CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

July 1990

Table of Contents

Table of Contents

PAGE

Results of Review (cont.)

Appendix

SUMMARY

Summary

The Capital Metropolitan Transportation Authority is one of four Texas transit authorities that has been placed under the Sunset Act. The application of the sunset review process to these transit authorities is limited in that there is no automatic termination if legislation continuing the agency is not enacted. For that reason, the review did not include an assessment of the need to continue the agency or of other organizational alternatives for carrying out Capital Metro's functions.

The review of Capital Metro resulted in recommendations to improve the operation of the board and to strengthen the accountability of Capital Metro to various oversight bodies. These recommendations are summarized below:

- Board member terms should be changed in statute from four to two years.
- Grounds and procedures for the removal of board members should be added to the agency's statute.
- A structure for the effective use of advisory committees should be established.
- The board should be required to develop policies to clearly separate board and staff functions.
- Capital Metro's financial audits should be subject to review by the state auditor.
- Capital Metro should be required to have an independent performance audit of its operations conducted once every four years.
- Capital Metro should be authorized to provide retirement plans to its employees and should be required to report on its plans to an outside oversight body.
- The requirements for the conversion of Capital Metro's bus fleet to alternative fuels should be modified to make it possible for Capital Metro to obtain an exemption or alteration in the timeframes for conversion if approved by the Texas Air Control Board.
- The board should be required, if it chooses to extend the free fare program on an ongoing basis, to develop clearly defined goals and to annually evaluate the costs and benefits of the program.

OVERVIEW OF TRANSIT IN TEXAS

Overview of Transit in Texas

Most Texas transit systems began as privately owned and operated enterprises with little or no governmental involvement. Privately owned transit companies existed in Texas for more than 100 years, beginning with horse-drawn railcars in the 1860's, changing to electric streetcars in the early 1900's, and evolving to the use of buses in the 1920's.

In the 1940's, after World War II, the demand for public transit began to decline as the use of private automobiles increased and people and jobs shifted out to the suburbs. Private transit companies could not afford to serve larger areas with fewer riders. As local governments began to subsidize or purchase transit systems, public transit became regarded as a basic element of public service in many cities. By the 1970's, most of the transit systems in Texas were publicly owned and operated by local governments.

City and regional traffic patterns began to change as the suburbs swelled with new homes and jobs and as private autos became prevalent on roads and freeways. Traffic congestion became a serious regional, rather than centralized, problem. At the same time, local funding for transit improvements was limited since the transit systems competed with other city services for tax dollars. Transit system development was further hindered by the fact that transit services were usually limited to city boundaries, while the problems of traffic congestion were regional in nature and involved suburban areas as well as central cities.

State policymakers began searching for ways to alleviate local and regional transit problems in the late 1960's. In 1969, the legislature established the Texas Mass Transportation Commission to encourage the development of mass transit in urban areas and to develop a master plan for public transportation in Texas. In 1975, the commission was merged with the State Department of Highways, now the State Department of Highways and Public Transportation (SDHPT). The SDHPT has distributed more than $68 million in state funds to local metropolitan and rural transit systems to help them obtain federal assistance. As a result, more than $418 million in matching federal dollars has been generated for state transit purposes. For fiscal years 1990-91, the legislature appropriated $9.6 million in state funds for public transportation, with $8.8 million designated for matching federal funds.

The SDHPT is also involved in funding transit projects that are developed in conjunction with the highway system. These projects include planning and constructing park and ride lots, constructing special freeway lanes for high occupancy vehicles, and reserving right-of-way for future high occupancy vehicle lanes. In addition, the SDHPT provides matching funds to local governments and transit authorities for development of principal arterial street systems (PASS) that are connected to or serve freeways and expressways in urban areas. The SDHPT allocates $37 million a year to the PASS program, which will expire in 1992.

Exhibit A

Metropolitan Transit Authorities In Texas
Calendar Year 1989*

Transit Authority (Date Est.) 1980 Pop.	Total Operating, Farebox and Sales Tax Revenues	Sales Tax Rate	Sales Tax Revenues	Total Operating, Capital and Other Expenses	Total Operating Expenses	Total Number of Buses in Use	Total Number of Passenger Trips	Percent of Operating Expenses Covered by Fares	Operating Costs per Passenger Subsidized by Taxes
Houston (1978) 1,595,000	$276,331,742	1%	$193,627,514	$227,127,088	$140,695,714	1,076	78,910,296	27.52%	$0.73
Dallas (1983) 904,000	$240,541,032	1%	$183,451,032	$146,655,000	$113,276,000	895	43,535,000	23.25%	$1.29
San Antonio (1978) 786,000	$54,134,930	1%**	$32,994,771	$77,514,505	$49,365,136	575	40,808,127	20.47%	$0.69
Fort Worth (1983) 385,000	$20,493,776	1/2%	$15,811,883	$15,107,474	$13,054,582	129	5,076,997	19.38%	$1.65
Austin (1985) 345,000	$47,398,931***	3/4%	$38,887,225	$59,644,709	$37,476,709	235	15,125,870	6.93%	$1.93
Corpus Christi (1985) 232,000	$10,484,173	1/2%	$9,460,020	$10,589,815	$9,039,208	66	3,281,046	8.78%	$2.44

* Information supplied by the State Department of Highways and Public Transportation except for sales tax revenues, which were supplied by the state comptroller's office.

** Half of San Antonio's transit sales tax is dedicated to the development of a new stadium complex. Revenue figures included in this chart for San Antonio reflect only the transit system's portion of the tax.

*** The Austin transit authority did not collect fares during the last quarter of 1989.

State laws have also been passed to help local governments establish and fund transit systems that are regional in scope. In 1973, the legislature authorized local governments to develop metropolitan transit authorities (Article 1118x, V.T.C.S.). The law enables voters in major metropolitan areas to approve the establishment of a separate governmental agency to provide mass transit services throughout the region. Under the law, an urban city, the surrounding county, and any adjacent suburban cities or counties may work together with voter approval to address their transit needs on a regional basis.

Article 1118x was amended in 1977 to authorize, with local voter approval, a sales tax of up to one percent to fund these authorities. The sales tax is imposed in each of the transit authority's member cities and must be used by the authority for transit-related expenditures. The first metropolitan transit authority in Texas was approved by San Antonio voters in March 1978, with a second authority approved by Houston voters in August 1978. In 1985, voters in Austin and Corpus Christi also approved the establishment of a metropolitan transit authority in their regions under Article 1118x.

In 1979, the legislature passed a similar law that dealt with the unique geographical configuration of the Dallas/Fort Worth area (Article 1118y, V.T.C.S). The two statutes are similar in most areas, with one major structural difference. Article 1118y allows Dallas and Fort Worth to either establish a joint regional transit authority or to separately set up regional transit authorities. Voters in both cities turned down a proposal to set up one transit system for the two regions in 1980. In 1983, proposals for separate transit authorities in Fort Worth and in Dallas were approved by the voters in each region.

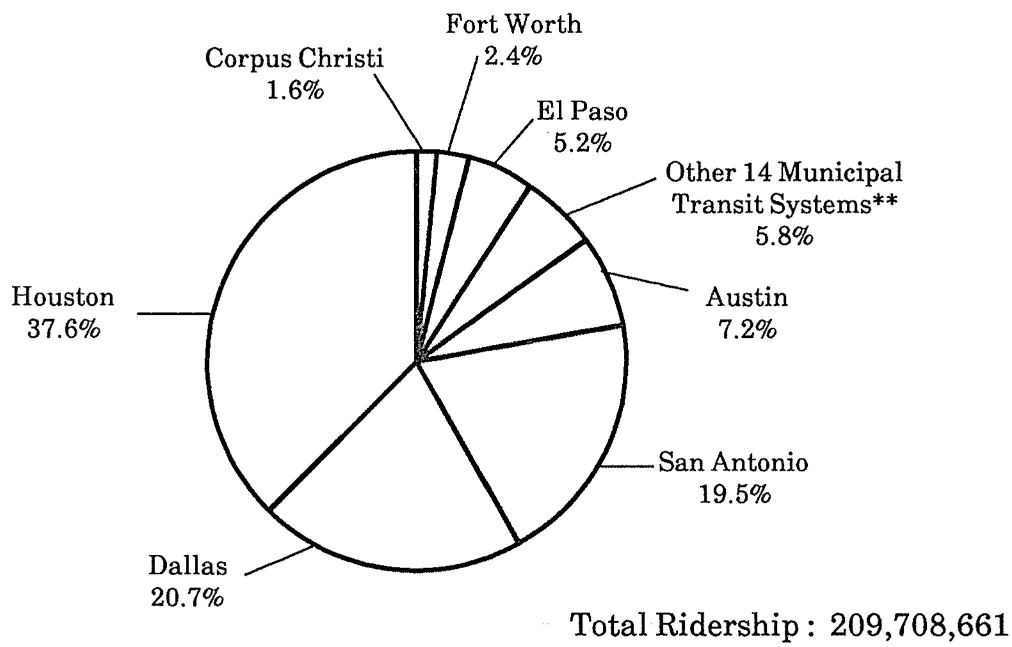
In 1987, the legislature passed a law to help secure financing for smaller city-owned transit operations. The law allows voters in cities with a public transit system and a population of 56,000 or more to approve a local sales tax of up to one-half of one percent to fund the transit system (Article 1118z, V.T.C.S.). City transit departments must operate only within city limits, under the authority of the city council. They do not become a separate regional authority like the other transit authorities, instead remaining a division of city government. As of June 1990, El Paso is the only city that collects the city transit sales tax, with a rate of one-half of one percent. Twelve other municipal transit systems in Texas are eligible to impose the city transit tax if approved by local voters and if their local tax rates have not reached the maximum of two percent allowed by state law. These cities are Abilene, Amarillo, Beaumont, Brownsville, Galveston, Laredo, Lubbock, Port Arthur, San Angelo, Tyler, Waco and Wichita Falls.

The six metropolitan and regional transit authorities in Texas vary in their size and levels of service. Exhibit A provides an overall picture of the range that exists between these authorities. For example, total revenues for these systems ranged from $10 million to $276 million, while total expenses ranged from $10 million to $227 million. Sales tax revenues for all of the authorities in 1989 was $492.5 million, with individual transit system tax revenues ranging from $9.4 million to $193.6 million.

The six transit authorities represent, by far, the majority of transit ridership in the state. In 1989, these transit systems carried 186 million passengers, which was 89 percent of the state's total transit ridership. Statewide transit ridership has increased by 42 percent since 1979. Exhibit B provides a breakdown of the state's transit ridership by system.

Exhibit B

Texas Transit Authority Ridership by System*
Calendar Year 1989



*Information supplied by the State Department of Highways and Public Transportation.

** Includes systems in Bryan-College Station and Sherman-Denison that do not meet the minimum population requirements for the city transit tax.

BACKGROUND

Creation and Powers

In January 1985, voters in Austin and the surrounding area approved the creation of the Capital Metropolitan Transportation Authority, to be funded in part by a one-percent sales tax. That election also included approval of a service plan that called for rapid expansion of the existing city bus service and, eventually, development of light rail. Nine areas voted to participate in the authority, including Austin, West Lake Hills, Rollingwood, San Leanna, Cedar Park, Leander, Lago Vista, Pflugerville and the Anderson Mill area of Williamson County. Since that time, the suburban cities of Jonestown and Manor have voted to join the service area and West Lake Hills and Rollingwood have voted to withdraw. Precinct Two of Travis County has also joined the service area, which now encompasses a total of 471 square miles (see Exhibit C).

Following the election, Capital Metro began the expansion outlined in the service plan. From July 1985, when Capital Metro took over the city bus service, to October 1986, there was an 88 percent increase in service. This was accomplished by extending bus routes and hours of operation. During this time Capital Metro incurred a debt of $19.3 million by purchasing 100 new buses to provide the increased service.

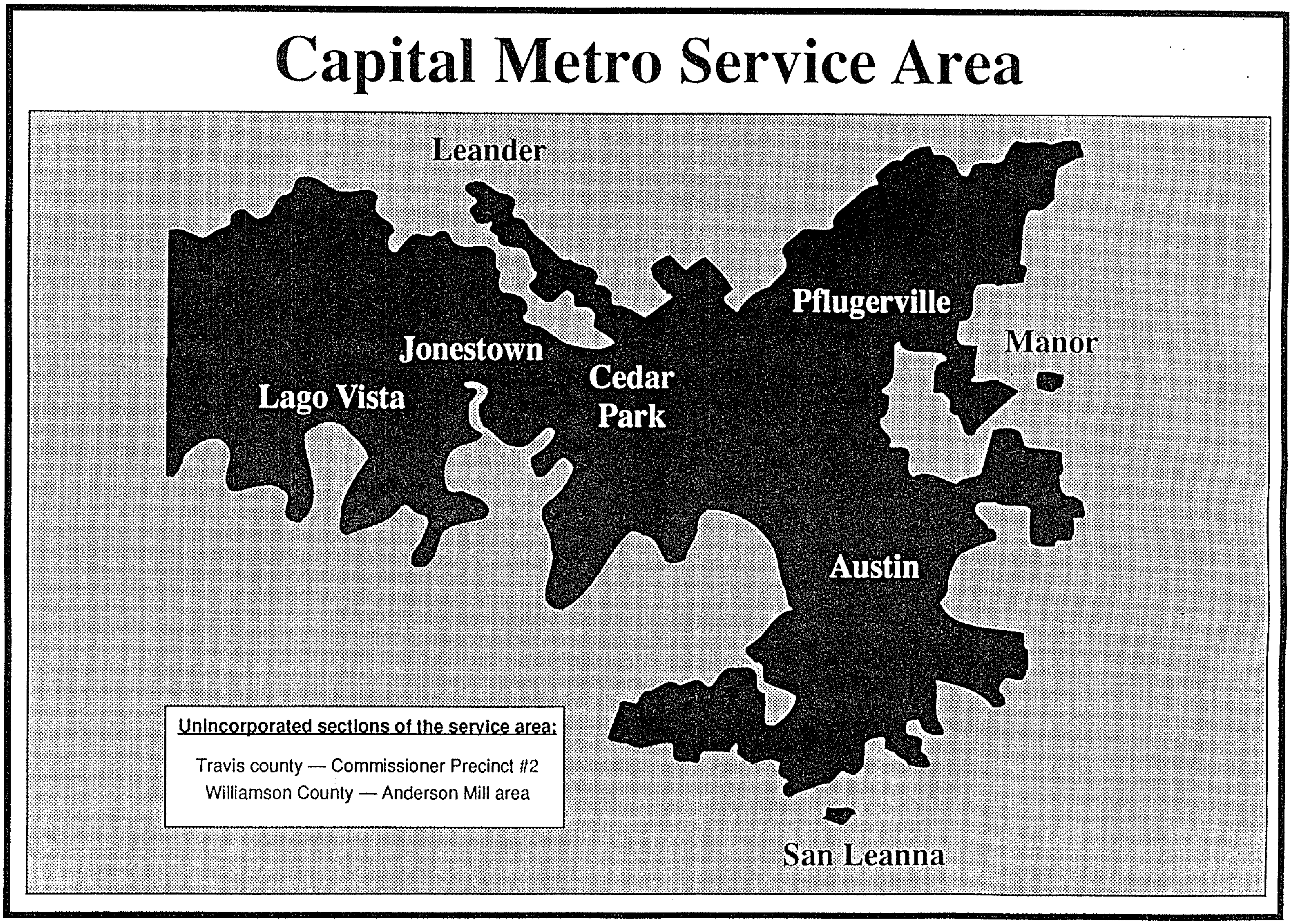
In January 1987, the downturn in the economy and the lack of demand for the increased bus services prompted the board to redirect the authority's emphasis towards operating more efficiently by reducing costs and increasing ridership. The board voluntarily lowered the sales tax to 3/4 percent beginning in April 1989, and has made a number of efforts to increase ridership, including the program it is currently running in which no fares are charged for any of its services. The free fare program is scheduled to last through December 1990.

The statute provides broad powers for Capital Metro as a regional transit authority. The board may levy and collect any kind of tax, except a property tax or tax prohibited by the Texas Constitution, if it is approved by a majority of the voters in the service area. The authority may issue bonds, with voter approval, for purchases, construction, or improvements to the transit system. The authority has the right of eminent domain to acquire lands needed for development of the transit system. The authority also sets all rates and fares for the transit system and makes rules and regulations governing the use, operation, and maintenance of the system. The board has the flexibility to alter the original service plan without submitting it for voter approval; however, any fare changes must be approved by a committee of locally elected officials. Cities and county precincts that no longer wish to participate may vote to withdraw from the authority.

Policy-making Body

Capital Metro is governed by a seven-member board. The Austin City Council appoints five members of the board, the Travis County Commissioners Court appoints one, and a committee of the seven suburban mayors and the Williamson County judge selects the seventh member. All board members may be removed from office for malfeasance or nonfeasance in office by the governing bodies that appointed them or by the remaining members of the board itself.

Exhibit C



*Map of service area provided by Capital Metro.

Capital Metro board positions are part-time and members are compensated for travel and expenses, but do not receive compensation for attending board meetings. Prospective board members must be resident citizens and qualified voters in the authority's service area. The statute provides for four-year terms, but all board member terms were modified to two-year terms in 1988 following a Texas attorney general's letter opinion (LO-88-66) that the four-year terms were unconstitutional. Officers of the board are elected and may be removed by a majority vote of the board members.

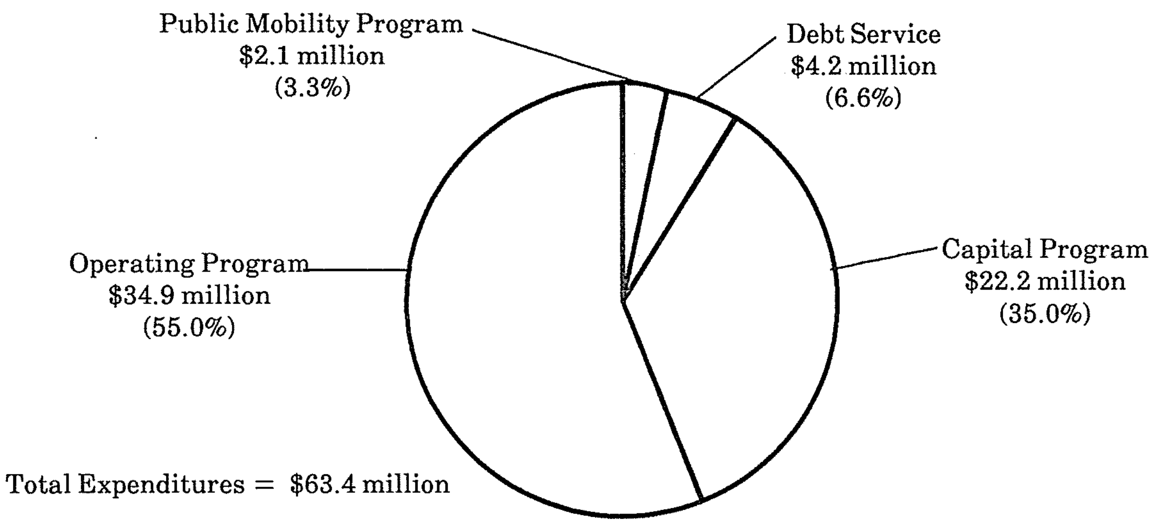
The board is responsible for management, operation and control of the authority. It is authorized to hire and remove all employees, as well as prescribe their duties, tenure and compensation. The board delegates much of this authority to a general manager who carries out the day-to-day operations of the authority. The board meets at least once a month and does much of its work in standing committees on finance and budget, planning, and operations. These committees review information and make recommendations to the full board. Nominations to the committees are made by the chairman of the board and approved by a board resolution. The board also receives input from a Citizens Advisory Committee and from a Mobility Impaired Services Advisory Committee.

Funding and Organization

As Exhibit D shows, in fiscal year 1989 Capital Metro spent over $63 million. These expenditures are divided into funding for the agency's operating program, capital program, public mobility projects, and debt service.

Exhibit D

Expenditures By Program
Fiscal Year 1989

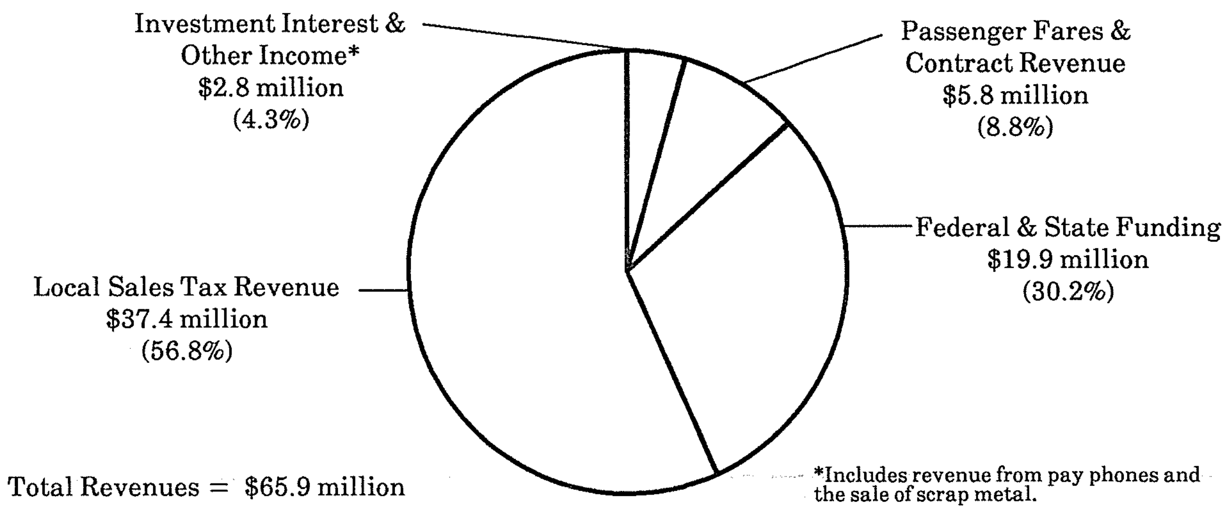


Operating expenditures include the cost of providing daily bus service and the cost of administrative activities that support these services. More than 55 percent of the authority's budget, or $34.9 million, was spent in this category. Capital expenditures include the cost of building facilities, constructing park and ride lots, and making major purchases, such as buses. These expenditures totaled approximately $22 million in fiscal year 1989. Capital Metro's capital costs also include public mobility projects to improve public transportation in the service area. These projects include funding for sidewalks, curb ramps, and street repairs along transit routes. Slightly over $2 million was spent on these projects in fiscal year 1989. The final category of expenditures is debt service. Capital Metro spent approximately $4.2 million during fiscal year 1989 to reduce debt incurred when the authority was first created.

In fiscal year 1989 Capital Metro had revenues totaling almost $66 million. As shown in Exhibit E, these revenues are derived from a variety of sources, including sales tax revenues, federal grants, bus fares and contract revenue, and interest income.

Exhibit E

Revenues By Source
Fiscal Year 1989



Sales tax revenue is the largest source of revenue for Capital Metro. Beginning in 1985, Capital Metro collected the full one-percent sales tax. Annually, since 1988, the board has considered the appropriateness of the sales tax level during budget deliberations. In April 1988, the Capital Metro board reduced the sales tax it collects to 3/4 percent. In December 1989, the board voted against a proposal to further reduce the sales tax to 1/2 percent. In fiscal year 1989, sales tax revenues totaled over $37 million and accounted for almost 57 percent of the authority's funding.

Government assistance is the second largest source of revenue for the authority, totaling almost $20 million in fiscal year 1989. Capital Metro receives several kinds of federal grants from the Urban Mass Transportation Administration (UMTA). Federal operating assistance from UMTA totaled $1.5 million in fiscal year 1989 and was used to supplement the operating budget. These funds are distributed through an allocation formula to transit systems across the country. Federal funding from UMTA for capital projects in fiscal year 1989 totaled over $4 million. In addition to the formula funded assistance, Capital Metro received $14.9 million in discretionary funding from UMTA during fiscal year 1989. This funding was awarded to Capital Metro for projects ranging from land acquisition for park and ride lots to the purchase of eighty new buses. Capital Metro also received $314,000 in state funding to provide the local match for the federal funding to purchase the eighty new buses.

Bus fares of $2.6 million and revenues from the UT shuttle contract of $3.2 million accounted for approximately nine percent of Capital Metro's revenue in fiscal year 1989. Bus fares have been eliminated as a revenue source under the free fare program that began in October 1989. Investment income revenue for fiscal year 1989 was almost $3 million, 40 percent higher than budgeted. This income accounted for four percent of Capital Metro's total revenue.

Exhibit F shows the balance over the last five years in Capital Metro's cash, investments, and restricted assets accounts. These accounts represent revenues in excess of the amount needed for operation of the authority that are being accumulated and invested for future expenditures.

Exhibit F

Contributions to Cash Reserves: Fiscal Year 1985-1989

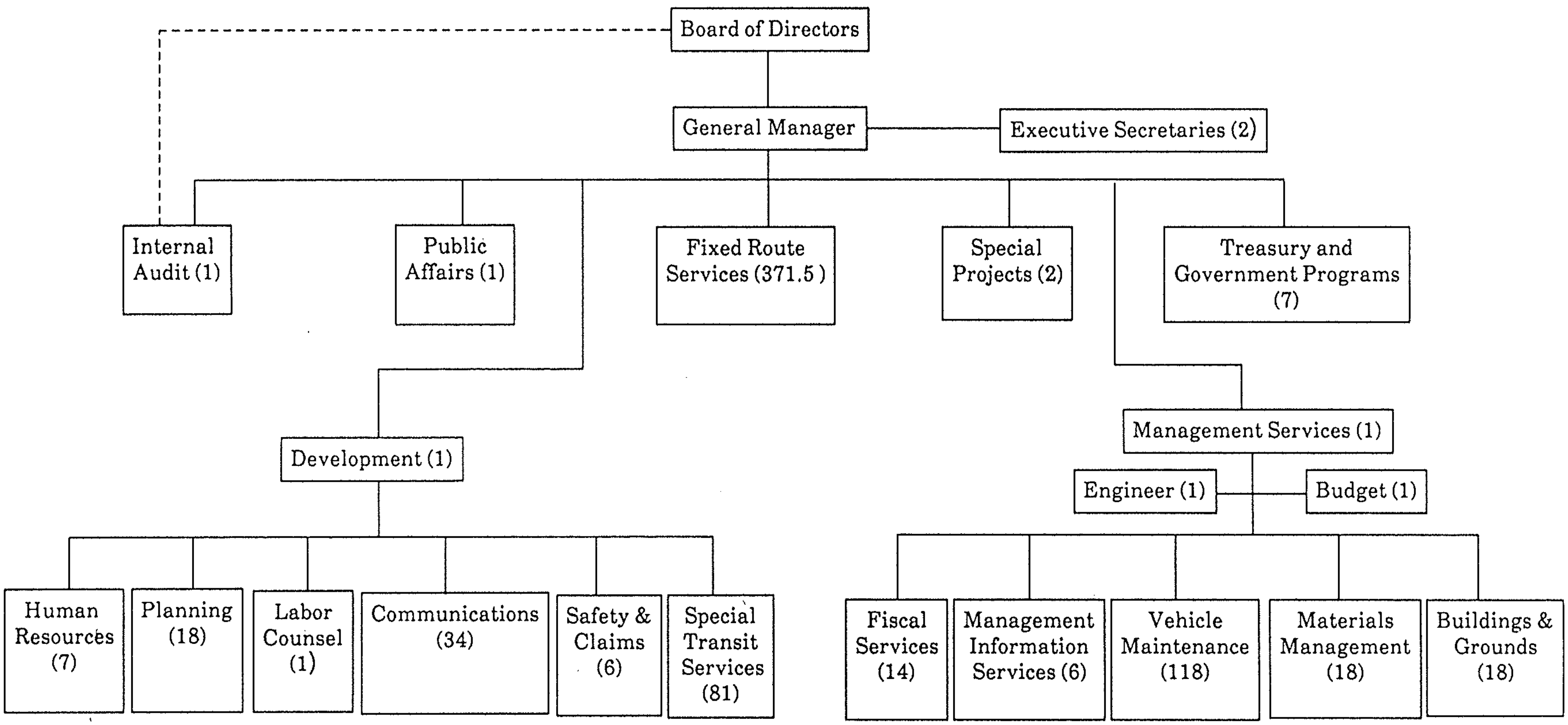
Fiscal Year	Amount	Year-End Balance	Percentage Increase
1985	$7,641,338	$7,641,338	--
1986	$7,995,127	$15,636,465	104.6%
1987	$4,616,348	$20,252,813	29.5%
1988	$9,396,968	$29,649,781	46.4%
1989	$1,820,986	$31,470,767	6.1%

Note: Contributions to cash reserves are calculated based on actual cash on hand at year-end, including investments and restricted assets. Because revenues and expenditures are accounted for on an accrual basis, the difference between revenues and expenditures will not reflect the actual cash on hand.

Since 1989, Capital Metro has operated out of a new facility in east Austin that houses all the administrative, operating and maintenance staff. Capital Metro's budget for 1990 calls for 710.5 full-time equivalent employees (see Exhibit G). Of those, 531.5 or 74.8 percent are actually employed by a management company, Management Labor Services, for Capital Metro. This arrangement was established to allow Capital Metro to fulfill its responsibility under federal law to maintain the bargaining rights that had been won by employees when the transit service was privately operated, without violating the state law prohibiting employees from collectively bargaining with a public agency. The majority of these employees are directly involved in operating or maintaining the buses.

Exhibit G

Capital Metropolitan Transportation Authority
Capital Metro Organization Chart
Fiscal Year 1990



Total Budgeted Full-Time Equivalent Positions = 710.5

Programs and Functions

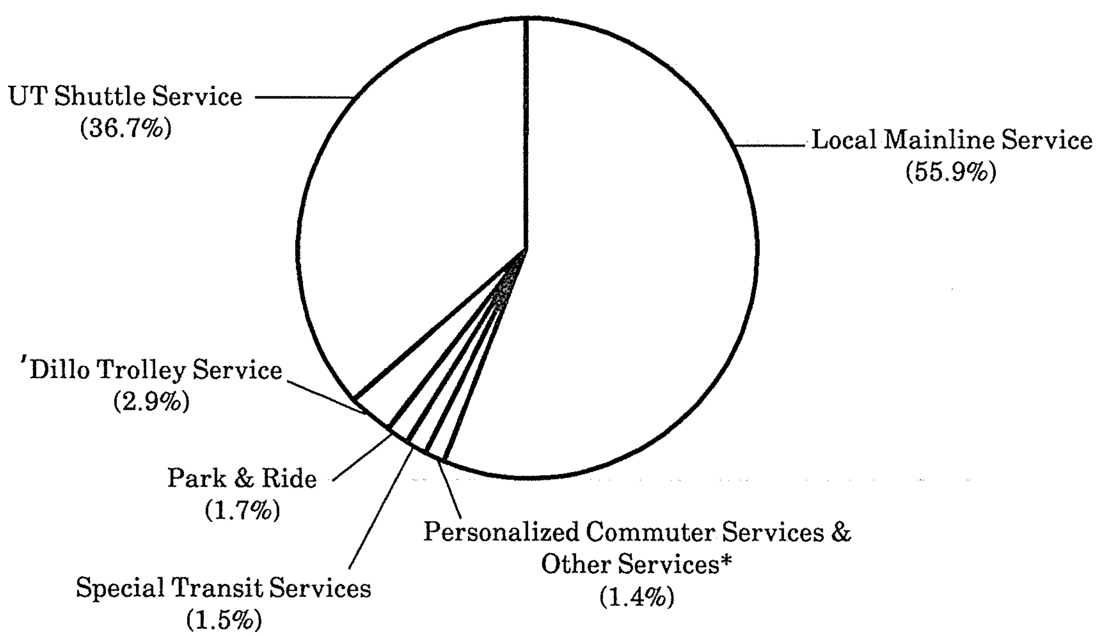
Capital Metro provides a regional transit system through operating and capital programs. Capital Metro also has a number of administrative functions that support the ongoing needs of these programs.

Operating Program

Capital Metro owns a total of 314 vehicles, including vans, buses and trolleys, to provide the variety of transportation services outlined below. Exhibit H shows the portion of ridership represented by each transportation service offered by Capital Metro and its contractors. Approximately 40 percent of all service is provided by private operators under contract to Capital Metro. Fares listed in the descriptions below have been waived during the current free fare program, scheduled to last through December of 1990.

Exhibit H

Capital Metro Ridership By Program
Fiscal Year 1989



Total Ridership with UT shuttle service - 23,505,500
Total Ridership without UT shuttle service - 14,886,910

*Includes vanpool, rural feeder service, and service to special events.

Mainline service

Capital Metro has 185 buses available to provide local fixed-route services. Capital Metro runs full-sized buses on the busiest routes, and contracts to provide van service on less utilized routes and to provide service from Lago Vista, Jonestown and Manor. These services generally run from 5:30 a.m. to midnight for a fare of 50 cents per trip, although students, senior citizens and passengers with mobility impairments ride for half-fare. In fiscal year 1989, these services accounted for 13.2 million passenger trips on 42 routes, or almost 56 percent of Capital Metro's total ridership. Ninety percent of the mainline fleet is equipped with wheelchair lifts.

In the central business district, Capital Metro operates the 'Dillo shuttle service for a 25 cent fare. The 'Dillos are wheelchair lift-equipped buses designed to look like antique trolley cars. In fiscal year 1989, 'Dillos accounted for over 671,000 passenger trips, or 2.9 percent of Capital Metro's total ridership.

Capital Metro's six park and ride routes serve suburban areas, including Leander and Pflugerville, with limited stops into the central business district. This service generally runs during peak hours on weekdays. It is provided under contract with Laidlaw Transportation, Inc. using 20 wheelchair lift-equipped suburban style coaches provided by Capital Metro. Regular fare for this service is one dollar each way, although students, senior citizens and passengers with mobility impairments ride for half-price. Over 410,000 passenger trips were made on these routes during fiscal year 1989, accounting for 1.7 percent of Capital Metro's ridership.

Special Transit Services

In addition to the lift-equipped regular bus service provided to passengers with mobility impairments, Capital Metro operates Special Transit Services (STS). This service is provided for a 60 cent fare to individuals who have been certified as being unable to use regular bus services due to some type of disability. Under this program, clients can make an appointment to have one of the specially-equipped vans or sedans pick them up at their door and take them to any location within the Capital Metro service area. Appointments must be made at least 24 hours in advance unless the client has established a standing reservation.

More than 6,600 individuals are registered for STS, and 346,735 trips were provided in 1989. Harlem Cab Company provided 146,983 of these trips under contract to Capital Metro, 42 percent of the STS total. These services, which account for 1.5 percent of Capital Metro's ridership, meet current federal requirements for services to the handicapped.

Capital Metro is currently in the process of purchasing an additional 42 specially-equipped vans and sedans, 32 of which will be used by an outside contractor to provide some of the STS service. The remainder of the new vehicles will be added to the fleet Capital Metro uses to directly operate the rest of the STS service.

Capital Metro also is using a voucher system on a trial basis that allows passengers to use taxicabs for certain return trips that are difficult to schedule in advance. Under this program, passengers may call the cab company of their choice and Capital Metro will pay up to $8.75 of the actual meter fare, with the passenger responsible for paying any amount over that.

University of Texas Shuttle Service

Capital Metro has eighty buses that are dedicated to providing shuttle bus service to the University of Texas campus. Capital Metro signed a five-year contract with the university to provide this service in September 1988, and in September 1989 the Laidlaw school buses that had previously been used were replaced with airconditioned, wheelchair lift-equipped buses. Capital Metro currently contracts with Laidlaw to operate the shuttle bus service.

The university's funding for the shuttle bus contract, which has not been waived during the free fare program, comes from an activity fee paid by all students. The students are allowed to ride all other Capital Metro routes by showing their student identification when they board the bus and non-student riders are allowed to ride the shuttle routes. The shuttle service provided 8.6 million passenger trips in 1989, accounting for almost 37 percent of Capital Metro's ridership.

Personalized Commuter Services

Capital Metro has a number of programs to ease the mobility problems of commuters to non-downtown areas, especially in the U.S. 183 North corridor. These programs include a computerized carpool matching service, custom routes to serve certain major employers, and a vanpooling program. Under the latter program, Capital Metro provides the van and pays all insurance and fuel costs, while one of the riders takes responsibility for organizing and driving the route.

Capital Program

The primary focus of Capital Metro's capital program in fiscal year 1989 was facility and vehicle improvement. The authority recently completed construction of a $22 million operations and administration facility in east Austin. Construction of this facility has allowed Capital Metro to consolidate all its employees at one facility.

For fiscal year 1990, the board has budgeted a capital expenditure of over $2 million for construction of a park and ride facility in northwest Austin. Seventy-eight percent of the funding for this project will come from federal grants. Other capital plans include purchasing tools and equipment for the operating facility, additional radio equipment, and a number of new vans for the Special Transit Services and personalized commuter programs. Capital Metro also has plans to construct a bike path along a stretch of railroad right-of-way that runs along Airport Boulevard from IH 35 to North Lamar Boulevard.

The Capital Metro board established a Public Transportation Mobility Fund in the 1989 budget for capital projects that are directly related to improving public transportation in the authority's service area. In the City of Austin, $4.5 million was budgeted in 1989 for projects ranging from construction of sidewalks and improvements to streets along transit routes to participation in the State Department of Highways and Public Transportation PASS program to improve arterial roads. An additional $500,000 was set aside in 1989 for projects in the suburban cities and county areas in the service area.

Administration

Capital Metro has a number of administrative functions that support the operating and capital programs. Of the 710.5 budgeted positions, 89 (12.5 percent) are administrative support positions. These functions include administrative support activities such as budgeting, purchasing, contracting, computer support, personnel, planning and finance activities. Capital Metro also employs an internal auditor to monitor and evaluate its efficiency and effectiveness. Capital Metro has several special administrative functions, including coordination of public and community affairs and promotion of minority and disadvantaged business participation.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

The Capital Metropolitan Transit Authority (Capital Metro) was placed under sunset review by the 70th Legislature. The legislature scheduled Capital Metro for sunset consideration by the 72nd Legislature in 1991, with subsequent reviews to be conducted every 12th year after 1991. Capital Metro is one of four Texas transit authorities under sunset review. The Dallas Area Rapid Transit Authority is also under current review. The Houston and Corpus Christi transit authorities were reviewed in 1989. The state's two remaining metropolitan transit authorities in San Antonio and Fort Worth are not subject to sunset consideration.

In placing Capital Metro under sunset review the legislature shaped the focus of the review in two ways. First, Capital Metro is to be reviewed, but is not subject to being abolished under the Sunset Act. Consequently, emphasis during the review was placed on recommendations to improve the ongoing operations of Capital Metro, rather than on evaluating the need for Capital Metro's continuation or alternative organizational approaches for carrying out its functions.

Second, the concern of the legislature in placing Capital Metro under sunset review appeared to center on the need for greater accountability. The language added to Capital Metro's statute placing it under review specifically refers to the review as an "accountability review." To address this concern, the review was structured to assess the accountability of Capital Metro, as a regional authority, to the public and various local and state officials.

A number of activities were undertaken by the staff to gain a better understanding of Capital Metro and the statutory provisions under which it operates. These activities included:

- a review of previous legislation on Capital Metro and other Texas transit authorities and an evaluation of the current statutory provisions;
- a review of staff recommendations and statutory changes adopted as a result of the sunset review of the Houston and Corpus Christi transit authorities;
- a review of numerous reports, documents and evaluations of Capital Metro;
- a number of interviews with the Capital Metro staff to review its major programs and functions;
- observation of Capital Metro board and committee meetings;
- a tour of Capital Metro's central operating, maintenance and administrative facility;
- phone discussions with persons knowledgeable about transit issues both nationally and in Texas, including federal and state officials; and
- phone discussions with other transit systems in Texas and in other states to gain an understanding of their approach to transit.

The review also included an analysis of the efficiency and effectiveness of Capital Metro's operations. The intent of this analysis was to make a general determination of how well Capital Metro is performing overall, particularly in comparison to other transit authorities of similar size, rather than conducting an in-depth analysis of each aspect of the agency's operations. A comparison of Capital Metro's overall system performance and operating costs with seven other "peer" systems was conducted, as well as an examination of changes in Capital Metro's performance over time. The results of the analyses are summarized in Exhibits 1 through 3 in the Appendix.

In general, the comparison indicated that Capital Metro's performance and expenditures are in line with data from the other similar size transit systems. One of the primary differences is that Capital Metro contracts for a larger percentage of its services. In addition, changes in Capital Metro's performance and costs since its first full year of operation in 1986 have shown improvement.

The review of Capital Metro yielded a number of recommendations to improve the overall accountability and oversight of the agency. The results of the review are addressed in the recommendations that follow.

Recommendations

ISSUE 1: The terms of Capital Metro board members should be statutorily changed from four to two years to comply with constitutional restrictions.

BACKGROUND

The statutory provisions in Article 1118x, V.T.C.S. governing the terms of office for Capital Metro board members currently provide for four-year terms. The four-year terms are staggered and there is a provision that no person may serve more than two consecutive four-year terms.

A review of the appropriateness of the board's terms of office determined the following:

- **The Texas Constitution restricts the length of terms of public offices to two years.**
  - Article XVI, Section 30 of the Texas Constitution provides that the duration of all offices not fixed by the constitution cannot exceed two years.
  - Article XVI, Section 30-a of the Texas Constitution does authorize terms of six years, provided one-third of the members are appointed every two years. However, this provision only applies to state boards and does not apply to local or district boards.
- **The requirement for four-year terms for Capital Metro board members conflicts with these constitutional restrictions.**
  - An attorney general letter opinion issued on June 3, 1988 (LO-88-66) found that the four-year terms provided for by Article 1118x for transit authority board member terms are in conflict with Article XVI, Section 30 of the Texas Constitution. The opinion concludes that the four-year terms thus are inappropriate.
  - Capital Metro has changed its terms of office to two years in response to the attorney general opinion, but the statute still provides for four-year terms.
- **The statutory terms of office of other Texas transit authority board members have been changed to two years to conform with the constitutional restrictions.**
  - The terms of office for the Houston and Corpus Christi transit authorities' board members, which are also governed by Article 1118x, were changed from four to two years during the 71st legislative session as part of the sunset process.

PROBLEM

According to an attorney general opinion, the statutory four-year terms of office for Capital Metro board members are in conflict with constitutional restrictions which limit such terms to two years.

RECOMMENDATION

- **The terms of office for Capital Metro board members should be statutorily changed from four to two years.**

This will ensure that the board's terms of office are in compliance with restrictions in the Texas Constitution on the length of terms of public officials. The provisions should be structured in statute in a manner similar to the provisions developed during the 71st Legislative session regarding two-year terms of office for Houston and Corpus Christi transit authority board members. These provisions include limiting board members to serving no more than four terms on the board, or a total of eight years and clarifying that actions taken by the board cannot be held invalid because they were taken at a time when the members of the board were serving four-year terms.

In addition, the statute should be modified to provide clearer direction for the staggering of terms. Set timeframes should be provided for staggered terms, with four members terms (three of the City of Austin appointments and the suburban city appointment) expiring on June 30 of odd numbered years, and three members terms (the other two City of Austin appointments and the Travis County appointment) expiring on June 30 of even numbered years. To initiate staggering of these set terms, the terms of all current board members would expire on June 30, 1991. Then, the initial appointments of the first four members outlined above would be for two year terms, and the initial appointments of the remaining three members would be for one year terms.

FISCAL IMPACT

No fiscal impact is expected as a result of this recommendation.

ISSUE 2: The statute should be amended to include specific grounds for the removal of Capital Metro board members and to clarify the procedures for removal from office.

BACKGROUND

The Capital Metro board is composed of seven members, with five members appointed by the Austin City Council, one member appointed by the Travis County Commissioners Court and one member appointed jointly by a committee of the suburban city mayors and the Williamson County judge.

The statutory provisions governing the removal of a member of the board authorize removal for malfeasance (misconduct in office) or nonfeasance (failure to fulfill the duties of the office). A member who has violated these grounds can be removed by either a majority vote of the Capital Metro board itself or by a majority vote of the governmental body that appointed the member to the board.

Statutory provisions governing the removal of board members from office should provide clear direction as to what constitutes grounds for removal and procedures for how a member may be removed if these grounds are met. A review of the procedures governing the removal of Capital Metro board members determined the following:

- **Capital Metro's statute does provide for removal of board members on grounds of malfeasance or nonfeasance in office, but it does not specify certain standard grounds or procedures for removal. Specific grounds and procedures for removal are generally added to the statute of an agency as part of the sunset process if they are not already in law.**
  - These provisions are applied "across-the-board" to agencies under sunset review and clarify that grounds for removal exist if a member: does not have or maintain the qualifications required for appointment; violates a conflict-of-interest provision; cannot discharge his duties; or is absent from more than half of the regularly scheduled meetings, unless excused by the board.
  - Procedures are also routinely added that require the agency head to notify the chairman of the board if the agency head has knowledge that a potential ground for removal exists. The chairman of the board is then required to notify the appointing entity that a potential ground for removal exists.
  - These specific grounds and procedures were added to the statutes governing the Houston and Corpus Christi transit authorities last session through the sunset process.

PROBLEM

The statutory provisions governing Capital Metro board members provide for removal from office on the grounds of malfeasance or nonfeasance, but they do not specify certain standard situations that can constitute grounds for being removed. In addition, there are no procedures in place to ensure that the appropriate parties are made aware of potential grounds for removal of a member.

RECOMMENDATION

- **The statute should be amended to include more specific grounds and procedures for the removal of Capital Metro board members.**

The statutory changes should incorporate the standard provisions for grounds and procedures for removal used when a member does not comply with certain requirements in statute, such as not maintaining the qualifications required for appointment or violating a conflict-of-interest provision. These procedures will ensure that the appropriate appointing entity is notified when a potential ground for removal exists in regard to a member it has appointed. These statutory provisions should be structured in a manner similar to those added to the statute last session for the Houston and Corpus Christi transit authorities.

FISCAL IMPACT

No fiscal impact is expected as a result of this recommendation.

ISSUE 3: The statute should be amended to establish a general structure for advisory committees to ensure that they are appropriately appointed, composed and utilized.

BACKGROUND

The statutory provisions governing Capital Metro do not specifically authorize the use of advisory committees by the board. The Capital Metro board uses advisory committees, but has no established rules or procedures governing how they are to be structured and utilized. Currently, there are two advisory committees to the Capital Metro board. These are the Citizen's Advisory Committee, which provides community input on services and long-term planning, and the Mobility Impaired Service Advisory Committee, which provides input on services to persons with mobility impairments.

The use of advisory committees is an effective way for policy-making boards to obtain additional public input and advice in certain areas of specific or ongoing interest. These committees should have a clear structure and purpose to operate effectively. A review of Capital Metro's use and structure of advisory committees determined the following:

- **The Capital Metro board uses advisory committees, but there is no set policy to govern the appointment, composition or effective use of such committees, either in statute or through board resolution.**

- **The statutes of many public agencies clearly set out a structure for advisory committees to ensure their effectiveness. Provisions have been added to the statutes of a number of state agencies as part of the sunset review process to provide a clear structure for the appointment and use of advisory committees.**

  -- The standard provisions added through the sunset process generally: authorize, but do not require, the appointment of advisory committees; require that committees have a balanced composition that represents the viewpoints of persons or groups with knowledge and interest in the committee's field of work; and require that the board specify a committee's purpose, powers, duties and methods for reporting the results of the committee's work back to the board.

  -- The statutory provisions governing the Houston and Corpus Christi transit authorities were amended during the 71st Legislative Session as part of the sunset review process to provide this structure for the use of advisory committees.

PROBLEM

The Capital Metro board uses advisory committees but there is no set structure to ensure that such committees are appropriately appointed, composed and utilized.

RECOMMENDATION

- **The statute should be amended to require that advisory committees appointed by the Capital Metro board have:**

  - **-- a balanced composition that represents the viewpoints of persons or groups with knowledge and interest in the committee's work; and**

  - **-- a defined purpose, specific powers and duties, and a method for reporting the results of their work back to the board.**

Adding these provisions to the statute will help ensure that advisory committees have an appropriate composition and a clearly defined purpose and means for reporting back to the board. These changes reflect an advisory committee structure that has worked well for state boards and other transit authorities. The structure should help to ensure the maximum utility of advisory committees to the Capital Metro board. The statutory provisions should be structured in a manner similar to the provisions developed for the Houston and Corpus Christi transit authorities through the sunset process last session.

FISCAL IMPACT

No fiscal impact is expected as a result of this recommendation.

ISSUE 4: The statute should be amended to separate the duties and functions of the Capital Metro board from those of the staff to ensure clear lines of authority for operating the transit system.

BACKGROUND

The statutory provisions governing Capital Metro give the seven part-time members of the Capital Metro board full responsibility for management of the authority. The statute also gives the board the authority to hire and fire all employees, as well as prescribe employees' duties, tenure and compensation.

The statute authorizes the board to hire a general manager, but it does not prescribe the duties or responsibilities of this person. The actual practice of the Capital Metro board has been to hire a general manager to manage the authority. The general manager prescribes the duties and compensation of the staff, with board approval through the budget process. By board policy, the general manager is directly responsible for the hiring and firing of employees.

The enabling laws of an agency should clearly distinguish between the functions of a board in setting policy for the agency and the functions of the executive director in managing the day-to-day operations of the agency, including the hiring and firing of staff. A review of Capital Metro's statute in comparison to other enabling laws determined the following:

- **The statutory provisions governing Capital Metro differ from most enabling laws by giving full responsibility for management of the agency, including the hiring and firing of all staff, directly to the board, even though in practice the board has delegated these duties to the general manager.**

- **The statutes of agencies under sunset review have generally been amended to require the agencies to develop policies that define board and staff functions. The purpose of these policies is to have an agency's board clearly separate and define the function of the board in setting policy for the agency and the function of the staff in managing the day-to-day operations of the agency.**

- **Both the Houston and Corpus Christi transit authorities, as part of the sunset process during the 71st Legislative Session, had changes made to their enabling laws to clarify the role of the general manager and were required to develop policies that further defined the functions of the board and those of the staff.**

PROBLEM

The statutory provisions governing Capital Metro differ from most enabling laws by giving the board full responsibility for managing the authority, including the hiring and firing of all staff, rather than giving these duties to the executive director or general manager. This sets up a structure in which the board could become actively involved in administering the agency, in addition to setting agency policy.

RECOMMENDATION

- **The statute should be amended to:**

  -- **specify that it is the duty and responsibility of the general manager to administer the operations of the authority on a day-to-day basis, including the hiring and firing of all employees; and**

  -- **require the board to develop and implement policies that clearly define and separate board and staff functions.**

These changes will establish a structure that more clearly separates the role of the board in setting policy and the responsibility of the general manager in implementing the board's policies through staff who answer directly to the general manager. This structure guards against the board, or individual board members, becoming inappropriately involved in the day-to-day operations of the authority. This approach is consistent with changes generally recommended through the sunset process for state agencies and those made last session for the Houston and Corpus Christi transit systems.

FISCAL IMPACT

No fiscal impact is expected to result from this recommendation.

ISSUE 5: The statute should be amended to authorize the state auditor to review Capital Metro's independent financial audit and to conduct its own audit if the review indicates a problem.

BACKGROUND

The statutory provisions in Article 1118x, V.T.C.S., require Capital Metro to have an audit of its finances conducted each year by an independent certified public accountant. The financial audit is a public record and must be open to the public for inspection. The requirement for an annual financial audit is one way in which the agency is held accountable to the public for the funding it receives. Capital Metro has had an annual financial audit conducted each year since its creation in 1985 with no significant problems identified.

Prior to having the audit conducted, Capital Metro must submit its selection of a certified public accountant to the state auditor for approval. The state auditor may not approve an accountant unless it is determined that the accountant is qualified to perform the audit and does not have an interest in the results of the audit. If the state auditor does not take action within thirty days of receiving the submission, it is automatically approved.

Once the audit is completed, the authority is required by law to send a copy of the audit to various state and local officials, including the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of the governing body of each county and city in the authority. The state auditor does not receive a copy of the audit and is not required to review the audit.

A review was made of the appropriateness of the state's financial oversight of Capital Metro. In order to be effective, state oversight should involve a review of an agency's independent financial audit or the state auditor's office should conduct the audit directly. An examination of the level of state oversight of Capital Metro's finances in comparison with the financial oversight of other regional entities indicated that:

- **The state has oversight responsibility over Capital Metro because Capital Metro is a regional entity created and authorized to receive sales tax revenues under state law.**

  -- Capital Metro was created and given authority to collect local sales tax, with voter approval, under Article 1118x.

  -- In fiscal year 1989, Capital Metro received over $66 million in revenues. Approximately $37.4 million, or 57 percent, of this was from sales tax revenues that are authorized to be collected under state law.

- **Current statutory provisions concerning oversight of Capital Metro's financial audits inappropriately provide for overseeing the selection of an auditor rather than providing for a review of or action on the actual results of the audit.**

  -- Oversight of the selection process is appropriate since the state auditor's office has stated that the only grounds on which they could justify disapproval of a selection would be if the accountants were not certified by the State Board of Public Accountancy, and that is unlikely to occur.

  -- The state auditor's office has also stated that based on their interpretation of Attorney General Opinion JM-872, requiring their approval of an auditor goes beyond their authority. In addition, it may violate the separation of powers doctrine in the Texas Constitution. The state auditor's approval of Capital Metro's auditor would be an act taken by a legislative agency to "order an executive agency to implement the law in a particular manner."

- **The legislature has developed an effective method of providing financial oversight of regional entities such as transit authorities by requiring that the state auditor review the independent financial audits of these entities and conduct its own audit if necessary.**

  -- The financial audit requirements of the Houston and Corpus Christi transit authorities were amended last session as part of the sunset process to require a review of their audits by the state auditor. The financial audit requirements of the Dallas transit authority were amended in this manner as well.

  -- Similar provisions were placed in statute for the 1,300 water districts and river authorities in Texas. The state auditor's review of those financial audits found a number of problems, including the failure of some to comply with generally accepted accounting principles. The Texas Water Commission, which oversees the water districts, has begun efforts to correct these problems.

PROBLEM

The state's oversight of Capital Metro's finances is inappropriately focused on simply approving the selection of a qualified independent auditor and does not involve a review of the audit itself. In addition, the state auditor's office has no authority to conduct an audit of its own if necessary. This method differs from the more effective oversight procedures in place for other regional entities.

RECOMMENDATION

- **The statute should be amended to:**
  - **-- require Capital Metro to submit its financial audits to the state auditor for review and comment;**
  - **-- authorize the state auditor to conduct its own financial audit of Capital Metro if necessary; and**
  - **-- remove the requirement that the state auditor approve Capital Metro's selection of an accountant to perform the audit.**

This approach will provide a more effective means of state oversight of Capital Metro's finances. The statutory provisions should be structured in a manner similar to the provisions developed last session for the Houston and Corpus Christi transit authorities. These provisions include authorizing the state auditor to examine any work papers from the independent financial audit or to audit the authority directly if it is determined to be necessary. In addition, the state auditor should be directed to file any comments relating to the authority's audit with the Capital Metro board and the Legislative Audit Committee, which is the legislative committee that the state auditor answers to.

FISCAL IMPACT

While this recommendation may increase the workload of the state auditor to some degree, it is anticipated that it can be accomplished with existing resources. No fiscal impact to Capital Metro is anticipated.

ISSUE 6: Capital Metro should be statutorily required to have an independent performance audit conducted once every four years to provide additional oversight and management information to the agency.

BACKGROUND

Capital Metro is not required, either by statute or board rules, to have any outside evaluation of its performance or to report on its performance to state and local officials on a regular basis. The board voluntarily contracted for an outside performance audit in 1987 after two years of operation. The results of that performance audit were used by the board in its efforts to improve the efficiency of the organization, but were not reported to elected officials.

Capital Metro tracks its performance internally by collecting and reporting to the board on a number of performance statistics. Some performance data is also reported to the State Department of Highways and Public Transportation. However, beyond a sunset evaluation every twelve years, Capital Metro is not subject to any regular outside evaluation of its performance.

The review examined whether sufficient procedures are in place to ensure adequate state oversight of the agency's performance. The findings of the review indicated that:

- **Transit authorities in Texas and in other states commonly use outside performance audits to improve their operations and to provide the information necessary for oversight by state and local officials.**

  -- Three of the six transit authorities in Texas are required by law to have an independent performance audit conducted once every four years. As part of the sunset process during the 71st legislative session, the statutory provisions for the Houston and Corpus Christi transit authorities were amended to include this requirement. The Dallas transit authority's statute was also amended during the same session to require regular outside performance audits, with the first audit to be completed this year.

  -- California statutorily requires all of its transit authorities to undergo independent performance audits once every three years to provide evaluative information to the state for oversight purposes.

  -- A survey of seven comparably sized transit authorities in other states indicated that six of the seven use outside performance audits on a regular basis.

- **Many transit authorities have found performance audits to be effective in improving operations and reducing unnecessary staff and costs.**

  -- The outside performance audit of Capital Metro in 1987 was one of several steps taken by the board that resulted in significant reductions in administrative staff and the overall budget of the authority that year. The proposed budget for fiscal year 1987 was reduced by $7.8 million and sixty administrative positions were eliminated.

  -- Houston Metro has also experienced significant cost savings from several outside performance audits conducted over the years. In particular, an extensive audit conducted in 1985 resulted in savings of more than $16 million in just two years.

PROBLEM

Unlike a number of Texas transit authorities, Capital Metro is not statutorily subject to any regular outside evaluation of its performance. This results in a lack of the information necessary for effective oversight by state and local officials. Capital Metro has voluntarily chosen to have an outside performance audit conducted once in the last five years, but there is no assurance that such audits will be conducted on a regular basis in the future.

RECOMMENDATION

- **Capital Metro's statute should be amended to require that independent performance audits of the authority be conducted every four years. The performance reviews should include the following:**

  -- **an examination of one or more of the following areas: administration/management, operations, or maintenance;**

  -- **an examination of performance in terms of a series of indicators with recommendations for methods of improvement in performance if needed; and**

  -- **an examination of compliance with applicable state statutes.**

Regular outside performance audits will provide the information necessary for effective oversight and should help to improve Capital Metro's efficiency and effectiveness. This approach provides sufficient flexibility to allow the agency to focus on one or more of three main areas of a transit system's operation during each audit. It will also ensure that all major areas of the agency are reviewed in the twelve-year period between sunset reviews. The statutory provisions should be structured in a manner similar to those adopted for the Houston and Corpus Christi transit systems last session to include provisions that: define the performance indicators to be used; describe the required qualifications of the auditing firm; and outline the responsibilities of Capital Metro in responding to the results of the audit and in publicizing those results. The first report should be completed and distributed by February 1, 1993 to coincide with the start of the legislative session, with future reports every four years thereafter.

FISCAL IMPACT

It is estimated that the cost to Capital Metro of meeting the statutory requirement for a performance audit would range from $30,000 to $50,000 in the year that an audit is conducted. It should be noted that this expense would be incurred every fourth year and that cost savings are frequently associated with such performance audits.

ISSUE 7: Capital Metro should be given the statutory authority to provide retirement pension plans to its employees to ensure that Capital Metro may exercise that option if necessary or desirable.

BACKGROUND

Transit authorities are not required by federal or state laws to offer a retirement pension plan to employees and Capital Metro has chosen not to offer one. Instead, Capital Metro employees are required to participate in a 401(k) deferred compensation plan. Offering a 401(k) deferred compensation plan is authorized by state law for all public agencies. However, Capital Metro may eventually decide to provide a retirement pension plan to employees as an additional benefit or to replace the 401(k) plan. Currently Capital Metro does not have specific statutory authority to provide a retirement pension plan.

A review of state laws and policies regarding the authority of governmental subdivisions to offer or participate in retirement pension plans indicated that:

- **The state attorney general's office has found that special governmental subdivisions in Texas must have specific statutory authority to provide retirement pension plans to employees.**
  - -- In 1989, the attorney general ruled that governmental subdivisions such as appraisal districts could not legally contract with a private firm to provide retirement pension plans for district employees (JM-1068). The opinion was based on the lack of provisions in statute or in the state constitution that authorize subdivisions such as appraisal districts to provide, directly or by contract, their own retirement pension plan.
  - -- In a related opinion issued in 1990, the attorney general ruled that governmental subdivisions such as appraisal districts do not have the implied statutory or constitutional authority to provide retirement pension plans to employees (JM-1142). Instead, that authority must come specifically from the legislature.
  - -- Appraisal districts and other special districts do have the statutory authority to provide deferred compensation plans, according to the attorney general (JM-1142).
- **The attorney general's opinions on appraisal districts cast doubt on whether other special districts such as Capital Metro could legally provide retirement pension plans to their employees without statutory authorization.**

- -- The attorney general has not specifically addressed the question of whether transit authorities may provide pension plans to employees. However, the attorney general stated that, in addition to appraisal districts, other special districts do not have the authority to create their own retirement pension plans.

- -- Capital Metro is a special government district, authorized by state statute, approved by local voters, and provided with many governmental privileges such as the authority to tax. The Capital Metro board has general statutory authority to perform management duties such as employing staff and prescribing employee compensation.

- -- Capital Metro does not have specific statutory authorization to establish retirement pension plans.

- **The legislature has given other governmental subdivisions, primarily hospital districts, the authority to provide retirement pension plans to employees.**

  - -- Hospital districts have specific statutory authority to establish their own retirement pension plans for employees. The districts may also contract with the state or federal government to provide a retirement pension plan for employees.

PROBLEM

The state attorney general has indicated that general state law does not authorize special districts such as Capital Metro to provide retirement pension plans to their employees. The attorney general has further said that special districts that wish to offer retirement pension plans to their employees should have specific statutory authority to do so. Capital Metro may eventually decide that offering a retirement pension plan to employees would be a desirable way to remain competitive with other public and private labor markets, but it does not have specific statutory authority to do so.

RECOMMENDATION

- **Capital Metro's enabling statute should be changed to authorize the agency to provide retirement pension plans to its employees.**

This recommendation will ensure that Capital Metro has a clear statutory basis to offer retirement plans to its employees should it decide to do so.

FISCAL IMPACT

No fiscal impact is expected to result from this recommendation.

ISSUE 8: Capital Metro should be required to request an advisory opinion from the U.S. Department of Labor to determine if the authority's retirement plan is subject to federal regulation, and to begin reporting on its retirement plan to the appropriate federal or state entity based on that opinion.

BACKGROUND

Like most other governmental agencies and private businesses, Capital Metro offers a retirement plan to its employees. The authority currently offers a deferred compensation plan established under Section 401(k) of the Internal Revenue Code. Participation in this plan is mandatory for employees of the authority because this is the only retirement plan offered.

Many of the persons working to provide Capital Metro's services are not direct employees of the authority. Capital Metro contracts with a private management company that employs bus drivers and mechanics for the authority. Employees of the management firm do not participate in the deferred compensation plan that Capital Metro offers for the employees it hires directly. Instead, the management company provides a separate retirement plan for these individuals.

Both public and private entities are generally required to report on their retirement plans to some governmental oversight body. A comparison of the reporting procedures for Capital Metro's retirement plan and the reporting procedures for other government and private pension plans indicated that:

- **Most government and private retirement plans in Texas are required to report annually to state or federal agencies that specialize in examining such plans.**

  -- Private businesses must file annual reports on their retirement pension plans with the U.S. Department of Labor under the federal Employee Retirement Income Security Act (ERISA). In 1986, the U.S. Department of Labor received reports on 68,694 pension plans in Texas.

  -- All Texas state agencies and political subdivisions with retirement pension plans are required to file a report each year with the State Pension Review Board, which was created by the legislature in 1979 to review public retirement pension plans. In 1989, 129 state, local and special district agencies in Texas reported to the state board. Included in this number are two Texas transit authorities, San Antonio VIA and Houston Metro.

- **Capital Metro does not report on its deferred compensation plan to any state or federal oversight agencies.**

- Capital Metro officials have stated that they are not currently reporting to the Department of Labor because they believe that Capital Metro is a governmental agency and therefore does not fall under the requirements of ERISA.

- Capital Metro is also not reporting to the State Pension Review Board, although it would appear to fall under the board's jurisdiction if it is not subject to the federal requirements of ERISA.

▸ It is unclear whether Capital Metro should report on its deferred compensation plan to the federal government.

- According to Department of Labor officials, the use of a management company to provide a large percentage of the labor for Capital Metro's services adds a "private" element to the authority, which may be sufficient to put both of the authority's retirement plans under the jurisdiction of ERISA.

- Department of Labor officials have advised that Capital Metro should request an advisory opinion from the department so that the specific circumstances of Capital Metro, including its use of a management company, can be considered in determining whether it is subject to federal regulation under ERISA.

▸ If Capital Metro is not required to report to the federal government on its retirement plan, then it should report to the State Pension Review Board.

- The State Pension Review Board is required by state law to examine retirement plans, including 401(k) plans, for "officers or employees of the state or a political subdivision, of an agency or instrumentality of the state or a political subdivision."

- Article 1118x, V.T.C.S., defines Capital Metro as a metropolitan transportation authority that constitutes "a public body corporate and politic, exercising public and essential governmental functions." The statute further authorizes Capital Metro to impose a local sales tax to provide public revenues to help fund the agency's operations. Since Capital Metro is a governmental agency under state jurisdiction, its retirement plan would appear to fall under the reporting requirements of the State Pension Review Board.

PROBLEM

Capital Metro is not reporting on its deferred compensation plan, which is its only retirement plan, to any state or federal oversight agency. If Capital Metro is subject to federal requirements, these would supercede state reporting requirements regarding pension plans. However, no determination can be made concerning whether Capital Metro is subject to federal regulation without an advisory opinion from the Department of Labor.

RECOMMENDATION

- **Capital Metro's statute should be amended to require the authority to request an advisory opinion from the Department of Labor concerning whether its retirement plan is subject to federal regulation, and to begin reporting on its retirement plan to the appropriate federal or state entity based on that opinion.**

This change will ensure that Capital Metro's retirement plan is subject to an independent examination by an outside government agency that specializes in reviewing retirement pension plans. If the Department of Labor determines that Capital Metro is subject to federal regulation under the Employee Retirement Income Security Act, Capital Metro should begin reporting to the Department of Labor. However, if the Department of Labor determines that Capital Metro's retirement plan is exempt from federal regulation, Capital Metro should be required to begin reporting to the State Pension Review Board.

FISCAL IMPACT

No fiscal impact is expected as a result of this recommendation. The State Pension Review Board has indicated that if it is determined that Capital Metro falls under its jurisdiction, review of Capital Metro's reports can be carried out with the board's current staff and budget. Capital Metro should not incur additional costs because the authority already tracks the information required for reporting.

ISSUE 9: Capital Metro's statutory provisions for exemption from alternative fuel guidelines should be changed to make them consistent with the provisions applied to other agencies.

BACKGROUND

Senate Bill No. 740, enacted by the 71st Legislature, requires school districts, state agencies with fleets of over fifteen vehicles, and transportation authorities such as Capital Metro to convert their vehicle fleets to the use of alternative fuels, such as compressed natural gas or methanol. The bill includes two statutory provisions to require the affected entities to move towards fleet conversion. The first requirement prohibits the purchase or lease of conventionally-fueled vehicles after September 1991. The second requirement outlines a timetable for converting the fleets. Each of these entities must have 30 percent of its fleet using alternative fuels by 1994, and 50 percent by 1996. If the Texas Air Control Board (TACB) finds that the program has been effective in reducing pollution in the area, the entity may be required to have 90 percent of its fleet capable of using alternative fuels by 1998. The provisions for school districts, state agencies and transit authorities are similar except that school districts and state agencies may obtain a waiver or reduction in the percentages required for conversion, but transit authorities cannot.

Senate Bill No. 769, enacted by the 71st Legislature, amended the Texas Clean Air Act to add additional alternative fuel provisions for transit authorities in metropolitan areas that do not meet federal air quality standards. Affected transit authorities are those in Dallas, Houston and El Paso. These provisions include an identical timetable for conversion of the fleets, but allow the TACB to waive or reduce the conversion percentages for these transit authorities.

According to Capital Metro staff, engines powered by compressed natural gas, methanol, or electricity offer the best possibilities as alternatives to diesel fuel. Transit authorities in Texas, including Capital Metro, have focused their efforts on compressed natural gas (CNG), partly because it is seen as beneficial to the economy of Texas to encourage technology that uses a natural resource that is available in Texas. The other alternative fuels involve drawbacks that are not present with compressed natural gas: methanol is thought to pose some health and safety risks; the technology for electric engines is still in the developmental stages, and is not available for buses at this time; and propane is also not currently available for buses and other heavy-duty vehicles.

Because of uncertainty about the availability and cost of alternative fuel technology, both Senate Bill No. 740 and Senate Bill No. 769 outline certain conditions for exemptions from the requirements for conversion. The statutory requirements governing Capital Metro's ability to obtain exemptions from the alternative fuel guidelines were examined to determine whether they were consistent with the provisions applied to other entities. The review indicated the following:

- **Capital Metro's statute does not give it any flexibility to obtain an exemption or modification of the timetable for converting its fleet if the need exists.**

  -- Capital Metro must meet the conversion guidelines that require it to have 30 percent of its fleet converted by 1994 and 50 percent of its fleet converted by 1996. Capital Metro is not authorized, under any circumstances, to obtain an exemption or modification of the timeframes for converting its fleet.

  -- Transit authorities in Dallas, Houston and El Paso have the same timetable for conversion but may obtain a waiver or modification of the timetable requirements if approved by the Texas Air Control Board. The provisions authorize an exemption if the transit authority can prove that it cannot obtain sufficient financing from the proposed fuel supplier to cover additional costs tied to the conversion, or that it operates in an area that does not have a central refueling station for alternative fuels.

  -- School districts and state agencies also have the same timetable but can obtain a modification or waiver of the requirements if approved by the State Purchasing and General Services Commission. The provisions authorize an exemption if a school district or state agency can prove that it is unable to buy alternative fuel equipment without incurring greater net costs over the life of the equipment than would be incurred by continued use of traditional fuels, or that it operates in an area that does not have a central refueling station.

- **The lack of ability to request and be granted an exemption or modification of the timetable requirements may cause Capital Metro unnecessary expense.**

  -- Capital Metro replaces buses according to a schedule that is based on guidelines established by the federal Urban Mass Transportation Administration (UMTA). If Capital Metro follows the UMTA schedule, it will not be replacing buses fast enough to meet the deadlines set by the state. Capital Metro will have replaced only 20 percent, rather than 30 percent, of its fleet by 1994, only 37 percent, rather than 50 percent, by 1996, and only 78 percent, rather than 90 percent, by 1998.

  -- If Capital Metro were to replace some vehicles earlier than is outlined in its replacement schedule in order to meet the state guidelines, it would have to return an annualized portion of the funding that UMTA originally provided to buy those vehicles. This would amount to an estimated $2.3 million that would be lost if Capital Metro followed the state's timetable for conversion of its fleet.

  -- Transit authorities that have begun buying alternatively-fueled buses report that the prices are very high. For example, while the current price for a diesel-fueled, 40-foot bus with a wheelchair lift and air-conditioning is $185,000, bids for CNG-fueled buses have come in between $285,000 and $304,000. According to Capital Metro staff, the cost of alternatively-fueled vehicles will remain high until there is more competition among manufacturers. That competition in CNG engines will not begin until 1992 when a second manufacturer will begin producing a limited number of engines. Prices for methanol engines are similarly high, because there is only one manufacturer at this time.

-- Capital Metro could meet the state's deadlines by converting its current diesel-fueled buses to use alternative fuels, such as CNG. That conversion would cost approximately $100,000 per bus, and under UMTA guidelines Capital Metro would have to then keep those buses in service for an additional five years. This is a problem because buses become more expensive to maintain as they age. Also, the industry has had very little experience with converting diesel buses to CNG, so there is little information about what conversion will do to the structure of the bus. Industry experts have expressed some concern that the additional fuel capacity necessary to run buses on compressed natural gas will add more weight to the buses than they were built to withstand.

PROBLEM

Even though Capital Metro faces the same difficulties as other entities in converting its fleet to use alternative fuels, Capital Metro is not given the opportunity to obtain an exemption or modification of the timetable for converting its fleet. This may result in unnecessary expenditures and the unnecessary replacement or conversion of vehicles.

RECOMMENDATION

- **The statutory provisions governing Capital Metro's ability to obtain exemptions from alternative fuel guidelines should be changed to:**

  -- **require the Capital Metro board to apply to the Texas Air Control Board (TACB) for an exemption from any requirement of the alternative fuel guidelines; and**

  -- **authorize the TACB to exempt Capital Metro from the requirement to buy only alternatively-fueled vehicles after 1991 and to waive or modify the timetable for fleet conversion if Capital Metro meets the same conditions that apply to state agencies and school districts.**

The TACB should be directed to develop rules to guide this process. These rules should include provisions requiring Capital Metro to hold a public hearing and to develop an alternative implementation schedule before applying to the TACB for exemption. To obtain an exemption, Capital Metro should be required to certify to the TACB that it is unable to acquire alternative fuel equipment without incurring greater net costs over the life of the equipment than would be incurred by continued use of traditional fuels, or that it operates in an area that does not have a central refueling station for alternative fuels.

These changes in the provisions for Capital Metro would make them more consistent with the provisions applied to school district fleets and state agency fleets. The changes would also ensure public input into Capital Metro's decision-making, as well as oversight by an outside entity. Finally, the provision authorizing the TACB to adopt a modified schedule would allow some flexibility in the conversion process without exempting Capital Metro from it entirely.

FISCAL IMPACT

While implementation of these provisions may add to the workload of the Texas Air Control Board, it is anticipated that it can be accomplished with existing resources. No additional cost to Capital Metro is anticipated as a result of complying with these provisions.

ISSUE 10: The statute should be amended to authorize Capital Metro to extend its free fare program on an annual basis only after an evaluation of the program's costs and benefits.

BACKGROUND

In October 1989, Capital Metro began a demonstration project in which fares on all of its buses were eliminated and passengers could ride the bus for free. The initial demonstration project was only scheduled to last three months as a means for promoting transit services in the Austin area. However, in December 1989 the board voted to extend free fares for another full year, from January to December 1990. In addition, at its July 1990 board meeting, the board is scheduled to consider a proposal to further extend the free fare program for another five years.

Free fare programs have been used by various transit systems nationally to accomplish a variety of goals such as attracting new riders or assisting certain low-income groups who cannot afford to pay fares. Transit authorities generally limit their free fare projects to particular segments of their ridership or to certain times, such as off-peak hours. Transit authorities typically use free fares as short-term promotional efforts, designed to attract new riders who may then continue to ride even when fares are reinstated.

The fare policies of Capital Metro were compared to the fare policies used by other transit agencies. To be successful, a free fare program should have clearly stated goals and the benefits of the program should be weighed against any loss in revenue or other problems that arise as a result of eliminating fares. The review of Capital Metro's program focused on determining whether the goals of the program are being met and whether the costs and benefits have been appropriately evaluated. The review determined the following:

- **Capital Metro is the only transit authority that has a policy of providing all services for free.**

  -- Capital Metro is the only transit authority that has adopted a policy of free fares for all its riders for an extended period of time. Other free fare programs identified in the review were more narrowly focused on a segment of ridership and a specific time period. For example, the transit authorities in Denver, Colorado, and Trenton, New Jersey, ran one-year demonstration projects in which they offered free fares during off-peak hours on some routes. As another example, during the summer of 1987, the Corpus Christi transit authority allowed riders under 18 to ride free.

- **The data that Capital Metro has collected indicates that the free fare program has increased ridership. However, the program may be negatively impacting the quality of services and has significantly reduced revenues.**

-- During the period that free fares have been in effect, Capital Metro's ridership has gone up by approximately 88 percent, from an average weekday ridership of 40,000 trips between January and March 1989 to an average weekday ridership of 75,000 trips during the same period in 1990.

-- While ridership has gone up by 88 percent in the period mentioned, the number of security incidents on Capital Metro buses has increased at an even more rapid rate during this same period. Security incidents have increased from 49 to 119 incidents, an increase of 143 percent. Disputes between passengers, intoxicated passengers, and incidents of weapons on the buses are among the types of security incidents that have increased significantly.

-- Austin Independent School District officials have expressed concern that the free fare program has promoted truancy by enhancing student mobility. Other community leaders have expressed concern that the free fares have encouraged "undesirable" riders, including youth gang members and transients, who they perceive may pose a threat to the safety of other passengers.

-- During implementation of the free fare program, Capital Metro has incurred a loss of approximately $3.5 million in passenger fare revenue and an increase of approximately $2 million in expenditures on labor, promotional activities, and security.

▶ **Capital Metro is currently considering extending the free fare program on a long-term basis.**

-- The free fare program was originally adopted as a three-month demonstration project. It was extended through fiscal year 1990 on the basis that the program had received a positive response from the community. The board is scheduled, at its July 1990 meeting, to consider a proposal to continue the free fare program for a five-year period.

PROBLEM

Capital Metro's free fare program has resulted in increased ridership. However, while ridership has increased, available statistics and comments from school officials and community leaders indicate that the free fare policy may have caused an increase in the problems on buses and may have aggravated student truancy. The Capital Metro board is considering extending the program on a long-term basis. If the program is extended, the potential problems with the free fare policy indicate the need for its continued and systematic evaluation.

RECOMMENDATION

- **The statute should be amended to require that, if Capital Metro continues its free fare program, the board:**

- -- **must develop and adopt clearly defined goals for the free fare program; and**
- -- **may extend the free fare program only for one year at a time after an annual evaluation of its costs and benefits.**

This recommendation requires the board to adopt clearly defined goals for the free fare program, if it plans to continue the program. Affirmative action of the board would be required each year to extend the program. This action could not be taken until an evaluation of the free fare program had been conducted in light of the goals set for the program. The evaluation should also include an examination of the long-term impacts of eliminating fares and whether reduced fares might achieve many of the same benefits without resulting in some of the undesirable effects of a completely free fare program.

FISCAL IMPACT

The fiscal impact of this recommendation to Capital Metro will depend largely on the depth of the annual evaluation of the free fare program. However, the cost should be minimal because it is anticipated that the evaluation work will be conducted by existing staff.

Appendix

Exhibit 1

Capital Metro: Comparison of 1989 System and Operating Characteristics

	Austin*	Average of Other Systems	San Mateo, California	Sacramento, California	Dayton, Ohio	Memphis, Tennessee	Norfolk, Virginia	Tacoma, Washington	Broward County, Florida
Total Passengers (in millions)	14.2	14.4	18.2	16.9	15.3	14.3	10.7	10.5	14.8
Total Operating Costs (in millions)	$31.8	$28.7	$38.1	$35.2	$29.1	$19.2	$20.5	$23.5	$35.1
Total Revenue Miles (in millions)	9.5	7.6	7.4	6.9	7.1	6.9	6.6	6.9	11.1
Peak No. of Vehicles in Service	186	222	256	199	235	168	233	218	247
Passengers Per Revenue Mile**	1.50	1.92	2.46	2.45	2.15	2.08	1.61	1.52	1.34
Operating Cost Per Passenger	$2.24	$1.99	$2.09	$2.08	$1.91	$1.34	$1.92	$2.23	$2.37
Total Operating Cost Per Revenue Mile***	$3.35	$3.78	$5.15	$5.09	$4.10	$2.78	$3.10	$3.39	$3.16
Total Operating Cost Per Vehicle Hour****	$42.25	$50.68	$53.34	$70.58	$61.44	$38.43	$32.16	$44.39	$54.47

*Does not include the University of Texas shuttle service.
**Refers to the average number of passengers carried for each mile a bus is in service on a route.
***Refers to the average cost of operating the system for each mile a bus is in service on a route.
****Refers to the average cost to operate a bus for one hour in service on a route.

Exhibit 2
Capital Metro: Comparison of 1989 Operating Costs

	Austin*	Average of Other Systems	San Mateo, California	Sacramento, California	Dayton, Ohio	Memphis, Tennessee	Norfolk, Virginia	Tacoma, Washington	Broward County, Florida
General Administration	6,757,585 (21.2%)	5,891,149 (20.6%)	7,586,048 (19.9%)	11,355,701 (32.2%)	5,013,811 (17.2%)	2,598,039 (13.5%)	3,994,368 (19.5%)	3,984,988 (16.9%)	6,730,085 (19.2%)
Vehicle Operations	16,070,345 (50.5%)	15,196,556 (53.0%)	19,198,653 (50.4%)	16,438,166 (46.6%)	16,167,291 (55.6%)	12,022,817 (62.8%)	10,253,012 (50.0%)	13,796,692 (58.7%)	18,499,258 (52.8%)
Vehicle Maintenance	5,231,674 (16.4%)	5,395,882 (18.8%)	6,675,678 (17.5%)	5,355,214 (15.2%)	6,209,522 (21.3%)	3,627,809 (18.9%)	5,025,811 (24.5%)	3,703,922 (15.7%)	7,173,219 (20.5%)
Non Vehicle Maintenance	846,407 (2.7%)	1,022,334 (3.6%)	870,789 (2.3%)	2,090,860 (5.9%)	1,250,018 (4.3%)	856,672 (4.5%)	653,851 (3.2%)	992,332 (4.2%)	441,814 (1.3%)
Purchased Transportation	2,913,902 (9.2%)	1,152,520 (4.0%)	3,733,948 (9.8%)	0 (0%)	460,437 (1.6%)	47,043 (.2%)	590,697 (2.9%)	1,043,535 (4.4%)	2,191,977 (6.3%)
Total Operating Costs	$31,819,913 (100%)	$28,658,440 (100%)	$38,065,116 (100%)	$35,239,941 (100%)	$29,101,079 (100%)	$19,152,380 (100%)	$20,517,739 (100%)	$23,521,469 (100%)	$35,036,353 (100%)

*Does not include the University of Texas shuttle service.

Exhibit 3

Capital Metro: Selected Performance Indicators

Indicator	FY 1986	FY 1989 (withoutUT)*	FY 1989 (withUT)**
Total annual ridership	8,301,377	14,214,478	21,702,538
Total revenue vehicle miles	5,801,523	9,497,088	11,847,332
Number of vehicles available for peak service	179	186	256
Operating cost per passenger trip	$3.52	$2.24	$1.61
Operating cost per vehicle mile	$5.03	$3.35	$2.94
Fare recovery ratio	9.2%	8.2%***	16.7%
On-time performance	Not Available	75.2%	Not Available
Miles between road calls	5,639	8,523	Not Available
Vehicle accidents per 100,000 miles	5.9	3.4	Not Available

*Does not include University of Texas shuttle service.
**Does include University of Texas shuttle service.
***Free fare project in effect for three months of this year.

Capital Metropolitan Transportation Authority

<u>Report prepared by</u>:

Ginny McKay

Carrie Luttbeg

Karl Spock

Sunset Advisory Commission
P. O. Box 13066, Capitol Station, Austin, Texas 78711

(512) 463-1300