridges in the state is basically the same as TxDOT's role in building and maintaining a system of state highways. TTA conducts feasibility studies of proposed projects, oversees project development and project design, contracts for the construction, and maintains completed facilities. Similar activities are performed by TxDOT on a much larger scale. While the approach to some of these activities may differ, the only substantial differences relate to how the projects are funded - use of bonds and collection of tolls.

<b>Comparison of TTA and TxDOT Road Building</b>		
<b>Activity</b>	<b>TTA</b>	<b>TxDOT</b>
Feasibility Studies	✓	✓
Route Planning	✓	✓
Environmental Studies	✓	✓
Right-of-Way Acquisition	✓	✓
Design	✓	✓
Contract Letting	✓	✓
<b>Bonding</b>	✓	
Materials Testing	✓	✓
Construction Management	✓	✓
Preventive Maintenance	✓	✓
Routine Maintenance	✓	✓
<b>Toll Collection</b>	✓	
Roadway Illumination & Signing	✓	✓

In its 43-year history, TTA has performed these activities on four toll projects: two road projects, the Dallas-Fort Worth Turnpike and the Dallas North Tollway, totaling 51 miles; and



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*In 1991, the Legislature declared its intent that TTA be consolidated into TxDOT on September 1, 1997, subject to additional study by the Sunset Commission.*

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higher costs mean that traffic cannot generate enough revenue to finance the entire project. Few, if any, remaining Texas traffic corridors have the volume of cars necessary to generate toll revenues necessary to pay off the bonds. Joint projects, including loans of federal or state highway funds, will be needed to make future projects feasible.

- ▶ According to traffic and revenue forecasts, TTA's newest project, the President George Bush Turnpike in the North Dallas area, has the most favorable traffic projections and economic indicators of any toll project in the U.S. in recent years.<sup>6</sup> However, this project was feasible only after substantial assistance from TxDOT, including:

  - project planning, design, and engineering work on the project;
  - a \$135 million loan from federal highway funds;
  - donation of two interchanges, right-of-way, property, and future construction worth \$221 million; and
  - construction of turnpike access roads worth \$230 million.<sup>7</sup>

Any future toll projects will most likely be a part of TxDOT's expansion plans. These projects would require a significant investment of TxDOT's effort and resources in their planning, development, and construction.

- ▼ **In 1991, the Legislature expressed its desire to consolidate TTA with TxDOT.**

  - ▶ During a special session in July 1991, the Legislature established TxDOT as the state's transportation agency by merging the Aviation Commission, Motor Vehicle Commission, and the State Department of Highways and Public Transportation. At the same time, the Legislature declared its intention to consolidate TTA within TxDOT on September 1, 1997, subject to voter approval of a constitutional amendment allowing TxDOT to loan funds for use on toll projects. The voters approved this constitutional amendment in November 1991.
  - ▶ As part of this proposal to consolidate TTA within TxDOT, the Legislature also required the Sunset Advisory Commission to study the feasibility of consolidation and report its findings to the Legislature in 1993, 1995, and 1997. The Legislature

directed the Sunset Commission's analysis of any full or partial consolidation to consider the cost impact; the impact on the availability of federal funds for turnpike construction; and the need for future turnpike construction in meeting the transportation needs of the state. The following findings detail the Sunset staff's analysis of these three study criteria.

- ▼ **Consolidation of TTA within TxDOT would improve cost efficiency for the state while not increasing the cost of constructing toll projects or adversely affecting the communities that support current toll projects.**
  - ▶ Under any consolidation of TTA and TxDOT, toll projects would continue to be funded primarily by revenue bonds supported by toll collections. Any administrative or support costs associated with the planning, development, or operation of toll facilities would continue to be funded by bond proceeds and tolls. The proposed consolidation would not increase costs to the state or the State Highway Fund. In fact, as discussed previously, increased use of toll-financed roads allows highway tax dollars to be used on other projects.
  - ▶ Consolidation would not increase costs relating to bond issuance. Bonding authority for toll projects could be transferred from TTA to the Texas Public Finance Authority (TPFA). TTA currently issues revenue bonds, using outside financial and legal advisers. TPFA could issue bonds for toll projects using the existing procedures and arrangements it has established for the state agencies (including numerous large construction projects) it already serves. As with TTA, any costs to TPFA resulting from assuming this activity would be paid from toll bond proceeds.
  - ▶ The proposed consolidation would not have a cost impact on communities already supporting toll projects. The Texas Turnpike Act requires each toll project to be financed and built with a separate bond issue, restricting a diversion of tolls. In addition, without local approval, the Act specifically prohibits the diversion of excess revenue from toll projects built before 1993 for use on another toll or non-toll project. This helps protect funds collected on both the Dallas North Tollway and the Mountain Lake Creek Bridge and would also protect funds collected on the President George Bush Turnpike and the Addison Tunnel that are being built as part of the Dallas North Tollway system.

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*Consolidation would not have a cost impact on communities already supporting toll projects.*

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- The proposed consolidation would not adversely affect the bond costs of building toll projects. TxDOT is quite capable of performing construction activities and should be able to demonstrate this ability to the satisfaction of the bond market.

According to Standard & Poor's (S&P), a bond rating agency that judges the security of revenue backed toll bonds, the most important element for a financially successful toll project is traffic demand. Other key elements include the economic strength of the region and the relative wealth of the customer.<sup>8</sup> These factors affect the feasibility of a toll project, much more than which state agency is going to build and operate the project. In fact, TTA contracts with the firm Wilbur Smith Associates to provide traffic and revenue estimates. Wilbur Smith is one of only three firms recognized by the toll industry as capable of providing accurate traffic and revenue estimates. TxDOT could also contract for this activity.

One concern of the bond market is the ability of an agency to build a project quickly so that toll revenues begin flowing to make debt payments. TTA has had an excellent track record in this regard. However, TxDOT would have the exact same incentive to build quickly so that tolls can be collected. TxDOT would also not have the funding problems that often slow its state highway projects, since bond proceeds will be available to keep construction moving.

S&P also indicates that toll authorities that demonstrate an ability to maintain high quality roadways are in a better position to receive favorable consideration when bonds are rated.<sup>9</sup> In rating bonds, S&P looks for such things as an in-house professional engineering staff that is capable of conducting frequent inspections of roadway surfaces. S&P feels that it is critical to keep toll projects properly maintained so that drivers will continue to pay the tolls to use the projects. TxDOT has a proven record of building and maintaining a high quality transportation system. TxDOT has a construction and maintenance budget of \$5.66 billion for the 1996-1997 biennium, which includes substantial resources for in-house design and construction engineering staff. The state's 77,000-mile state highway system has been ranked among the best in the nation.<sup>10</sup>

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*Consolidation would not adversely affect the bond costs of toll projects.*

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Other state's experiences have shown that transportation agencies can include responsibility for building and operating toll facilities without affecting bond rates. For example, Florida consolidated its 371-mile turnpike system with its Florida Department of Transportation (DOT) in 1969. In February 1995, Moody's Investors Services, another bond rating agency, upgraded Florida's turnpike bond rating from "A" to "A1." Moody's cited capable management by the Florida DOT as one reason for the upgrade.<sup>11</sup>

- ▼ **Consolidation would have no impact on the availability of federal funds for state highway or toll projects and would improve decision making relating to the use of federal funds on turnpikes.**
  - ▶ The consolidation of TTA's toll function within TxDOT would have no effect on the availability of federal funds for toll or non-toll projects. Receipt of federal funds depends entirely on TxDOT's and the state's compliance with federal requirements for such things as roadway construction procedures and traffic safety regulations.
  - ▶ Consolidation could improve the use of TxDOT's federal funds for toll projects. The Intermodal Surface Transportation Efficiency Act of 1991 and the National Highway System Designation Act of 1995 give the states flexibility to use federal funds to pay up to 80 percent of a toll project's cost. TxDOT has taken advantage of this funding flexibility by loaning \$135 million in federal funds to TTA to help pay for construction of the President George Bush Turnpike. Consolidation would remove one of the players from this process, which could streamline the coordination between TxDOT and its federal counterpart in these arrangements. TxDOT may be more likely to use its funds to support toll projects if it has more control of the fate of the project.
- ▼ **Partial consolidation of TTA's toll authority within TxDOT would not provide the same benefits as a full merger.**
  - ▶ The Legislature, in its charge to the Sunset Commission, directed that the partial consolidation be included in the analysis of TTA's possible merger with TxDOT. While partial consolidation could be structured several ways, the Sunset staff concentrated on the following scenario when studying the merits of this type of reorganization.

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*Partial consolidation would not provide the same benefits as a full merger.*

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- ▶ The most likely option to full consolidation is to create a regional toll authority for the Dallas-Fort Worth metropolitan area that would assume responsibility for the existing toll facilities in the area. Statewide toll authority for the rest of the state would be placed within TxDOT. This approach is similar to what has happened in Harris County, which established its own toll authority in 1983 to address transportation needs that were not feasible for TTA to address. The Harris County Toll Authority removed the state's largest potential market for future toll projects. Creating a separate regional toll authority in the Dallas-Fort Worth area would remove the state's second largest potential market for future toll projects.
- ▶ This consolidation option does not offer the same benefits as full consolidation of TTA with TxDOT. The state, as a whole, would be better served by having one agency responsible for planning and construction for both toll and traditional highway projects. In addition, Sunset staff could not presume that local governments in the Dallas-Fort Worth area would desire to establish such a regional authority, which would probably need to be backed by local tax revenues.
- ▼ **Consolidating TTA's functions with TxDOT would enhance the state's ability to meet transportation needs.**
  - ▶ Having the state's toll function in the state's transportation agency would make it easier to use toll projects, as appropriate, to meet the state's transportation needs. Although TTA is a state agency with statewide jurisdiction, it has concentrated its efforts in the Dallas metropolitan area. TxDOT has the expertise, statewide perspective, and financial resources to plan, develop, and operate toll projects as part of its highway system.
  - ▶ Consolidating toll projects within TxDOT would provide an alternative source of revenue for TxDOT in meeting transportation needs. Any project that can be built as a toll road, largely financed with toll revenue, would allow TxDOT to use the more traditional sources of revenue on other projects. In this way, having toll authority would enable TxDOT to serve a larger percentage of the state's transportation needs than the 40 percent it currently estimates.
  - ▶ Consolidating this function could improve the development of toll facilities. One agency, responsible for planning and

developing such a project, could avoid problems such as those encountered between TTA and TxDOT relating to the Houston Ship Channel Bridge.<sup>12</sup> Despite close coordination between the two agencies, funding for connecting roads was delayed, which seriously affected the traffic flow and the revenue collected. TTA eventually transferred the bridge to the Harris County Toll Authority.

## Conclusion

Toll roads, bridges, and tunnels are an essential element of the state's transportation system, as they can help relieve congestion in the state's most heavily urbanized areas. Because they are financed by revenue bonds that are supported by toll collections, turnpikes offer advantages over traditional methods of funding transportation projects. Increasing population and decreasing revenues will cause toll roads to play a more significant role in meeting future transportation infrastructure needs.

While the state benefits from the ability to build toll roads, a separate agency is not needed to perform this function. The main difference in roads built by TTA compared to those built by TxDOT is how they are financed. A separate agency was created to build and operate toll roads in part because, for years, the Texas Constitution prohibited the state from using state funds on toll roads. In 1991, however, a constitutional amendment largely eliminated this prohibition, allowing TxDOT to loan money to TTA for toll roads as long as the money is repaid. At the same time, the Legislature expressed its intent, in statute, that TTA should be consolidated with TxDOT on September 1, 1997.

Despite having a flexible way to finance building roads and bridges, TTA has been able to serve the needs of only a small region of the state. Furthermore, turnpikes solely supported by toll revenue are, for the most part, no longer feasible because higher construction costs make it nearly impossible to fund construction solely from tolls collected. TxDOT, which is currently limited to pay-as-you-go financing, could use the flexibility of toll authority to help fund additional road projects to meet the state's transportation needs.

Consolidation would not affect the areas of the state that have toll facilities and it would not adversely affect the cost of building future toll roads. The consolidation would improve the state's ability to meet transportation needs statewide because every dollar spent on toll road projects means that state dollars are available to meet other transportation needs in the state.

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*While the state benefits from building toll roads, a separate agency is not needed to perform this function.*

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## Recommendation

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### Changes in Statute

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- Consolidate the functions of the Texas Turnpike Authority with the Texas Department of Transportation.
- Transfer bonding authority for toll projects from the Texas Turnpike Authority to the Texas Public Finance Authority.

This recommendation would consolidate the functions of the Texas Turnpike Authority within the Texas Department of Transportation effective September 1, 1997. Under this consolidation, all of TTA's existing toll projects and assets, including the 21.4-mile Dallas North Tollway and the Mountain Creek Lake Bridge and its headquarters building in Dallas, would transfer to TxDOT. TxDOT would be responsible for operating and maintaining these projects, including collecting tolls. TxDOT would also assume responsibility for completing and operating the President George Bush Turnpike and the Addison Airport Tunnel, which are currently under construction.

Tolls collected on the Dallas North Tollway, the Mountain Creek Lake Bridge, the Addison Airport Tunnel, and the President George Bush Turnpike would continue to be used to pay the bondholders and on-going maintenance of those facilities. The consolidation would not remove the current safeguards against pledging toll revenues from one project to another project.

Through this consolidation, TxDOT would retain the authority relating to building and operating toll facilities that currently resides in TTA. For example, TxDOT's toll staff would retain TTA's right-of-way powers for toll projects. Specifically, TxDOT's toll staff would have the right to enter and inspect property before acquisition and be able to take early possession of condemned property. These powers would not extend to TxDOT's non-toll activities.

The specifics of any consolidation would need to be worked out between TTA and TxDOT regarding such issues as how the consolidated highway/turnpike function would be staffed and organized. TxDOT would be responsible for organizing this new toll function within its agency structure. Generally, the resources currently available to TTA would be transferred to TxDOT, including the employees and contracting ability for planning, developing, operating, and maintaining toll projects. TxDOT's new toll staff would need to be separated from the other TxDOT staff for accounting purposes. These functions would continue to be funded by bond proceeds and toll revenues and would have no impact on the State Highway Fund.

The Texas Transportation Commission would assume the powers and duties currently exercised by the TTA Board. The Commission already has the responsibility for overseeing a comprehensive system of state highways and public roads, and as part of

this responsibility, must consider plans and policies for incorporating turnpikes into the state highway system. As ex officio members of the TTA Board, the Transportation Commission members are well qualified to perform this task.

This recommendation would also require the transfer of bonding authority from TTA to the Texas Public Finance Authority (TPFA). TxDOT would not have any independent authority to issue revenue bonds. For any new projects after consolidation, TxDOT would develop a project to the point where they were ready to obtain financing. This includes project design, traffic and revenue estimates, route selection, and construction cost estimates. TxDOT would obtain approvals from the Transportation Commission and any other necessary approvals. TxDOT would then submit a request for financing to TPFA, including expenditure and construction schedule. TPFA staff would work with a financial consultant to structure the bond issuance, determine the type of sale to be used (either negotiated, competitive or commercial paper), and select underwriters. The bond package must be approved by the Bond Review Board and reviewed by the Attorney General's Office to ensure compliance with applicable state laws. Finally, TPFA's financial advisor would help take the project to market and the funds would then be available to TxDOT for construction.

Transfer of bonding authority would have no adverse effect on the \$854.5 million of outstanding revenue bonds issued by TTA. The Sunset Act establishes procedures for the termination of agencies that have outstanding bond obligations. In this case, the bond covenants—legal agreements between bondholders and TTA—on these outstanding bonds require the continued use of a third party trustee for the bond proceeds. Under this recommendation, TxDOT would collect tolls and deposit them with the trustee, outside the State Treasury. On behalf of TTA, TPFA would assume all responsibilities and functions relating to bond payment. For future bond issues, TxDOT and TPFA could use either a third party trustee, or TPFA could act as trustee, and place the bond proceeds and toll revenue in the Treasury or the Treasury Safekeeping Trust Company.

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## Fiscal Impact

Because the Texas Turnpike Authority is financed through revenue bond proceeds and toll revenues and does not receive a state appropriation, the consolidation into TxDOT would not have an additional fiscal impact to the state. The costs associated with TxDOT's administering this new toll function would continue to be paid from the operations of toll facilities. In addition, the costs relating to TPFA's issuing revenue bonds for toll projects would continue to be paid from bond proceeds. No costs to the State Highway Fund or the General Revenue Fund would result.

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- <sup>1</sup> *Texas Transportation Plan*, Texas Department of Transportation, 1994 Edition, Dye Management Group, Austin, Texas. p. 27.
- <sup>2</sup> Christopher J. Oswald, Chungwon Lee, Mark Euritt, et.al, *Texas Public Opinion Regarding Toll Roads*, Center for Transportation Research, The University of Texas at Austin, (Austin, March 1995) p. iv.
- <sup>3</sup> Interview with Susan Buse, Texas Turnpike Authority, February 1996.
- <sup>4</sup> Public Finance Authority, *Self Evaluation Report to the Sunset Advisory Commission*, September 1995.
- <sup>5</sup> Follow-up meeting with Texas Turnpike Authority staff, Dallas, January 17, 1996.
- <sup>6</sup> Telephone interview with Ernest Perez, Director, Municipal Finance Department, Standard and Poor's Ratings Group, New York, February 29, 1996.
- <sup>7</sup> Information obtained from Thomas Griebel, Assistant Executive Director, Multimodal Transportation, Texas Department of Transportation, February 29, 1996.
- <sup>8</sup> Standard and Poor's. *Municipal Finance Criteria 1995*, McGraw-Hill, 1995, p. 137.
- <sup>9</sup> Standard and Poor's. *Municipal Finance Criteria 1995*, McGraw-Hill, 1995, p. 138.
- <sup>10</sup> David Hartgen, *Resources versus Results: Comparative Performance of State Highway Systems: 1984-1993*. University of North Carolina Press, Chapel Hill North Carolina, June 1, 1995.
- <sup>11</sup> Fiscal Year 1995 Annual Report, *Florida Department of Transportation, Turnpike District*, p 6.
- <sup>12</sup> Texas Comptroller of Public Accounts, *Breaking the Mold*, 1991, Transportation 10.

# **BACKGROUND**

# Background

## Agency History

The Legislature created the Texas Turnpike Authority (TTA) with the passage of the Turnpike Act in 1953. TTA has statewide jurisdiction, with headquarters located in Dallas. The agency's purpose is to plan, finance through both public and private resources, build, operate and maintain a system of toll roads, bridges and tunnels in the state. Once TTA bonds are fully paid, a toll project is turned over to the Texas Department of Transportation (TxDOT) to maintain as a toll free highway or bridge. TTA currently operates two projects in the Dallas-Fort Worth metro area, the Dallas North Tollway System and the Mountain Creek Lake Bridge, both entirely supported by the tolls they generate. A complete history and listing of current TTA turnpike projects are shown in the chart, *TTA Turnpike Projects*.

Legislation enacted in 1991 consolidated a number of functions within the newly created Texas Department of Transportation. This legislation also expressed the Legislature's intent that TTA be consolidated within the TxDOT on September 1, 1997. The legislation further required the Sunset Advisory Commission to review the feasibility of various consolidation options. In this review, to be completed for the 75th Legislature, the Legislature directed the Commission to consider the cost impact of a consolidation, the impact of consolidation on the availability of federal funds for turnpike construction, and the need for future turnpike construction.

In 1991, the federal government also enacted legislation affecting transportation. The Intermodal Surface Transportation Efficiency Act (ISTEA) allowed federal funds to be spent on toll projects. This provision was expanded with the passage of the National Highway System Designation Act of 1995, which allows federal funds to be used for up to 80 percent of the cost of a turnpike, toll bridge or tunnel. Congress designed this provision to give the states more flexibility in using federal highway funds, but did not provide any additional funds for turnpikes or toll bridges.

*All current TTA projects are located in the Dallas-Fort Worth area and are supported by tolls generated.*

TTA Turnpike Projects			
Project	Completed	Bond	Status
Dallas Fort Worth Turnpike	1957	The bonds were retired in 1977.	TTA transferred the road to TxDOT in 1977. The road is now designated IH-30.
Dallas North Tollway System (DNT)			
Original segment (9.8 miles)	1968	TTA has sold DNT bonds on 8 different occasions since 1965. The total outstanding bond indebtedness is \$848,721,475. TTA has contracted to issue additional DNT refunding bonds in 1997. Bonds issued through 1997 are scheduled to mature in 2025. Tolls collected on all DNT system projects go to pay off all obligations on the DNT system.	TTA operates the original segment and phases I and II as turnpikes. TTA has not raised tolls on the DNT since 1982. Construction will begin on the Addison Tunnel and the President Bush Turnpike in early 1996.
Phase I extension (4.8 miles)	1987		
Phase II extension (6.8 miles)	1994		
Addison Airport Tunnel (3,700 ft. project tunnel length 800 ft.)	(1998)		
President George Bush Turnpike (26 miles)	(2004)		
Mountain Creek Lake Bridge	1979	The bonds are scheduled to mature in 2007. The total outstanding bond indebtedness is \$5,810,000.	TTA currently operates the bridge as a toll facility. TTA raised tolls in 1981 from 40 cents to 50 cents to meet debt obligations.
Houston Ship Channel Bridge	1982	The bonds were retired in 1994.	TTA transferred the bridge to the Harris County Toll Authority in 1994.
( ) years in parentheses indicate expected dates of completion .			

In response to the federal legislation and TTA's increasing need for more flexible financing methods, the Legislature and the state's voters amended the Texas Constitution in 1991 to allow TxDOT to expend funds on toll projects, as long as money from the State Highway Fund is repaid. This constitutional amendment allowed TxDOT and TTA to enter into joint ventures to share the cost of toll projects. The adoption of the amendment also affirmed the intent of the Legislature that TTA should be consolidated with TxDOT in 1997. Because federal funds technically become state funds once allocated to TxDOT, TTA would not have been able to take advantage of this funding flexibility under the constitutional prohibition against using state funds on toll projects that existed before 1991.

## Policy-making Body

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A 12-member Board of Directors governs TTA. Included on the Board are the three members of the Texas Transportation Commission, who are voting, ex officio members. The Governor appoints the other nine members, representing the public, for staggered six-year terms and designates the presiding officer.

Although no statutory requirement governs the frequency of Board meetings, the Board generally meets at least four times a year. The Board met seven times in 1995. All members serve without pay, but are entitled to reimbursement for actual expenses necessarily incurred.

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*Unlike most state agencies, TTA does not receive its funding through the legislative appropriations process.*

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## Funding and Organization

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### *FUNDING*

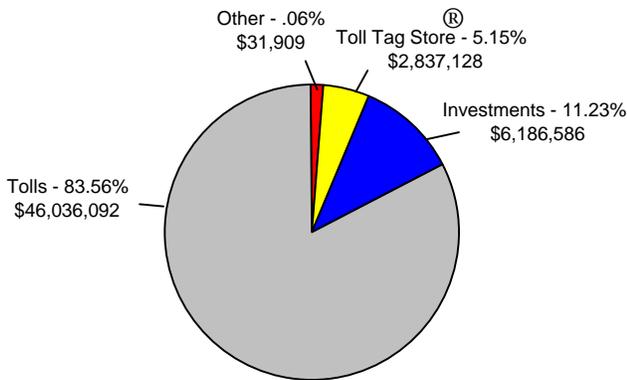
Unlike most state agencies, TTA does not receive its funding through the legislative appropriations process, but instead receives funding from revenue bonds issued for tollway construction projects and tolls generated. After tollway completion, TTA collects tolls and uses the tolls to pay operation and maintenance expenses, as well as principal and interest on the bonds. TTA also uses earnings from investment of bond issue proceeds to pay principal and interest on the bonds. Revenue bonds, unlike general obligation bonds, are not supported by the full faith and credit of the state.

According to the Turnpike Act, every toll project must be financed and built with a separate bond issue. Money to build, operate or retire the debt of one roadway project generally cannot come from another of TTA's projects, with the following exceptions:

- revenues from pooled projects contained within a planning region of a council of governments;
- surplus revenues from turnpike projects, with the condition that surplus revenue from turnpikes under construction or operated by TTA on January 1, 1993 can only be used with local approval; and
- money in the revolving fund, which could receive surplus revenue from turnpike projects. The revolving fund is a perpetual funding mechanism that would allow TTA basically to borrow money from itself, repay the loan with interest, and have additional funds from which to borrow again. The primary intended purpose of the revolving fund is to provide credit enhancement for potential new projects. The revolving fund has not yet been funded.

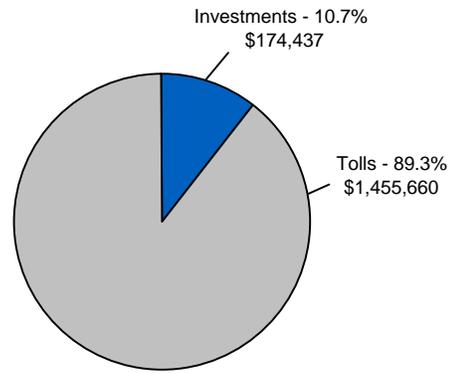
Since revenue from one toll project may not be used to pay expenses on another project, TTA operates under separate budgets for each toll project and charges all salaries and supplies proportionately against the revenue of each toll road or bridge. The 1995 revenues and expenditures for the two projects TTA currently operates are shown in the charts, *Dallas North Tollway and Mountain Creek Lake Bridge Revenues, and Dallas North Tollway and Mountain Creek Lake Bridge Expenditures.*

**Dallas North Tollway Revenues  
Calendar Year 1995**



**Total Revenues: \$55,091,715**

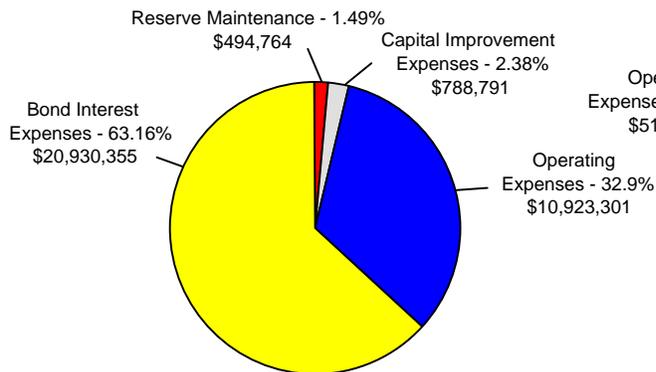
**Mountain Creek Lake Bridge Revenues  
Calendar Year 1995**



**Total Revenues: \$1,630,087**

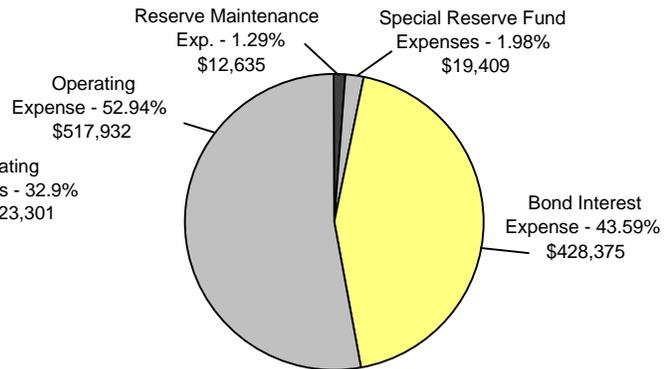
The expenditures charts show the total expenditures from the trust accounts for both projects, including bond interest expenses, reserve maintenance and capital improvements expenditures, and the operating expenses.

**Dallas North Tollway Expenditures  
Calendar Year 1995**



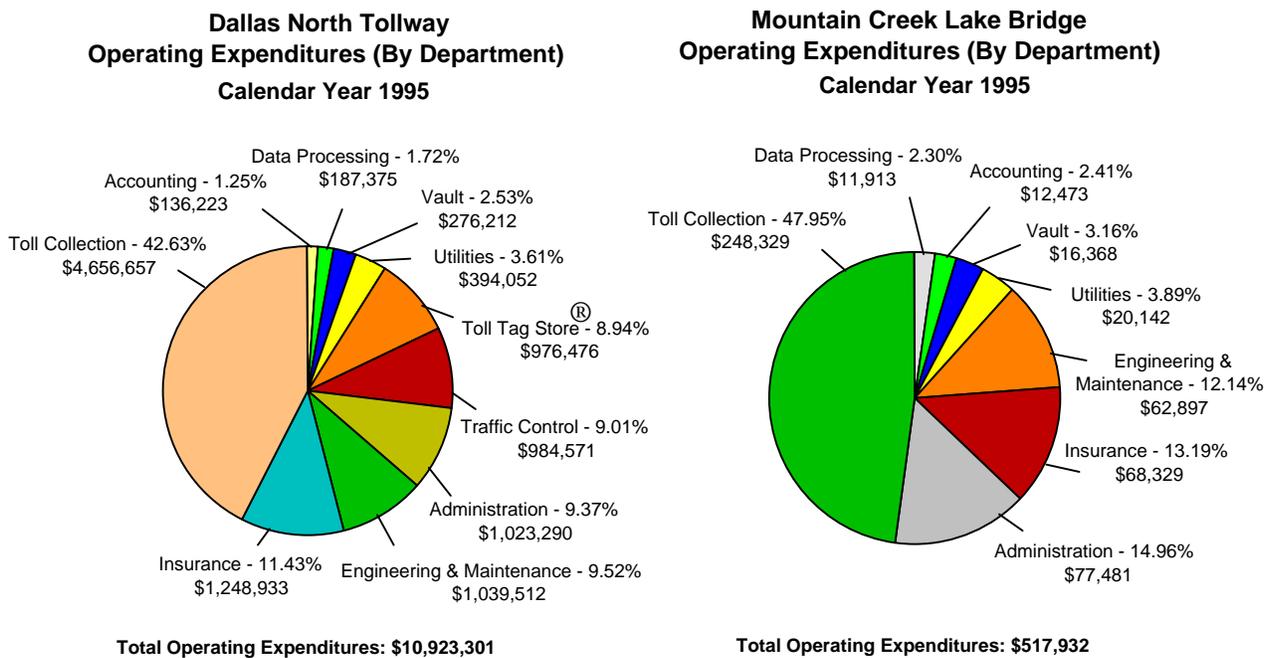
**Total Expenditures: \$33,137,211**

**Mountain Creek Lake Bridge Expenditures  
Calendar Year 1995**



**Total Expenditures: \$978,351**

A specific breakdown of operating expenses, representing the agency costs associated with operating the two projects, are shown in the charts, *Dallas North Tollway Operating Expenditures and Mountain Creek Lake Bridge Operating Expenditures*. These expenses, \$11,441,233 for 1995, can be viewed as the budget of the agency.



In addition to revenue bonds, TTA has since 1991 been able to receive loans from TxDOT and may form joint ventures with TxDOT to finance toll construction. Through joint ventures, TTA and TxDOT have additional flexibility to develop new roadway projects as toll roads, allowing state highway funds to be stretched farther.

To date, one joint venture has been established, the State Highway 190 project in Dallas, now called the President George Bush Turnpike. In 1995, TxDOT transferred \$116.2 million of its own work on SH 190 to TTA and has agreed to build parts of the non-toll portions of the freeway interchanges at a cost of \$106 million.<sup>1</sup> In addition, TTA is borrowing \$135 million in federal funds from TxDOT for the project, which is to be paid back from toll revenue. TTA, in turn, is providing a \$20 million cash contribution from Dallas North Tollway surplus funds as well as the proceeds from TTA's \$446 million revenue bond issuance. The total cost

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*TTA has 235 full-time employees who are considered employees of the state.*

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of the 26 mile project, including the value of donated right of way, is estimated to be \$1 billion.<sup>2</sup>

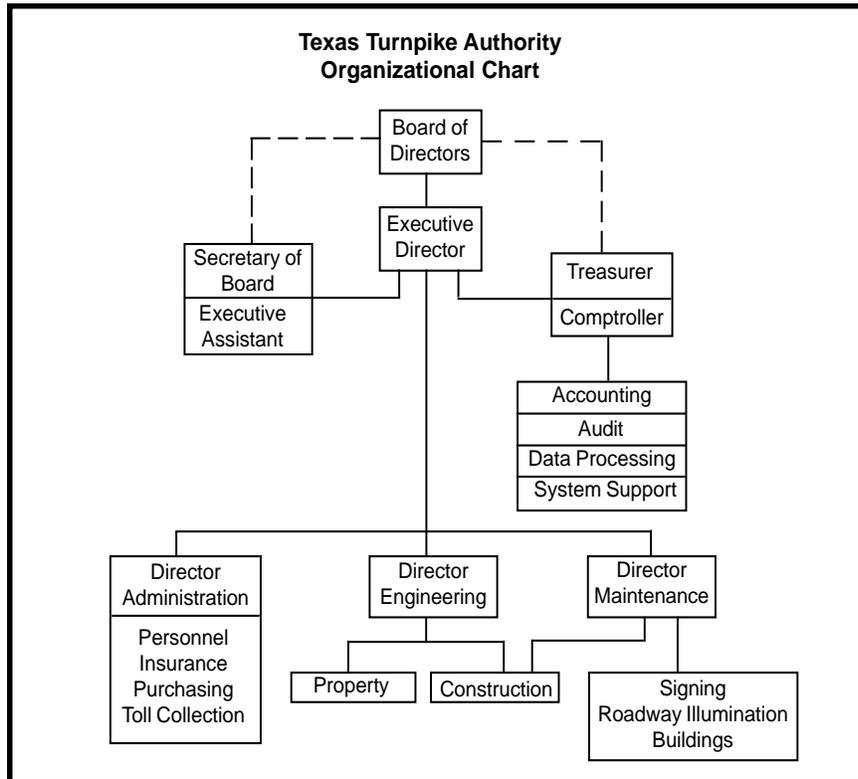
In addition to joint ventures with TxDOT, the Legislature has expanded TTA's financing capabilities in other ways since 1991. For instance, state law permits TTA to enter into agreements with private and public entities, including municipalities, and governmental agencies, including Mexican agencies, to independently or jointly construct, maintain and operate turnpike projects. Unlike the state, local governments are not prohibited from incurring debt or appropriating tax money for turnpike projects. As a result, they may agree to back tollway bonds with local appropriations or local taxes, or they may issue bonds directly for the purpose of constructing a toll road in association with a TTA project.

To date, TTA has entered into an agreement with one municipality to back TTA bonds. The Town of Addison recently agreed to provide credit enhancement, backed by the city's taxing authority, in an amount sufficient to pay the debt service on up to \$2.5 million of the bonds issued by TTA for a tunnel under the Addison airport. Bonds backed by cities and counties generally receive higher bond ratings than bonds issued for similar projects without local backing because of the security local backing affords the bondholders. In this agreement, the bondholders are assured of receiving at least the \$2.5 million guaranteed by the town if tolls do not cover payments.

#### *ORGANIZATION*

TTA has 235 full-time employees. Of this total, 23 employees are in the agency's Dallas headquarters, and 147 employees collect and process tolls for the two projects located in the Dallas area, the Dallas North Tollway and the Mountain Creek Lake Bridge. The remaining employees work in the maintenance department, the money counting operation, the Tolltag Store, and one employee maintains the TTA office in Austin.

TTA contracts for the majority of specialized legal, financial, engineering and construction services required to sell bonds, invest their proceeds and build toll projects. In addition, TTA contracts with the Department of Public Safety for law enforcement services for the Dallas North Tollway and the Mountain Creek Lake Bridge. A total of 17 officers are assigned to the two toll roads. The *TTA Organizational Chart* shows the organizational structure of the agency's divisions.



All employees of the agency are state employees with salaries and wage rates set by the State Employee Classification Plan. TTA employees also participate in the state Employees Retirement System.

The *TTA Equal Employment Opportunity Statistics* chart shows the categories of TTA employment, depicts the agency’s minority employment in each of these categories, and compares the minority employment with goals set in the Appropriations Act. While the agency is not subject to the Appropriations Act, the minority goals set out in the Act

**Texas Turnpike Authority  
Equal Employment Opportunity Statistics - 1995**

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	State Goal	Agency	State Goal	Agency	State Goal
Officials/Administration	14	21.4%	5%	7.2%	8%	35.7%	26%
Professional	3	0%	7%	33.3%	7%	0%	44%
Technical	NA	0%	13%	0%	14%	0%	41%
Protective Services	1	0%	13%	0%	18%	0%	15%
Para-Professionals	NA	0%	25%	0%	30%	0%	55%
Administrative Support	30	13.3%	16%	3.3%	17%	86.6%	84%
Skilled Craft	3	0%	11%	33.3%	20%	0%	8%
Service/Maintenance	169	45.0%	19%	17.2%	32%	27.8%	27%

are applicable to most state agencies and therefore serve as a useful reference point.

<b>Purchases from HUBs Calendar Year 1995</b>	
Total goods and services contracted	\$295,240
Amount of HUB participating share	\$55,258
Percent of HUB participation	18.7%
State goal	30.0%

The *Purchases from HUBs—Calendar year 1995* chart shows participation of historically underutilized businesses (HUBs) in TTA's contracts for goods and services in 1995.

Although the chart shows the state goal of 30 percent, TTA is not subject to the state goal, set forth in an appropriations rider, because TTA receives no appropriation. Instead, TTA has

retained the state's former HUB goal of 20 percent. In addition, the chart only includes HUB information on goods and services commonly purchased by an agency, such as office supplies and janitorial services, but does not include specialized legal, financial, engineering or construction contracts. Those specialized contracts totaled \$8,210,585 in 1995, 11.9 percent of which were HUB contracts totaling \$977,080.

## Agency Operations

Although not used in the budgeting process, the TTA Board of Directors adopted a strategic plan to finance, through public or private resources, construct, operate and maintain turnpike projects throughout the state in partnership with the Texas Department of Transportation. To promote this goal, the agency has three main activities: (1) planning and financing, (2) right of way acquisition and construction, and (3) operation and maintenance.

### *PLANNING AND FINANCING*

Historically, communities have approached TTA staff with requests to conduct feasibility studies on particular projects through city councils, county commissioners courts, or other governmental bodies. As a result, TTA generally has not sought out potential roadway projects to study and build, although TTA has recently employed a statewide planner for this purpose. More recently, Metropolitan Planning Organizations, specified in federal law and designated by the Governor to coordinate urban transportation planning, have approached the TTA staff with tollway proposals.

TTA staff conducts a preliminary review to determine whether the proposal merits more detailed analysis. If the results of that preliminary review are positive and the Board approves, the staff will retain outside consulting firms to conduct a preliminary feasibility analysis. An outside

civil engineering consulting firm estimates construction and right-of-way acquisition costs as part of the preliminary feasibility analysis, and a traffic engineering firm studies the potential traffic and toll revenue the turnpike might generate. The traffic and revenue estimates are the key components in determining whether a roadway will be viable as a toll road.

If, after the preliminary feasibility study, the project still appears viable, the agency, with Board and TxDOT approval, arranges for a second, more thorough investment grade feasibility study, performed by the same civil engineering and traffic engineering firms. The purpose of this study is to demonstrate the potential of the turnpike project to generate revenues sufficient to service and retire the bonds that will ultimately finance the project. The civil engineering firm prepares a preliminary engineering schematic and more complete construction, right-of-way and operation costs. The civil engineers conduct the required environmental assessment, which is substantially similar to TxDOT's environmental assessment policy. The civil engineers also conduct the required public hearing on the proposed project. The traffic engineers prepare the final traffic and revenue forecasts and estimate the level of coverage on the project. Coverage is the degree to which toll revenue will cover operating costs and debt service. The bond market generally requires coverage on a project to be at least 1.2 (net revenue/debt service = 1.2), or a 20 percent projected margin of revenues in excess of the cost of operation and debt service, for a proposal to be considered feasible.

The most recent feasibility studies undertaken by TTA are shown with their corresponding outcomes and costs in the *Recent TTA Feasibility Studies* chart. Other than the Dallas area projects discussed in the previous section on funding, no other projects in Texas have proven feasible to TTA.

A local government requesting a feasibility study may finance the study. Otherwise, study costs are charged to the feasibility study fund established in 1977 by the Legislature with \$1 million from the Dallas-Fort Worth Turnpike surplus fund to research potential toll projects across the state. In 1993, the TTA Board of Directors replenished the fund with \$2.8 million from the Dallas North Tollway capital improvement fund. By law, all expenditures out of the feasibility fund must be approved by the Texas Transportation Commission.

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*Other than the projects already undertaken, TTA has not identified any other feasible projects in the state.*

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<b>Recent TTA Feasibility Studies</b>				
<b>Proposed Project</b>	<b>Dates Study</b>	<b>Type</b>	<b>Cost</b>	<b>Current Status</b>
Beltway-8 East (Harris County)	1987-1990	Feasibility	\$58,7191	Feasible; Bond Review Board did not approve financing. Harris County is developing
Treaschwig Road (Harris\Montgomery County)	1990	Initial Feasibility	\$35,8001	Not feasible for TTA alone
Trinity Turnpike (Dallas\Tarrant County)	1988-Present	Feasibility in 1988; staff past 5 yrs	\$361,981	Not feasible for TTA alone; developing new plan in cooperation with TxDOT
Addison Airport Tunnel (Dallas County)	1990-Present	Feasibility	\$448,2211	Feasible; bonds sold with construction to begin in 1996
DFW Airport East-West Connector (Tarrant\ Dallas County)	1993-Present	Initial Feasibility	\$38,845	Not feasible for TTA alone
West Texas Turnpike (14 counties)	1993-Present	Initial Feasibility	\$161,8262	Not feasible
DNT Extension-3 (Collin County)	1993-Present	Staff	\$115,389	Feasibility promising; City of Frisco acquiring right-of-way and building service road
SH-190T (Dallas, Collin and Denton County)	1994-Present	Feasibility	\$733,997	Feasible as partnership with TxDOT and FHWA; bonds sold with construction to begin in 1996
Southwest Turnpike (SH 121) (Tarrant\Johnson County)	1987-Present	Initial Feasibility in 1987; staff past 5 years	\$19,110	Not feasible for TTA alone; developing new plan in cooperation with TxDOT
Laredo Bridge No. 4 (Webb County)	1994-Present	Feasibility	\$78,175	Feasible; TTA will loan federal funds from TxDOT to Laredo
Port of Brownsville Bridge (Cameron County)	1993-Present	Staff	*	Continuing
US 183 Turnpike (Travis\Williamson County)	1994-Present	Staff	*	Continuing
SH 71 Turnpike (Travis County)	1994-Present	Staff	*	Continuing
Lago Vista Bridge (Travis County)	1994-Present	Staff	*	Continuing

The final step in the planning of a potential project is the securing of financing. State law exempts TTA from having to use the services of the Texas Public Finance Authority for bond financing. Instead, TTA retains a financial advisor to review the engineering reports, evaluate the potential for securing adequate financing, and determine a general plan for financing. In addition, the financial advisor monitors the bond market for the best time to issue the bonds for sale. The bonds are issued under a trust agreement which contains the terms and conditions of the bonds and the covenants of TTA with respect to the bonds and the project. A trust agreement pledges the revenue of the project to the repayment of the bonds and controls how such revenues, as well as the proceeds of the bonds, are applied and invested. A trust agreement, which is legally binding, also specifies the schedule for repaying bonds. The agency structures the bond issue and prepares the trust agreements with the aid of outside financial and legal advisors, including the underwriters.

The agency also retains one or more of the three national bond rating agencies — Moody's, Standard and Poor's, or Fitch — to rate the bond issue, which provides investors with an indication of the relative security of TTA bonds. By law, both the Attorney General's Office and the Texas Bond Review Board must approve the bond issue and the trust agreement. The entire bond issue is sold to an underwriter or a consortium of underwriters which in turn sell the bonds to individual investors. Depending on the reason for the bond issue, the proceeds in the trust account can be used to refund outstanding bonds to achieve debt service savings or for construction costs on a turnpike project. The trust agreement establishes rules for investing the unobligated funds in the trust account.

#### *RIGHT OF WAY ACQUISITION AND CONSTRUCTION*

Once TTA determines a project is feasible and secures funding, TTA begins to acquire needed right of way for the project, which is often donated by affected cities and/or counties. The agency's staff and general counsel work with real estate appraisers to appraise the needed property and assists the agency in negotiating for the purchase of the property. Unlike TxDOT, TTA may offer a property owner more than the appraised value for a parcel. TTA also has the power of eminent domain. In 1991, the Legislature gave TTA authority to take possession of a condemned parcel before a special commissioners court determines the final purchase price of the parcel. To date, TTA has used this power twice. The Legislature also gave TTA the authority to enter property before

condemnation proceedings to make a survey, sounding, drilling, or any examination it determines necessary.

Upon issuance of the bonds, a design engineering firm is selected to survey the land, complete comprehensive engineering schematics, and act as the overall coordinator for the project. The design firm also investigates the need for the relocation of utility facilities.

Finally, a prime contractor is chosen through the low bid process. Toll roads need to be constructed and opened to traffic as quickly as possible so tolls can be collected and the debt service paid. The bond repayment schedule outlined in the trust agreement takes into account the construction timetable and date of completion.

#### *OPERATIONS AND MAINTENANCE*

Each project's trust agreement requires the agency to maintain toll rates at a level sufficient to repay the debt. After holding a public hearing, TTA may increase tolls on projects to assure adequate cash flow to repay the debt, but must be careful not to price tolls too high, discouraging usage of the toll road.

TTA staff operate the toll collection stations. Throughout the day, TTA staff collects the tolls and periodically deposits them in a vault. TTA contracts with an armored truck service to transfer the money to the bank. Tollers are also collected using a windshield - mounted toll transponder known as a Tolltag®, which operates like an electronic debit card, allowing users to pay tolls without stopping at the toll plazas. Tolltag® users comprise 42 percent of the week day traffic on the Dallas North Tollway.

Approximately two to three percent of all tollway users fail to pay the appropriate toll. TTA has statutory authority to issue a notice of nonpayment and assess an administrative fee against a violator, and if the toll and fee are left unpaid, a citation may be issued.

TTA employs its own maintenance staff to do electrical and mechanical repair work, landscaping, pavement repair and roadway signing. TTA employs 30 people to maintain the two toll projects and its headquarters building in Dallas, which it owns.

When all of the bonds sold for a particular project have been retired, the toll road project is transferred to TxDOT. TxDOT then operates and maintains the facility as a toll free highway or bridge. The only toll road transferred to date was the Dallas-Fort Worth Turnpike, which was turned over to the Department in 1977, 17 years ahead of schedule.

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<sup>1</sup> Information obtained from Thomas Griebel, Assistant Executive Director, Multimodal Transportation, Texas Department of Transportation, February 29, 1996.

<sup>2</sup> Ibid.



**AUTOMOBILE THEFT PREVENTION AUTHORITY**

# ISSUES

# Issue 1



## Continue the Automobile Theft Prevention Authority within the Texas Department of Transportation.

### Background

In 1991, the Legislature created the Automobile Theft Prevention Authority (ATPA) in response to the growing concern about economic losses due to auto theft. Thieves stole 163,837 automobiles in 1991 at a cost of almost \$850 million to Texas automobile owners. Texas had the third worst auto theft rate in the nation. Local law enforcement agencies lacked sufficient funding and jurisdiction to address the problem in a comprehensive manner. For example, jurisdiction was a problem when a city officer needed to follow a stolen vehicle into a neighboring city or surrounding county to inspect a salvage yard.

To address the problem, the Legislature established a grant program to assist cities and counties with funding their individual auto theft enforcement and prevention needs, while at the same time providing for the coordination of auto theft activities statewide and across jurisdictions.

The Legislature funded ATPA by requiring insurance companies to pay \$1 for each motor vehicle covered for a year by that insurer's policy, and requiring a prorated fee for shorter length policies. The insurer may recoup the fee from the policy holder. The Comptroller collects the assessment from the insurance companies and deposits the funds in the auto theft prevention account in the general revenue fund. The Legislature directed that these funds be used in the following ways:

- to provide financial support to auto theft law enforcement task forces;
- to provide financial support to law enforcement agencies, local prosecutors, judicial agencies, and other organizations for programs designed to reduce automobile theft;

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*The Legislature funds ATPA through a one dollar fee for every vehicle insured in Texas.*

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- to establish an automobile theft prevention registration program with the Department of Public Safety (DPS), now called the “Help End Auto Theft” (H.E.A.T.) program;
- to conduct auto theft prevention public awareness programs;
- to provide experimental equipment for auto theft prevention; and
- to establish a uniform program to prevent stolen vehicles from entering Mexico.

To oversee these activities, the Legislature established the Authority as a seven-member body with six governor-appointed members representing insurance companies, law enforcement, and motor vehicle insurance consumers. The director of the Department of Public Safety serves ex officio as the seventh member of the Authority. Having such an Authority administer this grant program not only provides expertise relating to auto theft, but also allows for a broad perspective in making decisions regarding the distribution of funds statewide.

Although ATPA was created within the Governor’s Office in 1991, and then statutorily moved within the administrative framework of TxDOT, effective September 1, 1995, the basic functions of ATPA have remained the same. ATPA continues to make annual grant awards for auto theft enforcement, prosecution and prevention that may be renewed for a total of five years. In fiscal year 1995, ATPA spent \$17.8 million and distributed \$16.5 million to 47 grantees.

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*In 1994, ATPA funded 39 auto theft task forces covering 75 Texas counties.*

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To justify the continuation of an agency’s functions, certain conditions should exist. A current and continuing need should exist for the state to provide the functions or services; the functions should not duplicate those currently provided by any other agency; and the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency’s functions or services to any other state agency.

## Findings

- ▼ **The ATPA function of administering auto theft prevention grants continues to be needed to protect motor vehicle owners in Texas.**
  - ▶ ATPA grants have helped local law enforcement agencies establish auto theft task forces. In 1994, ATPA grants funded, or partially funded, 39 auto theft task forces covering 75 of 254 counties in Texas. Eighty-nine percent of all auto thefts in Texas occur in those 75 counties.<sup>1</sup> The

grants paid for the salaries of an additional 225 law enforcement officers in Texas and enabled cities and counties to hire prosecutors for the exclusive prosecution of auto theft cases. In addition, grantees use their grants to train officers and prosecutors and to educate the public on auto theft prevention.

- ▶ DPS, through ATPA grants, has registered 23,000 cars in the H.E.A.T. program designed to prevent auto theft, and has established the Border Auto Theft Information Center (BATIC) to provide police officers in the United States and Mexico with stolen vehicle information. BATIC has led to the recovery of \$20 million worth of stolen vehicles.<sup>2</sup> In addition, DPS receives a grant to conduct one-week advanced auto theft training seminars for local law enforcement agency officers.
- ▶ While a direct correlation between ATPA activities and Texas auto theft rates is difficult to make, the rate, calculated as motor vehicle thefts per 100,000 inhabitants, has declined from a rate of 944 motor vehicle thefts in 1991 to 603 motor vehicle thefts in 1994 (the last year for which complete uniform crime reports exist), a 36 percent decrease.<sup>3</sup> Over the same period, the national rate has decreased only 10 percent, from 659 motor vehicle thefts to 591 motor vehicle thefts per 100,000 inhabitants.<sup>4</sup>

Texas county comparisons from 1991 to 1994 also present an interesting contrast. In counties with ATPA task force coverage, auto thefts decreased by 34 percent, while counties not covered by an ATPA task force experienced only a 15 percent decrease.<sup>5</sup>

Another possible connection to auto theft decreases can be seen through declines in insurance rates. The three largest automobile insurance carriers in Texas — State Farm, Mid-Century and Allstate — have reduced their comprehensive insurance premiums by 34 percent, 15 percent, and 6 percent, respectively, since 1991.<sup>6</sup>

- ▶ Despite declines in the vehicle theft rate and comprehensive insurance rates, vehicle theft remains a serious problem in Texas with over 110,000 vehicles stolen in fiscal year 1994 at a cost to auto insurance consumers of \$604 million.<sup>7</sup> Additionally, recent trends along the border show an increase

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*Texas auto theft rates have declined 36 percent from 1991 to 1994, compared to a national rate decrease of ten percent.*

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*In fiscal year 1994, over 110,000 vehicles, at a cost of \$587 million, were stolen in Texas.*

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in vehicle theft, in part due to recent Mexican economic hardships.<sup>8</sup>

- ▶ No other funding mechanism is as flexible as the ATPA program. ATPA grants have allowed local law enforcement agencies to work together for the first time in multi-jurisdictional efforts, including cross-border auto theft efforts. Grant recipients have taken the initiative against auto theft by establishing preventive efforts, such as surveillance of high auto theft areas or inspections of auto salvage yards. Without ATPA funds, many localities would not be able to retain the task forces or the expertise developed to exclusively address auto theft.

▼ **Since its creation, ATPA has had problems with its administrative structure.**

- ▶ In 1991, the Legislature created ATPA in the Governor's Office where a number of other grant programs are administered. Generally, the programs within the Governor's Office have advisory boards that recommend funding guidelines for grant programs with the Governor making the final funding decisions. ATPA was the only entity within that structure that made autonomous decisions regarding grant expenditures.
- ▶ In 1993, The Governor's Office transferred ATPA to TxDOT through an interagency agreement. Under conditions of the agreement, the Governor's Office reimbursed TxDOT for providing support services to ATPA, including payroll and administrative services such as printing, postage and supplies. As a result, ATPA operated largely as an autonomous body with little TxDOT oversight. For example, ATPA attempted to institute a separate agency classification system for its staff over TxDOT objections.

▼ **Neither the intended oversight nor the administrative efficiencies have resulted from the Legislature's decision to place ATPA within TxDOT.**

- ▶ In 1995, the Legislature codified the link between ATPA and TxDOT by establishing ATPA in TxDOT. The legislation specified that ATPA was not an advisory body and that TxDOT shall implement its decisions. ATPA currently contracts with TxDOT for many administrative services such as payroll, purchasing and mailing. Despite this linkage with

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*Without ATPA funds, many localities would not be able to retain auto theft task forces.*

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TxDOT, the legislation allowed ATPA to contract for legal, fiscal, administrative and personnel services with agencies other than TxDOT and to employ and compensate staff “in coordination with TxDOT.”

- ▶ The confusion resulting from the conflicting statutory authority prompted ATPA and TxDOT to distance themselves from each other, in essence establishing ATPA as a quasi-independent agency. The result has raised the following oversight questions and efficiency concerns:
  - Although ATPA currently contracts with TxDOT for certain administrative services, the Authority could choose to contract with another agency in the future. Such a situation would conflict with ATPA being considered a part of TxDOT.
  - The Legislature intended for ATPA and TxDOT to coordinate the employment and compensation of ATPA staff. However, because ATPA has controlled auto theft funds, it has been able to administer staff without TxDOT oversight. As a result, ATPA currently has seven employees and intends to hire one more even though the Legislature included five ATPA employees in TxDOT’s employee cap for the 96-97 biennium.
  - Questions persist for ATPA and TxDOT regarding TxDOT’s oversight responsibilities. For example, TxDOT abandoned an internal audit of ATPA’s functions in 1994 because of ATPA’s apparent autonomy. In addition, TxDOT sought approval from the state comptroller for ATPA to process grant payments internally rather than through TxDOT.
  - In addition, ATPA’s quasi-independent status could lead to duplication of effort, and as a result, inefficient use of state resources. For example, TxDOT offered office space to ATPA free of charge. Nevertheless, ATPA entered into an 18-month lease, through the General Services Commission, for its own office space in downtown Austin at a cost of \$2,000 a month.
- ▶ While TxDOT and ATPA are attempting to resolve the conflicting statutory authority by further separating themselves from each other, the Legislature clearly established ATPA in TxDOT. Because the Legislature established ATPA within

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*Although the Legislature established ATPA in TxDOT, conflicting statutory authority has led ATPA to operate as a quasi-independent agency.*

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TxDOT to achieve oversight and administrative efficiencies, the solution to the conflicting authority would be to strengthen the link between TxDOT and ATPA.

- ▼ **Texas, as well as other states, have shown an interest in linking entities with comparable functions to achieve administrative efficiencies.**
  - ◆ An example of a clear administrative linkage exists within TxDOT. The Motor Vehicle Board, responsible for establishing policy and enforcing provisions of the Motor Vehicle Commission Code, operates as an independent board within TxDOT. The Board, however, relies solely on staff from the Motor Vehicle Division within TxDOT to implement its decisions.
  - ◆ The Legislature established the Texas Agricultural Finance Authority (TAFE) within the Texas Department of Agriculture to achieve administrative efficiencies. TAFE is a nine-member board responsible for promoting Texas agricultural products by providing financial assistance to eligible agricultural businesses. The Commissioner of Agriculture sits on the board and provides staff, subject to TAFE approval, to implement TAFE decisions.
  - ◆ The Legislature linked the Wastewater Treatment Research Council with the Texas Natural Resource Conservation Commission (TNRCC). The Council is an 11-member body responsible for awarding competitive grants for improving wastewater treatment methods. Like ATPA, the statute specifies that the Council is not advisory and that TNRCC must implement Council decisions. Unlike ATPA, however, the Council is not authorized to employ its own staff, but instead enters into interagency agreements with TNRCC for staff or other administrative support to promote the purposes of the Council.
  - ◆ Of the ten states identified as having auto theft prevention programs, seven states, Florida, Maryland, Michigan, New York, Rhode Island, Virginia and Wisconsin, linked those programs with an existing state agency.

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*The Legislature often links certain state functions to larger agencies to achieve administrative efficiencies.*

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- ▼ **Clarifying the structure of ATPA's administration would result in a more efficient program, maximize funds available to grantees, and ultimately benefit Texas motor vehicle owners.**
  - ▶ Clarifying that TxDOT is responsible for supporting ATPA activities, including hiring of staff and providing administrative support, would ensure administrative cost efficiency. Improvement would result from using existing TxDOT office space, using TxDOT's employee classification system, and tapping existing staff resources within TxDOT. These measures would reduce administrative costs and would ensure that more money is used for auto theft prevention grants.
  - ▶ Establishing an operating cost cap would further ensure efficiency in the way ATPA administers auto theft funds. Although ATPA's scope of activities has remained constant since its creation, its operating costs, including salaries, travel, and marketing expenditures have risen from three percent in 1993, the first grant award year, to almost eight percent in 1995. An operating expense cap would make ATPA consistent with grant programs administered by the Governor's Office. In addition, auto theft prevention programs in Illinois, Arizona and Maryland have administrative expense caps between 5 and 10 percent.

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*An independent agency is not the most efficient way to administer a grant program.*

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## Conclusion

While state auto theft rates and comprehensive insurance premiums have decreased since 1991, auto theft continues to be a serious problem. Continuing ATPA's function would allow continued funding of local auto theft prevention efforts in Texas. However, conflicting statutory directives concerning the relationship between ATPA and TxDOT have resulted in friction, confusion, and a lack of oversight. The coordination anticipated by the Legislature has not occurred.

Although TxDOT and ATPA have attempted, through interagency agreement, to allow ATPA to operate as a quasi-independent agency, that was not the Legislature's intent when it placed ATPA within TxDOT. An independent agency is not the most efficient way to administer a grant program. The Legislature placed ATPA in TxDOT so that it could share resources and receive support from TxDOT's well developed agency infrastructure.

## Recommendation

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### Changes in Statute

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- Continue the Auto Theft Prevention Authority within the Texas Department of Transportation.
- Clarify the relationship between ATPA and TxDOT by:
  - removing ATPA's authority to hire its own staff and contract with state agencies other than TxDOT for support services; and
  - specifying that TxDOT shall provide staffing and services necessary to support the function of ATPA, as determined by contract with the Authority's Board.
- Set a cap on non-grant expenses at eight percent of total expenditures.
- Remove ATPA's Sunset review date and specify that it will be included in future reviews of TxDOT.

This recommendation would continue ATPA's existing functions relating to the granting of funds to combat auto-theft. The seven-member Authority would continue as a separate Governor-appointed entity within TxDOT and would retain final decision-making power over auto theft grants.

By clarifying TxDOT's responsibility for staffing ATPA and for providing all administrative services, this recommendation would strengthen the link between ATPA and TxDOT, clearly establishing ATPA as part of TxDOT. As a result, ATPA would not undergo a separate Sunset review, but would instead be reviewed as part of the next TxDOT review. TxDOT would be responsible for all ATPA staff needs, including any contract staff that may be necessary in the future. In addition, TxDOT would be responsible for securing services for ATPA that TxDOT cannot provide, such as ATPA fee collection services, now performed by the Comptroller's Office. This arrangement would match TxDOT's responsibility for operation of the Motor Vehicle Division under the authority of the Motor Vehicle Board.

The statutory changes would not affect state highway funds. ATPA staff would be paid through funds appropriated for auto theft prevention, enforcement and prosecution purposes. TxDOT would identify staff time, materials and services dedicated to ATPA to assure that state highway funds are not used for ATPA purposes. Likewise, ATPA funds could not be used on anything other than ATPA activities, as intended by the Legislature.

Setting an operating expense cap of eight percent, the current level, will ensure that these expenses stay in line with those of similar grant programs. This cap would apply to all

non-grant expenses, including salaries, travel, and marketing expenditures. The operating expense cap should be calculated based on the total amount of funds expended, rather than the total amount collected, to reflect a percentage of the money actually administered. This cap will allow the greatest amount of funds collected to be used for the primary purpose intended — auto theft prevention grants.

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## Fiscal Impact

This recommendation would result in a more cost-efficient administration of the auto theft program, but resulting savings cannot be estimated. ATPA funds are no longer dedicated as a result of funds consolidation legislation in 1995. Funds collected on behalf of ATPA are general revenue funds. As a result, any savings resulting from TxDOT administrative support and the proposed cap on expenses would have a positive effect on general revenue.

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<sup>1</sup> Derived by ATPA from the Texas Department of Public Safety, *Uniform Crime Report*, calendar year 1994.

<sup>2</sup> Interview with Border Auto Theft Information Center (BATIC) staff, El Paso, February 15, 1996.

<sup>3</sup> Texas Department of Public Safety, *Uniform Crime Report*, calendar years 1991-1994.

<sup>4</sup> Crime Index Rates documented by the Federal Bureau of Investigation, Criminal Justice Information Services Division, calendar years 1991-1994.

<sup>5</sup> Percentage calculated by ATPA from number of thefts documented by county in the *Uniform Crime Report*, Texas Department of Public Safety, calendar years 1991-1994.

<sup>6</sup> Memorandum from Phillip Presley, Texas Department of Insurance, March 19, 1996.

<sup>7</sup> Texas Department of Public Safety, *Uniform Crime Report*, 1994.

<sup>8</sup> Interviews with Border Auto Theft Information Center (BATIC) staff and Midland/Odessa auto theft task force officer, February 15, 1996, and Interview with Laredo auto theft task force officer, December 6, 1995.



## Issue 2



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### Maximize Earnings on Auto Theft Prevention Assessment Collections.

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#### Background

The Automobile Theft Prevention Authority (ATPA) receives its funding through an assessment on motor vehicle insurance policies. Originally collected on February 1 each year, the Legislature in 1995, changed the assessment collection to March 1 to coincide with the collection of other insurance fees and taxes. The assessment is collected from insurance companies, just as the state collects maintenance fees, Office of Public Insurance Counsel fees, the Workers' Compensation surcharge, and Insurance Premium taxes.

Each insurer must pay a \$1 per motor vehicle year assessment to ATPA, which the insurer may recoup from the policyholder. Motor vehicle years are the total number of motor vehicles covered by the insurer for the year or a portion of the year. For example, an insurer who sold 100 six-month policies would be responsible for paying the \$1 assessment on 50 motor vehicle years. Assessments are collected on all automobile policies providing primary liability coverages for automobiles, trucks, trailers, equipment mounted to trailers, and motorcycles. ATPA assessments totaled \$12.4 million for calendar year 1995.

Although ATPA's enabling statute gives ATPA the authority to collect the assessment, the Comptroller's Office currently performs this function through an interagency agreement. The Comptroller also collects the other insurance-related taxes and fees. The interagency agreement requires ATPA to pay the Comptroller's Office the full cost of collecting the fee up to an agreed maximum. The Comptroller mails the ATPA assessment request on a separate form each year to all licensed property and casualty companies. Of those, over 1,000 insurance companies pay an ATPA assessment.

Since 1991, state law has required taxpayers who owe \$500,000 or more a year for a single tax or fee category to pay by Electronic Funds Transfer (EFT). As a result, four insurance companies made their

ATPA assessment payments totaling over \$4,500,000 by EFT in March 1996, which represents approximately 39 percent of total collections for 1995. All other insurers make their ATPA payment by mail.

Before fiscal year 1995, the Comptroller deposited ATPA assessments into a dedicated fund. ATPA funds are no longer dedicated as a result of funds consolidation legislation passed by the Legislature last session. The Comptroller deposits the collected amount, approximately \$12 million a year, to the ATPA account in the General Revenue Fund.

The review focused on whether ATPA is maximizing interest earnings on fees due to the state. As with any revenue collection process, increased collection efforts can also increase costs. The review also analyzed such costs.

## Findings

- ▼ **The ATPA statute allows insurers, and not the state, to earn interest on money collected for auto theft prevention.**
  - ▶ ATPA's current statute does not require insurers to remit calendar year ATPA collections until March 1 of the following year. As a result, some payments remain with the collecting insurer earning interest for over a year before the insurer remits the state's money.
  - ▶ ATPA assessments totaled \$12.4 million in calendar year 1995. Assuming insurance companies collect half the total assessment each six-month period, at a minimum, insurance companies are currently earning interest on \$6 million for eight months—July through February.
- ▼ **The state has shown an increasing interest in maximizing existing resources through funds management.**
  - ▶ The Governmental Planning chapter in the Government Code acknowledges that maximizing the prudent use of governmental revenues is a self-evident goal given the state's limited resources.
  - ▶ The Legislature has recently enacted revenue enhancement provisions for several state agencies. For example, the Legislature enacted a revenue enhancement requirement for the Transportation Commission in 1995, requiring it to maximize the generation of revenue from existing assets. The Health and Human Services Commission has a similar

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*The current collection date for ATPA payments, once a year, does not allow the state to maximize interest earned.*

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statutory directive to maximize the use of federal, state, and local funds.

- ▶ The State Treasury has a Cash Management Program Division, in large part to expedite the flow of revenues into interest-bearing accounts. As a result, the Treasury has implemented several cash management programs, including lockbox, deposit concentration, direct deposit, credit/debit cards, and TEXNET, which is the largest electronic tax collection program in the nation in terms of dollars collected.
- ▼ **Semi-annual collection of ATPA assessments would result in a net benefit to the General Revenue Fund.**
  - ▶ Changing the fee collection from annual to semi-annual would benefit the state by having approximately \$6 million in general revenue six months earlier than the current collection process. This would allow the state to earn interest on these additional collections, about \$184,000 a year after collection costs.
  - ▶ The additional revenue would outweigh the minimal implementation costs to the Comptroller's Office, including costs associated with printing, mailing and processing additional forms, handling any additional phone calls, and computer programming modifications. A preliminary estimate from the Comptroller's Office indicates costs of about \$35,000 per year.<sup>1</sup>
- ▼ **Adding a collection date would not impose an administrative burden on insurance companies.**
  - ▶ By recommending collection dates of March and August 1st, ATPA tax collections would coincide with current premium tax collection due dates. Insurance companies already perform tax and fee calculations and submit revenues on these dates.
  - ▶ Four companies, collecting 39 percent of yearly ATPA assessments, make their payments through EFT, so their actual processing time is negligible. Most of the remaining insurance companies collect a relatively small amount each. The administrative effort should be limited to completing a form and issuing a check.

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*Semi-annual collection of ATPA fees would generate \$184,000 in interest without an undue burden on insurance companies.*

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## Conclusion

Current statutory collection dates allow insurance companies to earn interest for several months on money collected for the state's auto theft prevention efforts. This result is contrary to the state's clear interest in maximizing existing state resources through improved funds management. Although insurance companies pay premium taxes twice a year, the ATPA assessment is paid annually. Matching ATPA assessment payments to premium tax payment dates would have only a minimal impact on insurance companies, while providing increased revenue to the state.

## Recommendation

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### Change in Statute

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- **Require insurers to pay ATPA assessments:**
  - not later than August 1 of each year for motor vehicle years calculated on policies issued, delivered or renewed from January 1 through June 30 of the same year; and
  - not later than March 1 of each year for motor vehicle years calculated on policies issued, delivered or renewed from July 1 through December 31 of the previous year.

This recommendation would result in increased revenue for the state without significant administrative burdens for insurance companies or the Comptroller's Office. Motor vehicle years would still be calculated the same way, so assessments each year would be the same, whether collected once or twice a year. In addition, insurance companies would still have ample time to make their assessment calculations. Insurance companies would have the month of July every year to calculate the assessment due for policies issued from January through June and would have a calculation period of three months for assessments on policies issued between July 1 and December 31.

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### Fiscal Impact

This recommendation would have a positive fiscal impact to the state's General Revenue Fund. The Fiscal Impact chart shows that the recommendation would result in a net gain to general revenue of \$26,334 in fiscal year 1998 and \$184,340 in fiscal year 1999 and each year thereafter. The estimate was based on information obtained from ATPA and the Comptroller's Office on the historical amount of revenue collected. This estimate assumes that approximately \$6 million would be deposited in general revenue on each of the two collection dates. Based on historical data from the Comptroller's Office, an average interest rate of 5.3 percent was applied to the principal amount to calculate the gain in

increased interest. This gross amount was adjusted for increased administrative costs to the Comptroller of \$37,550 in 1998 and approximately \$35,000 thereafter.

<b>Fiscal Year</b>	<b>Net Gain to General Revenue Fund</b>	<b>Change in Number of FTE from Fiscal Year 1996</b>
1998	\$26,334	+1
1999	\$184,340	+1
2000	\$184,340	+1
2001	\$184,340	+1
2002	\$184,340	+1

<sup>1</sup> Letter from Alyson Lacey, Legislative Analysis Group, Comptroller of Public Accounts, March 28, 1996.



# **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Automobile Theft Prevention Authority</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Apply/Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Apply/Modify	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Apply/Modify	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	9. Provide for public testimony at meetings of the policymaking body.
Not Applicable	10. Provide for notification and information to the public concerning agency activities.
Apply	11. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Already in Statute	13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Not Applicable	14. Require information to be maintained on complaints.
Apply	15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Not Applicable	16. Require development of an equal employment opportunity policy.
Not Applicable	17. Require the agency to establish career ladders.
Not Applicable	18. Require a system of merit pay based on documented employee performance.

<b>Automobile Theft Prevention Authority</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	5. Authorize the staggered renewal of licenses.
Not Applicable	6. Authorize agencies to use a full range of penalties.
Not Applicable	7. Specify disciplinary hearing requirements.
Not Applicable	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

# **BACKGROUND**

# Background

## Agency History

The Legislature created the Automobile Theft Prevention Authority (ATPA) in 1991 to establish a statewide effort to reduce vehicle theft and associated economic costs. At the time of ATPA's creation, Texas had an auto theft rate of 1.17 percent, the third worst in the nation. Thieves stole a total of 163,837 vehicles statewide in 1991, causing an economic cost to consumers and insurance companies of almost \$850 million. The citizens of Texas directly pay the massive costs of these thefts through insurance deductibles and higher rates. The following chart, *State Automobile Theft Rates and Economic Costs*, summarizes theft trends since the creation of ATPA.

*Vehicle thefts peaked in 1991, costing Texas consumers and insurance companies \$850 million.*

Year	Registered Vehicles	Vehicle Thefts	Theft Rate	Economic Loss (mil.)
1991	13,934,462	163,837	1.17	\$849
1992	14,046,514	145,048	1.03	\$782
1993	14,251,493	124,822	0.876	\$644
1994	14,460,552	110,772	0.776	\$604
1995	N/A	49,780*	N/A	N/A

\*Six-Month Figure

ATPA was originally established within the Criminal Justice Division of the Governor's Office, but it now operates under a seven-member appointed board with its own staff and office space. In 1995, the Legislature removed ATPA from the Governor's Office, gave it authority to hire staff, and attached it to the Texas Department of Transportation (TxDOT) for administrative purposes so it could share common functions such as payroll, purchasing, and accounting. However, the Authority does not operate under TxDOT's control and is not an advisory body to TxDOT.

ATPA is responsible for assessing the scope of the automobile theft problem in Texas; analyzing various methods of combating the problem; providing financial support to local auto theft task forces through an annual grant program; and providing public awareness and education programs. Additionally, ATPA is required to develop a statewide anti-theft vehicle registration program.

## Policymaking Structure

The Auto Theft Prevention Authority consists of seven members. The Governor appoints six members, with the advice and consent of the Senate, while the Director of Public Safety serves *ex officio* as the seventh member. The six Governor-appointed members serve staggered six-year terms, with the terms of two members expiring every odd-numbered year. The appointed members are comprised of two representatives, each of motor vehicle insurance consumers, law enforcement, and the automobile insurance industry. The Authority annually elects a chairman from its members.

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*ATPA grant funds come from auto insurance consumers who pay a one dollar fee per year for each insured motor vehicle.*

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The Authority's primary responsibilities include adopting rules to implement its powers and duties, hiring staff, and making the final determination on all grant awards. The Authority has the power to accept and solicit gifts and grants and to enter into contracts with other agencies for various services. ATPA must report on its activities to the Lieutenant Governor and the Speaker of the House of Representatives no later than April 1 of each year.

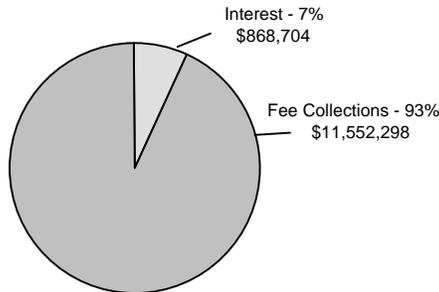
The Authority meets at the call of the chair or four of its members. The Authority met five times in fiscal year 1995.

## Funding and Organization

### **FUNDING**

ATPA receives its funding from consumers who pay an annual fee of one dollar for each motor vehicle insured during the year. ATPA has an interagency contract with the Comptroller to collect the assessments from insurance companies and deposit the funds, including interest, in the auto theft prevention account in the General Revenue Fund. The graph, *Sources of Revenue - Fiscal Year 1995*, displays information on collections and interest.

**Sources of Revenue  
Fiscal Year 1995**



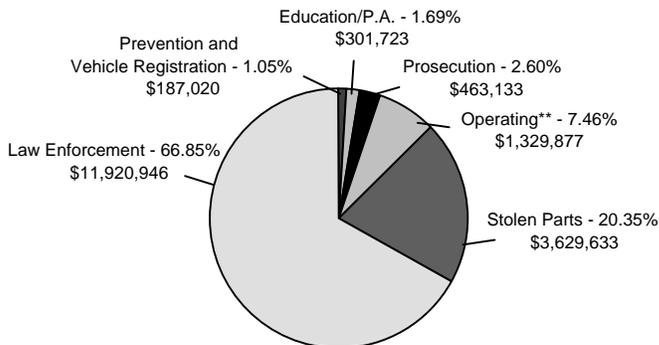
Total Revenues: \$12,421,002

Until it was administratively linked with TxDOT in 1995, ATPA received its appropriation through the Governor’s Office Criminal Justice Division from insured motor vehicle fees that had been in a dedicated account in general revenue. However, because of funds consolidation efforts by the Legislature, which also occurred in 1995, the funding source is no longer dedicated within the General Revenue Fund for auto theft purposes. For the 1996-97 biennium, the Authority has maintained control of auto theft funds and continues to award grants for auto theft prevention, but in the future it will do so without the benefit of a dedicated funding source<sup>2</sup>.

ATPA spent \$17.8 million in fiscal year 1995. Of this amount, \$1.3 million is for operating expenses, including salaries, professional services, and indirect costs. ATPA expended the balance, \$16.5 million, in auto theft prevention grants. The graph, *Expenditures by Strategy - Fiscal Year 1995*, shows a breakdown of the agency’s expenditures.

*ATPA expended \$16.5 million in fiscal year 1995 for auto theft prevention grants.*

**Expenditures by Strategy  
Fiscal Year 1995**



Total Expenditures: \$17,832,332\*

\*FY 1995 expenditures exceeds FY 1995 revenue due to an unexpended balance carried forward.

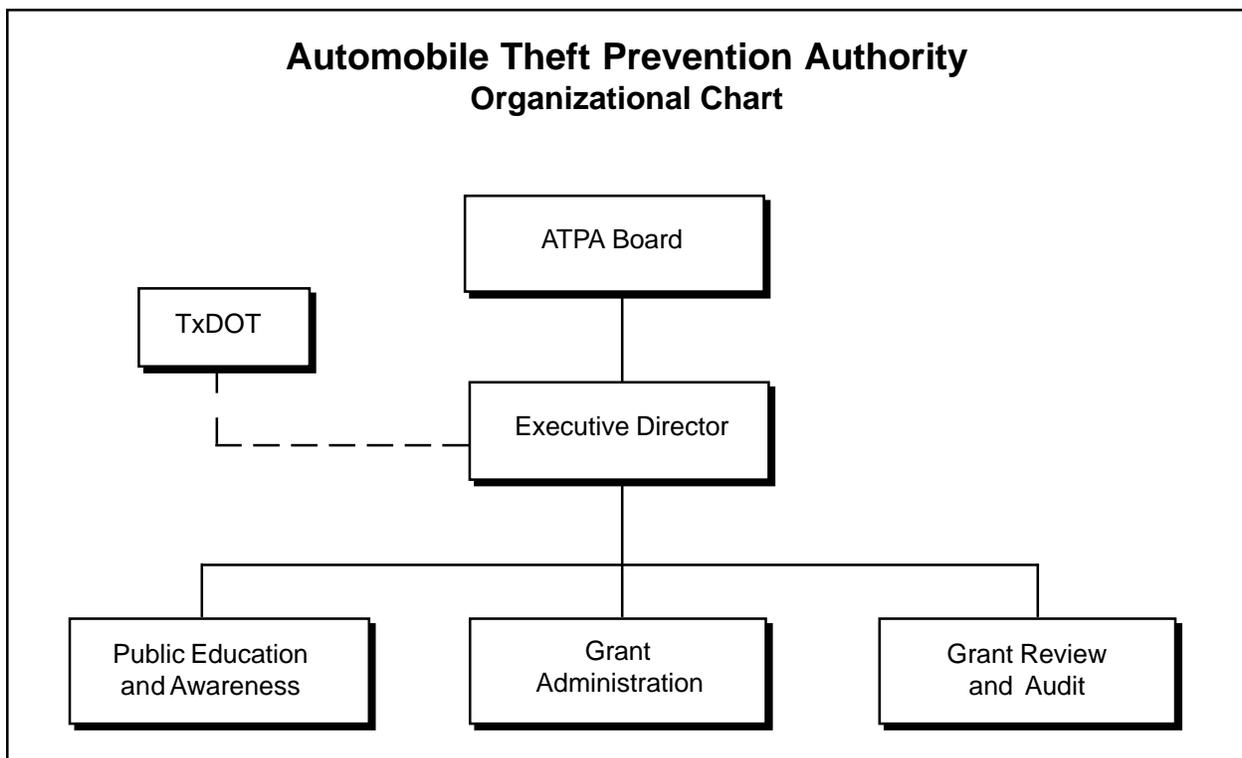
\*\*Operating expenses include all non-grant expenditures, such as administrative and marketing expenses.

Purchases From HUBs Fiscal Year 1995	
Total goods and services contracted	\$500,000
Amount of HUB participating share	\$500,000
Percentage of HUB participation	100%
State/agency goal	30%

The Legislature has established a statewide goal of 30 percent of all agency contracts to be made with Historically Underutilized Businesses (HUBs). The Legislature also requires the Sunset Commission, in its reviews, to consider agencies' compliance with laws and rules pertaining to HUB use. The chart, *Purchases from HUBs*, shows ATPA's HUB participation for 1995.

**ORGANIZATION**

In fiscal year 1995, ATPA had five full-time-equivalent employees located in Austin. The chart, *Automobile Theft Prevention Authority Organizational Chart*, shows the organization of the agency. The staff administers the grant program and promotes public awareness and education about ATPA and vehicle theft prevention.



A comparison of the agency's work force composition to the state's minority work force goals is shown in the chart, *ATPA Equal Employment Opportunity Statistics*, for fiscal year 1995.

**Automobile Theft Prevention Authority  
Equal Employment Opportunity Statistics - 1995**

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	State Goal	Agency	State Goal	Agency	State Goal
Officials/Administration	1	0%	5%	0%	8%	100%	26%
Professional	3	0%	7%	60%	7%	60%	44%
Technical	0	0%	13%	0%	14%	0%	41%
Protective Services	NA	0%	13%	0%	18%	0%	15%
Para-Professionals	0	0%	25%	0%	30%	0%	55%
Administrative Support	1	0%	16%	0%	17%	100%	84%
Skilled Craft	NA	0%	11%	0%	20%	0%	8%
Service/Maintenance	NA	0%	19%	0%	32%	0%	27%

**Agency Operations**

Although a formal strategic plan has not been developed which describes its operations, ATPA addresses the statutory mandate of reducing vehicle theft and associated economic costs through two basic activities: issuing grants and developing solutions to cross-border theft issues.

**GRANT PROGRAM**

In support of reducing the incidence of vehicle theft, ATPA administers a grant program to fund local and county auto theft task forces throughout the state. Law enforcement agencies, local prosecutors, judicial agencies, and community, business, and nonprofit organizations are eligible for grants. ATPA publicizes the availability of auto theft prevention grants through mailings to all Police Chiefs, Mayors, and County Judges.

The Authority makes annual grant awards after rating applications based on several factors, including statistical support of the problem to be addressed, a comparison of project costs with project goals, and the identification of project performance measures. For the fiscal year 1996 grant period, ATPA received 51 applications. ATPA rejected 10 applications, renewed 33 programs, and funded eight new programs.

After a grant is awarded, each grantee is reviewed to determine compliance with grant criteria and performance measures. ATPA awards grants on an annual basis and allows grant renewals for up to five years. ATPA policy is to provide 100 percent of the funding for the first two years of the grant, declining to 80 percent in the third, fourth, and fifth years. The Authority’s intention is for grantees to make up the difference in funding after the program is established. However, for 1996, the Authority did not require grantees to provide this funding match.

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*ATPA addresses its statutory mandate to reduce vehicle theft through the issuance of grants and development of solutions to cross border theft.*

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ATPA grant funds are administered in accordance with the Uniform Grant and Contract Management Standards. ATPA staff monitor the expenditure of grant funds through on-site visits and periodic audits of quarterly financial and progress reports. The visits and audits ensure that grant money has been spent on auto theft prevention activities and in accordance with Authority guidelines. In addition to on-site visits, the Authority may require an independent annual financial audit of grants in excess of \$50,000. Lastly, ATPA grants are typically awarded to municipalities and counties, and are subject to their audit and procurement requirements.

In fiscal year 1995, ATPA awarded \$18.2 million in grants that grantees used to hire approximately 300 staff, including 235 law enforcement officers<sup>3</sup>. Grant funds must be used exclusively for auto theft prevention purposes and cannot be used for existing local efforts. The Authority awards grants in five separate categories:

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*In 1995, grants directly led to the hiring of 235 law enforcement officers for auto theft prevention.*

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- enforcement of motor vehicle theft laws and apprehension of suspected auto thieves;
- prosecution and adjudication of motor vehicle theft offenses;
- prevention of motor vehicle theft and vehicle registration;
- reduction of the sale of stolen vehicle parts; and
- public awareness and education about automobile theft.

While the Authority seeks to fund grants for all five categories, approximately 70 percent of grant expenditures are for enforcement and apprehension. The map, *Location of ATPA Task Force Grantees*, shows the location of ATPA grant recipients. A description of each grant category is provided below.

*Enforcement and Apprehension* - ATPA grants support the enforcement of motor vehicle theft laws and facilitate apprehension of car thieves. Enforcement programs contribute to the reduction in motor vehicle theft and aid in the apprehension of offenders by establishing motor vehicle theft enforcement task forces, encouraging community involvement, and providing training for law enforcement officials.

*Prosecution and Adjudication* - ATPA grants support the prosecution of persons charged with motor vehicle offenses. Funds in this grant category have been used to hire additional prosecutors and to establish special courts for adjudicating persons charged with automobile theft. For example, Tarrant County established an Auto Theft Impact Court to

# A.T.P.A. Grant Fund Sites 1995 - 1996

## Continuation Programs

1 City of Beaumont (Jefferson County)

2 City of Brownsville

3 Dallas County

4 DPS Batic

5 City of El Paso

6 Galveston County

7 Harris County

8 City of Houston

9 Laredo (Webb County)

10 Odessa

11 City of San Antonio

12 Smith County

13 Tarrant County Task Force

14 Tarrant County Court

15 Travis County

16 City of Austin

17 Office of the Attorney General

18 Bexar County

19 Denton County

20 City of Eagle Pass

21 Jones County

22 Montgomery County

23 City of Paris

24 DPS Training

25 City of Victoria

26 City of Fort Worth

27 City of Arlington

28 City of Dallas

29 Orange County

30 City of Del Rio

31 North Central Texas Council of Governments

## New Programs

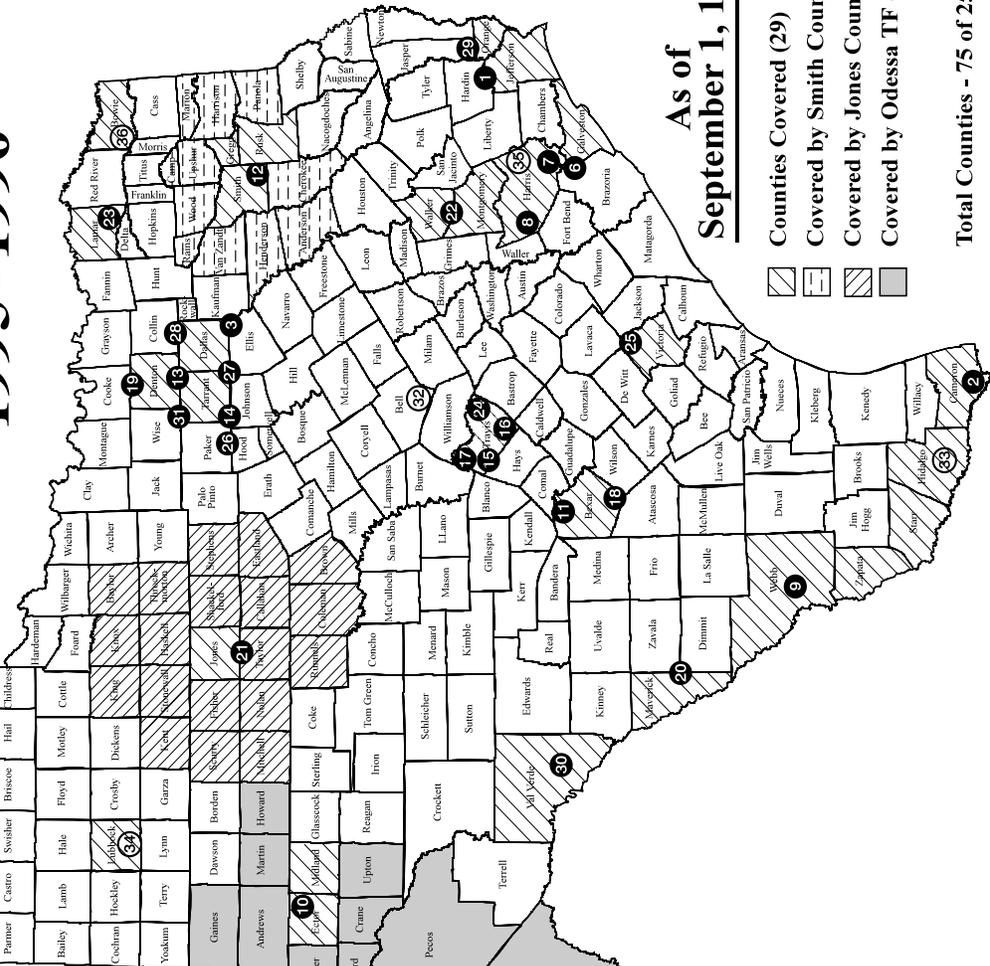
32 Central Texas College - Killeen

33 City of Donna

34 Lubbock County

35 Precinct 1 - JP Court - Houston

36 City of Texarkana



Total Counties - 75 of 254

Source: 1994 Edition of Texas Transportation Plan

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*ATPA uses five grant funding categories:*

*Enforcement & Apprehension*

*Prosecution & Adjudication*

*Prevention*

*Stolen Vehicle Parts*

*Public Awareness & Education*

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alleviate a backlog of vehicle theft cases. Since its inception in fiscal year 1993, the court has handled 1,300 cases and disposed of 80 percent of pending cases<sup>4</sup>.

*Prevention* - Funds awarded in this category primarily support a statutorily - required vehicle registration program. The program, "Help End Auto Theft" (H.E.A.T) is funded through ATPA and administered by the Department of Public Safety (DPS). H.E.A.T., established in 1993, has registered 23,000 vehicles in the state. Registered vehicles receive a decal authorizing law enforcement officials to stop the driver during early morning hours to verify the vehicle has not been stolen. Fees are charged to cover the cost of the program. Fee revenue, including the approximately \$20,000 collected to date, is currently deposited in the auto theft prevention account.

*Stolen Vehicle Parts* - These grants attempt to discourage the sale of stolen vehicle parts through registration and labeling programs. Additionally, these grants help grantees inspect salvage yards and investigate the presence of chop shops. These grants are awarded based on the theory that reducing the market for stolen parts directly leads to a reduction in vehicle theft.

*Public Awareness and Education* - This category of grants provides funds to educate the public on ways to prevent vehicle theft through radio and television announcements, billboards, and other media. Grant funds are also used to develop a vehicle theft prevention curriculum for the public, specialized vehicle theft prevention training for law enforcement officers, and develop public awareness for the H.E.A.T. program.

ATPA, through a contract with a marketing firm, has designed a public awareness campaign called *Watch Your Car*. The campaign has used television and radio public service announcements, along with printed materials, to deliver its vehicle theft prevention message. ATPA has an employee overseeing statewide coordination for public awareness and education for all grantees, and is responsible for working with media and outside consultants.

#### Cross Border Auto Theft

In addition to administering the grant program, the Authority is involved in reducing cross-border theft through the Border Solutions Committee. ATPA created the committee in 1993 to address problems and solutions related to cross-border vehicle theft. The committee is composed of federal, state, and local officials from Mexico and Texas that meets

quarterly, allowing the interaction of various law enforcement jurisdictions on an international level. The mission of the committee is summarized below.<sup>5</sup>

- Reduce vehicle theft in Texas and bordering states of Mexico.
- Facilitate locating, recovery and return of vehicles.
- Establish more effective cooperation, communication and understanding between participating agencies.
- Recommend beneficial projects for funding to the ATPA Board.
- Aggressively pursue the prosecution of vehicle theft and related crime.

ATPA also provided grant funds to help create the Border Auto Theft Information Center (BATIC). DPS developed the idea for BATIC, which provides data to authorized law enforcement agencies in the United States and Mexico about stolen vehicles. BATIC has also provided training for over 1,000 Mexican law enforcement officers on how to detect stolen vehicles. Since its inception in 1994, the use of information contained in BATIC has led to the recovery of over \$20 million in stolen vehicles.<sup>6</sup>

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*ATPA created a Border Solutions Committee to deal with the special problems of cross-border vehicle theft.*

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<sup>1</sup> Texas Department of Public Safety, Crime Records Division, Uniform Crime Report, Calendar Years 1990-1995.

<sup>2</sup> Interviews with the Legislative Budget Board, January 24, 1996, and Comptroller of Public Accounts, February 26, 1996.

<sup>3</sup> Automobile Theft Prevention Authority, Summary of Grantee Personnel Report - FY 1995, March 28, 1996.

<sup>4</sup> Interview with Tarrant County Auto Theft Task Force, Ft. Worth, January 18, 1996.

<sup>5</sup> Border Solutions Committee, Mission Statement, received from ATPA Board Member and Committee Chair - Mateelee Rittgers, El Paso, February 15, 1996.

<sup>6</sup> Interview with Border Auto Theft Information Center (BATIC) staff, El Paso, February 15, 1996.



**TEXAS DEPARTMENT OF TRANSPORTATION  
TEXAS TURNPIKE AUTHORITY  
AUTOMOBILE THEFT PREVENTION AUTHORITY**

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