

TEXAS TURNPIKE AUTHORITY

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SUMMARY

Summary

The Texas Turnpike Authority is subject to the Sunset Act and will be automatically abolished unless statutorily continued by the 72nd Legislature in 1991. The review of the agency included an assessment of: the need for the functions of the agency; benefits that could be gained through transfer of the agency's functions to another existing agency; and changes needed if the agency was continued using its current organizational structure. The results are summarized below.

Assessment of Need for Agency Functions

The review concluded that the functions of the Texas Turnpike Authority should be continued. The primary functions of the agency to plan, finance, build and operate state toll roads continue to be needed. Toll roads provide an alternative funding source to the tax-supported highways built by the State Department of Highways and Public Transportation. In addition, the federal act which sets the nation's highway policy and controls the distribution of federal aid to the states will come before Congress for reauthorization in 1992. The authority to build toll roads provides the state with options if federal policy substantially changes with the act's reauthorization.

Assessment of Organizational Alternatives

If the decision is made to continue the functions of the agency, the review concluded that the Texas Turnpike Authority should be continued as a separate agency. The review examined the possibility of transferring TTA's functions to the State Department of Highways and Public Transportation, which is the primary transportation agency in the state. However, the Texas Constitution prohibits state funds from being used in the construction, operation or maintenance of toll roads. Without the repeal of the constitutional provision, a merger could put the entire appropriation of the State Department of Highways and Public Transportation in jeopardy.

Recommendations if the Agency is Continued

- The size of the board of directors should be reduced from twelve to nine members and the governor should be required to designate a member of the board to serve as chairman.
- The administration of the agency should be modified by:
 - requiring the agency to solicit proposals before awarding professional service contracts;
 - requiring the agency to request permission of the attorney general's office to use outside legal counsel; and
 - requiring the adoption of a disadvantaged business enterprise program in rules.

- The operation of the agency's programs should be improved by:
 - requiring the agency to adopt procedures for environmental reviews in rules; and
 - requiring the agency to adopt a relocation assistance policy and procedures in rules.
- The oversight of toll road planning and construction in the state should be improved by:
 - requiring the State Department of Highways and Public Transportation (SDHPT) to approve all toll projects in the state;
 - requiring SDHPT to incorporate toll roads into its strategic and short-term planning processes; and
 - repealing an antiquated statute authorizing private toll road corporations.

BACKGROUND

Creation and Powers

The Texas Turnpike Authority (TTA) was created with the passage of the Turnpike Act of 1953 (6674v, V.T.C.S.) by the 53rd Legislature. The Texas Turnpike Authority is a state agency with statewide jurisdiction, with its headquarters located in Dallas. The agency's purpose is to plan, finance, build and operate toll roads and bridges in the state. According to the Texas Constitution and state law, no tax revenue of the state may be used in the planning, construction, maintenance or operation of a toll road. Therefore, all roads and bridges built and operated by TTA are supported entirely by tolls paid by users of the tollway.

The agency's primary duties have changed little since its inception. In 1977, the 65th Legislature provided for the transfer of the agency's first completed project to the Texas Department of Highways and Public Transportation (SDHPT) upon retirement of all revenue bonds; established a fund for TTA to finance the study of potential new toll projects; and authorized separate projects within one county to share toll revenue and investment earnings, an approach prohibited for other toll projects. In 1979, as a result of the review by the Sunset Advisory Commission, the 66th Legislature added a requirement for a public hearing before final approval of a toll road. The 66th Legislature also added several sunset commission across-the-board recommendations to TTA's statute. Finally, the 70th Legislature in 1987 requested the board to study the feasibility of a high-speed rail system in Texas.

Currently, the agency operates three tollway projects: the Dallas North Tollway, the Mountain Creek Lake Bridge in Dallas County, and the Houston Ship Channel Bridge. The revenue bonds which funded these projects are scheduled for repayment in the years 2020, 2007, and 2020, respectively. Maps showing the location of each toll project are included in the Appendix. In addition, study is underway to determine the feasibility of several additional projects: the Sam Houston Tollway-East, a tunnel under the Addison Airport, and the Treschwig Road Connector in Harris and Montgomery Counties.

Policy-making Body

A 12-member board of directors governs the Texas Turnpike Authority. Each of the three members of the State Highway and Public Transportation Commission are voting, ex officio members of the board. All members are appointed by the governor and serve staggered six-year terms. The board elects a chairman.

Although no statutory requirement governs the frequency of board meetings, the board generally meets four times a year. Board meetings are held in Dallas, Houston and, less frequently, Austin. All members serve without pay but are entitled to reimbursement for expenses, according to the requirements in the state Appropriations Act.

Funding and Organization

The Texas Turnpike Authority receives no appropriation from the general revenue fund. Section 52b, Article III of the Texas Constitution prohibits the state

from either incurring any debt or appropriating any tax money to fund toll roads. Instead, the money needed to plan, construct, operate and maintain the roads is raised by issuing tax-exempt revenue bonds. The principal and interest of these bonds are paid solely from the tolls charged to travel on the toll road and from the income earned on the investment of bond issue proceeds. As of June 30, 1990, the agency's total outstanding debt was \$520,618,650.

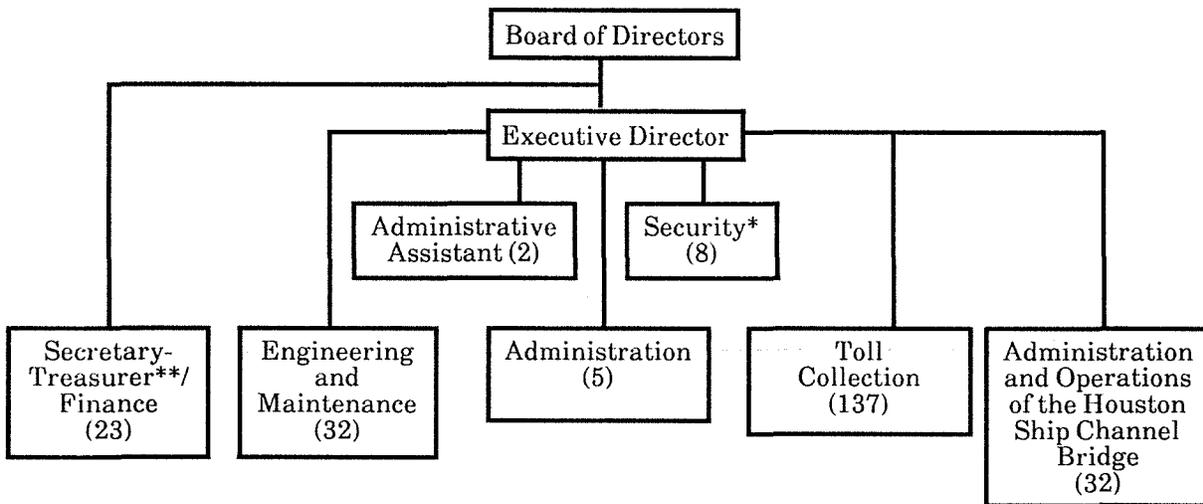
According to the Act, every toll project must be financed and built with a separate bond issue. This means that no money to build, operate or retire the debt of a project may come from another of TTA's projects, with the exception of pooled projects wholly contained within one county.

Oversight of the bond issue and administration of the toll project is governed by a trust agreement. These agreements describe the financing, planning, and feasibility of a toll project to the purchasers of the bonds and are legally binding. Trust agreements also specify the schedule for repaying bonds. The agency structures the bond issue and prepares the trust agreements with the aid of financial and legal advisors. Generally, the agency also asks one of the national bond rating agencies, such as Moody's or Standard and Poor's, to rate the bond issue, which provides investors with an indication of the relative security of the TTA bonds. The entire bond issue is sold to an underwriter or a consortium of underwriters who in turn sell the bonds to individual investors.

When the Authority has redeemed a project's bonds by repaying the principal and interest of the bond issue, the tolls are taken off of the road and the project is transferred to the SDHPT for continuing maintenance and rehabilitation.

The Texas Turnpike Authority has 240 full-time employees. Of this total, 71 employees are in the agency's headquarters, located in Dallas. Thirty-two employees are located in a field office in Houston to administer, operate and maintain the Houston Ship Channel Bridge. The remaining 137 employees collect and process tolls and maintain the two projects located in the Dallas area, the Dallas North Tollway and the Mountain Creek Lake Bridge. In addition, TTA contracts with the Department of Public Safety for law enforcement services for the three toll roads. A total of 21 officers are assigned to the Dallas North Tollway and Mountain Creek Lake Bridge and seven officers are assigned to the Houston Ship Channel Bridge. The organizational chart for the agency is shown in Exhibit A.

Exhibit A
**Texas Turnpike Authority
 Organizational Chart**



* Security personnel employed by TTA receive and dispatch traffic control requests and provide building security functions. In addition, a total of 21 Department of Public Safety officers are assigned to the toll roads for traffic control.

** The secretary-treasurer is an employee of TTA elected by the board to serve as secretary-treasurer in a non-voting position.

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 employee's retirement system.

Exhibit B depicts the agency's work force and how it has changed over a five-year period in categories of employment. Exhibit B also depicts the agency's minority employment by category over this time period and compares it 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 are applicable to most state agencies and therefore serve as a useful reference point.

Exhibit B
 Percentage of Minorities in Agency's Workforce

Job Category	1986 Total Workforce 144		1990 Total Workforce 240		1990-1991 Appropriations Act Statewide Goal for Minority Workforce Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	8	12.5%	18	16.6%	14%
Professionals	3	33%	2	0%	18%
Technicians	7	14.3%	9	22.2%	23%
Para-Professionals	4	0%	0	0%	25%
Administrative Support	8	37.5%	42	33.3%	25%
Skilled Craft	80	35.1%	132	53%	29%
Service/Maintenance	34	35.3%	37	29.7%	52%

Unlike most other state agencies, the Texas Turnpike Authority operates on a calendar financial year. Since revenue from one project may not be used to pay any expenses of another toll project, the authority operates under three separate project budgets and all salaries and supplies are charged against the revenues of one of the three toll roads. The operating expenses and revenues earned for each of the agency's three projects are shown in Exhibit C.

Exhibit C
Revenues and Expenses for Calendar Year 1989

	<u>Project</u>		
	<u>Dallas North Tollway</u>	<u>Mountain Creek Lake Bridge</u>	<u>Houston Ship Channel Bridge</u>
<u>Revenues</u>			
Toll Revenues	\$ 27,028,284	\$ 1,311,441	\$ 7,737,202
Earnings from investments	6,955,812	130,932	1,527,689
Other	<u>13,842</u>	<u>--</u>	<u>2,845</u>
Total Revenues	<u>\$ 33,997,938</u>	<u>\$ 1,442,373</u>	<u>\$ 9,267,736</u>
<u>Expenditures</u>			
Administration	\$ 1,225,572	\$ 149,871	\$ 404,933
Toll Collection	3,225,072	253,121	549,122
Traffic Control*	839,137	--	370,694
Engineering and maintenance	810,348	52,832	--
Other	<u>243,286</u>	<u>18,470</u>	<u>45,487</u>
Total Expenses	<u>\$ 6,343,415</u>	<u>\$ 474,294</u>	<u>\$ 1,370,236</u>
<u>Net Revenues for Debt Service</u>	<u>\$ 27,654,523</u>	<u>\$ 968,079</u>	<u>\$ 7,897,500</u>
<u>Interest on Bonded Debt**</u>	<u>\$ 17,936,818</u>	<u>\$ 548,032</u>	<u>\$ 9,564,935</u>
<u>Net Revenue</u>	<u>\$ 9,717,705</u>	<u>\$ 420,047</u>	<u>\$ (1,667,435)***</u>

* Traffic control is provided by the Department of Public Safety through an inter-agency agreement.

** Includes payments from a reserve maintenance fund.

*** The Houston Ship Channel Bridge has been operating at a deficit since its opening in 1982. The bridge was refinanced in 1985.

Programs and Functions

Planning and Financing

The Texas Turnpike Authority typically does not actively seek potential roadway projects to study and build. It is more common for a local community group, such as a city council, county commissioners court, or city transportation study group, to approach TTA staff with a request to conduct a feasibility study on a particular route. The staff will then conduct a preliminary review to determine whether or not the proposal merits more detailed analysis. If the results of that preliminary staff review

are positive, outside consulting firms are retained to conduct a more detailed analysis.

The agency does not maintain staff in-house to conduct engineering and traffic studies. The agency hires an outside civil engineering consulting firm to estimate construction and right-of-way acquisition costs. A traffic engineering firm is also retained to study the potential traffic and toll revenue the turnpike might generate. The traffic and revenue estimates are the key component in determining whether a roadway will be viable as a toll road. Recent exploratory studies have included the Loop 375 Expressway in El Paso, the McKelligon Canyon Expressway also in El Paso, the New Bay Crossing in Galveston and the Treschwig Road Connector in Harris and Montgomery Counties. The cost of these studies ranged from \$7,000 to \$32,000.

If after the initial in-house and consultant studies a project still appears viable, the agency arranges for a second, more thorough feasibility study, if approved by the State Highway and Public Transportation Commission and by the board. As with the consultant exploratory study, TTA retains two engineering firms to conduct the feasibility study. The civil engineering firm prepares a preliminary engineering schematic and more complete construction, right-of-way and operation costs. At this stage, the consulting engineer also conducts the environmental assessment and the public hearing on the proposed project, which is required under the act. The traffic engineering firm prepares the final traffic and revenue forecasts for the project and estimates the needed coverage of operating costs and debt service.

Recent feasibility studies have included the Hardy Road Corridor in Harris County, a Trinity Tollway linking Dallas and Fort Worth, a Southwest Turnpike in Fort Worth and the Sam Houston Tollway-East in Harris County. The cost of these studies ranged from \$110,000 to \$1.4 million. In addition, the 71st Legislature specifically directed TTA to study the feasibility of a high-speed rail system in Texas. Based on the results of that study, the legislature created the Texas High-Speed Rail Authority to further examine feasibility and solicit bids for a franchise to build and operate the rail system.

Requesting local governments sometimes finance the initial feasibility studies. Otherwise, study costs are charged to the feasibility study fund, established in 1977 by the legislature to research potential toll projects across the state. The legislature designated \$1 million from the Dallas-Fort Worth Turnpike surplus fund, at the time of its transfer to SDHPT, to establish the fund. By law, all expenditures out of this fund must be approved by the Texas Highway and Public Transportation Commission. Votes are taken separately in highway commission meetings independently of the members' role as ex-officio members of the Texas Turnpike Authority board.

The final step in the planning of a potential project is the securing of financing. The authority retains a financial advisor to review the engineering reports and comment on the potential to secure adequate financing. In addition, the financial advisor monitors the bond market for the best time to issue the bonds for sale. Together with its outside bond counsel, general counsel and financial advisor, the agency prepares a trust agreement. By law, both the attorney general's office and the Texas Bond Review Board must approve the bond issue and the trust agreement. Once approval is given by the attorney general's office, the bonds are incontestable in a court of law. In other words, the questions of whether the bond issue is legal and

whether the bonds may hold a tax-exempt status will not be heard in a court of law, unless the challenge is on constitutionality or fraud.

Right-of-Way Acquisition and Construction

Immediately 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 engineering firm also investigates the need for the relocation of utility facilities off the right-of-way.

The Texas Turnpike Authority has the power of eminent domain. The agency's general counsel works with real estate appraisers to appraise the needed property. The general counsel also assists the agency in negotiating for the sale of the property.

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 start being collected and the debt service paid. The bond repayment schedule outlined in the trust agreement essentially governs the timetable for the construction to be completed.

Operations and Maintenance

The Texas Turnpike Authority employs its own maintenance staff to do electrical and mechanical repair work, landscaping, pavement repair and roadway signing. A total of 29 maintenance personnel are assigned to the two projects and headquarters building in Dallas and an additional eight maintenance personnel are assigned to the Houston facility.

Each project's trust agreement requires the agency to maintain toll rates at a level sufficient to repay the debt. Tolls on the three projects vary. On the Dallas North Tollway, an automobile pays as little as \$.25, while the maximum toll on the Houston Ship Channel Bridge is \$3.75 plus \$.75 for each axle over five. The complete toll schedule is shown in Exhibit 1 in the Appendix. Periodically throughout the day, the toll money is collected and deposited in a vault. The authority contracts with an armored truck service to transfer the money to the bank.

When bonds sold for a particular project have been redeemed through payment of all interest and principal, the toll road project is transferred to the State Department of Highways and Public Transportation. The SDHPT then operates and maintains the facility as a "free" highway or bridge. The only toll road transferred to date is the Dallas-Fort Worth Turnpike which was turned over to the department in 1977.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

The Sunset Act requires an assessment of several factors as part of an agency's review. These factors include: a determination of the continued need for the functions performed by the agency; a determination if those functions could be better performed by another agency; whether functions performed by another agency could be better performed by the agency under review; and, finally, a determination of the need for any changes in the agency's statute to improve the efficiency and effectiveness of the agency's operations. The assessment also draws upon the experience gained in any previous sunset reviews of the agency.

Prior Sunset Review

The Texas Turnpike Authority was reviewed by the Sunset Commission in 1979. As part of the current review, the staff examined the previous staff report, the recommendations adopted by the Sunset Commission and the resulting statutory changes made by the legislature.

The previous staff review concluded that agency operations were being administered in an efficient manner and that the two toll facilities built at that time had proven to be financially successful revenue bond toll facilities. No recommendation was made in the staff report as to whether or not the functions of the agency should be continued. However, the report did conclude that if the legislature decided to abolish or consolidate the TTA with another state agency, the constitutional prohibition from lending the state's credit or granting funds for toll road purposes would first need to be repealed. The review also suggested consideration of the following:

- requiring that the construction of a turnpike project be authorized by a majority of the qualified voters in the area of the proposed project;
- requiring that the agency be made subject to all general provisions of Article V of the state Appropriations Act; and
- placing a limit on the amount of bonded indebtedness the agency could incur.

The Sunset Commission considered these recommendations and several alternative approaches to operations of the agency. However, none of the approaches received a majority vote of the commission. As a result, no affirmative recommendations were made by the commission to the legislature.

The sunset bill finally passed by the 66th Legislature in 1979 addressed some of the approaches considered but not adopted by the Sunset Commission. The bill provided that TTA hold at least one advertised public hearing on proposed projects prior to final approval of the project. In addition, the bill made the agency subject to travel rates and reporting requirements modeled after applicable provisions found in the state Appropriations Act, and made the agency subject to provisions relating to the use of consultants found in general law.

Approach to Current Review

In accordance with the Sunset Act, the review of the Texas Turnpike Authority included an assessment of the need to continue the function performed by the agency; whether benefits would be gained by combining the functions of the agency with those of another organization; and, finally, if the functions are continued in their present form, whether changes are needed to improve the efficiency and effectiveness of the department.

The need for agency functions focused on whether continued state involvement in the financing, construction, maintenance and operation of state toll roads is necessary. The review then examined whether benefits would result from merging the agency with any other state agency. The remainder of the report details changes needed if the agency is maintained in its current form.

To make determinations in each of the review areas the staff performed a number of activities. These included:

- review of agency documents, previous evaluations of agency activities, literature containing background resource material, and a review of documents and data from the State Department of Highways and Public Transportation;
- review of agency financial documents, including the most recent TTA annual report and other states' turnpike authorities' annual reports and the trust agreements and other legal documents governing each of TTA's bond issues;
- interviews with key agency staff in the Dallas headquarters and Houston offices;
- tours of the agency's three toll projects, the Dallas North Tollway, the Mountain Creek Lake Bridge and the Houston Ship Channel Bridge;
- attendance at a meeting of the Texas Turnpike Authority board of directors;
- telephone and personal interviews with local community groups, the primary toll authority association, the federal highway administration, and other states' toll road agencies; and
- interviews with the agency's bond counsel and general counsel.

The principal findings and conclusions resulting from the review are set out in three sections of the report: 1) Assessment of Need for Agency Functions; 2) Assessment of Organizational Alternatives; and 3) Recommendations if Agency is Continued.

Assessment of Need for Agency Functions

ISSUE 1: The authority to build state toll roads should be continued.**BACKGROUND**

Toll roads have been authorized in Texas for over three-quarters of a century. In 1913, the legislature authorized the creation of private toll road corporations and accorded them the power of eminent domain. No private toll roads were built under this authority, however. Because the corporations were private and, therefore, the bonds to finance the toll project could not be tax-exempt, the costs to finance the projects never proved feasible. Then, in 1953 the 53rd Legislature passed the Texas Turnpike Act, creating the Texas Turnpike Authority (TTA). The act authorized the building of toll roads in the state, generally, and the Dallas-Fort Worth Turnpike, specifically. All toll roads built by TTA are financed entirely by revenue bonds, repaid only with tolls and investment income. Article III, Section 52b of the Texas Constitution prohibits the state from appropriating money or in any other way lending its faith or credit to the building of toll roads.

The Texas Turnpike Act was enacted at a time when the growth in passenger cars was outpacing new roadway construction. Neither the federal government nor state governments had yet made the commitment and devised a public funding scheme to finance the new interstate highway infrastructure. Toll roads were able to provide an immediate funding source without obligating general appropriations. Numerous toll roads were built throughout the country during the 1950's.

Congress passed the Federal Highway Act of 1956 which mandated the construction of the interstate highway system and set up a complex funding structure to funnel federal gasoline tax revenues to the states. The infusion of federal money allowed the states to begin building the interstate, U.S. and State highway systems. With this growth in public funding, new toll road construction dwindled. In the past several years, however, the prospect of declining federal highway funds has caused toll road activity to pick up again across the country, aimed primarily at urban congestion relief.

The review examined the need to continue the policy for building state toll roads. Analysis focused on the role of turnpikes in the state's overall highway transportation policy. The analysis also focused on the impact to the state, past and future, of the authority to build state toll roads. Major findings resulting from the analysis indicated that:

- ▶ **Uncertainty surrounds the future of the federal funding scheme as well as the amount of funds that will flow to the states. Toll roads provide the state with options if federal policy substantially changes in the next few years.**
- The federal act which sets the nation's highway policy and controls the distribution of federal aid to the states for transportation purposes will come before Congress for reauthorization in 1992. The

original act, passed in 1956, was anchored on the development of the interstate highway system.

- Today, however, the interstate system is nearly complete and attention has shifted to maintenance of the highway infrastructure, congestion relief and economic development issues. To that end, the federal funding formulas under the current act may change substantially upon reauthorization.
- Independent of changes that may occur in the federal funding formula, Texas may experience decreasing funds with which to address transportation needs and build highways. An estimated \$600 - \$700 million in federal highway trust fund assets that were pledged to Texas have not been allocated by congress, in an effort to offset the federal budget deficit. These assets may never be transferred to the state.

▶ **Increasing priority is being given to toll roads at the federal level.**

- Alternative means of financing the construction and large-scale renovation of the federal-aid highway system are being considered as a part of the reauthorization of the federal highway bill by the federal Department of Transportation (DOT) and Congress. User fees, such as tolls, offer one alternative.
- The most recent policy of the Department of Transportation declares user fees the key element in financing transportation needs and pledges a greater reliance on them. Legislation relaxing the current restriction against tolls on federally-assisted roads may soon be introduced in Congress.
- As a first step, Congress recently established a pilot program in seven states, including Texas, to study joint federal-state toll projects. Until these pilot projects were authorized, federal-aid dollars could only be used to build toll bridges and tunnels that were too expensive to fund with highway fund allocations alone.

▶ **The legislature has shown an interest in expanding the authority to build toll roads in the state.**

- In 1977, the legislature established a feasibility study fund for the Texas Turnpike Authority to research potential toll projects across the state. The legislature designated \$1 million of the Dallas-Fort Worth Turnpike surplus revenues to establish the fund.
- Legislation passed in 1947 and amended in 1977 and 1989 authorizes counties bordering on the Gulf of Mexico and adjacent counties to build toll roads and bridges. In 1989, the 71st Legislature expanded the authority to all counties in the state with a population above 1.5 million. Unlike TTA bonds, county toll road bonds may be supported by a county ad valorem tax, with the approval of the voters in the county. To date, the Harris County Toll Road Authority is the only

county authority. It has constructed two toll roads in Harris County, the Sam Houston Tollway and the Hardy Toll Road.

- In 1989, the 71st Legislature amended the Road Utility District Act which allows for the creation of utility districts to construct and maintain roads. The 1989 amendment expanded this authority to include financing, constructing and operating toll roads.
- In 1987 and 1989, the legislature passed bills authorizing TTA to enter into agreements with the State Department of Highways and Public Transportation (SDHPT), cities, counties, road utility districts, transportation corporations and local government corporations to build joint toll road projects. No formal joint agreements, as envisioned by these acts, have been formally adopted since the passage of these bills. However, if SDHPT's available resources prove to be insufficient to ease urban congestion, joint projects may be an attractive funding alternative.
- ▶ **The primary role for toll roads in Texas has been to reduce congestion in the major metropolitan areas. Where resources were not immediately available from SDHPT, toll roads have been able to more quickly address communities' needs.**
 - With the completion of the interstate system and changing commuting patterns, congestion relief in major urban areas has become a primary transportation planning issue. New construction in metropolitan areas is disproportionately expensive compared to construction in rural areas because of the high cost of purchasing right-of-way and relocating homes and businesses off the land needed for the highway. The SDHPT, alone, has been unable to keep up with the immediate demand for new and expanded road construction in the major metropolitan areas.
 - The agency's toll road projects have helped ease congestion and reduce the time and distance motorists previously had to travel. The SDHPT monitors traffic and has developed a congestion index to indicate the extent of congestion on all the major roads in the state. Each of the major roads from which the Dallas North Tollway and the Houston Ship Channel Bridge attract traffic rank in the highest category for congestion. For example, the Dallas North Tollway diverts commuting traffic off the Stemmons Freeway and Central Expressway, both of which are in the top congestion category. The tollway has been so successful that TTA has been able to refinance the original bond issue to fund two extensions. The Houston Ship Channel Bridge, although carrying traffic below the level originally predicted, has diverted traffic from two existing congested tunnels that carry traffic under the ship channel, the Baytown and Washburn tunnels.
- ▶ **In the future, toll roads would be a useful option in continuing to help relieve congestion in the urban areas.**

- Although the projects built by the Texas Turnpike Authority to date have been in the Dallas-Fort Worth and Houston areas, other areas of the state may begin to turn to toll roads as a way of relieving congestion if federal and state gasoline tax appropriations are not sufficient to meet these cities' needs.
- Joint projects between SDHPT and the state and county toll authorities could be a useful tool in the future. Costs in the urban areas may reach a point where SDHPT cannot afford to construct a road with state highway funds alone and TTA cannot secure adequate financing. The sharing of expenses, while maintaining the constitutional provision prohibiting state tax money from funding toll projects, may prove a viable solution.
- ▶ **Regardless of its future role, TTA's current projects must continue to operate and collect tolls in order to pay off the bonds. To that extent, the state function related to toll roads would need to continue in the future.**
- Each of the agency's toll roads are still under legal obligation to repay the bonds which were sold to finance construction. The bonds for the Dallas North Tollway, the Mountain Creek Lake Bridge and the Houston Ship Channel Bridge are scheduled to be repaid in the years 2020, 2007, and 2020, respectively.
- The legal documents governing the bond sale specify that if TTA is abolished, the governor is required to designate another agency to assume operation of the roads until the bonds are repaid.

RECOMMENDATION

- **The authority to build state toll roads should be continued.**

This recommendation would allow the state to continue building and operating toll roads. The authority to build toll roads provides the state with another option for building roads where the existing resources of the State Department of Highways and Public Transportation are not sufficient to meet the immediate needs of communities. In the past, the SDHPT had adequate resources to address nearly all the needs of both the urban and rural motorists. Now, however, with uncertainty surrounding the future of the federal funding structure and the rising costs of right-of-way acquisition in the urban areas, the state is having to rely to an increasing extent on a patchwork of options for constructing needed roadways. State toll roads are one of the options.

If this recommendation is not adopted, no additional toll roads would be built by the state. However, the existing roads would have to continue to be operated and managed in accordance with the legal requirements of the revenue bonds. Either the Texas Turnpike Authority or another state agency could operate and manage the three existing toll road projects; however, a constitutional provision could prevent the transfer to the State Department of Highways and Public

Transportation or another existing state agency. The constitutional provision is discussed in Issue 2.

FISCAL IMPACT

Toll roads are constitutionally prohibited from using any state funds. Therefore, this recommendation, whether adopted or not, will have no impact on the general revenue fund. However, some benefit to the state highway fund could be achieved if a state toll road authority were continued. To the extent that toll roads add to the state highway system, demands on the budget of the State Department of Highways and Public Transportation would be reduced.

Assessment of Organizational Alternatives

ISSUE 2: The Texas Turnpike Authority should be continued as a separate agency.

BACKGROUND

During each review, the potential benefits of transferring an agency's duties and functions to other state agencies are examined. Combining the activities of different agencies can have several benefits, such as eliminating duplication among agencies, reducing costs and increasing the amount or quality of services provided to the public.

State highway transportation policy has provided for construction of both tax-supported and toll roads. Tax-supported roads are built by the State Department of Highways and Public Transportation (SDHPT), cities and the counties. Roads on the state highway system are funded almost entirely by a state and federal gasoline tax. Roads on the county and city systems are funded primarily by local ad valorem taxes. In addition, three quasi-public entities have been created by the legislature to help finance the construction of roads on the state and county systems. These are road utility districts, transportation corporations and local government corporations.

Toll roads in Texas have been built by the Texas Turnpike Authority and by the counties. In 1989, the legislature also granted road utility districts the authority to construct and operate toll roads; however, this authority has not been used to date. State toll roads are funded entirely through the sale of revenue bonds. In contrast, both the counties and road utility districts may sell either revenue or general obligation bonds and may levy an ad valorem tax to help retire the debt.

The review analyzed the need for maintaining a separate agency for building toll roads. The analysis compared the functions of the Texas Turnpike Authority with other agencies, particularly the State Department of Highways and Public Transportation, to determine whether efficiencies could be gained by merging TTA with another agency. The SDHPT has the primary responsibility for the state's highway system. Its duties are to plan, build and maintain the state highway system, including all interstate and U.S. highways. Merging the functions of TTA into SDHPT was, therefore, the most logical alternative to consider. The analysis focused on the constitutionality of a merger with SDHPT. Finally, a comparison was made with the organizational structure of other states' turnpike agencies. Major findings resulting from the analysis and comparison indicated that:

- ▶ **The constitutional prohibition against state funding of toll projects would probably make the transfer of the Texas Turnpike Authority to the State Department of Highways and Public Transportation unconstitutional.**

-- Article III, Section 52b of the Texas Constitution prohibits the state from, in any way, pledging its faith or credit to toll road projects.

Whether from the general revenue fund or the state highway fund, state tax money cannot be used to construct or administer a toll program. This means that state funds cannot be co-mingled with toll revenue to pay the salaries of employees working on toll projects, pay contractors, or purchase supplies used in the administration and operation of a toll project.

- Therefore, all costs that would directly or indirectly support a department toll road project would have to be accounted for and paid from separate toll road funds. Although SDHPT staff indicated this separation of expenses could be accomplished if the agencies were merged, a myriad of building and equipment costs as well as the time of staff support would have to be portioned among the various funds and could make the cost accounting cumbersome.
- In addition, Article III, Section 52b also declares that the Legislature shall not grant any public money to any agency which is authorized to construct, maintain or operate toll roads in the state. Therefore, if TTA were transferred, and SDHPT were thereby authorized to build toll roads, the entire appropriation of the State Department of Highways and Public Transportation could be in jeopardy.
- ▶ **Although many functions of the Texas Turnpike Authority and SDHPT are similar, a considerable portion of TTA's work is unique and could not be assumed by existing SDHPT staff.**
 - The fundamental purpose of TTA and SDHPT is similar. Both agencies plan, build and operate highways in the state. Nonetheless, many functions of the agencies are distinct, the most pronounced being the issuance of bonds. All of TTA's projects are financed by the sale of tax-exempt revenue bonds. No function currently carried out by SDHPT involves bonding.
 - In addition, the agency has earned a reliable reputation among Wall Street investment firms. Transfer to an agency previously unfamiliar with bonding could inhibit the willingness of the investment community to provide financing in the short-term.
 - Finally, the toll collection function of the agency is unique. Of TTA's 235 employees, 163, or 69 percent, are directly involved in the toll taking function. If the agencies were merged, the entire toll taking staff would have to be transferred.
- ▶ **Although other states do not have a similar constitutional prohibition against the state funding of toll roads, a majority of other states still have chosen to perform the toll function through separate toll authorities.**
 - A total of 29 states, including Texas, build toll roads. In at least 22 of those states, the toll road authorities operate state-wide. In 15 of those states, the state toll road authority operates as a separate entity from the state's primary transportation agency. Seven states carry out the toll road function as part of the state's transportation

department. In the remaining seven states, no state-wide toll authority exists and the toll authorities operate only in a local area. At least 32 local government toll agencies exist across the country, including the Harris County Toll Road Authority in Texas.

- None of the other states that build and operate toll roads are constitutionally prohibited from using tax revenue to support toll roads.

RECOMMENDATION

- **The Texas Turnpike Authority should be continued as a separate agency.**

This recommendation would maintain TTA as an independent state agency. Although some benefit and cost savings might be achieved by transferring the functions to the State Department of Highways and Public Transportation, a constitutional provision appears to prohibit a merger of the two agencies. In order to transfer the agency's functions to SDHPT, or any other state agency, the current constitutional amendment addressing state funding of toll roads would probably have to be repealed. Furthermore, any savings would not be to the general revenue fund but to the cost of the toll road and, ultimately, the motorists who pay the tolls.

FISCAL IMPACT

No fiscal impact is anticipated from this recommendation.

Recommendations if Agency is Continued

ISSUE 3: The size of the Texas Turnpike Authority board of directors should be statutorily reduced from twelve to nine members.

BACKGROUND

The TTA Board of Directors is a 12-member policy-making body originally created in 1953. The members of the board are appointed by the governor to six-year staggered terms. The appointments are subject to senate confirmation. Three of the twelve members are the members of the State Highway and Public Transportation Commission who serve in an ex-officio capacity with voting privileges. The only statutory qualification for office for the remaining nine members is that each must have been a resident of the state for one year prior to appointment. The chairman is elected by a majority vote of the board.

The primary responsibilities of the board include hiring the executive director of the authority, promulgating administrative rules, approving feasibility studies for proposed projects, approving the design and financing of new tollway projects, and setting toll rates.

The review examined the structure and size of the board to determine if the qualifications for members are appropriate to the duties performed and whether the number of members is in line with other state boards and commissions with a similar level of responsibility. The review of the qualifications and size of the board indicated the following:

- ▶ **The current statutory qualifications for appointment to the TTA board are appropriate to make the types of policy decisions that are the responsibility of the board.**
 - The board is composed of nine public members and three members of the State Highway and Public Transportation Commission. None of the duties of the board appear to require members to have a particular expertise. Assistance in coordination with the State Department of Highways and Public Transportation, which is the state's primary transportation agency, is provided through the three members of the board who also serve on the State Highway and Public Transportation Commission.
- ▶ **Only one other large state agency has a board greater than nine members.**
 - Of 21 large state agencies' boards or commissions examined, only the Texas Board of Health has more than nine members. Seven of the boards have three members, seven have six members and six have nine members.

- ▶ **No particular circumstances were identified which would necessitate the board to be larger than other state agency policy-making bodies.**
 - The board primarily makes policy decisions relating to feasibility studies for proposed new toll roads, decisions on whether or not to build a new project, decisions as to rates of tolls, approval of contracts for consultants and construction projects, and issues of administrative policy.
 - These types of decisions do not differ significantly from the types of decisions made by other boards and commissions. For example, the State Highway and Public Transportation Commission, composed of three members, sets policy for the construction and maintenance of the state's highway system and makes many decisions each month relating to the location and funding of highway projects.

PROBLEM

A 12-member board is unnecessary to make the types of policy decisions that are the responsibility of the TTA board. A smaller board could adequately perform the board's duties and be more in line with the size of other state boards and commissions.

RECOMMENDATION

- **The statute should be amended to reduce the size of the Texas Turnpike Authority board of directors from twelve to nine members.**

A reduction in the size of the board to nine members would bring the board more in line with other state agency policy-making boards. There would be no change in the board's ability to perform its policy and decision-making functions. Three members of the State Highway and Public Transportation Commission would continue to serve as ex-officio, voting members of the board. The number of public members would be reduced from nine to six.

FISCAL IMPACT

There would be a small savings resulting from reduced travel expenses of the smaller board.

ISSUE 4: The statute should require that the governor designate the chairman of the board.

BACKGROUND

The chairman of the board is currently elected by the members of the board and serves as chairman for two years. The method of selection of the board and its chairman should provide for accountability between the policy body and the governor and legislature. Having the governor designate the chairman is one way to strengthen this accountability. The Sunset Commission has routinely recommended that the governor appoint the chairman for the purpose of improving accountability between state boards and the chief executive. The review found that the governor already selects the chair of 42 other state agencies, including the State Board of Insurance, the State Board of Education, the Alcoholic Beverage Commission, and the State Highway and Public Transportation Commission. The majority of the agencies reviewed for the 71st Legislature had this provision in their statutes. Where it was not in statute, it was added as a result of sunset action.

PROBLEM

The election of the chairman by the board members does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer.

RECOMMENDATION

- **The statute should be changed so the governor designates the chairman of the Texas Turnpike Authority Board of Directors.**

The person appointed as chairman would continue in the position at the pleasure of the governor. In the event the governor decided to remove the person from the chairmanship, the person would continue to serve his appointed term on the board and the governor would choose another chairman from the membership of the board. This change will promote accountability of the board to the governor.

FISCAL IMPACT

No fiscal impact would occur as a result of the recommendation.

Overall Approach to the Review

ISSUE 5: The statute should be amended to require the Texas Turnpike Authority to solicit proposals from multiple firms before awarding professional service contracts.

BACKGROUND

The Texas Turnpike Authority hires outside consultants to perform the majority of its professional service functions. Since the agency studies and designs only one or two roadways a year, the need for most professional services, particularly engineering work, is intermittent. It is not cost effective for the agency to maintain an in-house professional staff large enough to accommodate these peak periods, but the need to plan and design a project without delay is important in order to take advantage of conditions in the bond market.

Typically, when a project is under consideration, the agency hires engineering consultants to study the feasibility of potential new projects. A civil engineering consultant prepares preliminary engineering schematics; estimates the cost of construction, right-of-way acquisition and operation; conducts a review of the potential environmental impact of the project; and conducts a public hearing. In addition, a traffic engineering consultant studies the potential traffic and toll revenue the new project could generate. These traffic and revenue estimates are the key component in determining the feasibility of a project. Typically, the agency conducts one or two feasibility studies a year. If the project is found feasible, outside firms are hired to handle legal, financial and underwriting needs for the bond sale. A design engineering, or architect/engineering, firm is also hired to prepare the final engineering plans and to oversee the construction. Other engineering consultants are hired, as needed, for other engineering functions not provided by the architect/engineer, such as toll booth design and highway lighting.

For on-going needs, TTA hires an outside law firm to handle the agency's general legal functions, including answering all routine legal questions from the agency and the public, preparing contracts and resolutions for board meetings, and negotiating for and acquiring of right-of-way. The general counsel also handles all of the agency's litigation. The agency also hires an outside accounting firm to annually audit each of the three toll roads it currently operates. The firm also audits the feasibility study fund.

The agency's approach to hiring outside professional consultants was compared to the state's general policy and the approach taken by the State Department of Highways and Public Transportation, which is the state's major highway agency. Because the overall function and responsibilities of TTA and SDHPT are so similar, the professional services required by both agencies, particularly in the engineering and legal areas, can be directly compared. The comparison indicated the following:

- ▶ **The SDHPT selects professional consultants after seeking proposals from a range of consulting firms.**

- State law requires the selection of professional services on the basis of qualifications and not low bid. Article 664-4, V.T.C.S. prohibits the awarding of professional service contracts on the basis of price alone. Agencies generally hire firms considered the most qualified, provided the cost is within normally accepted industry standards. The general law does not specify procedures to guide an agency in identifying consulting firms that are able and willing to contract with the agency for the needed services.
- The State Department of Highways and Public Transportation has developed a process to find firms that meet the department's qualifications. The SDHPT process is based on soliciting proposals from a wide range of firms before concluding which is the most appropriate and qualified firm for the job.
- When a contract is to be let, the SDHPT districts circulate requests for proposals to at least five firms, chosen from the department's database of over 800 consulting firms. In addition, the professional engineering associations, including eight regional minority consultant associations, are periodically sent a list of upcoming projects. Where appropriate, requests for proposals are specifically sent to small and minority firms as well as those that have not recently worked for the department.
- All proposals are reviewed by a selection committee in the district. The top three proposals are forwarded to the headquarters in Austin for review by a multi-disciplinary consultant review committee which ranks the three firms in order of preference. That candidate list is then sent back to the district to negotiate price.
- The results of this process for soliciting a wide range of proposals are seen in the number of consulting firms that are awarded projects by the department. The department currently has 67 different firms under contract working on 96 engineering and architectural service contracts, for a total value of \$90 million.
- ▶ **The approach of the Texas Turnpike Authority to awarding professional service contracts differs significantly from that of the SDHPT. Unlike the department, TTA does not solicit proposals from a range of companies for many of its professional service needs.**
 - The agency does not invite more than one firm to submit proposals for the professional services used most frequently by the agency. By not advertising upcoming professional service contracts, the agency does not consider more than one proposal or evaluate the capabilities of more than one firm for a project.
 - This includes contracts for general and specialized legal services and for the and traffic engineering work involved in feasibility studies.
 - This also includes contracts for the civil engineering functions involved in feasibility studies even though the State Department of

Highways and Public Transportation routinely contracts for nearly identical engineering services through its standard process.

- While the most frequently used services are acquired using the above approach, TTA does solicit contract proposals from more than one source to evaluate and hire the financial advisor and underwriting firm involved in the bond sale. Proposals are also solicited for the architect/engineering firm responsible for preparing the final engineering plans for a project. In its history, however, TTA has needed these services only six times for projects that have been found feasible and were built by the agency. When TTA has solicited proposals for upcoming contracts, nearly all of the consulting firms that were sent a request for proposal responded.
- ▶ **The agency's policy for soliciting and awarding most of its professional services contracts does not encourage competition and results in the selection of the same consulting firms.**
 - Because the agency does not solicit more than one proposal for many contracts, the agency consistently hires the same firms for services. For instance, the agency has had the same law firm under contract to perform general counsel duties since the agency was created in 1953. Three additional law firms have been hired on occasion to perform some general counsel functions. These services cost the agency over \$700,000 in 1989.
 - The agency has also had the same accounting firm under contract since the agency was created to annually audit each of the three toll projects. In 1989, the agency spent \$77,800 on financial audits.
 - The agency has retained the same two firms as bond counsel for the six bond issues sold by the agency to date. Most of the bond counsel's compensation comes from a percent of the bond sale. In addition, the agency paid \$188,898 for bond counsel services in 1989.
 - The same two traffic engineering firms have been hired to study the traffic and toll revenue potential of new turnpike projects. Nine traffic studies have been completed over the last ten years at a total cost of \$1.1 million. In addition, TTA spent almost \$20,000 in 1989 for on-going traffic consulting services for the three projects.
 - The same two civil engineering firms are typically retained to help study the feasibility of potential projects. Including the high-speed rail project which involved a consortium of firms, eight studies have been conducted since 1980 at a total cost of about \$1.8 million. In addition, TTA spent almost \$27,000 in 1989 for on-going civil engineering consulting services for the three projects.
 - In each of these areas of work, a number of national consulting firms are available to submit proposals. Although by hiring different firms TTA could not guarantee to reduce its costs, competition generally encourages higher quality for lower overall costs.

- ▶ **Because the agency often uses the same consulting firms, it is difficult for small and minority businesses to win contracts with the agency.**
 - None of the major engineering firms to which the agency has repeatedly awarded contracts is owned and operated by women or minorities. The agency has recently developed a minority business program to encourage the primary consultants and contractors to hire minority subconsultants and subcontractors. However, until the agency procedures for awarding contracts are opened up, small and minority firms cannot compete for the prime contracts.
 - Neither the general counsel firm nor the accounting firm which have been under contract with the agency since its inception are owned and operated by minorities.

PROBLEM

The agency does not attempt to invite proposals from more than one firm for the majority of its professional service contracts. This is in contrast to SDHPT's policy of inviting proposals from at least five firms for all engineering and other professional service contracts. Without an opportunity to review a variety of proposals, the agency consistently awards contracts to a small number of firms. This policy does not encourage competition and closes prime contracting opportunities to minority and women-owned consulting firms.

RECOMMENDATION

- **The agency's statute should be amended to require the agency to:**
 - **solicit and consider proposals from multiple firms when selecting professional consulting services; and**
 - **adopt a policy and procedures in rules for soliciting proposals for all professional service contracts, including the elements listed above.**

This recommendation would require the agency to develop a policy and procedures for awarding professional service contracts similar to those used by the State Department of Highways and Public Transportation. The Texas Turnpike Authority would have to consider a wider range of firms before awarding a contract for professional services. This is similar to an approach adopted by the 71st Legislature in the enabling statute of the Texas High-Speed Rail Authority.

The recommendation would not prohibit the agency from hiring the consulting firms it has consistently used in the past, but it would set up a process for evaluating the capabilities of other consulting firms before decisions are made. This recommendation could result in proposals that offer a fresh approach and could result in lower overall prices for services rendered. This process would also

broaden the potential for TTA to award prime contracts to small and minority-owned firms.

Some of the agency's functions require a consulting firm with a national and established reputation in order to meet the needs of the Wall Street investment community. Because traffic and revenue estimates are the key component in determining whether a roadway will be viable as a toll road, investment firms may look more favorably upon the projections of a consultant with a well-established, national reputation. For that reason, the agency does not have the same breadth of choice in hiring a traffic consulting firm as they might for other services. Nonetheless, there are several national traffic firms which meet the investment community's standard. Again, this recommendation would not require the agency to hire a less-established firm but would require consideration of other firms interested in working on the project.

FISCAL IMPACT

A fiscal impact cannot be calculated for this recommendation. Professional services are prohibited by state law from being awarded on the basis of cost. However, a policy and procedures for considering a wider number of available firms could result in future savings if equally qualified, but less expensive firms, are hired for future projects.

ISSUE 6: The agency should be required to request the approval of the attorney general to hire outside legal counsel.

BACKGROUND

The activities of the Texas Turnpike Authority require a variety of legal services. Since its creation, TTA's general day-to-day legal services have been provided by a private, or "outside", law firm on retainer. The law firm performs a wide variety of routine legal services, including answering all legal questions from staff and the public, preparing contracts, drafting resolutions for board meetings, and negotiating for and acquiring of right-of-way. The law firm also prepares and prosecutes in court all condemnation cases and other lawsuits for the agency.

Specialized legal services dealing with bond financing are also provided by separate outside counsel. The bond counsel's responsibility is to ensure that the bond issue and the governing legal documents are in compliance with all state and federal laws, including federal tax laws.

State agencies generally do not use private law firms to carry out all their legal work. Legal services are normally provided by counsel on the agency's own staff or by attorneys from the attorney general's office. Outside counsel may only be used when approved by the attorney general. Expenditures of state funds for outside legal counsel are conditioned upon advance approval of the attorney general.

Since the TTA practices are substantially different than those of other state agencies, the practices of the agency were analyzed and compared with the general policy for state agencies. Major findings resulting from the analysis indicated the following:

- ▶ **State agencies must get prior authorization from the attorney general before hiring outside counsel.**
 - Article IV, Section 22 of the Texas Constitution creates and defines the role of the attorney general. Among other responsibilities, the attorney general and district and county attorneys are mandated to represent the state before trial and appellate courts. Over the years, the attorney general has interpreted the constitutional construction to mandate the attorney general and his staff to handle all the legal duties of state agencies with statewide jurisdiction, where the attorney general has available resources. This viewpoint has been affirmed by the courts, particularly in Maud v. Terrell (200 S.W.2nd 375).
 - The Supreme Court declared in Maud v. Terrell that it is the constitutional right of the attorney general to decline the use of outside legal services at his discretion. The court further stated that

when outside services are used by agencies, it must be in subordination to the authority of the attorney general.

- The legislature has supported this policy by including a provision in the appropriations act which prohibits state agencies from expending funds for outside legal counsel to defend the agency in court without the express authorization of the attorney general's office. Article V, Section 41 of the current Appropriations Act specifically requires agencies to get the consent of the attorney general's office before an outside firm is retained. However, TTA is not subject to the state Appropriations Act.
- ▶ **Although it is a state agency with statewide jurisdiction, TTA does not request approval for the outside counsel that it uses. It is unclear whether such approval is required.**
- Since the establishment of TTA in 1953, the agency has chosen to obtain its legal services through contracts with outside legal counsel. Records of the attorney general show that no application has ever been made by the Texas Turnpike Authority for permission to hire outside general or bond counsel.
- The TTA is a state agency with statewide jurisdiction. It would appear that the state constitution and case law previously referenced would require the attorney general's approval of TTA's outside counsel. However, the TTA statute authorizes the agency to contract for professional services such as legal services. In addition, the TTA is not subject to the provisions in the Appropriations Act since it receives no state appropriations. These factors cast some doubt on whether TTA must get the approval of the attorney general's office before retaining outside counsel.
- ▶ **Other agencies with statewide jurisdiction that are outside the appropriations process such as TTA have met the general policy for attorney general approval of outside counsel.**
- The Texas Public Finance Authority utilizes the attorney general's office for general legal representation and has submitted outside bond counsel for approval.
- The Texas Housing Agency specifically requested and was denied authority by the attorney general to use outside counsel.

PROBLEM

The state constitution, general case law and the state Appropriations Act generally indicate that state agencies with statewide jurisdiction must get the approval of the attorney general's office before they can hire outside legal counsel. Separate provisions in the TTA statute and TTA's status as an agency outside the appropriations process make it unclear whether the TTA is also required to do so. The agency has never sought permission from the attorney general's office to hire

outside legal counsel, even though other state agencies in similar circumstances have had to follow this general state policy.

RECOMMENDATION

- **The statute should be amended to clearly require the agency to seek approval of the Office of the Attorney General for the use of outside counsel.**

This recommendation would require the agency to follow the policies and procedures of the attorney general's office in requesting authority to hire outside legal counsel. It does not, in any way, prohibit the agency from continuing to hire outside counsel or from hiring in-house counsel in the future. However, by this recommendation, the attorney general's office could deny authorization and require the agency to utilize the services of the attorney general's staff for a part of its legal responsibilities.

FISCAL IMPACT

A fiscal impact may result from this recommendation but it cannot be estimated at this time.

ISSUE 7: The Texas Turnpike Authority should be required to establish a disadvantaged business program consistent with current state policy.

BACKGROUND

State and federal governments have established policies aimed at encouraging agencies to contract with disadvantaged business enterprises (DBE's). Though different definitions exist, a disadvantaged business is generally defined as a business owned and operated by someone who is socially and economically disadvantaged. Different definitions include different minority groups and some include women.

Federal programs generally require that contracting efforts meet particular DBE guidelines, specifying a percentage of contract dollars that must be awarded to DBEs. For instance, the federal Department of Transportation requires that ten percent of all federal highway funds be spent with disadvantaged businesses. In the federal definition, DBEs are defined as businesses that are owned or controlled by socially and economically disadvantaged individuals, including women. In the federal law, a minority is defined as a Black American, Hispanic American, Asian-Pacific American, Asian-Indian American, and Native American.

Texas has also developed its own policies concerning DBEs. This policy has been established through Section 118, Article V, of the 1990-1991 state appropriations act and applies to all agencies which use legislative appropriations for contract funding. The current policy has been developed over a period of years beginning in 1975 with the Small Business Act and through executive orders and appropriations bill riders. In general, the current policy in the appropriations bill requires agencies to set minority business contracting goals. It also encourages outreach and assistance efforts to increase the small and minority business contracting community's participation in state contracts. The appropriations act rider directs agencies to establish target participation levels by comparing the number of DBEs to the total number of businesses able and willing to do the kind of work offered by the contract. The act also directs the Texas Department of Commerce (TDOC) to provide outreach and training to the DBE community. The TDOC is required to locate DBEs to include on bid lists, to offer assistance and training in state procurement practices, and to educate DBEs on contracting with the state.

The current state disadvantaged business policy would not apply to toll road projects built by the Texas Turnpike Authority because the current state DBE policy is established through the appropriations act and applies only to appropriated funds. The Texas Turnpike Authority is prohibited by the Texas Constitution from using state funds to build and operate toll roads. All funds expended by TTA are derived from bond proceeds and are not appropriated funds.

The state has established a policy of encouraging DBE contracting for state agencies that are subject to the appropriations process. This policy should be

applied to all funds expended by state agencies unless some special circumstance exists for exclusion. The analysis of applying the state's DBE policy to the agency indicated the following:

- ▶ **The agency has adopted a DBE policy for all types of contracts. However, it is not required by statute or codified in rules and, therefore, can be changed.**
 - The agency has developed a policy for contracting with disadvantaged businesses in professional service and competitive-bid contracts. Agency staff have implemented the policy achieving positive results. However, this policy is not required in statute and has not been adopted in rules. This allows the board to reverse its policy without a requirement for public notice and comment.
 - Furthermore, the agency's policy does not appear to track the state policy in one important way. It does not attempt to set target goals for minority business participation in TTA contracts. Target goals are based on a comparison of the number of minority and non-minority businesses able and willing to perform a particular type of work. Without target goals, the agency cannot determine whether the percentage of minority firms currently contracting with the agency is appropriate.
- ▶ **The bond proceeds expended by the TTA are not subject to the state's general DBE policy as defined in the appropriations act.**
 - The DBE policy established in the appropriations act applies to contract expenditures made from funds appropriated under the act. Practically, this DBE policy applies to all state agencies that use appropriated monies to fund contracts.
 - The funding source for TTA's contract expenditures will not be from the appropriations act. Funding for TTA toll roads is derived from the sale of bonds that the agency is authorized to issue for each new toll project.
- ▶ **No substantive reason could be found that would justify exempting the TTA contract expenditures from a standard state policy addressing DBE participation.**
 - The Texas Turnpike Authority is a state agency with statewide jurisdiction whose primary purpose is to build toll roads in the state. TTA's funding source differs from that of the State Department of Highways and Public Transportation and other state agencies in that TTA's funds are not appropriated by the legislature. However, both the gasoline tax, which is the primary source of funds for SDHPT, and the tolls, which fund TTA, are collected from the motorists of the state.
 - There is nothing distinguishable in the operations of the Texas Turnpike Authority that would justify exempting it from the standard state DBE policy. Even though TTA does not receive

general appropriations, it is an agency of the state and is designated and obligated to act in the public interest.

PROBLEM

The 1990-1991 appropriations act sets a policy aimed at encouraging state agencies under the appropriations act to contract with DBEs. The activities of the Texas Turnpike Authority are funded with bond proceeds and, therefore, are not subject to the provisions in the appropriations act. However, the review was unable to find any reason why the DBE policies which apply to appropriated funds should not also apply to expenditures made by the Texas Turnpike Authority. Although TTA has adopted a strong DBE policy, it does not completely track the state policy outlined in the appropriations act and, without a statutory requirement, there is no assurance that the agency's policy will continue in the future.

RECOMMENDATION

- **The statute should require TTA to establish a disadvantaged business enterprise program consistent with state policy set out in either the appropriations act or general law. The statute would require the agency to:**
 - **set and strive to meet appropriate DBE targets for the purchase of goods and services; and**
 - **develop and implement an outreach program to locate and assist DBEs in the community.**

This recommendation would require the agency to develop a program for identifying the level of eligible DBEs in a given contract area and develop a method for setting a target goal based on that determination. It would not create a set-aside or quota program since it would not require or mandate meeting a set DBE goal. Instead, it would allow the commission to set and strive to meet targets based on the available DBE population. The second half of the recommendation would require the commission to have a process in place for assisting in locating and recruiting DBEs in the community. In the instance that the commission is having difficulty meeting its stated DBE participation goals the outreach program would provide a mechanism for striving to improve the participation and a forum for identifying problems in the system.

FISCAL IMPACT

No fiscal impact is anticipated from this recommendation.

ISSUE 8: The applicable statutes should be changed to require the SDHPT to consider toll road alternatives in its planning efforts and to be the final approval point for all toll road projects in the state.

BACKGROUND

Over the years, the legislature has enacted numerous statutes dealing with toll roads. In 1913, the legislature authorized the construction of privately-financed toll roads. The legislature granted this authority before the creation of either the Texas Turnpike Authority or the State Department of Highways and Public Transportation. In 1947, counties bordering the Gulf of Mexico were authorized to build toll roads and bridges. Shortly thereafter, in 1953, the Texas Turnpike Authority was created to build toll roads in the state, generally, and to study and build the Dallas-Fort Worth Turnpike, specifically.

In 1989, the 71st Legislature expanded the county authority to counties in the state with a population above 1.5 million. Also in 1989, the 71st Legislature amended the Road Utility District Act to authorize districts to finance, construct and operate toll roads. In that same year, transportation corporations and local government corporations, which are non-profit corporations created to help SDHPT and local governments fund roadway development, were authorized to participate in joint toll road ventures with TTA, a county or a road utility district. Currently, there are seven types of entities authorized to construct or participate in the construction of toll roads in the state.

As different authorities for toll road construction have been created, different levels of state oversight have been developed. The levels of oversight range from specific approval by the SDHPT of road utility districts; partial approval by the SDHPT of TTA projects; to no approval of private toll activities.

To assess whether state policy in this area is adequate, an analysis was made to determine whether current statutory requirements for coordination and planning are sufficient to ensure a coordinated surface transportation system and, if not, where attention needs to be given for improvement. Major findings indicated the following:

- ▶ **No overall state policy exists for the approval and oversight of toll roads in the state, causing a fragmented and inefficient approach to the integration of toll roads into the state highway system.**
 - A general oversight provision relating to toll roads was adopted by the legislature in 1989 which requires the review of most toll projects by SDHPT. However, the commission was given no authority to stop or change a toll road project. The provision applies to a county, city, political subdivision or to a non-profit corporation acting on behalf of a county or political subdivision, but not to TTA or privately-built toll roads.

- Oversight requirements included in the various toll authorities' enabling statutes vary considerably.
 - The State Highway and Public Transportation Commission as well as the appropriate local authority must approve both the creation of, and projects proposed by, road utility districts including toll road projects. The commission may only grant its approval if a project is found to be feasible, is necessary for the district, complies with all requirements of the city or cities within which the roadway will be located, and if the district is financially able to issue and repay the bonds to construct the roadway.
 - The Texas Turnpike Act gives the State Highway Commission the authority to partially approve toll projects by requiring the commission to approve expenditures from the feasibility study fund for studying the potential of new toll projects. The commission is also required to approve or disapprove the proposed location of a state toll project.
 - The SDHPT may review a county toll road project but it cannot approve or disapprove a project.
 - No approval or review is required for private toll road corporations.
- ▶ **The SDHPT does not consider the use of toll roads as an alternative to tax-supported roads in its planning process. This has led to problems in the past. With the expansion of toll road construction authority to additional counties and other entities, early planning and central coordination becomes even more critical.**
- The State Department of Highways and Public Transportation does not incorporate toll roads into either its long-term strategic plans or its shorter-term planning and funding decisions, even though toll roads that will become part of the state highway system are pertinent to both processes.
- Legislation passed by the 70th and 71st Legislatures provides for the SDHPT and TTA to enter into joint projects with each other and with other road-building authorities. Joint projects can make previously uneconomical toll projects potentially viable. However, SDHPT's planning process does not consider toll roads as an option for making all or part of a project financially feasible. In contrast, other alternative financing mechanisms, such as transportation corporations and road utility districts, are used to make highway projects more financially feasible.
- Advance planning by SDHPT is essential to the financial feasibility of toll projects. There must be connecting highways with the capacity to carry the amount of traffic expected to pay tolls and eventually retire the bonds sold to construct the toll road. Toll roads

must also offer an attractive enough alternative to the existing "free" roads to be an incentive for motorists to pay the toll. If uncongested free roads are built on the same route, motorists will generally opt for the free roads.

- Coordinated long-term planning could have lessened problems experienced with the Houston Ship Channel Bridge and the Harris County Toll Road Authority's Sam Houston Tollway. Both tollways are carrying traffic below expected levels. In the case of the Houston Ship Channel Bridge, delays slowed construction of service roads and interchanges connecting the bridge with Interstates 10 and 45. In the case of the Sam Houston Tollway, the SDHPT purchased the right-of-way and built "free" three-lane access roads, with the intention of building center lanes in the future. When Harris County built the center lanes as toll roads, much of the traffic chose to stay on the access roads rather than pay a toll, since the access roads followed the same route and were not highly congested.
- ▶ **The existing private toll road statute passed in 1913 does not provide for any oversight by SDHPT or any other agency and contains none of the typical controls regarding eminent domain.**
 - The private toll road statute was created for a special purpose 77 years ago, to study and build two toll roads that were to travel diagonally across the state. Neither of those two projects nor any other project has been built by a private toll road corporation.
 - Private toll road corporations are given the power of eminent domain under the act. The only other road authorities in the state that have eminent domain power are SDHPT, TTA, counties and cities. Neither road utility districts, transportation corporations nor local government corporations have the power of eminent domain. Any property acquired by these groups must be purchased or donated.
 - Utility companies are the only private companies in the state that have the power of eminent domain, other than private toll road corporations. However, utilities must be granted authority by the state to operate and are regulated as to rates and profits.
- ▶ **Private toll roads are being explored as an alternate funding source for highway construction by other states and in Texas.**
 - Construction has begun on a privately-financed toll road in northern Virginia, extending the Dullas Airport toll road to the city of Leesburg. In Virginia, toll road corporations do not have the power of eminent domain. All engineering standards, right-of-way acquisition policies, police needs, and other operational policies must be approved by the Virginia Department of Transportation. In addition, toll rates are approved and regulated by the State Corporation Commission.
 - The California Legislature approved the building of private toll roads in 1989. Proposals have recently been reviewed and accepted

by the California Department of Transportation for private firms to finance and build two separate private toll roads, one in northern and one in southern California. As in Virginia, the California Department of Transportation will oversee the construction and operation of these projects.

- Interest in building private toll roads has also been shown in Texas. Articles of incorporation have been filed recently to create a private, for-profit corporation for the purpose of building a privately-financed toll road from an international bridge in Webb County, to the Port of Corpus Christi, and ending on Padre Island. The length of the toll road would be approximately 200 miles long. However, the authority for such a project would fall under the antiquated statute that provides little public protection.

PROBLEM

The fragmented approach to central approval of toll roads at the state level can undermine the state's ability to continue to build and operate a coordinated roadway system. All major public toll roads become part of the state highway system after the debt on the road is retired. Coordination with SDHPT must be adequate to ensure that the projects built by the other entities fit effectively into the overall highway system. Furthermore, a 1913 private toll road corporation law still in effect would be an inappropriate mechanism for present day consideration of privately funded toll roads. The provision gives private companies the power to condemn property and construct toll roads completely outside the oversight or approval of SDHPT or any other agency. No public hearings, environmental reviews or oversight of toll rates would be required.

RECOMMENDATION

- The state's policy relating to toll roads should be changed to:
 - amend the applicable statutes to require the State Department of Highways and Public Transportation to consider toll roads in its planning processes;
 - amend the applicable statutes to require the State Department of Highways and Public Transportation to approve or disapprove the construction of any toll road in the state that would eventually become part of the state highway system; and
 - repeal the existing provisions for private toll roads.

This recommendation would require the State Department of Highways and Public Transportation to begin incorporating toll roads into its long and short-term planning processes and would require SDHPT to consider the potential of future highway corridors as toll roads. The SDHPT reports that the agency will have insufficient funding to construct the roads the department has determined to be needed in the next ten years. The department's 1988 project development plan

identified \$2.55 billion per year in projects for construction over the next 10 years to address highway preservation and mobility needs. In comparison, revenue forecasts show \$1.4 billion per year should be available for these purposes, resulting in an annual shortfall of \$1.15 billion in unmet needs. Toll facilities have the potential for filling some of the unmet needs for new highway projects. The building of toll roads that will become part of the state highway system would allow SDHPT funds targeted for that project to be available to build other needed roads.

Coordinated strategic planning is also important because SDHPT's timing for constructing access and connecting roads with the toll roads can have a significant impact on the financial success of a toll road. The SDHPT should, therefore, consider the needs of toll authorities in planning its construction schedule for state and federal-aid highways, particularly access and connecting roads. This recommendation would not, however, restrict SDHPT's authority to schedule its construction of state and federal-aid roads. Nor would the recommendation in any way limit toll road construction to those routes initially indicated by SDHPT. Nothing in this recommendation would prohibit the state or a local toll road authority from proposing to build a toll road that was not included in SDHPT's planning process.

This recommendation would also require SDHPT to approve all toll roads in the state. This would include toll roads built by TTA, a county, a road utility district, or any other currently authorized entity in the state, provided the road will become part of the state highway system upon retirement of the debt. This would also include toll authorities created in the future, unless specifically exempted by statute. Several new toll road authorities have been created in the past two legislative sessions with little coordination provided at the state level. Central approval is important because all major public toll roads eventually become part of the state highway system after the debt is retired. Review and approval by the department would focus on the toll road's effective integration into the state highway system and on the ability of the department to make the necessary commitment to build connecting roadways which will help the toll road be financially sound.

Finally, this recommendation would repeal the outdated private toll road statute. The recommendation is not intended to address the policy question of whether or not privately-financed toll roads should be authorized in Texas. However, the law which is currently in statute does not provide sufficient state oversight and does not ensure that the interests of the public are properly protected. This recommendation would, however, require that any future private toll road project be approved by the State Department of Highways and Public Transportation.

FISCAL IMPACT

No direct significant fiscal impact is anticipated from implementation of this recommendation. Some staff time and travel costs would be involved in efforts to coordinate planning and projects among the various road-building authorities in the state. No additional staff would be needed for the commission to perform the approval function. Indirectly, the consideration and integration of toll projects into the planning and construction of appropriate portions of the state highway system could have a beneficial fiscal impact on the state highway fund. To the

extent that toll roads effectively add to the state highway system, demands on the budget of the State Department of Highways and Public Transportation would be reduced.

ISSUE 9: The statute should be amended to require the Texas Turnpike Authority to adopt a process in rules for evaluating environmental impacts of proposed toll road projects.

BACKGROUND

An environmental impact review is conducted on projects developed by the authority. These reviews examine the potential for impacts of a proposed project on various resources such as water quality, endangered species, archeological sites and other factors. On the Dallas North Tollway projects, the environmental reviews were performed by the engineering firm under contract to perform all preliminary design and engineering work on each phase of that project. On the Houston Ship Channel Bridge, the environmental studies were performed by the State Department of Highways and Public Transportation (SDHPT) as part of the overall environmental studies done on the state highway leading up to the bridge. A preliminary environmental assessment was performed as part of a feasibility study for a proposed toll road between Dallas and Fort Worth.

The review analyzed the need for providing a basis in statute and rules for the agency's environmental review process. The analysis compared the agency's process with similar activities of federal and state agencies, such as the State Department of Highways and Public Transportation. The comparison focused on determining whether the public and affected governmental agencies have a consistent opportunity to participate in the development of policies and procedures that significantly affect the public. The analysis indicated the following:

- ▶ **Although the agency conducts environmental reviews on its projects, it has not ensured that the reviews will be conducted in a consistent manner by developing rules for environmental studies.**
 - The agency generally contracts with the engineering firm that performs all preliminary design and engineering work on a project to conduct the environmental study as part of the preliminary work. The agency indicated that these firms are directed to follow the SDHPT's procedures manual for the conducting of environmental reviews. The SDHPT procedures have not gone through the state's rulemaking process.
 - There is no assurance of consistency when a process such as environmental studies is not set out in rule. Lack of a set process in rules does not provide a consistent standard for those who perform the studies to follow and does not furnish a standard against which the agency can measure the quality of the work.
- ▶ **Both federal and state statutes or rules relating to roadway construction and other major activities impose requirements for conducting environmental studies.**

- The SDHPT conducts environmental reviews under federal guidelines for most major roadway projects. In 1989, for example, the department began construction on 137 projects valued at about \$850 million that used federal funds and went through the federal environmental review process. The environmental review process specified in federal law and regulations establishes set procedures for considering environmental impacts. These procedures clearly specify the situations requiring environmental review for federally-funded projects and the depth of analysis required. They also specify the types of effects, such as ecological or aesthetic effects, that must be considered by the state agency conducting the study. The regulations also outline how the various federal agencies with responsibility for environmental issues should work together to assess those impacts.
 - The SDHPT has developed an environmental review process similar to the federal process for roadway projects that use state funds. The SDHPT process generally parallels the federal review process, except that there is no review by federal agencies and no outside approval of the environmental document by another agency. The SDHPT is currently developing rules for its environmental review process on state-funded highway projects.
 - The Texas Department of Health must prepare an environmental analysis before issuing licenses for persons whose processing activities produce radioactive by-product materials. The Texas Deepwater Port Authority is required to prepare an environmental protection plan to minimize damage that may result from its actions. The Authority's statute requires it to adopt its environmental plan after proper notice and hearing and after consultation with federal, state and local agencies with responsibility for environmental protection.
 - Two other state agencies have adopted environmental review procedures in rules. The Texas Water Commission and the Texas Water Development Board have adopted procedures for considering environmental impacts for activities under their responsibility which do not require federal environmental study. These rules establish guidelines for preparing environmental impact statements.
- ▶ **Future tollway projects could have major impacts on the environment.**
- One proposed project is the Trinity Turnpike System which would span from Dallas to Fort Worth. The road would generally follow the path of the Trinity river and has the potential for having significant environmental impacts. Although the project has not been determined to be financially feasible as a toll project at this time, this situation may change and considerable environmental review could be required if the project is constructed.
 - Another project recently studied was a toll bridge and highway connecting Galveston with the mainland. Although this project also

has not shown financial feasibility, it serves as another example where, if built, such a toll project would require extensive environmental study.

- ▶ **Requiring the agency to adopt an environmental review process in rules would focus the attention of the board on the environmental impacts of toll projects and strengthen the public's ability to influence this important process.**
 - The TTA currently has not adopted rules or guidelines for environmental reviews and directs its consulting engineering firms to use SDHPT environmental review procedures when needed. Developing and adopting environmental procedures in rules requires the board to focus attention on how the TTA will address the environmental aspects of their toll projects and will help ensure consistency of the reviews.
 - Having environmental procedures in rules also gives the board a basis for evaluating the work of the consultant actually performing the environmental review.
 - The rulemaking provisions of the Administrative Procedure and Texas Register Act (APTRA) provide for public participation before the adoption of a rule. These rulemaking provisions would enable interested persons to have input into the factors that the agency uses to assess the environmental effects of a turnpike project. These factors may include an analysis of the direct and indirect effects of the project, conflicts with local land use plans, and impacts on cultural or historical resources.
 - A formally adopted environmental review process would serve as a standard to allow the public to clearly see how the agency addresses environmental concerns on turnpike projects. Adopting this process in rules would then allow interested persons to evaluate how well the agency's actions reflect that standard.
 - A formally adopted process for conducting environmental studies of turnpike projects would also provide a basis for interested parties to resolve challenges to these reviews in court if an agreement cannot be reached with the agency. Currently, the lack of any statutory requirements for environmental reviews to be conducted leaves no statutory basis upon which to challenge the actions of the agency in court.
- ▶ **The agency does not submit its draft environmental studies for review and comment by outside agencies. Both the state and federal environmental review processes provide for a review by appropriate outside agencies.**
 - The two most recent studies contracted for by TTA were not reviewed by the Texas Parks and Wildlife Department, the Texas Water Commission, the SDHPT or any other state agency. The SDHPT typically submits its environmental studies for review by state

agencies with environmental protection responsibilities. The department has entered into memoranda of understanding with these state agencies to review and comment on proposed highway projects. The department also participates in the Texas Review and Comment System (TRACS) which provides for interagency coordination at a later stage in project development.

- The only formal review and approval of the final document occurs as a part of the acceptance by the board of the entire preliminary design and engineering package developed by a private engineering firm under contract with the agency. In contrast, on federally-funded projects, the SDHPT must obtain final approval of an environmental review from the Federal Highway Administration before proceeding with the project.

PROBLEM

Neither the statute nor agency rules set out guidelines or criteria for conducting environmental studies for turnpike projects. As a result, the important responsibility of developing environmental guidelines occurs either within the agency or within the engineering firm conducting the review. In both cases, the development of environmental guidelines occurs away from the requirements for public participation contained in APTRA. In addition, because the agency does not have a formal environmental review process set out in rules, the board has no consistent basis on which to assess the acceptability of the environmental studies. In addition, the public can have difficulty determining how the agency assesses environmental impacts. Finally, this lack of a formal process in rules reduces the public's ability for challenging the agency's findings in court.

RECOMMENDATION

- **The agency's statute should be amended to require the agency to:**
 - **set out a process in rules for evaluating the environmental effects of turnpike projects;**
 - **specify in rules the types of impacts that the agency will analyze in its environmental reviews;**
 - **conduct the environmental review of projects before determining the final roadway alignment and before the sale of any bonds;**
 - **update and re-adopt the rules at least every five years; and**
 - **obtain approval of the environmental review by the State Highway and Public Transportation Commission before proceeding with a project.**

This recommendation would ensure that the agency considers the environmental effects of all turnpike projects in a systematic manner. As part of this process the

agency should develop a system for determining the extent of the environmental review needed based on the size of the project and the impacts it may have. The procedure for making these decisions would be adopted by the board in rules.

The process should contain provisions for public hearings that are similar to the federal requirements that the SDHPT follows. Generally, only full environmental impact statements would require public hearings. The public should also be able to request hearings on the other less extensive environmental reviews.

In developing this process, the TTA, with public input, would determine what types of environmental impacts these reviews should consider. Rulemaking procedures then allow the agency to refine its process as new concerns arise.

The agency should consider including in its process a review of the types of factors the SDHPT looks at in their federal environmental reviews. These factors include an analysis of direct and indirect effects of the project; possible conflicts with local land use plans; impacts on social, cultural and historical resources; and, the environmental effects of alternatives. By tailoring the analysis of environmental effects after SDHPT's process, the agency could ensure that state turnpike projects receive a similar level of environmental scrutiny as is received by the majority of roadway projects in the state.

Requiring the environmental review to occur before the agency determines precisely where the roadway will go would enable the agency to consider alternative routes as a way to reduce the potential threats to the environment. Finally, the TTA should adopt this process in its rules to enable the public to participate in its development and to provide a standard for the board to evaluate the work of the consultants that perform the environmental reviews. These published rules would also allow interested parties to assess the agency's environmental review process and the reviews conducted under that process.

FISCAL IMPACT

Because the agency already provides for environmental reviews in the contracts for preliminary design and engineering work on a project, the fiscal impact of this recommendation would be limited to the costs of developing the rules and conducting hearings on those rules. If the board adopts a process for environmental review that is more extensive than it currently requires the consulting engineering firm to perform, there could then be an increase in costs associated with this work. These costs would be included in the value of the bonds sold to build the toll project.

ISSUE 10: The agency should be required to develop and implement a relocation assistance policy to assist and compensate property owners who are displaced when their land is acquired by the agency.

BACKGROUND

The Texas Turnpike Authority has the power to condemn property under the state's eminent domain laws. These laws allow the agency to acquire land needed to construct a toll road project, provided the landowner is adequately compensated for the value of the land. As soon as a toll project is approved and the bonds sold, the agency appraises the needed property and negotiates with the landowner for its sale to the agency. Appraisals assess the fair market value of the land to be taken as well as the value of any buildings and other real property (such as a house or fencing) on the land that is being acquired. In addition, if the agency is not acquiring a landowner's entire holding, the remaining land is appraised for any decrease in value, or damages, that construction of the toll road will cause. A landowner, then, is offered the sum of the value of the land to be taken and any damages to the remaining land. If the landowner rejects the initial offer, the agency and landowner may negotiate a purchase price for the property. If a purchase price cannot be negotiated, the land is acquired through the judicial condemnation process.

If the land taken by the agency has a residence or business located on it, the property owner will incur costs associated with moving the home or business that are not calculated in the fair market value of the land. For instance, there can be costs to close on the new property where the landowner is moving, relocate to the new home, and transfer utilities. In contrast, the State Department of Highways and Public Transportation (SDHPT) pays certain relocation expenses in conformance with federal requirements for its projects.

The review analyzed the need for the agency to extend relocation assistance to property owners who are displaced from their homes or businesses as a result of a turnpike project. The analysis compared the agency's policy and procedures with that of the federal government and other state agencies, particularly the State Department of Highways and Public Transportation. The comparison focused on determining whether protection is extended uniformly to residents and businesses displaced for roadway and other public works projects. The review indicated the following:

- ▶ **TTA has not yet needed to adopt a policy for providing relocation assistance to property owners.**
 - Only a small number of residences and businesses have been displaced by TTA for construction of its three existing projects. Three of the 23 parcels acquired for the Houston Ship Channel Bridge qualified for relocation assistance benefits under the State Department of Highways and Public Transportation's policy.

However, these parcels were acquired by SDHPT for necessary reconstruction of Interstate 10 and SDHPT paid all relocation benefits.

- Because so few landowners have been affected in the past, the agency has not seen a need to develop relocation procedures. Although relocation expenses are not included in the price it offers for the property, the agency has negotiated in the past with property owners on an individual basis for related expenses the landowners incurred as a result of the construction. These landowners were not displaced from their homes or businesses, however.
- ▶ **A formal relocation assistance policy may become more important in the future.**
 - Since the agency's primary purpose is, and will likely continue to be, the relief of congestion in the major urban areas of the state, future projects may require the acquisition of property in developed areas. Clearly, projects in developed urban areas will displace a greater number of homes and businesses than projects in rural or undeveloped urban areas, where TTA projects have been located in the past.
 - The agency has been studying several projects which could displace numerous residents and small businesses. One is the Trinity River Turnpike project connecting Dallas and Fort Worth which the agency has been studying for many years. Another is a widening of the Dallas North Tollway if feasibility were to be found in the future.
- ▶ **Relocation assistance is commonly provided by both federal and state governments. Federal law requires federal, state and local agencies to offer relocation assistance to all property owners on all federally-funded public works projects, including federally-funded highway projects.**
 - The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act requires that people and businesses who are displaced on any federal-aid project must be reimbursed for the costs associated with moving, within specified limits. Basically, the act requires agencies to offer property owners financial help with moving costs, temporary rental payments or a down payment on new property and costs associated with purchasing new property.
 - Other provisions in the federal act extend additional benefits to low income families living in substandard housing. Rules define minimum standards and require agencies using federal funds to find or build adequate housing for displaced low income owners or tenants.
 - Other state and local condemning authorities using federal funds offer relocation assistance benefits. For instance, all land acquired for the Superconducting Super Collider will follow the federal relocation assistance guidelines. The state will acquire and donate

to the federal government all needed land for the project. The policy of the Texas National Research Laboratory Commission, created to oversee Texas' role in the building of the super collider, is to follow the federal Uniform Relocation Assistance Act requirements and procedures for relocating any persons or businesses who will be displaced when their land is sold to the agency.

▶ **State law authorizes all state and local agencies to adopt a relocation assistance program consistent with the federal relocation act.**

- Chapters 21.043 and 21.046 of the Property Code authorize an agency of the state to provide a relocation advisory and assistance service for individuals, families, businesses, and non-profit organizations. Unlike the federal law, the state law is permissive. As a cost of acquiring real property, state agencies may pay moving expenses and rental supplements, provide financial assistance to acquire replacement housing and compensate an owner for expenses involved in transferring property. Payments may not exceed those authorized under the federal act nor the market value of the property being moved.
- The state law does not require state agencies to replicate the benefits and requirements of the federal act. Agencies establishing a state program may specify the conditions of eligibility for property owners. Nonetheless, under the law, an agency that initiates a relocation program must adopt rules for its administration.
- According to attorney general opinion JM-8, if an agency chooses to adopt a relocation assistance program in rules, once those rules are adopted all benefits must be granted to property owners consistently.

▶ **The SDHPT offers relocation assistance on all federal and state construction projects.**

- All federally-assisted roadway projects must comply with the federal relocation assistance program. Yet 45 percent of all the department's construction projects are funded entirely with state funds. Nonetheless, the State Highway Commission has extended all the benefits and procedures of the federal relocation program to state-funded road projects. In fiscal year 1990, SDHPT paid over 1,700 relocation benefit claims totaling \$3.9 million.
- The SDHPT distributes literature in English and Spanish at the public hearings held on the proposed roadway project describing the relocation assistance program and available benefits. Staff attend those meetings to answer any questions on the program. Later, department staff work with landowners individually to arrange reimbursement of eligible expenses and assist people in finding and arranging replacement housing.

PROBLEM

The constitution and state law requires TTA to pay landowners for the value of the property acquired and any decrease in value to the property owner's remaining land. Yet, residents and businesses sometimes incur costs that are not included in the price of the land. The agency does not have a policy for helping property owners defray costs associated with moving when they are displaced due to a toll road project. Furthermore, the review found no reason why a comparable level of public protection should not be required of state toll roads as of tax-supported roads or other public works projects.

RECOMMENDATION

- **The agency's statute should be modified to:**
 - **require the agency to adopt in rules a relocation assistance policy in accordance with state law;**
 - **require the board to adopt rules outlining eligibility for the program and the benefits that will be provided to those eligible; and**
 - **require the agency to notify landowners in the public hearing of the relocation assistance program.**

This change will require the agency to establish a relocation assistance policy for persons and businesses displaced as a result of right-of-way acquisition for a turnpike project. According to existing state law, the agency will have to adopt rules establishing the parameters of the program and the guidelines for implementing it.

Requiring TTA to adopt a policy and procedures to offer relocation assistance would make its future actions generally consistent with the SDHPT, the primary highway condemning authority in the state and with federal and state policy generally. However, this recommendation does not require the agency's policy to replicate either the provisions of the federal relocation assistance act or the regulations adopted by the State Highway and Public Transportation Commission. Rather, TTA's policy could be tailored to meet the unique needs and circumstances of toll projects. The policy would, however, have to spell out the relocation benefits the agency will extend and the conditions under which a business or homeowner would be eligible for those benefits.

The primary intent of this recommendation is to address a potential future need. The agency has built a total of four turnpike projects since its creation. Although the agency's first project, the Dallas-Fort Worth Turnpike, displaced numerous residents and businesses in 1956-57, the three most recent projects have displaced only a few homes and businesses. However, since the agency's primary purpose is to help relieve congestion in the major urban areas of the state, future projects may require the acquisition of property in developed areas. This recommendation would extend uniform benefits to homeowners and small businesses that have to move off their property at their own expense.

Finally, it should be clear in statute that relocation benefits are separate and distinct from the calculation of the value of the property being acquired.

FISCAL IMPACT

A fiscal impact cannot be calculated for this recommendation; however any fiscal impact resulting from this recommendation would have no impact upon the state's general revenue fund. The costs caused by this recommendation would be included in right-of-way acquisition estimates by the agency and would be included in the sale of the bonds.

ACROSS-THE-BOARD RECOMMENDATIONS

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies is denoted in abbreviated chart form.

Texas Turnpike Authority			
Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
	X		1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
**			3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
X			5. Specify grounds for removal of a board member.
	X		6. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
	X		9. Provide for notification and information to the public concerning board activities.
		X	10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
X			11. Require files to be maintained on complaints.
X			12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			13. Require development of an E.E.O. policy.
X			14. Require the agency to provide information on standards of conduct to board members and employees.
X			15. Provide for public testimony at agency meetings.
X			16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
X			17. Require development of accessibility plan.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

Texas Turnpike Authority (cont.)			
Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) related to currently existing conditions.
		X X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

MINOR STATUTORY MODIFICATIONS

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

**Minor Modifications to the
Texas Turnpike Authority Statutes
Article 6674v, V.T.C.S.**

Change	Reason	Location in Statute
1. Delete outdated language limiting the interest rate on bonds sold by TTA to five percent.	The five percent rate ceiling has been superseded by general law (Article 717k-2, V.T.C.S.) relating to sale of bonds by state agencies.	Article 6674v, Section 9
2. Delete outdated language requiring construction of the Dallas-Fort Worth Turnpike.	The Dallas-Fort Worth Turnpike has been constructed, paid for, and turned over to SDHPT to be operated as part of the state highway system.	Article 6674v, Sections 17 and 17a
3. Delete outdated language requiring TTA to conduct a feasibility study on high-speed rail facilities and to report their findings to the 71st Legislature.	The study was completed and the findings have been reported to the legislature.	Article 6674v, Section 28

APPENDIX

Exhibit 1
Toll Fares on Texas Turnpike Authority Toll Roads

Dallas North Tollway

	Toll Amount by Class of Vehicle				
	1	3	4	5	6
	<u>Two-Axle Passenger Cars & Trucks</u>	<u>Three-Axle Vehicles and Combinations</u>	<u>Four-Axle Vehicles and Combinations</u>	<u>Five-Axle Vehicles and Combinations</u>	<u>Any vehicle of six or more axles, or requiring a special permit</u>
<u>Toll Booth Locations*</u>					
Barrier Toll Plaza No. 1 Cedar Springs Road	.50	.80	1.00	1.20	1.40
Mockingbird Lane	.40	.60	.80	1.00	1.20
Northwest Highway	.30	.50	.70	.90	1.10
Royal Lane	.25	.40	.50	.60	.70
Spring Valley Road	.25	.40	.50	.60	.70
Belt Line Road	.30	.50	.70	.90	1.10
Barrier Toll Plaza No. 2 Keller Springs Road	.50	.80	1.00	1.20	1.40

Exhibit 1
**Toll Fares on Texas Turnpike Authority Toll Roads
 (cont.)**

Mountain Creek Lake Bridge

<u>Class of Vehicle</u>	<u>Toll Amount</u>
All Vehicles	\$0.25 per axle

Houston Ship Channel Bridge

<u>Class of Vehicle</u>	<u>Toll Amount</u>
1 Two-Axle Vehicle	\$ 1.50
3 Three-Axle Vehicles and Vehicle Combinations	2.75
4 Four-Axle Vehicles and Vehicle Combinations	3.50
5 Five-Axle Vehicles and Vehicle Combinations	4.50
- Each Additional Axle	1.00

Exhibit 2 Map of the Dallas North Tollway

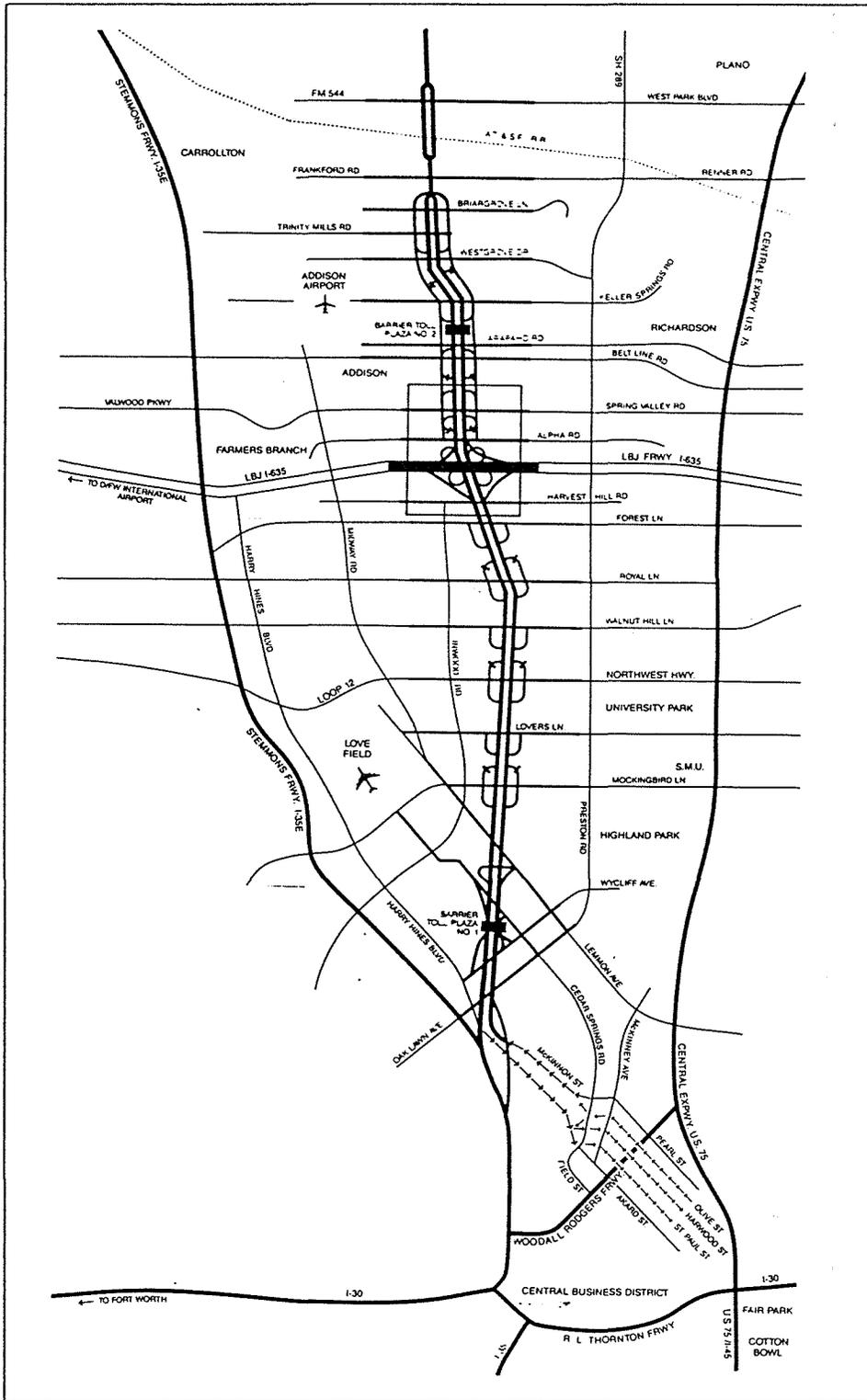


Exhibit 3 Map of the Mountain Creek Lake Bridge

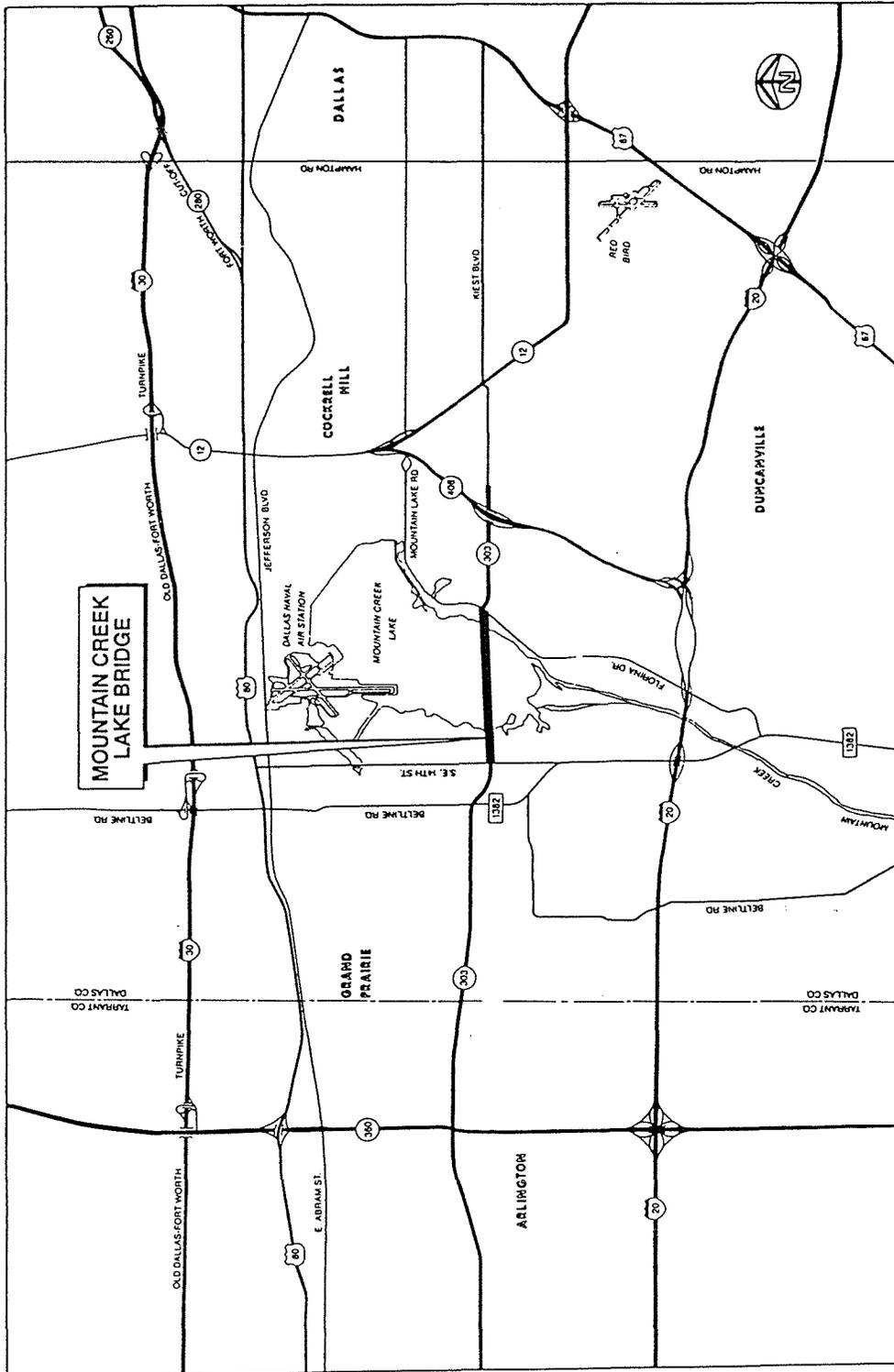
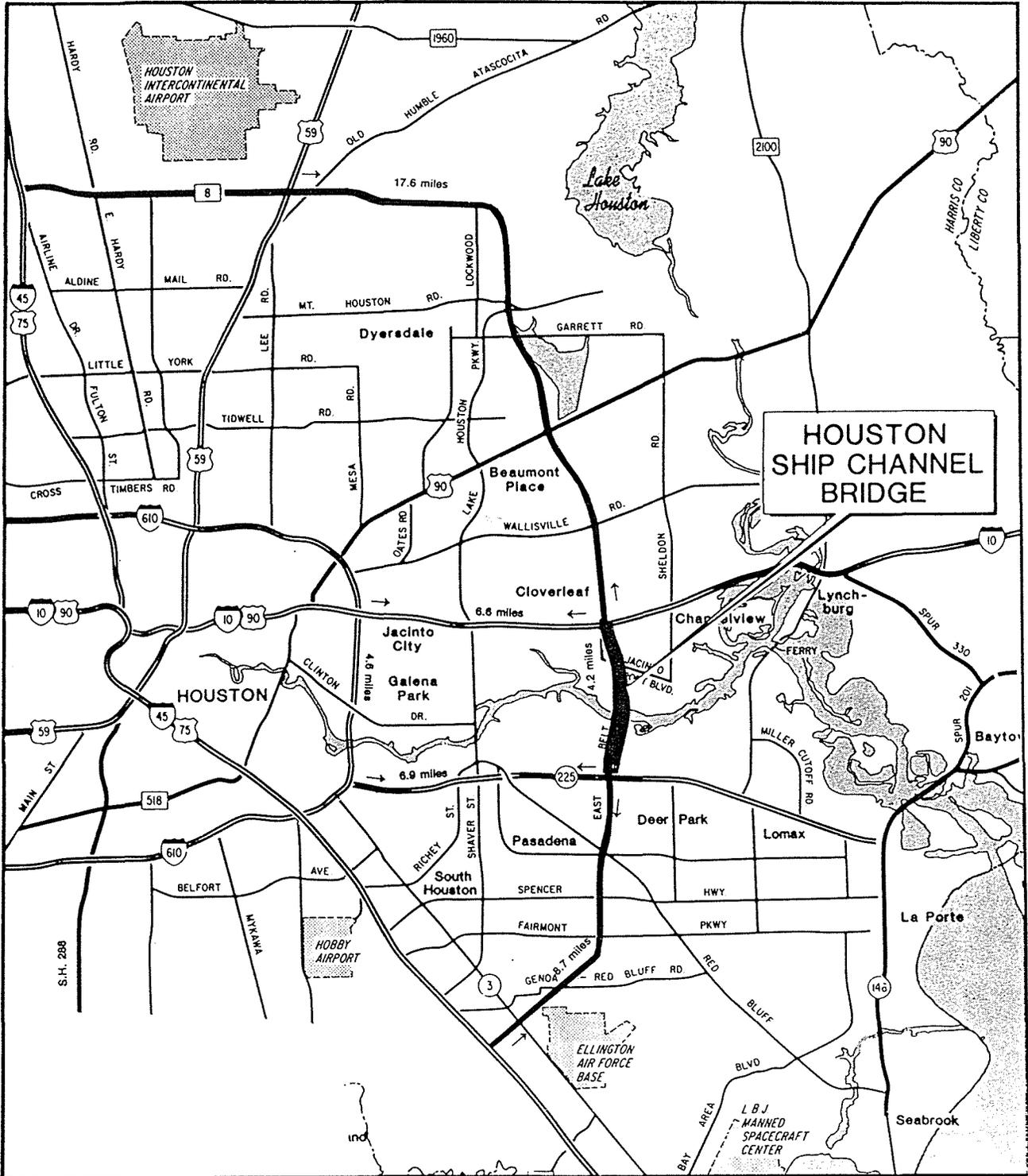


Exhibit 4 Map of the Houston Ship Channel Bridge



Texas Turnpike Authority

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