



**Texas  
Sunset  
Advisory  
Commission**

---

**STAFF EVALUATION**

---

*State Department of Highways  
and Public Transportation*

---

---

**A Staff Report  
to the  
Sunset Advisory Commission**

TEXAS SUNSET ADVISORY COMMISSION

Membership

Senator Gonzalo Barrientos, Chair

Representative Lena Guerrero, Vice-Chair

Senator Steve Carriker

Representative David Cain

Senator Gene Green

Representative Bruce Gibson

Senator Don Henderson

Representative Ashley Smith

Nancy C. Speck, Public Member

Lynn Eggers, Public Member

Bill Wells, Director

**STATE DEPARTMENT OF HIGHWAYS AND  
PUBLIC TRANSPORTATION**

**July 1990**



---

# Table of Contents

---

	<u>PAGE</u>
<b>Summary</b>	1
<b>Background</b>	
Creation and Powers .....	3
Policy-making Body .....	4
Funding and Organization .....	4
Programs and Functions .....	10
<b>Results of Review</b>	
Overall Approach to Review .....	19
Assessment of Need for Agency Functions	
Issue 1 - Continue agency functions .....	21
Assessment of Organizational Alternatives	
Issue 2 - Maintain the department as a separate agency .....	23
Recommendations if Agency is Continued	
<u>Policy-making Body</u>	
Issue 3 - Increase the size of the commission to six members .....	25
Issue 4 - Remove requirement for agency director to be a registered engineer .....	29
<u>Overall Administration</u>	
Issue 5 - Require monthly payments to contractors to be made no earlier than the 10th of each month .....	33
Issue 6 - Increase efforts to recruit and hire minority employees at the professional and upper management levels .....	37

---

---

# Table of Contents

---

## Results of Review (cont.)

	<u>PAGE</u>
Issue 7 - Require the agency to participate in the state's competitive cost review program .....	45
<u>Evaluation of Programs</u>	
Issue 8 - Develop the process for selecting highway projects through the state's rulemaking process .....	49
Issue 9 - Develop the process for performing environmental impact reviews through the state's rulemaking process .....	53
Issue 10 - Create an advisory committee to assist in the development of the project selection and environmental review processes .....	59
Issue 11 - Establish a disadvantaged business program for state-funded construction, maintenance and purchasing contracts .....	63
Issue 12 - Remove the requirement that the department pay for moving utility lines on interstate highway projects .....	69
Issue 13 - Create a public transportation advisory committee .....	73
Issue 14 - Establish a highway maintenance fee for overweight vehicles .....	77
Issue 15 - Establish a system of administrative penalties for violations of the state's overweight vehicle laws .....	81
Issue 16 - Remove requirements for surety bonds for overweight vehicles .....	87

---

---

# Table of Contents

---

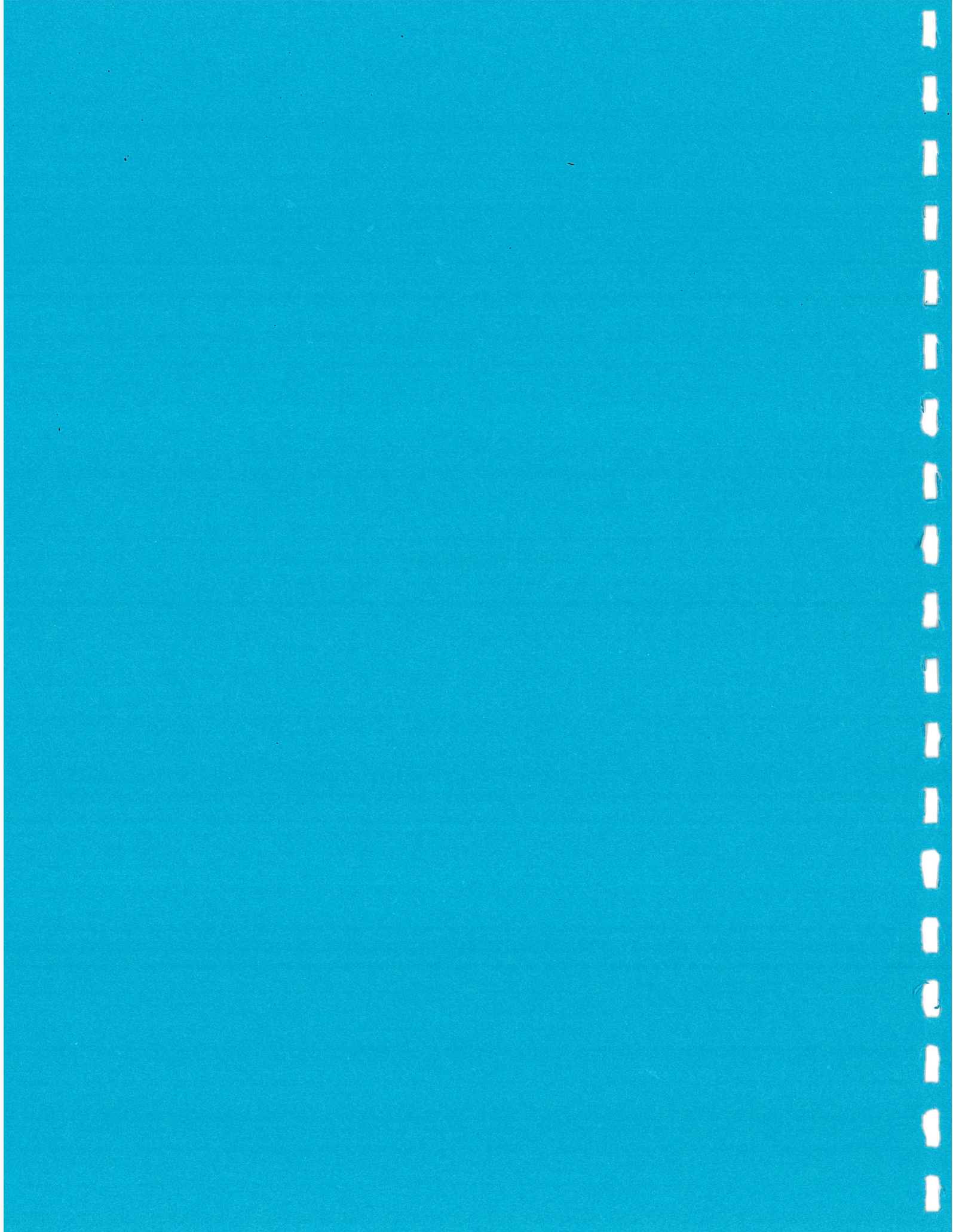
	<u>PAGE</u>
<b>Across-the-Board Recommendations</b>	91
<b>Appendix</b>	
Exhibit 1 - SDHPT contractor payments by days of month .....	93
Exhibit 2 - SDHPT female and minority employment: Years 1980 to 1990 .....	94
Exhibit 3 - SDHPT employment statistics .....	95
Exhibit 4 - SDHPT minority employment goals .....	96
Exhibit 5 - Proposed overweight vehicle administrative penalty schedule .....	97

---





**SUMMARY**



## Summary

The State Department of Highways and Public Transportation is subject to the Sunset Act and will be automatically abolished unless statutorily continued by the 72nd Legislature in 1991. The review of the department included an assessment of: the need for the functions of the agency; benefits that could be gained through transfer of all or part of the agency's functions to another existing agency; and changes needed if the agency were 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 State Department of Highways and Public Transportation should be continued for a 12-year period. The primary functions of the department to plan, build and maintain a system of state highways continue to be needed. The Texas highway program has been generally cost effective in comparison to other states. In addition, abolishing the department without transferring the functions to another agency would result in the loss of almost one billion dollars a year in federal funds.

### Assessment of Organizational Alternatives

If the decision is made to continue the functions of the agency, the review concluded that the State Department of Highways and Public Transportation should be continued as a separate agency. The department already serves as an umbrella transportation agency through its activities in the areas of public transportation, traffic safety, registration of motor vehicles, and the permitting of overweight trucks. As certain other transportation related agencies, such as the Texas Turnpike Authority and the Department of Aviation, undergo sunset review, an evaluation will be made whether or not the functions of these agencies should be transferred to the State Department of Highways and Public Transportation.

### Recommendations if Agency is Continued

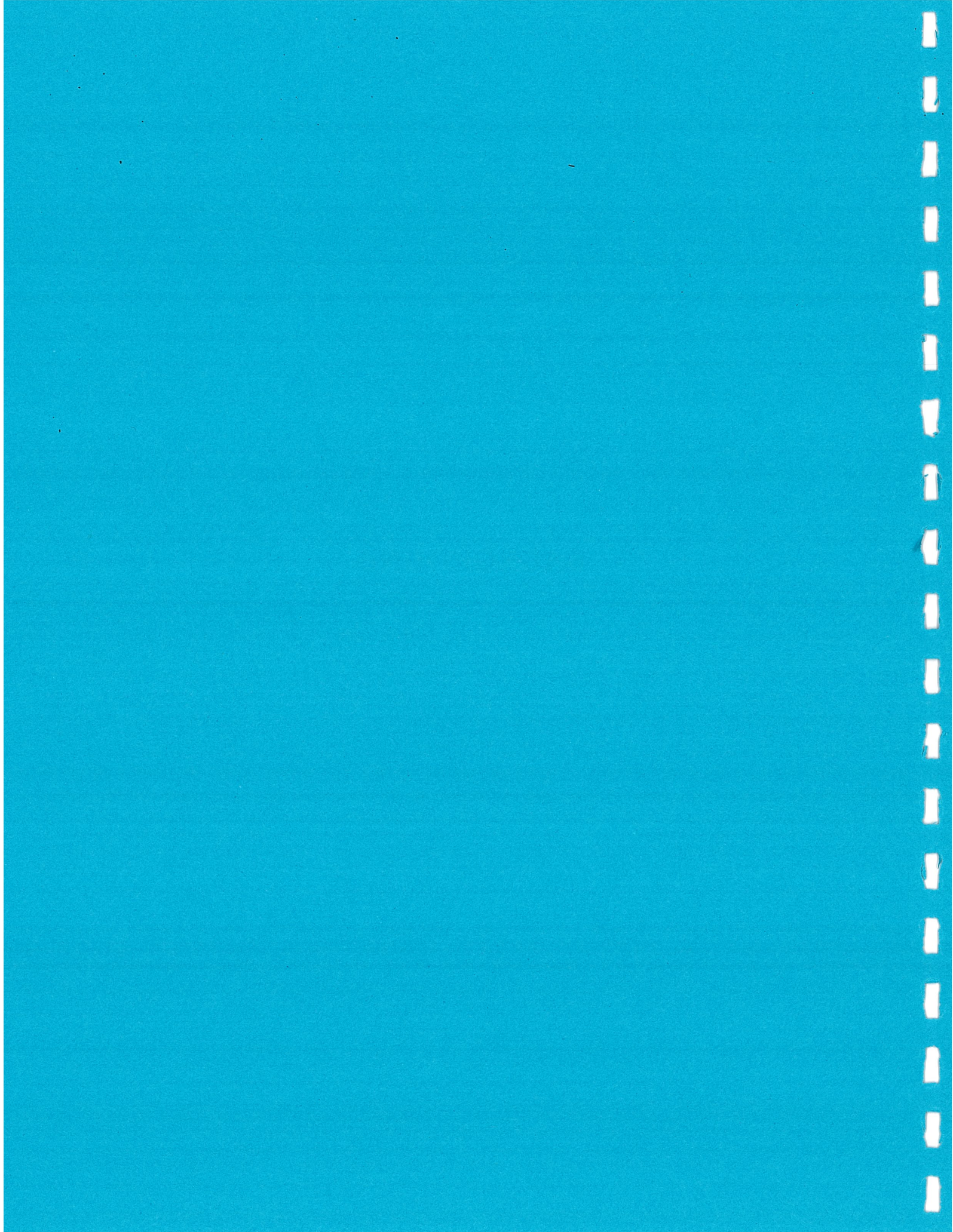
- The size of the commission should be increased from three to six members and the requirement for the director of the agency to be a registered engineer should be removed.
- The administration of the agency should be modified by:
  - requiring the SDHPT to make monthly payments to contractors no earlier than the 10th of each month;
  - increasing efforts to recruit and hire minority employees at the professional and upper management levels of the agency; and
  - requiring the agency to participate in the state's competitive cost review program.

- The operation of the agency's programs should be improved by:
  - developing and adopting the processes for selecting highway projects and performing environmental impact reviews of proposed state-funded projects through the state's formal rulemaking process;
  - creating two advisory committees, one to assist in the development of the project selection and environmental review processes and another to aid in the department's public transportation efforts;
  - removing the statutory requirement that the department pay for moving utility lines on interstate highway projects;
  - establishing a disadvantaged business program for state-funded construction, maintenance and purchasing contracts; and
  - changing the regulation of overweight vehicles to establish a highway maintenance fee, remove requirements for surety bonds, and provide for a system of administrative, as opposed to criminal, penalties for violations of the state's overweight vehicle laws.

### FISCAL IMPACT

Preliminary estimates indicate that the recommendations will produce a net revenue gain of \$19.5 million per year.

**BACKGROUND**



## Creation and Powers

The 35th Legislature created the State Highway Department and a three-member commission in 1917 to take advantage of federal funds made available by the Federal Highway Act of 1916. The department's initial responsibilities were to grant financial aid and direct the road construction programs of the counties, to make sure that proper materials were used in the highway construction process, and to ensure that engineers were qualified.

The duties and responsibilities of the department have broadened and changed substantially since it was created in 1917. In 1921, congress amended the Federal Highway Act of 1916, requiring all state highway departments to assume control of all construction and maintenance responsibilities. In 1923, the legislature responded to these amendments by giving the department control of the state highway system and removing control from the counties. The legislature also adopted a one cent per gallon gasoline tax to fund the department's growing responsibilities. One quarter of this tax was dedicated to the available school fund.

The department's tourism activities began in 1936 with the creation of 13 tourist bureaus at major highway entrances to the state. Today, the department continues to promote travel and tourism by maintaining 12 travel information centers, publishing Texas Highways magazine, and printing brochures and guides on places and events in Texas.

After World War II, the department became responsible for two large highway construction programs. In 1949, the Colson-Briscoe Act created a farm-to-market (FM) road program which was primarily intended to serve farmers, ranchers, and others traveling in rural areas. The Federal Highway Act of 1956 resulted in the creation of the interstate highway system and led to the construction of more than 3,000 miles of interstate highway in Texas.

In recent years, the department has assumed additional responsibilities related to transportation. In 1975, the State Highway Department was merged with the Texas Mass Transit Commission to form the State Department of Highways and Public Transportation (SDHPT). With this merger the department became responsible for providing assistance to local communities in developing and maintaining public transportation. Also in 1975, the department was assigned responsibility to find sites for the disposal of dredge material from the Gulf Intracoastal Waterway. The last major change occurred in 1976 when the Governor's Office on Traffic Safety was transferred to the department.

The current responsibilities of the department reflect the additional tasks which have been assigned to it over the years. These responsibilities include designing, constructing, and maintaining the state's highway system; providing technical assistance and funding for public transportation to local agencies; registering and titling motor vehicles; and sponsoring the Gulf Intracoastal Waterway.

## Policy-making Body

The State Highway and Public Transportation Commission consists of three members appointed by the governor with the advice and consent of the senate. The members serve staggered six-year terms and one member is designated by the governor to serve as chairman. The only statutory qualification to serve as a member on the commission is that an appointee be a citizen of Texas.

One of the duties of the commission is to elect the state engineer-director, who heads the department and acts as an advisor to the commission. The statute requires the state engineer-director to be a Texas registered professional engineer with experience in highway construction and maintenance and in public and mass transportation planning and development. The state engineer-director exercises administrative control over the day-to-day activities of the department.

The commission administers the state highway fund and approves plans and policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. This includes reviewing project proposals; approving the acquisition and disposition of right of way; awarding construction, maintenance, and building contracts; and authorizing project modifications and cost overruns. The commission also authorizes the disbursement of funds for public transportation and related programs. Rules and regulations concerning the operation of the department must be approved by the commission. The commission also has the authority to suspend and reinstate contractors. Commission meetings are held monthly or more frequently as determined by the commission or the chairman.

## Funding and Organization

In fiscal year 1989, the department utilized 15,414 full-time employees (FTE's) to build, manage, and maintain the highway system, and perform other required responsibilities. Of this total, 2,546 employees are in the department's headquarters in Austin. Their primary responsibility is to provide support to the 24 districts located throughout the state. There are 12,868 personnel employed in the districts. In terms of operations performed, 32.9 percent of all employees are involved in the highway construction program, 50.7 percent are involved in maintenance, and 16.4 percent are involved in administration and support. Exhibit A shows the organizational structure of the department.

As shown above, the districts perform most of the department's operations, accounting for 82 percent of the employees and almost 83 percent of the department's budget. Each district is composed of an average of 10 counties and is directed by a district engineer, who is responsible for highway planning, construction, and maintenance in that area. Each district is divided into smaller areas in which resident engineers supervise the actual construction and maintenance activities. District personnel do most of the planning and design work for highway projects within the districts. In contrast, the central office in Austin provides design and other assistance where needed and issues approvals for proceeding through the various stages of the projects. Exhibit B shows the location of the districts throughout the state.



Exhibit A  
STATE DEPARTMENT OF HIGHWAYS  
AND PUBLIC TRANSPORTATION  
ORGANIZATION CHART  
May, 1990

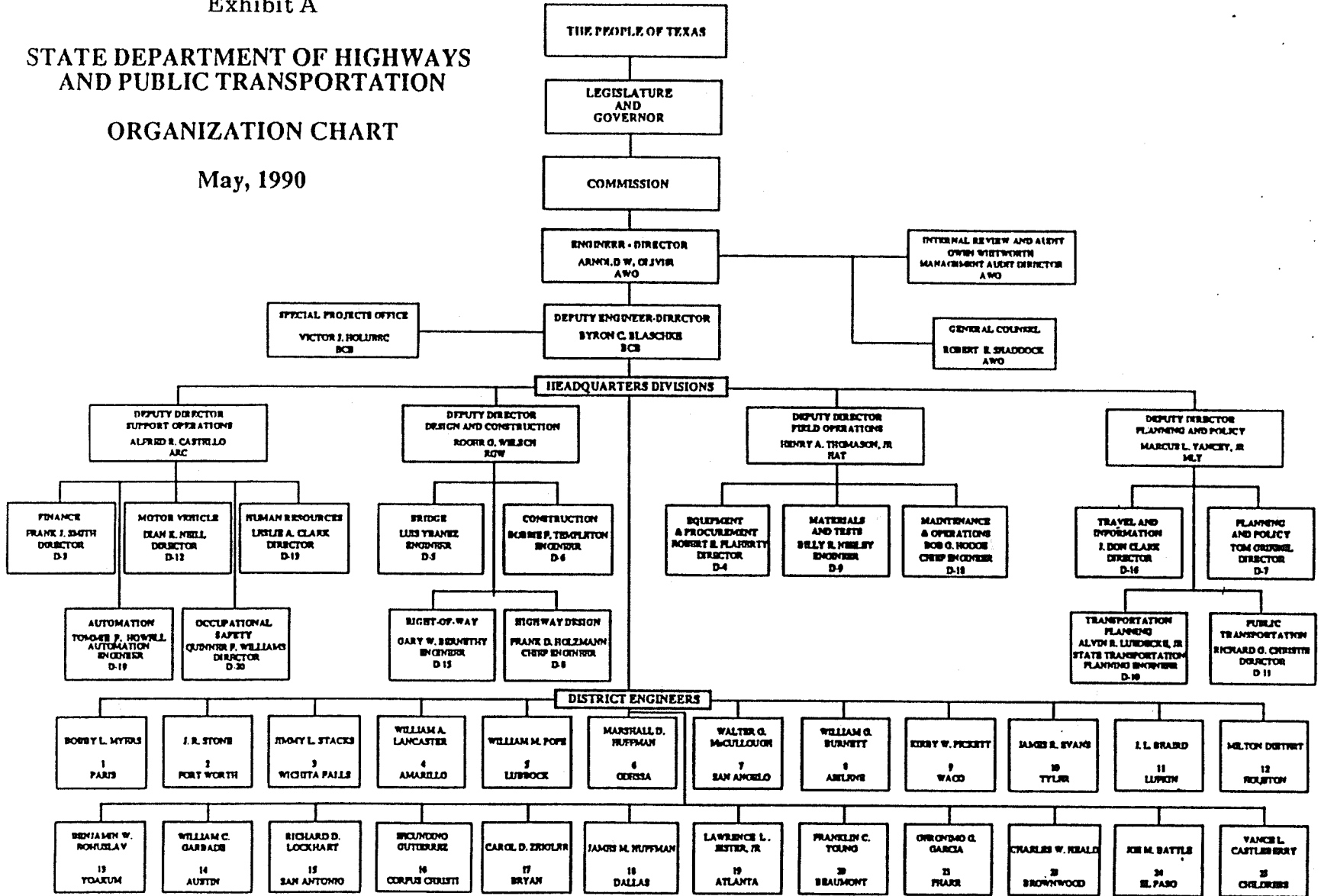
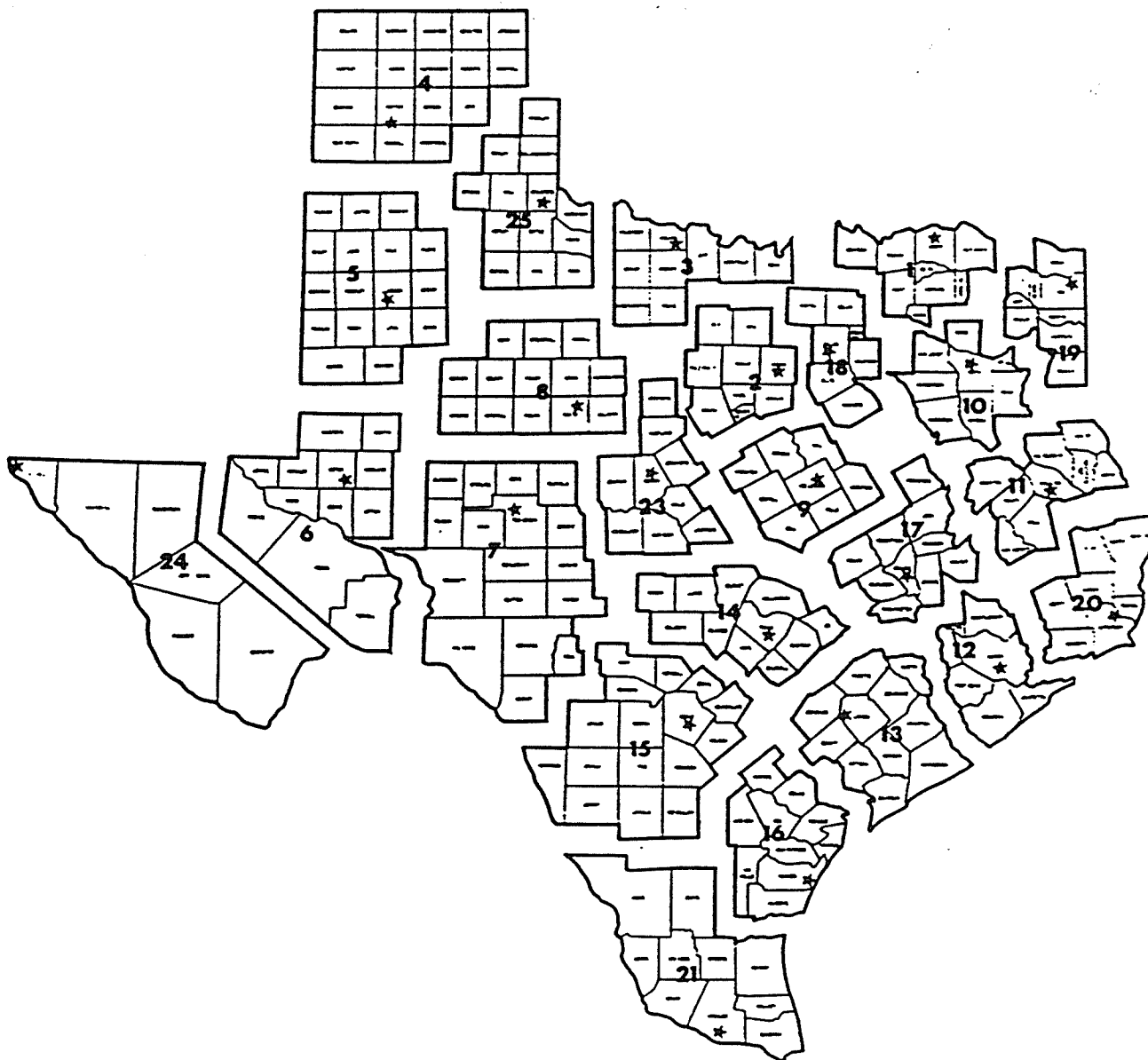


Exhibit B

TEXAS COUNTY/DISTRICT OUTLINE MAP

STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION



★ DISTRICT LOCATIONS

- |                 |              |                |                   |              |
|-----------------|--------------|----------------|-------------------|--------------|
| 1 PARIS         | 6 ODESSA     | 11 LUFKIN      | 16 CORPUS CHRISTI | 21 PHARR     |
| 2 FORT WORTH    | 7 SAN ANGELO | 12 HOUSTON     | 17 BRYAN          | 23 BROWNWOOD |
| 3 WICHITA FALLS | 8 ABILENE    | 13 YOUNG       | 18 DALLAS         | 24 EL PASO   |
| 4 AMARILLO      | 9 WACO       | 14 AUSTIN      | 19 ATLANTA        | 25 CHILDRESS |
| 5 LUBBOCK       | 10 TYLER     | 15 SAN ANTONIO | 20 BEAUMONT       |              |

To facilitate the design, construction, maintenance and use of the highway system, the department operates three equipment and supply warehouses, six regional computer centers, 12 travel information centers at major entrances to the state, 17 motor vehicle registration offices, and 20 semi-permanent materials and tests laboratories statewide.

In fiscal year 1989, the department received total revenues of approximately \$2.9 billion. Exhibit C shows the department's sources of funding for fiscal year 1989. Most of this funding comes from the state highway fund, which receives money from motor fuels taxes, vehicle registration fees, and the federal government. The department receives additional funding from special funds, such as the traffic safety fund, the public transportation fund, and the highway beautification fund. These funds obtain revenues from federal reimbursements, public and private grants, and outdoor advertising fees. Since fiscal year 1988, the department no longer receives any money from the general revenue fund.

The motor fuels tax is the primary revenue source for the highway fund. The department received approximately \$1.1 billion or 38 percent of its total revenue from motor fuels taxes in fiscal year 1989. Generally a state tax of 15 cents per gallon is levied on gasoline, diesel fuel, and liquefied petroleum gas. Of the state motor fuels taxes collected, 25 percent goes to the available school fund, while the remaining 75 percent goes to the state highway fund. In fiscal year 1989, \$369 million in motor fuels taxes went to the available school fund. In addition, the department received \$27 million from state taxes on lubricants.

Federal funds make up the second largest source of revenues, accounting for \$929 million or 32 percent of the department's budget. This revenue is composed of reimbursements and allocations from four federal agencies: the Federal Highway Administration for certain costs incurred for construction, right of way acquisition, and research; the Federal Urban Mass Transit Administration for costs associated with the administration and support of the public transportation program; the National Highway Traffic Safety Administration for traffic safety projects throughout the state; and the U.S. Army Corps of Engineers for road construction performed as a result of flood control projects.

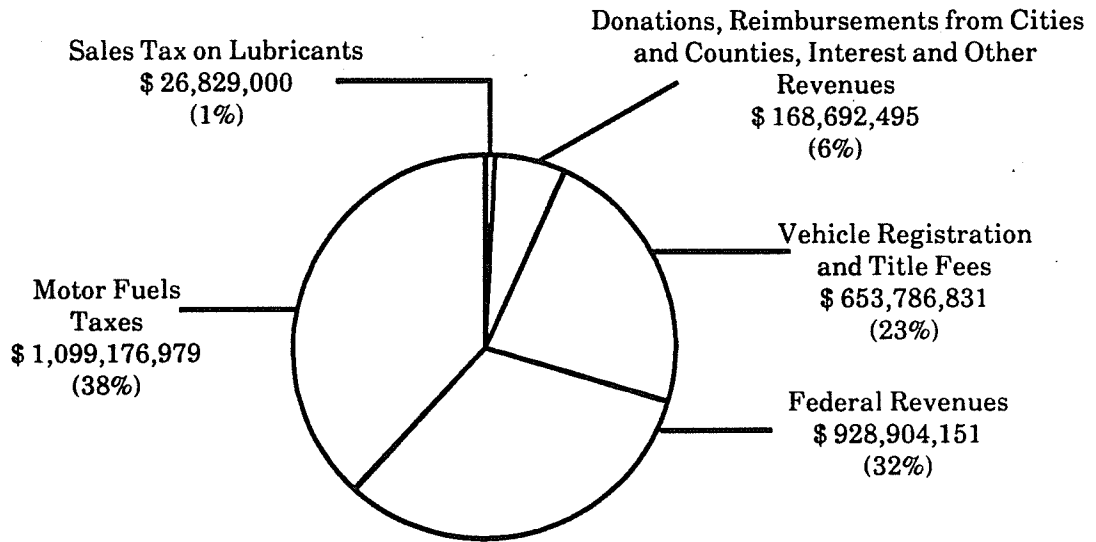
Vehicle registration and title fees accounted for more than \$654 million or 23 percent of total revenue in fiscal year 1989. All other sources of revenue, including donations, interest and reimbursements accounted for approximately \$169 million.

Department expenditures are broken into the following categories: construction; maintenance; public transportation; administration and support; and, auxiliary operations. Total expenditures for fiscal year 1989 were approximately \$2.83 billion. Exhibits C and D show the department's expenditures for fiscal year 1989.

The department's highway construction program includes preliminary planning, right-of-way acquisition, engineering and design, construction inspection, and payments to construction contractors. The construction program accounted for almost \$1.8 billion or 63 percent of total department expenditures in fiscal year 1989. Maintenance was the next largest area of activity, accounting for expenditures of almost \$575 million. Department employees perform most maintenance activities. However, in fiscal year 1989 the department contracted for 26 percent of its maintenance expenditures in response to legislative directives for more contracting of these activities. Examples of contracted activities include resurfacing road surfaces, mowing, litter pick-up, and guardrail replacement.

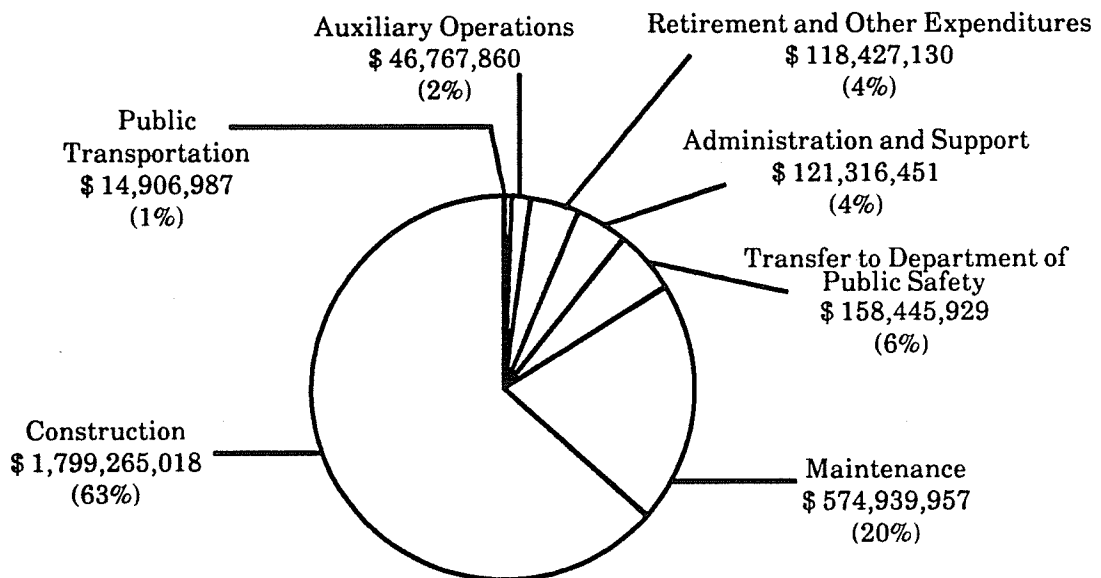
Exhibit C

State Department of Highways and Public Transportation  
Revenues (FY 1989)



Total Revenue in FY 1989: \$ 2,877,389,456

State Department of Highways and Public Transportation  
Expenditures and Encumbrances (FY 1989)



Total Expenditures and Encumbrances in FY 1989: \$ 2,834,069,332

Exhibit D

State Department of Highways and Public Transportation  
Detail of Expenditures and Encumbrances (FY 1989)

<u>Activity</u>	<u>Expenditure</u>
<b>CONSTRUCTION</b>	
Construction Management	\$ 16,273,210
Preliminary and Construction Engineering	186,271,754
Right-of-way Acquisition	136,086,459
Contractor Payments - Construction	1,460,633,595
<b>TOTAL CONSTRUCTION</b>	<b>1,799,265,018</b>
<b>MAINTENANCE</b>	
Maintenance Management	\$ 14,237,085
Maintenance Work	401,523,696
Ferries and Tunnel Operations	7,991,304
Contractor Payments	151,187,872
<b>TOTAL MAINTENANCE</b>	<b>574,939,957</b>
<b>PUBLIC TRANSPORTATION</b>	
Coordination and Technical Support	\$ 804,889
Financial Assistance	14,102,098
<b>TOTAL PUBLIC TRANSPORTATION</b>	<b>14,906,987</b>
<b>ADMINISTRATION AND SUPPORT</b>	
Executive Administration	\$ 1,095,453
Planning and Research	21,076,229
Support Operations	99,144,769
<b>TOTAL ADMINISTRATION AND SUPPORT</b>	<b>121,316,451</b>
<b>AUXILIARY OPERATIONS</b>	
Public Travel and Information Services	\$ 10,897,182
Motor Vehicle Registration and Titling	24,868,318
Off-System Railroad Grade Separation	681,326
Outdoor Advertising and Junkyard Control	111,522
Traffic Safety Promotion	9,476,771
Gulf Intracoastal Waterway	732,741
<b>TOTAL AUXILIARY SERVICES</b>	<b>46,767,860</b>
<b>OTHER EXPENDITURES</b>	
Unemployment, Insurance, and Social Security	\$ 102,631,002
Professional Fees	3,370,228
Services Provided by SPGSC	4,549,157
Transfers to Other Agencies	163,262,258
Texas Transportation Corporations	3,060,414
<b>TOTAL OTHER EXPENDITURES</b>	<b>276,873,059</b>
<b>TOTAL EXPENDITURES and ENCUMBRANCES</b>	<b>\$ 2,834,069,332</b>

The department expended about \$15 million in fiscal year 1989 for public transportation, most of which was financial assistance for public transportation providers. Such providers include rural and small city transportation systems, agencies that primarily serve elderly and handicapped populations, and the metropolitan transportation authorities. The department also spent about \$121 million for administration and support and approximately \$47 million for auxiliary operations, such as motor vehicle registration and titling, and travel and information services. In addition to these expenditures, the legislature authorized other expenditures totaling \$277 million for items such as insurance, unemployment benefits and services provided by other agencies in fiscal year 1989. These expenditures also included a transfer of \$158 million to the Texas Department of Public Safety (DPS), which represented about 78 percent of the DPS budget.

## Programs and Functions

The State Department of Highways and Public Transportation (SDHPT) is responsible for planning and constructing roadway projects, maintaining the state's roadway system, and providing assistance and funding for public transportation throughout the state. The following material describes how the department addresses these responsibilities. Because questions are often raised concerning how highway projects are chosen, the first section describes the process the department uses to decide which roadway projects it will undertake. The next section describes the department's major programs which include construction, maintenance and public transportation. The final section briefly describes the department's support functions, which include auxiliary operations and administrative activities.

### Project Development Process

The responsibility to build and maintain the highway system in Texas requires the department to make important decisions regarding the selection and timing of roadway projects. The highway commission has established broad guidelines which give the basic strategy for managing this system. The department's first priority is to preserve the existing highway system through maintenance and rehabilitation. The second priority is to improve traffic safety by upgrading and modernizing the system. The department then seeks to relieve congestion by increasing the capacity of existing roadways and building new ones. Finally, the department seeks to promote the comfort of highway users and to beautify the highway system. To meet these goals, the department must allocate resources among construction, rehabilitation and maintenance activities. Because it has limited resources to meet the activities identified, the department has developed a process to guide the selection of projects.

Since the late 1970's, the department has sought to prioritize and select roadway projects according to a Project Development Plan (PDP). The department's highway design division established the PDP to make sure that planning, resources and work efforts are directed at high priority and cost effective projects. The intent is that only the most cost effective projects move forward in the development process. The PDP lists all projects that the department intends to undertake within specified time frames. These projects are divided into nine categories which reflect the type of roadway or the type of work to be performed. For example, the department evaluates most new roads and added capacity projects through a 10-year PDP, which is updated every two years to bring in new projects and re-order remaining viable projects. As

projects are let to contract, they are no longer included in the PDP. The 10-year time frame is necessary because of the long-term planning needs of these construction projects. Other needs, such as rehabilitation and preventive maintenance are evaluated on shorter time frames. The department has established these nine categories to be able to compare and fund projects on the basis of similar characteristics. For example, projects like farm-to-market roads would not have to compete with other projects like interstate highways for authorization.

The largest segment of the department's construction activities is in building new roadways or in adding capacity to existing roadways on the interstate, U.S., or state highway systems. In an average year, these activities total \$829 million, or about 52 percent of the department's total roadway expenditures. The department spends an average of \$768 million each year for other roadway activities, including rehabilitation, preventive maintenance, and improvements to the urban roadway system.

Construction projects may be initiated in several ways. Districts and the design division may identify needed roadway projects and introduce them to the PDP. The transportation planning process administered by the department and the 25 metropolitan planning organizations (MPO's) throughout the state may identify other needs. These MPO's have been established through federal directives to provide local planning and input for federally-funded transportation programs. Projects may also arise from communication between interested parties and the highway commission, such as presentations of local officials before the commission. Other projects are identified at the district level to address short term needs such as highway rehabilitation, preventive maintenance and the farm-to-market and urban roadway systems.

To be constructed, new roadways and added-capacity projects must pass through four levels of authorization. Level I provides authorization for feasibility studies only. Level II is authorization for advanced planning through right-of-way determinations and includes necessary route and environmental studies and public hearings. Level III is authorization through the preparation of engineering plans and specifications and acquisition of right of way. The fourth level is authorization for construction. Once the commission approves a project to go to Level IV, contracts for construction projects are generally let in three to 12 months.

Typically, most project activity begins at Level II, because many proposed projects already have traffic volumes that support their feasibility. Level II is where the department conducts route studies to determine the potential alignment of the roadway. Also, at this level the department conducts an environmental assessment to determine the project's potential for significant environmental impact. In fiscal year 1989, the department conducted 459 environmental assessments, 146 of which were substantive in nature. If the department determines that a project has the potential for significant impact, it must prepare an environmental impact statement. Federal law requires the department to conduct environmental studies for projects that use federal funds. State law contains no such requirement for state-funded projects that do not use federal funds. In practice, however, the department has established a similar procedure for conducting environmental assessments and studies for state-funded projects. In fiscal year 1989, the department conducted one environmental impact statement.

After the department has completed advanced planning, and it finds the project to be cost effective, it may promote the project to the third level of development. At this level, the department prepares the engineering plans and specifications and cost estimates for the project and begins to acquire any needed right of way. The department acquires right of way either through purchase, eminent domain, or through donations of land by persons who want to facilitate the development process. If a roadway project decreases the value of the parcel of land remaining after right of way acquisition, the department must compensate the landowner for both the land taken and for any damages that result to the remaining land. In addition, the department provides relocation assistance for individuals, homeowners, and businesses who are displaced by the project.

Once the engineering work and right-of-way acquisition have been completed, the project may be advanced to Level IV, which is authorization for construction. After a project is authorized, it takes about 90 days to get into the department's monthly letting cycle prior to construction.

The PDP ranks all major new location and added capacity projects in each of the four levels on the basis of certain cost-effectiveness formulas. These formulas basically compare a project's likely cost to its effect on current or estimated traffic congestion. Projects get promoted to higher levels of authorization as their rankings improve. The rankings generally improve as the amount of traffic to be served goes up or the cost for the construction and right of way goes down. For example, if an area becomes congested, and more vehicles would be served for about the same cost, the project's ranking would be improved. If landowners donate all of the right of way for a project, costs would be reduced, which also improves the project's ranking. A project's ranking may also improve as other projects with higher needs are completed.

## Major Programs

The following section describes the department's major programs which include construction, highway maintenance and public transportation. Generally, the divisions in Austin provide overall policy direction, planning and technical assistance where needed, while the 24 districts throughout the state perform the actual functions and make the day-to-day decisions.

### Construction

Highway construction involves long-range planning, feasibility studies, environmental analyses, preliminary design and engineering, project construction and management, as well as right-of-way acquisition and other technical and regulatory activities. The department's construction activity primarily involves six divisions: transportation planning; highway design; bridge; right of way; construction; and materials and tests. The construction activity is the largest in the department in terms of expenditures, accounting for \$1.8 billion or 63 percent of the department's total expenditures in fiscal year 1989. It is the second largest activity in terms of employees with 5,083 employees or 33 percent of the department work force.

Transportation Planning Division. The transportation planning division has three major functions: collection and analysis of highway and traffic data; planning for all modes of transportation; and department research. District personnel collect highway and traffic data, while the division uses this data to develop traffic volume



and pattern forecasts. The department uses these forecasts to determine the need for new highways and highway expansions. A major activity of the division that involves both data collection and planning is the Texas Highway Trunk System, a four-lane divided highway network designed to serve all Texas cities with over 20,000 population. This system will complement the national initiative to develop a comprehensive system of four-lane, divided highways.

The transportation planning division also administers the Cooperative Highway Research Program which is intended to improve the efficiency and safety of highways in Texas by developing and testing new designs and materials, such as break-away signs and collapsible barrels surrounding bridge supports. Division personnel also provide technical assistance to the 25 metropolitan planning organizations (MPO's). These MPO's have been established through federal directives to involve local officials in the planning of federally-funded roadway and mass transit projects. Roadway projects must be approved by MPO's to be eligible for federal funding. District personnel work with the MPO's to provide data to support these local planning efforts. In fiscal year 1989, the division had 172 FTE's involved in data collection, transportation planning and research at both the division and district levels, and operated on a budget of \$31.9 million.

Highway Design Division. The highway design division is responsible for coordinating the development of plans, specifications and cost estimates (PS&E) for highway projects and ensuring that they meet established standards. The division personnel establish the standard construction plans and specifications which guide most design criteria, such as the alignment of the roadway and the structure of the pavement. The division also reviews and approves finished plans developed within the districts and changes made to a plan during construction, and it provides technical assistance to the districts as needed. In addition, the division provides assistance to the districts in the development of environmental studies and reviews and approves the studies upon completion. The division is also responsible for developing and administering the department's 10-year Project Development Plan (PDP), which guides the selection of roadway projects throughout the state. District personnel are responsible for the actual development of PS&E and environmental studies on specific projects. The highway design division operated on a budget of \$4.2 million and employed 109 FTE's in fiscal year 1989. An additional 1,846 employees provided design work in the districts.

Bridge Division. The bridge division is responsible for the development of projects involving bridges and drainage structures on the highway system. While some districts have the capability to design bridges and drainage structures, many districts rely on the bridge division to provide this type of technical expertise. To ensure that the designs are appropriate and safe, the division reviews the districts' plans, specifications, and estimates for all bridge projects.

In addition, the division administers the National Bridge Inspection Standards Program which requires the inspection of the 46,700 bridges on and off the state highway system in Texas at least every two years, and the bridge replacement and rehabilitation programs. These inspections are done by personnel in the districts with the aid of the bridge division. The Federal Highway Administration apportioned \$51.1 million to Texas for this program in 1989. The division, through the districts, is also responsible for maintaining and upgrading rail-highway grade crossings. The bridge division produces plans for approximately 150 structures and handles about 200 projects involving the installation of railroad crossing surfaces

and 250 signal projects annually. In fiscal year 1989, the division was budgeted \$4.4 million and employed 116 FTE's in the division and in the districts.

Right-of-Way Division. The right-of-way division is responsible for the acquisition of land and property for highway construction and departmental purposes. In fiscal year 1989, the department acquired 1,490 parcels of land at a cost of \$139 million. The division provides technical support to right-of-way personnel in the districts regarding appraisals, negotiations, and final settlements. Most property acquisition is conducted by right-of-way personnel in the districts. Right-of-Way personnel in the districts also enforce the Litter Abatement Act, which is concerned with outdoor advertising and junkyards located along interstates and major highways. In fiscal year 1989, the department had 391 total employees engaged in right-of-way activities in both the division and districts.

Construction Division. After the engineering and design work has been completed, the construction division assumes responsibility for a project. The primary responsibility of the division is conducting the competitive bidding process. Each month, the division conducts a contract letting process where division personnel open sealed bids and identify the lowest bidder for each contract. The division also certifies qualified contractors and approves plan changes and contract modifications proposed by the districts. State and federal laws require the department to attempt to award contracts to a certain percentage of disadvantaged business enterprises (DBE's) and to see that DBE's get a portion of subcontracts on a project. The division's equal employment opportunity section makes sure that eligible DBE's are certified to bid on projects and that the department meets its legal requirements. District personnel are responsible for the supervision and inspection of construction work done on a project. The districts are also responsible for assuring that contractors meet the terms of the contract regarding the type and amount of materials to be used and the schedule for project completion. In fiscal year 1989, there were 886 pre-qualified contractors, who bid on 842 projects valued at \$1.46 billion. The department had 67 division employees involved in construction activities in fiscal year 1989.

Materials and Tests Division. The materials and tests division is responsible for the quality control of materials used in highway construction and maintenance and in assisting districts in the proper selection of construction and maintenance materials. The division maintains a testing laboratory in Austin and in each of the 24 districts throughout the state. Districts perform tests and inspections on or near the project while the division tests and inspects products that are fabricated or produced in commercial plants. In addition to laboratories in the districts, the division also oversees field offices located throughout the state which test to ensure that materials used in construction meet department standards. The division was budgeted \$6.4 million and employed 226 FTE's who performed over 75,000 tests in fiscal year 1989.

### Highway Maintenance

The department's maintenance and operations activities are primarily intended to preserve the existing highway system. Another responsibility of the department's maintenance and operations activities is permit operations, in which it regulates oversize and overweight vehicles on state highways. Also included are the promotion of traffic safety, building management and landscaping. These activities are conducted within one division, maintenance and operations, which is the largest in

terms of personnel, with more than 7,400 employees in the division and the districts. Maintenance and operations expenditures were almost \$575 million in fiscal year 1989.

Maintenance. The division recommends the distribution of maintenance funds to the districts and formulates maintenance staffing standards as well as guidelines to promote consistent service delivery throughout the state. While the division sets overall policies, the districts are responsible for the actual maintenance work which includes resurfacing roads, controlling litter, and mowing and landscaping along the right of way. The districts maintain more than 180,000 lane miles of highways, 750,000 acres of right of way, 800 picnic areas, 100 rest areas, and the 1,400 department buildings. The districts are also responsible for two ferry systems, a tunnel near Houston, and three swing bridges. In response to legislative directives the division has intensified its efforts to privatize its maintenance activities through maintenance contracts. The level of contracted maintenance has increased from \$400,000 in 1979 to \$60 million or more than 26 percent of the department's routine maintenance activity in fiscal year 1989.

Permit Operations. The maintenance and operations division operates the department's central permit office which issues permits for oversize and overweight vehicles. The division also provides assistance to the district permit coordinators who handle questions and problems related to permits. Under this program, all vehicles exceeding the state's weight and size limits are required to obtain a permit and an approved route from the department to help ensure that the load is moved safely and with minimal damage to the state's highways. Most permits for overweight loads are for single trips and have a fee of \$20. Individuals moving mobile cranes or operating oil drilling and servicing machinery are required to obtain a special overweight permit. The fees for these permits take into account the weight of the vehicle and the distance the vehicle will travel. Oversized load permits must also be written for a single trip, or for 30 or 90 days. The fees for these permits are currently \$20, \$40, and \$80, respectively. In fiscal year 1989, the division issued 368,613 permits and collected \$8.7 million in fees which were deposited into the state highway fund. The fees will increase to \$30, \$60, and \$120 on September 1, 1990 and will be deposited into the general revenue fund.

Traffic Safety. The maintenance and operations division also administers the state's traffic safety program with the goal of reducing traffic accidents and the resulting deaths, injuries and property damage. The department seeks to improve traffic safety through traffic law enforcement and education programs designed to improve driver behavior and by projects that eliminate unsafe road conditions. The department also investigates new engineering techniques and safety products to make roads safer. In the districts, traffic engineers and traffic safety specialists implement safety programs and techniques. In fiscal year 1989, expenditures for traffic safety were \$26.8 million, of which \$8 million were from the National Highway Traffic Safety Administration, \$12 million were from the Federal Highway Administration and the remaining \$6.8 million were from the state highway fund. The department assigned 37 employees to this activity in fiscal year 1989, with 18 of these employees working at the division level and 19 in the districts.

### Public Transportation

The public transportation division's primary functions are to administer funds from federal sources and the state public transportation fund and to provide technical

assistance to urban and rural transit systems. Total funding for public transportation that was administered by the department in fiscal year 1989 was \$15.4 million, with \$14.6 million of this coming from the Urban Mass Transportation Administration (UMTA) through three federal public transportation programs and \$750,000 coming from the state.

The first federal program administered by the department provides funds to non-profit organizations to pay for vehicles and other equipment to transport elderly and handicapped people. The second program provides funds to public transportation programs in rural areas and small cities for operating expenses, administration and capital expenditures. The third program provides funds directly from UMTA to metropolitan transit authorities (MTA's) for operating costs and capital improvements.

The state public transportation program provides funds to assist MTA's, small cities, rural systems, and non-profit agencies as part of the non-federal match required for UMTA grants. Except for MTA's, these funds may also be used for operating expenses. For the 1990-1991 biennium, the legislature appropriated \$9.6 million to the public transportation program. Of this money, about \$800,000 will be used for administrative expenses and about \$8.8 million will be used for grants to transit providers. Twenty percent of these grants, or \$1.76 million will go to seven transit authorities in cities with populations greater than 200,000. Forty percent or \$3.5 million will go to the small urban systems in cities with populations between \$50,000 and \$200,000 and the remaining 40 percent will go to the rural systems. The functions of the division are carried out by 17 full-time employees in Austin with the equivalent of eight full-time employees throughout the 24 districts. District personnel in small districts often perform public transportation duties in addition to their regular duties.

### Support Functions

In addition to the department's major responsibilities of highway construction, maintenance and public transportation, the department performs other functions that do not readily fit into major categories. These activities include several auxiliary operations and administrative functions. These areas are briefly discussed in the following material.

The department performs several auxiliary operations which include motor vehicle registration and titling, providing dredge disposal sites for the Gulf Intracoastal Waterway, and promoting tourism through travel services and publications. While not directly related to the construction and maintenance of the highway system, these activities do support the statewide transportation system. In fiscal year 1989, these operations employed 599 FTE's and operated on a combined budget of \$37 million.

The motor vehicle division, through county tax collector offices, is responsible for issuing license plates, license plate validation stickers, and certificates of title for the 14 million cars and trucks in Texas and in fiscal year 1989 collected \$654 million in fees for the highway fund. The department is also responsible for evaluating and acquiring sites for the disposal of dredge material along the Gulf Intracoastal Waterway, a sheltered sea route constructed and maintained by the U.S. Army Corps of Engineers that stretches from Brownsville to Beaumont. The travel and information division is responsible for promoting recreational travel by both

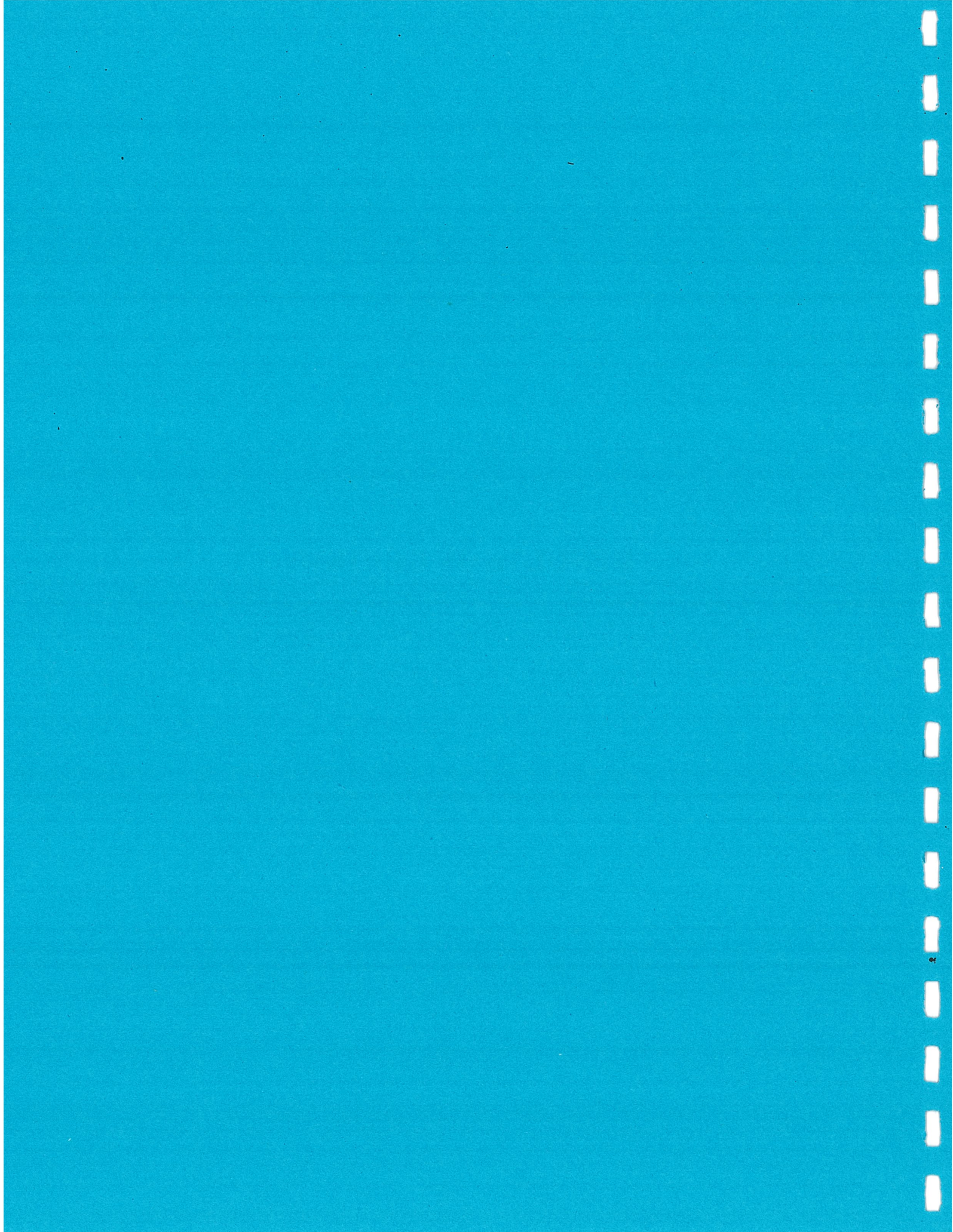
residents of Texas and non-residents, and operates 12 travel information centers at major entrances to the state, publishes Texas Highways magazine, and produces and distributes a variety of travel guides and literature.

In addition to the divisions which oversee the major programs and auxiliary functions, the central headquarters in Austin houses the department's administrative activities which include executive administration, finance, human resources, equipment and procurement, automation, planning and policy, and occupational safety. These activities support the department's day to day operations. In fiscal year 1989, these activities employed 605 persons and had a budget of \$144 million.

The state engineer-director, deputy engineer-director, and four deputy directors make up the department's executive administration which develops the policies and procedures of the department to make sure that the agency operates in an efficient and cost effective manner. The finance division implements the financial policies and procedures of the department, coordinates the financial functions of the districts and divisions, and trains personnel involved in these activities. The human resources division is responsible for recruitment, training, and classification of employees. The equipment and procurement division provides the equipment, materials, and services needed for the department's activities. The automation division provides for the management, planning, training, coordination and implementation of the automation needs of the department. The planning and policy division was formed in 1985 to provide a unit responsible for long-term systems planning, reviewing policies and procedures for consistency and clarity, performing program analysis, and analyzing legislative issues for the administration. Finally, the occupational safety division administers the department's workers' compensation program, resolves tort claims, obtains liability coverage for employees driving state vehicles, and conducts the department's safety and industrial hygiene program.



**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. If there has been a prior sunset review of the agency, the assessment draws on the experience gained in that review.

### Approach to Current Review

In accordance with the Sunset Act, the review of the State Department of Highways and Public Transportation included an assessment of the need to continue the functions performed by the department; whether benefits would be gained by combining the functions of the department 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 construction and maintenance of a system of highways was necessary. The review then examined whether benefits would result from merging the department 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, legislative reports, other states' reports, previous evaluations of department activities, and literature containing background resource material;
- interviews with key agency staff both in the central office and district offices;
- attendance at the department's annual "short course", which covers topics ranging from broad areas such as funding for transportation in Texas to technical areas such as the pavement management system;
- attendance at meetings and public hearings of the State Highway and Public Transportation Commission;
- phone and personal interviews with construction contractors, personnel from engineering schools at various universities, national highway organizations, the Federal Highway Administration, and other states' highway departments including California, New York, Florida, Illinois and others; and
- interviews with groups affected by or interested in the activities and policies of the department, including groups representing environmental

concerns, public transportation, construction contractors, highway users and others.

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 the Agency is Continued.

**Assessment of Need for Agency Functions**



## Assessment of Need for Agency Functions

**ISSUE 1: The functions of the State Department of Highways and Public Transportation should be continued.**

### BACKGROUND

The State Department of Highways and Public Transportation has been responsible for developing, building, and maintaining a state system of highways since 1917. Since that time, the department's role has expanded to include responsibilities for public transportation coordination, traffic safety promotion, the registration and titling of motor vehicles and assistance for the Gulf Intracoastal Waterway.

As of March 1990, the department has constructed and now maintains 76,886 miles of roadways, ranging from two-lane farm-to-market roads to multi-lane superhighways. This includes responsibility for 46,700 bridges in the state.

There are certain broad factors that must be present to justify the continuation of the functions of an agency. First, there must be a current and continuing public need for the state to provide the function or service. Second, the responsible agency must have carried out these functions in a generally efficient and effective manner. Third, the functions should not duplicate those of any other state agency.

The current evaluation of the need to continue the functions of the department determined that:

- ▶ The primary functions of the department to plan, build and maintain a system of state highways continue to be needed. Adequate transportation is an essential component for the economic and social progress of the state. The movement of the vast majority of goods and people in Texas takes place via the highways built and maintained under the direction of the department.
- ▶ Through past enactments, the legislature has indicated its interest in continuing and enhancing the public highway system in Texas. In 1984, the state tax on gasoline was raised from five to 10 cents per gallon, and was further increased to 15 cents per gallon in 1986. In addition, the legislature has added significant responsibilities to the department over the years. For example, in 1975 the responsibilities for the coordination of public transportation were added when the Texas Mass Transportation Commission was merged with the highway department.
- ▶ There is no other entity to perform the functions of the department. The counties and cities are not equipped or funded to maintain the existing highways. There is also no other agency set up to coordinate and plan for a statewide system of highways.

- ▶ While organizational structures may vary, all other states use an agency similar to the department to plan, build and maintain their highway systems.
- ▶ Abolishing the department without transferring the functions to another agency would result in the loss of almost \$1 billion on the average per year in federal funds. These funds are generated through revenues received from the citizens of Texas and other states by payment of the federal tax on gasoline and other highway user fees.
- ▶ The Texas program has been generally cost effective in comparison to other states. This is indicated by the fact that the department expends less funds for each mile of highway lanes than the five states most similar in terms of highway inventory, size of budget and size of work force.

Based on these factors, the review concluded that there is a continuing need for the functions of the agency.

### RECOMMENDATION

- The functions of the State Department of Highways and Public Transportation should be continued.

---

Continuing the functions of the department would ensure that our current system of highways would be maintained, that there is a mechanism in place for the construction of roads to meet existing needs, and that there is a coordinated effort to plan for the future transportation needs of the state.

### FISCAL IMPACT

If the current functions of the agency are continued, its annual appropriation from the state highway fund, which is presently about \$1.5 billion, would continue to be required. The department is fully supported by state gasoline taxes, various fees and federal funds, all of which are deposited into the highway fund. No general revenue funds would be required if the agency is continued.



**Assessment of Organizational Alternatives**



## Organizational Alternatives

**ISSUE 2: The State Department of Highways and Public Transportation should be continued as a separate agency with its current functions.**

### BACKGROUND

During each review, the potential benefits of transferring all or part of 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 the duplication of agency activities, reducing state expenditures, and increasing the amount and quality of services provided to the public.

The State Department of Highways and Public Transportation (SDHPT) is a free-standing agency whose primary responsibilities are to plan, build and maintain the state highway system and to coordinate the public transportation systems in the state. As a result of these basic duties, most of the department's activities are not regulatory or direct service oriented. This orientation differs significantly from most state agencies that were created to perform a regulatory function, such as the Public Utility Commission, or to provide direct services to citizens as does the Texas Employment Commission.

An assessment of existing agencies to determine the potential for transfer of the department's functions did not reveal any such alternatives. The review did show, however, that other states often perform several functions within their highway agencies, and that the legislature has considered combining the functions of certain other state agencies into the SDHPT.

An assessment of the functions of other states' highway agencies and of prior legislative efforts to create an umbrella agency for transportation in Texas indicated the following:

- ▶ **Other states' responsibilities range from just the construction and maintenance of highways to multi-functional departments of transportation.**
  - Thirty-three states' agencies are called departments of transportation, although the functions assigned to those agencies vary significantly.
  - The most common responsibilities of these departments, other than for highways, are for motor vehicle registration, traffic safety, public transportation and aviation.
- ▶ **The SDHPT currently serves as an umbrella transportation agency and as such, performs three of the four most common functions (other than highways) of other states' departments of transportation.**

- In 1975, the legislature merged the Texas Mass Transportation Commission with the Texas Highway Department to form the current State Department of Highways and Public Transportation. Limited responsibility for assistance to the Gulf Intracoastal Waterway was also assigned to the department at that time.
- In 1976, the Governor's Office of Traffic Safety was transferred to the department.
- The responsibility for the registration of motor vehicles has been assigned to the department since its inception in 1917.
- ▶ Legislation was introduced in the past two regular sessions and one special session to transfer the Aeronautics Commission (now the Department of Aviation) to the SDHPT. None of these transfer efforts were successful.

### RECOMMENDATION

- **The State Department of Highways and Public Transportation should be continued as a separate agency with its current functions.**

---

The programs and functions assigned to the SDHPT are appropriately placed in the agency as it is currently structured. No significant benefits would be achieved by transferring any duties or activities to another agency. As certain other transportation related agencies, such as the Texas Turnpike Authority and the Department of Aviation, undergo sunset review, an evaluation will be made to assess whether or not the functions of the agencies should be transferred to the SDHPT.

### FISCAL IMPACT

No change in agency expenditures would be required as a result of this recommendation.

**Recommendations if Agency is Continued**



**ISSUE 3: The size of the State Highway and Public Transportation Commission should be statutorily expanded to six members.**

## **BACKGROUND**

The State Highway and Public Transportation Commission is a three-member policy-making body originally created in 1917. The members of the commission are appointed by the governor to six-year staggered terms. The governor designates one member as chairman. The only statutory qualification for office is that a member must be a citizen of Texas.

The primary responsibilities of the commission include appointing the state engineer-director, administering the state highway fund, formulating plans and policies for the location, construction and maintenance of the state highway system, and setting policies regarding the state's public transportation programs. The commission generally meets monthly to perform these activities. In addition, members of the highway commission serve as ex-officio members of the board of directors of the Texas Turnpike Authority.

Each state board or commission should be structured to allow for appointment of members that provide certain expertise where that is needed and to provide representation of the citizens of the state into the decisions that affect them. In addition, the structure should allow for easy and clear compliance with the Texas Open Meetings Act and statutory conflict-of-interest provisions. A review of the appointments to and responsibilities of the commission and of the size of other policy-making bodies showed the following:

- ▶ **No minorities or women have ever served on the commission.**
  - Since 1917, there have been 50 members of the highway commission. Although records showing the race and gender of commission members are not maintained, the department indicates that they believe that all members have been anglo males.
- ▶ **In the past 20 years, a large majority of the commission members resided in the major urban areas of the state. There has been little geographic diversity.**
  - Only two of the 13 members that served on the commission in the past 20 years were from west Texas. The 11 other members were from the major urban areas of east and central Texas. Of the 11 members from urban areas, five members were from the Dallas-Fort Worth area, four were from the Houston area, one was from San Antonio, and one member was from Austin.
- ▶ **A larger commission allows for increased geographic and ethnic diversity in commission appointments.**

- The recent expansion of the Board of Human Services from three to six members allowed for appointment of one additional minority member and the representation of the panhandle area that had previously been unrepresented.
- ▶ **Recent supreme court interpretations of the Texas Open Meetings Act indicate that three member boards and commissions may have difficulty in complying with that Act.**
  - A May 1990 Texas supreme court opinion, *Acker v. Texas Water Commission*, states that a meeting occurs any time a quorum discusses or acts on public business. The following quotation from the opinion clarifies this point:

Any verbal exchange between a majority of the members concerning any issue within their jurisdiction constitutes a deliberation. When a majority of a public decision making body is considering a pending issue, there can be no "informal" discussion. There is either formal consideration of a matter in compliance with the Open Meetings Act or an illegal meeting.
  - With a three-member commission, every time two members meet each other they now must be certain that no matter pending before the commission be discussed in any way.
  - Under a six-member commission, for example, it would take four members meeting together in order for there to be a quorum under the Open Meetings Act.
- ▶ **The nature of the work of the commission is diverse and often complicated. The limited size of the commission does not allow members to divide review of this workload prior to a decision.**
  - The commission makes decisions on the use of some \$1.4 billion in highway projects each year. These projects can range from the resurfacing of a two-lane highway to the location of a new freeway that could cost in excess of \$100 million.
  - The commission regularly must consider and approve rules in diverse areas such as in public transportation, the state's vehicle titling and registration system, agency administration, the purchase of right-of-way, occupational safety and other areas.
  - In one month the commission may have over 80 contracts to consider valued in excess of \$95 million.
  - Many state boards and commissions, overseeing large and small operations, use committees of their membership to review matters before the board or commission.

The Texas Youth Commission, a six-member commission, has two standing committees - one that assists in the development and



oversight of the agency's budget and one that assists in the management of the agency's trust properties.

The Texas Air Control Board, a nine member board, has six standing committees that deal with various administrative and technical aspects of the board's operations.

- ▶ **Only two other major Texas state agencies have three-member part-time policy-making bodies.**
  - The Public Safety Commission and the State Purchasing and General Services Commission are the only three-member part-time commissions in Texas.
  - Most Texas state boards and commissions are composed of either six or nine members.
- ▶ **Other states' highway or transportation agencies that use a commission structure are generally overseen by larger boards or commissions.**
  - Of the 27 states that use a commission structure for agency oversight or policy-making, the average size is eight members.
  - Of the states bordering Texas, Arkansas has a five-member board, New Mexico has a six-member board and Oklahoma has an eight-member board. Louisiana does not have a similar policy-making board.

## PROBLEM

It is difficult for appointments to a three-member board to represent the diverse geographical and ethnic make-up of a state such as Texas. A three-member board size also results in problems ensuring that there are no violations of the Texas Open Meeting Act. In addition, the three member size does not allow for the division of some of the commission's complicated workload into subcommittees where material for potential decisions can be examined in detail and recommendations made to the full commission.

## RECOMMENDATION

- **The statute should be amended to increase the size of the State Highway and Public Transportation Commission to six members.**

---

An increase in the size of the commission to six members would provide more opportunity for the governor to appoint members to the commission that reflect the geographic and ethnic diversity of the state. In addition, such a change in size would allow for subcommittees to be created to review some of the department's recommendations prior to the commission's decisions, and would ease the commission's difficulty in ensuring compliance with the Texas Open Meetings

Act. Because members of the commission also serve as ex-officio board members of the Texas Turnpike Authority, this recommendation would have the effect of increasing the authority's board of directors from 12 to 15 members unless the authority's statute were changed to limit this number.

**FISCAL IMPACT**

The change in the number of commission members would increase direct costs approximately \$15,000 per year in travel and per diem expenses.

**ISSUE 4:** The statutory requirement for the director of the department to be a registered professional engineer is unnecessarily restrictive and should be removed. The commission would continue to have the choice to appoint an engineer to serve as director.

## **BACKGROUND**

The State Highway and Public Transportation Commission is required to appoint a state engineer-director for highways and public transportation. The engineer-director must be a registered professional engineer in the state of Texas and skilled in highway construction and maintenance and in public and mass transportation planning or development. The engineer-director is authorized to act with the commission in an advisory capacity, without vote.

The engineer-director is responsible for administering the department. This includes overseeing an annual budget of approximately \$2.5 billion, employing the personnel necessary to carry out the statutory duties of the department, administering the development of plans, policies and procedures for the state highway and public transportation systems, fulfilling various statutory reporting requirements, and generally ensuring that the department is run in an efficient and effective manner.

The need for specific statutory requirements on the appointment of the administrative head of an agency should strike a balance between the need for particular expertise or experience and the restrictions such requirements place on the appointment. A review of the duties of the engineer-director and of the requirements for chief executive officers of other agencies indicated the following:

- ▶ **The responsibilities of the engineer-director are primarily administrative.**
  - The activities set out above and other duties such as liaison activities with the governor, the legislature and other state agencies and representing the department in various organizations are generally administrative.
  - The director now manages a complex organizational structure that includes 24 district offices and over 15,400 employees.
  - Although the director does use his engineering expertise in the course of the job, these duties could be assigned to one of the senior staff engineers. The director's engineering background is utilized in activities such as in the hiring and evaluation of key agency managers that are engineers, assessing the input of these managers, and in providing advice to the commission. These duties can be performed by a chief engineer as is the case in many highway and transportation departments across the country.

- ▶ **The responsibilities of the department have expanded substantially beyond just the construction of highways.**
  - The department is now responsible for administering the state's public transportation programs, for the registration and titling of motor vehicles, and for being the source of the state's travel and tourism information.
  - Other activities which involve significant non-engineering work include acquisition of right-of-way, public relations, accounting and finance, and much of the department's automation efforts.
  - All highway construction, which accounts for the majority of the department's budget, is contracted out.
- ▶ **Only one other major state agency has specific professional requirements placed on their director even though some agencies have significant responsibilities that require technical expertise.**
  - The Texas commissioner of health is required to be licensed to practice medicine in the state. The commissioner is responsible for administering all the programs operated under the State Board of Health.
  - In 1987, the legislature removed the statutory requirement that the commissioner of the Texas Department of Mental Health and Mental Retardation be a licensed physician.
  - Agencies such as the Texas Water Commission and the Texas Air Control Board both issue permits which require extensive engineering evaluations of plans and designs. In order to perform this function and their inspection and monitoring activities, these agencies employ a significant number of engineers. However, the directors of these agencies are not required to be engineers or have other technical qualifications.
- ▶ **Sufficient engineering expertise is readily available in the agency if needed.**
  - The deputy engineer-director and three of the four deputy directors are registered engineers.
  - The agency indicated that 36 of their top 40 managers are engineers.
- ▶ **The chief executive officers of transportation agencies in other states are not typically required to be engineers.**
  - The American Association of State Highway and Transportation Officials (AASHTO) annual directory indicates that only nine of the 50 states' chief highway engineers were also the chief administrative officer of their highway or transportation department.

## PROBLEM

The duties of the position of engineer-director do not absolutely require the professional skills of an engineer. Most of the duties require administrative and managerial acumen, and decisions rarely require that a direct engineering judgment be made. However, the statute continues to require that the position only be held by a registered engineer. This requirement places an unnecessary restriction on the commission if they should determine that another set of qualifications would be more useful for selecting the top administrator.

## RECOMMENDATION

- The statutory requirements concerning the qualifications of the department's director should be amended to:
  - remove the requirement that the director of the department must be a registered professional engineer;
  - change the title of the position from engineer-director to director; and
  - broaden the experience requirement to include experience and skill in highway construction and maintenance and/or experience in construction management. The requirement for experience in public and mass transportation planning or development should continue in place.

---

The removal of the limitation on the selection of the director would provide the commission with the additional flexibility to choose the individual with the background and experience best suited to manage a diverse organizational structure such as the department's. The broad administrative nature of the job does not necessarily require a registered engineer to fill it. The director would have sufficient engineering advice available through the current agency structure. Although the requirement that the position be filled by an engineer would be removed, this change would in no way limit the flexibility of the commission to select an engineer to fill the position if this were its preference.

## FISCAL IMPACT

No fiscal impact is anticipated.



**ISSUE 5:** The statute should require the department to make its monthly payments to contractors no earlier than the 10th of the month in order to earn maximum interest.

## BACKGROUND

Once a contract for highway construction is let, the department makes a monthly payment to the contractor for the work performed and materials on hand or used during the previous month. On the average, the department processes between 1,200 and 1,500 payments to contractors each month.

The contractor payment process involves coordination between the contractor, the resident engineer, the district office and the central office in Austin. Between the 28th and 30th of each month the department's resident engineer, who oversees a project or projects, develops estimates or bills for the work performed and for materials on hand or used by contractors during that month. The resident engineer sends these estimates to the district office where they are checked for accuracy and then forwarded to Austin for further processing and payment. The contract payment section in the central office receives these estimates during the first week of the month, rechecks the costs and sends them to the state comptroller who issues warrants. The department then distributes the checks to the contractors. Payment dates for individual contractors may vary, but on average the department makes 90 percent of contractor payments by the 10th of the month. Other states such as California, New York, Louisiana, Oklahoma, and New Mexico follow a payment process similar to the department's process. Exhibit 1 in the Appendix shows a 12-month daily average of the amounts of payments made by the department to contractors.

The department pays the contractors the full amount of the estimate and is then reimbursed by the Federal Highway Administration for the federal portion of the project, if any. Depending on the project, this reimbursement could be zero percent, 75 percent, or 90 percent of the estimate. For example, the state is reimbursed for 90 percent of the construction costs on interstate highways, 75 percent on state highways and receives only a limited amount of federal funds for farm-to-market projects. On average, the department is reimbursed for approximately 50 percent of its construction expenditures. The department generally bills the Federal Highway Administration once a week. Money is electronically transferred to the state within one or two days.

The department's funds are maintained in the state treasury. This agency is responsible for investing the department's funds along with most other state funds. The department earns interest on the amount of funds in the agency's current balance as indicated by the state comptroller of public accounts.

An agency should take all reasonable steps to earn the maximum amount of interest income on funds under its control. The department's fund management and contractor payment processes were reviewed to assess whether interest

earnings to the highway fund could be increased. This review indicated the following:

- ▶ **The department's policy of paying contractors as quickly as estimates are processed results in a loss of interest income to the state.**
  - On average, the department makes 90 percent of all contractor payments during the first 10 days of the month. In fact, about 14 percent of all contractor payments are made during the first five days of each month and about 77 percent are made during the second five days of each month. Over the course of a year payments made during the first 10 days of the month represent approximately \$1.56 billion in contractor payments.
  - Based on information from the office of the state treasurer, the department earns an average of .023 percent interest per day on all funds in the state highway fund or conversely loses .023 percent interest per day on each dollar paid out of the fund. This daily interest rate is equivalent to an annual interest rate of 8.4 percent.
  - The department would have earned an additional \$909,500 in interest income during the last 12 months if contractor payments were made no earlier than the 10th day of the month. These additional earnings per month are as follows:

June	1989	\$ 93,274
July	1989	\$ 65,357
August	1989	\$ 101,606
September	1989	\$ 117,359
October	1989	\$ 114,085
November	1989	\$ 60,376
December	1989	\$ 31,577
January	1990	\$ 46,383
February	1990	\$ 58,059
March	1990	\$ 43,033
April	1990	\$ 87,246
<u>May</u>	1990	<u>\$ 91,151</u>
<u>Total</u>		<u>\$ 909,506</u>

- ▶ **A management study contracted for by the department recommended changing the department's payment process.**
  - A management study commissioned by the department and performed by Price Waterhouse in 1989 recommended that the department delay contractor payments until the end of the month in order to realize additional interest income. The department studied this recommendation and determined that contractors would increase contract bid prices to compensate for the delayed payment date. In addition, contractors interviewed indicated that a significant delay in the prime contractor being able to pay materials suppliers would result in higher materials costs.



- ▶ **Paying contractors no earlier than the 10th of the month would not harm the contractors or increase contract costs.**
  - Interviews with contractors indicated that contractors have a general expectation of receiving payment from the state on or around the 10th of the month.
  - Contractors also indicated the security of knowing payments will be received around the 10th of the month results in lower bid prices. This is due to the fact that the need for interim financing is decreased and the contractors can pay suppliers more quickly, thus lowering the price for materials.

### **PROBLEM**

The department is currently following a contractor payment schedule which results in lost interest income. Estimates show that by paying contractors no earlier than the 10th of the month for work performed the previous month the department could have earned an additional \$909,500 in interest between June 1989 and May 1990.

### **RECOMMENDATION**

- **The department should be required in statute to pay contractors no earlier than the 10th of the month after the work is performed, but as soon after the 10th of the month as possible.**

---

This change would delay payment to the majority of contractors an average of two or three days but would be consistent with the contractors' expectations of being paid around the 10th of each month. This change would not single out individual contractors or a set of contractors, because individual contractors do not have a set date on which they are regularly paid and may be paid anytime during the month. Individual contractor payment dates vary because the time it takes for the agency to process each monthly estimate varies from month to month.

The department's current system for processing contractor payments could accommodate this change. However, if the department sent all estimates to the comptroller of public accounts on the same day as opposed to the current staggered approach, the comptroller would have difficulty processing them in 24 hours as they do under the current manual processing system. This problem could be avoided and the current payment processing time could be shortened if the system was automated. In August 1990, the department is scheduled to begin a program to put vouchers on computer tape for transfer to the comptroller's office. Within two years the department expects to have all vouchers on a computerized tape system. The computerized system will help ensure that contractors receive their payments on or as close to the 10th of the month as possible. In addition, the comptroller has begun a pilot program to provide electronic wire transfers of payments directly to vendor accounts. Electronic transfers would also quicken payments to contractors.

**FISCAL IMPACT**

By paying contractors no earlier than the 10th of each month, or as soon as possible after the 10th, it is estimated that the state could earn an additional \$900,000 annually in interest income. No additional costs to the department associated with this recommendation are expected.

**ISSUE 6: The department should increase its efforts to recruit and hire qualified women and minorities for professional and upper management positions.**

## BACKGROUND

In 1969, the department, in response to federal requirements, established an equal employment opportunity policy to provide equal employment opportunities for minority employees and applicants. Since 1974, the department has also followed a formal Affirmative Action Plan to help ensure the absence of discrimination and establish and plan for meeting numerical goals and objectives for the recruitment and hiring of women and minorities. Since 1980, minority representation in the department's workforce has increased from 20.7 percent to 23 percent and the percentage of women in the department's workforce has increased from 13.2 percent to 18 percent. This information is presented graphically in Exhibit 2 in the Appendix.

The department is presently required to pursue both state and federal employment goals. Federal goals are required by the Federal Highway Administration (FHWA) and state goals and plans are set out in the current Appropriations Act. The purpose of these goals is to reduce the underrepresentation of women and minorities in the department's workforce.

The department is required by the FHWA to establish parity goals for women and minorities based on the relevant civilian labor force. To establish the parity goals the department calculates and compares the representation of women and minorities within the department's workforce with the representation of women and minorities in the relevant civilian labor force. The relevant civilian labor force is the percentage of women and minorities in those occupations comparable to occupations in the department's workforce. For example, the department could use census data to determine that minorities comprise 25 percent of the professional workforce in Texas. The department would then set a goal of 25 percent minority employment in its professional workforce. Parity goals are further adjusted to reflect the representation of minorities in specific occupations such as engineering. The actual goal could be greater or less than 25 percent based on the actual minority or female representation within specific occupations such as engineering. The FHWA also requires that the department calculate parity goals by gender and ethnic group in eight job categories. A comparison of the federal parity goals and the department's workforce is shown in Exhibit 3 in the Appendix.

In addition to federal parity goals, the department and other designated state agencies must strive to meet state minority employment goals set out in the 1990-91 Appropriations Act. The Appropriations Act requires the agency to report on their progress on these goals to the Commission on Human Rights. The Commission on Human Rights indicated that the report should show the agency's full workforce profile in relation to the goals. These state minority employment goals, like the parity goals, apply to the same eight job categories and are based on

the civilian labor force in Texas. The state employment goals in comparison to the department's workforce levels are shown in Exhibit 4 in the Appendix.

To attempt to meet both state and federal employment goals and attract qualified applicants, the department maintains a multi-faceted recruitment program. One of the most important parts of this program is the use of recruitment teams to target schools with large minority populations. Each fall the districts supply the recruiting teams with a list of projected employee needs for the upcoming year and after visiting colleges and universities, these recruiting teams notify the districts of applicants interested in that particular district. The department also advertises positions in The Black Collegian and Hispanic Times, attends school job fairs and career days, and provides a summer employment program for high school and college students. The department attempts to fill a significant number of summer positions with minority and female students. Of the approximately 2,200 of these positions filled for summer of 1990, 25 percent were filled by minority students and 13 percent were filled by women. Districts have also used cooperative education programs on a limited scale. Co-op programs allow students to alternate semesters of work and study in order to gain work experience and an education simultaneously. Students are paid by their employer during the semester they work and may earn college credits for work experience. Normally a student will work for the same agency or business throughout the co-op program and historically large numbers of students accept jobs with their co-op employers.

The department is very active in the Texas Alliance for Minority Engineers (TAME). The Texas Alliance for Minority Engineers works with junior high and high school students and exposes them to engineering through field trips, contests, scholarships and education. This exposure is expected to increase the enrollment of minorities in civil engineering programs and interest students in employment with the department at a later time.

After qualified women and minority candidates have been identified and recruited, another important step in meeting both state and federal goals is the hiring process. Department-wide policies and directives on hiring are communicated to the districts through administrative orders, administrative circulars and administrative announcements from the central office in Austin. Because of the decentralized nature of the department, hiring decisions are left up to personnel in the 24 districts throughout the state. District personnel enter employment data into a department-wide computer system called the Human Resources Management System (HRMS) which provides information on the number of people employed, the ethnic/gender composition of the workforce, promotions, people hired and fired, and salary levels. The department's civil rights specialist in Austin also monitors the department-wide workforce composition.

A government agency should strive to meet all state and federal employment goals in a timely manner by using all programs and policies available to recruit, hire, and retain qualified women and minority candidates. The review of the department's minority hiring and recruitment efforts indicated the following:

- ▶ **The department workforce does not meet federal or state goals in upper level management.**
  - The department is currently authorized 193 positions at the upper management level. Of this total, 181 are white males, four are white females, and eight are Hispanic males. Upper management positions include the engineer director, deputy engineer director, deputy directors, division heads, section directors, district engineers and certain managing engineers in the districts.
  - Parity goals in upper management are set at 8.3 percent for women and 12.4 percent for minorities. In 1989, women comprised 2.1 percent of the department's upper management, while minorities comprised 4.1 percent of upper management.
  - To meet parity goals at current workforce levels the department would need to employ an additional nine women, five Black Americans, two Hispanic Americans, seven Asian Americans and one individual from other ethnic groups in upper management.
  - The current Appropriations Act specifies 14 percent as the state minority employment goal for upper management. As mentioned above, minorities comprise 4.1 percent of the department's upper management.
  - To meet the state minority employment goal at current workforce levels the department would need to employ an additional 19 minorities in upper management.
- ▶ **The department employs fewer women and minorities at the upper management level than other highway agencies in this region and other state agencies.**
  - Arkansas, Louisiana, New Mexico, Oklahoma and Texas are the states which make up Federal Highway Administration region 6. Of these states, Arkansas, Oklahoma and New Mexico employ a higher percentage of women and minorities in upper management than Texas.
  - The percentage of women and minorities in upper management in the department was compared with the percentage of women and minorities in upper management in the following state agencies including some of those that have a significant number of technical positions: Texas Air Control Board, Texas Water Commission, Texas Department of Commerce, Texas Department of Health, Department of Public Safety, Texas Department of Corrections, Comptroller of Public Accounts and Texas Department of Agriculture. The department is exceeded by all the other agencies in the percentage of women employed in upper management and the department exceeds only the Department of Public Safety and the Texas Water Commission in the percentage of minorities employed in upper management.

- ▶ **The department has met goals at the professional level for minorities as a whole. However, it has not met professional level goals for some specific ethnic groups.**
  - The department's professional work force as of March 1990 was composed of 981 women, 2,915 whites, 101 Black Americans, 315 Hispanic Americans, 52 Asian Americans and six Native Americans.
  - The department has met parity goals for women and Hispanic Americans at the professional level. Goals for women and Hispanic Americans are 26.3 percent and 7.1 percent respectively. Currently, women comprise 28.9 percent and Hispanics 9.3 percent of the professional workforce.
  - The department has not met parity goals at the professional level for Black Americans, Asian Americans and Native Americans. The parity goal for Black Americans is 4.3 percent, for Asian Americans the goal is 2.1 percent, and for Native Americans the goal is 0.3 percent. Currently Black Americans comprise three percent of the professional workforce, Asian Americans 1.5 percent, and Native Americans 0.2 percent. To meet parity goals for the professional level at current workforce levels the department would need to employ an additional 45 Black Americans, 20 Asian Americans and four Native Americans.
  - The 1989 Appropriations Act specified 18 percent as the state minority employment goal for professionals. In 1989, minorities occupied 14 percent or 474 of the department's 3,389 professional positions. At current workforce levels the department would need to employ an additional 136 minorities at the professional level to meet the state minority employment goal.
- ▶ **Several policies and practices of the department impede progress in reaching employment goals.**
  - The department historically has followed a policy of filling all upper management positions from within the agency. Under the current system, individuals must work for the department for many years to reach upper level positions. This policy of exclusive promotion from within extends the workforce profile of women and minorities from the past into the present and future.
  - There is little oversight to ensure that hiring practices are consistent with hiring goals. Within the department, hiring authority is vested in the division heads and the district engineers. The central office, which is responsible for the equal employment opportunity program, the affirmative action plan, and meeting both state and federal employment goals, does not control the selection process or workforce composition in the districts. The central office receives information on employment levels after hiring has taken place and analyzes workforce levels for the department as a whole.

- The recruiting program has not been used to its full potential. The department has not taken advantage of several common recruiting practices. These practices, which are often used by private sector businesses, other government agencies and other highway agencies include national recruiting, continuous contact with college placement officers, and co-op programs. While the department has employed each of these techniques in isolated instances, it has not used them to their full potential.
- Untapped sources of professional employees may exist within the department itself. The department employs some 3,441 technicians of which 11.7 percent are women and 17.8 percent are minorities. The department has a continuing education program which provides employees with the opportunity to return to school and earn an engineering or other degree. The department has not made any special effort to inform women and minority employees of this program and encourage them to participate.
- ▶ **Other states and Texas agencies have developed more aggressive strategies to meet upper management and professional employment goals.**
  - The 10 largest state highway departments in terms of employees include: Texas, California, Pennsylvania, New York, North Carolina, Virginia, Florida, Ohio, Illinois and Georgia. These states, in addition to the FHWA region 6 states mentioned earlier, were surveyed to gain information on their recruiting and hiring practices.
  - Seven states' highway agencies often hire upper level managers, professionals and engineers from outside their organization. These states include California, New York, North Carolina, New Mexico, Ohio, and Florida. Personnel from these states indicated that opening upper management positions to applicants from outside the department has allowed these states to diversify management, infuse the department with new ideas and gain the broadest range of experience possible. Qualified applicants are often available from other highway departments, the federal government and transit authorities.
  - In terms of recruiting professional employees such as engineers, several states indicated that they have developed national recruiting programs to increase the number of their minority applicants. The primary reason given for national recruiting is that the competition for minority professionals is intense and the number of qualified applicants is not sufficient to meet both public and private needs.
  - Placement office directors from several colleges and universities in Texas indicated that the most successful recruiters of minority candidates establish close and continuous relations with college placement offices and student organizations. These individuals pointed out that the department's recruitment effort could be improved by strengthening these relations.

- The majority of states surveyed use cooperative education programs to recruit both minority and non-minority students. While Texas has been involved in a co-op program, it is relatively small. The department estimates that only five students participated in such a program in fiscal year 1989. A co-op program enables a student to alternate semesters of work and study in order to gain work experience and an education simultaneously. Government agencies and businesses benefit from co-op programs because they receive access to quality students and historically large numbers of students accept jobs with their co-op employers. Co-op programs may also reduce the time and costs associated with training new employees and create closer ties between the co-op employer and the colleges and universities. Co-op programs have been successfully set up in Illinois, Georgia, Arkansas, New Mexico, Ohio, Virginia, North Carolina, New York and California for professions including engineering, computer processing and business related areas.
- Community and junior colleges represent an untapped source of qualified women and minority candidates. The Texas Public Junior College Association estimates that one-third of junior and community college students are minorities. Co-op programs could be used to reach these community and junior college students who are interested in professional careers.
- ▶ **Other states and agencies maintain a greater level of oversight of hiring activities in their regions or districts.**
  - The following states' highway agencies monitor or review the hiring process in their districts: California, New York, Oklahoma, Georgia, Arkansas, Louisiana, and Florida. Central review of the hiring process allows these states to evaluate their interview and selection processes and identify problem areas. This process also signals to the districts that the central office believes that minority recruitment and hiring are important departmental goals.
  - The Texas Department of Agriculture has a high level of oversight over their district hiring practices. To ensure that minority recruitment and hiring are given importance within the organization, the Texas Department of Agriculture has developed a hiring process which requires the central office to review the applicant pool and selection process and approve the individuals hired.

## **PROBLEM**

Although the department has attempted to increase the representation of women and minorities in its workforce, it has not met several federal and state hiring goals and has not used all programs and policies available to correct problems of underrepresentation.



## RECOMMENDATIONS

The following three statutory recommendations would require the department to strengthen its efforts in hiring women and minorities:

1. The department should strengthen its recruitment efforts to better compete in hiring qualified minorities and women by:

- opening upper level management positions to applicants from outside the department in order to diversify the workforce;

Traditionally, the department has filled upper management positions from within and turnover in these positions has been extremely low. The department argues that the responsibilities and risks involved in these positions is too great to trust to someone who does not have experience within the department. However, other highway departments including California, New York and Florida, and private sector firms fill top management positions from both inside and outside the organization. Opening these positions to outside applicants could increase the representation of women and minorities, bring in new ideas and diversify the workforce.

- broadening the scope of recruiting from a predominantly state and regional approach to a national approach when sufficient numbers of women and minority candidates are not available in Texas;

One of the reasons most often mentioned by the department for not employing more minorities in professional positions is the lack of qualified candidates. By developing a national recruiting effort the department could access a larger pool of women and minority applicants.

- coordinating more closely with college placement officers and student organizations;

College placement officers indicated that one of the most important techniques to recruit women and minority students is close and continuous relations with college placement offices and student organizations. By developing these relationships there would be greater awareness by women and minority students of the opportunities and benefits of employment with the department.

- expanding co-op programs with universities and community colleges to employ women and minority engineering students;

Because competition for women and minority students is so intense the department needs to match if not exceed the efforts of its competitors. Other highway departments and private businesses use co-op programs to recruit not only women and minorities, but other highly qualified candidates. A well coordinated co-op program could give the department increased access to women and minority students, reduce training time and costs, and allow the department to develop closer ties with universities and community colleges. Co-op programs could also be set up with community colleges to tap into another pool of minority candidates.

- **expanding educational opportunities for technical employees.**

By intensifying and expanding the department's educational opportunities, many women and minorities who are currently technicians could be given the opportunity to return to school and earn professional degrees. These individuals could help the department reduce underrepresentation at the professional level.

- 2. Involvement of the central office in the hiring practices of the agency should be strengthened by requiring the central office to set minority hiring goals for district offices, monitoring the progress of the districts toward these goals and providing technical assistance where needed.**

Currently the department is required by the Federal Highway Administration to develop programs to ensure equal employment opportunity and is required to pursue both federal and state employment goals. The responsibility for these programs and goals is vested in the human resources division of the department. Yet, parity goals are calculated in the districts and all hiring decisions are made in the districts. By having the central office set goals and monitor the progress of the districts toward these goals, the department would have increased control over the process and could identify problem areas and apply the appropriate remedies. These remedies could, for example, include intensified recruiting or aid in setting up co-op programs. This recommendation would not require the central office to approve or monitor individual hiring decisions in the districts.

- 3. The engineer-director should be required to report to the State Highway and Public Transportation Commission annually on the progress of the department in meeting state and federal employment goals and increasing the applicant pool.**

Minority recruitment, hiring and employment programs, just as with any other program, must be supported by the top level of any organization to be effective. By requiring the engineer-director to report to the commission on women and minority recruitment, hiring and employment programs, the commission would be made aware of departmental efforts and given an opportunity to provide input to the process.

### **FISCAL IMPACT**

Intensified recruiting efforts would increase personnel and travel expenses. The cost of adding one individual in recruiting and one individual in the office of the civil rights specialist would approach \$70,000 for salaries, benefits and travel. The department may also experience increased costs associated with expanded use of the continuing education program.

**ISSUE 7:** The statute should require the department to participate in the competitive cost review program to ensure that in-house costs for providing commercially available services are competitive with those in the private sector.

## **BACKGROUND**

The department, like other state agencies, performs many support activities that are commonly available through the private sector. These activities include printing, data processing, and various maintenance operations. The 70th Legislature established a process to help agencies compare the cost and quality of services provided in-house with those services available in the private sector. This process, known as the competitive cost review program, is modeled after a federal program.

The federal competitive review process requires governmental agencies to identify the commercial activities they perform, determine the cost of performing the activity in-house, and accept competitive bids on those activities from the private sector. The activity can be retained in-house if the agency can provide the service at a competitive cost given the same level of quality.

The competitive cost review program is still new in Texas and has been introduced in only six state agencies: the Texas Department of Mental Health and Mental Retardation; the Texas Department of Human Services; the Texas Department of Corrections; the Texas Education Agency; the Texas Higher Education Coordinating Board; and the Texas Department of Agriculture. The program requires that these agencies, with the help of the state auditor, identify and determine the cost of commercial activities performed in-house. The State Purchasing and General Services Commission compares the agency's cost estimate with the cost of purchasing those services in the private sector. If agency costs exceed private sector costs by more than 10 percent, the agency is required to bring its costs in-line with those of the private sector.

In general, government should not provide services available through the private sector unless it can do so at a lower cost or provide a higher quality service. In addition, governmental agencies should follow a standardized program to evaluate their costs of performing commercially available activities currently provided in-house. The review of department activities which are commercially available indicated the following:

- ▶ **The department performs many commercially available activities in-house and could potentially save money and increase efficiency and effectiveness by participating in the competitive cost review program.**
- The department currently contracts for a variety of its primary activities such as construction and maintenance valued at approximately \$2 billion per year. In addition, the department

contracts for a portion of several support activities including printing and publishing, educational services, materials testing, real estate appraisals, vehicle and equipment maintenance, security, laundry, janitorial services, and data processing. The department spends approximately \$90 million per year on contracts in these areas.

- A portion of each these activities continues to be performed in-house and would be appropriate to consider for inclusion in the competitive cost review program. Commercial activities performed in-house include printing and publishing, various maintenance operations, and data processing.
- The department has identified printing as an activity that would be viable to examine in the cost review program. Currently the department spends \$1.17 million on printing contracts and performs printing activities valued at \$3.196 million in-house.
- ▶ **The federal government has experienced significant cost savings since initiating its cost review program.**
  - Since 1981, 22 federal agencies have participated in the review process with savings of approximately \$3.9 billion.
  - The Office of Management and Budget estimates that the federal review program will save approximately \$167 million in fiscal year 1990.
- ▶ **Although the agency has studied and pursued opportunities to contract for some services currently provided in-house, the department does not have a procedure which systematically compares activities it performs with those available through the private sector to determine whether cost savings could result from purchasing the services rather than providing them in-house.**

## PROBLEM

The department performs several activities in-house which are available through the private sector. Currently there is no formal process to identify and evaluate the costs of performing commercially available activities in-house to ensure that these activities are less costly than purchasing the services in the private sector.

## RECOMMENDATION

- **The department's statute should be changed to include the department in the competitive review program by:**
  - **requiring the department to initiate the competitive cost review process for commercially available support activities currently operated by the agency in-house; and**

**RECOMMENDATION (cont.)**

- limiting the agency's responsibility for review to one definable activity in the first two years.

---

This change would require the department to identify a commercially available support activity or part of an activity which is definable for bidding purposes, determine the cost of performing the activity in-house and compare the cost to the costs of obtaining the service from the private sector. If significant differences are found, the department will modify its costs for the activity to be in-line with those of the private sector or may contract for that activity. After the first two years, the agency will be responsible for expanding the process to other support services. Including the department in the competitive cost review program will require a systematic review of certain support activities to determine if in-house costs could be reduced or whether there are advantages to contracting with private businesses for those activities. Limiting the department's responsibility in the first two years will allow time to adequately develop and refine the procedure.

**FISCAL IMPACT**

Cost savings are expected once the review process is implemented. However, it is likely that some initial costs will be incurred in order to establish a cost estimate system.



**ISSUE 8:** The statute should be amended to require the department to adopt in rules its procedures for selecting roadway projects in order to increase public access to the decision process.

## BACKGROUND

The department is responsible for building and maintaining roadways on the state and federal highway systems. To meet this responsibility, the department must allocate resources among construction, rehabilitation and maintenance activities. How it decides to address each of these activities affects the mobility and safety of every motorist in the state. The department must balance the need for building new roads with rehabilitating and maintaining existing roads. These decisions affect the expenditure of billions of dollars. In fiscal year 1989, the department was responsible for almost 77,000 centerline miles of roadway, and its expenditures for construction, rehabilitation and preventive maintenance activities were approximately \$1.8 billion.

Nothing in the department's statute or rules requires a process to guide the selection of roadway projects. Since the late 1970's, however, the department has sought to prioritize and select roadway projects in a systematic way that matches projects with the funds available. To guide the selection of roadway projects, the department has established a way of ranking projects based on their cost effectiveness. The actual rankings of these projects statewide are compiled into a Project Development Plan (PDP). The department uses the PDP to assure that it will select only high priority and cost effective projects. The plan is also intended to ensure that selected projects will be developed in a timely and efficient manner.

The department evaluates these construction projects in the PDP by using a ranking system that considers the need for projects and the costs that they would incur. Generally, the department then proceeds with projects on the basis of their cost effectiveness ranking. The department ranks new roadway projects according to the cost per vehicle for each mile of roadway built. It ranks lane expansions according to an index based on how much congestion the expansion relieves. Both of these measures basically reflect the cost of the project, including construction and right-of-way, for each additional vehicle that will use the road for each mile of roadway. The cost effectiveness and the ranking of a project may improve as the amount of traffic to be served goes up or the cost for the construction and right-of-way goes down. The actual selection of projects for construction also depends on the availability of funds and on the extent to which the project serves the needs of the statewide highway system.

The review analyzed the need for providing a basis in statute and rules for the department's PDP process. The analysis compared the department's process with similar processes in other state agencies. The comparison focused primarily on determining whether the public and governmental agencies have a consistent opportunity to participate in the development of policies and procedures that have a significant impact on the public. Any process that can significantly affect the

public should be developed with public input. The review of the department's project development process indicated the following:

- ▶ **The process used to guide the department in the selection of roadway projects has not been established in statute or rules.**
  - The department has established a process for prioritizing the selection of roadway projects. This process was developed within the department, and it has evolved since its creation in the late 1970's. The department makes adjustments to this process to reflect changes in commission policy and changes in the availability of funding. Neither the initial establishment of the project selection process nor the changes to the process made over time have been adopted in statute or department rules.
- ▶ **The process for selecting roadway projects significantly affects the public.**
  - In 1989, roadway projects accounted for annual expenditures of over \$1.8 billion. Roadway spending was the fourth largest expenditure in the state budget after Foundation School Program grants, salaries and wages, and public assistance payments.
  - Through the PDP, the department makes decisions regarding new construction, preventive maintenance, lane expansion, and roadway additions for the 77,000-mile state highway system. The department estimates that two-thirds of all daily traffic in Texas uses the state roadway system. In 1988, the department estimated that approximately 282 million vehicle miles were traveled on the state system in an average day.
- ▶ **Statutes or rules of other Texas state agencies often outline how major agency functions will be carried out.**
  - The legislature frequently specifies in statute how state agencies should address major policy issues. By laying out requirements for these agencies to follow, the legislature ensures that they consider certain factors of importance to the public in their decision-making processes. Several examples exist in which the legislature guides the allocation of funds or the location of projects for activities that are similar to the PDP. The legislature requires the Texas Education Agency (TEA) to follow very detailed provisions for funding public education through the Foundation School Program. State law also requires the Department of Criminal Justice to consider certain factors, such as proximity to an urban area, before determining the location of new prison units. State law also requires the Texas Water Development Board to consider factors, such as upstream development on bays and estuaries, in the preparation of a comprehensive state water plan for Texas.
  - Other statutory provisions may simply require agencies to take action by developing their own procedures on certain matters. This approach allows the agency to work out the details in rules for



implementing these provisions. State law requires the State Board of Education to establish procedures for adopting school textbooks. In addition, the Texas Department of Commerce is required to adopt guidelines for awarding of contracts under the state's community development programs.

- ▶ **Other comparable states include mechanisms for public input in the development of the framework for selection of roadway projects.**
  - The review surveyed five states identified by the department as most like Texas in terms of size of their roadway systems and total expenditures for roads. These states are California, Florida, Illinois, New York and Pennsylvania. The survey sought to determine whether these states have established frameworks for prioritizing and selecting roadway projects in statute or in rule.
  - The survey found that these states have different approaches in the way they select roadway projects. However, two states, California and Pennsylvania, do have requirements in statute for their transportation agencies to devise and follow an established process for selecting roadway projects. These two states provide opportunities for public input through public hearings in developing and updating their roadway selection processes.
- ▶ **Requiring the department to adopt its project selection process in rules would allow for public input into the development of the process that primarily determines which roadways are built in the state.**
  - The rulemaking provisions of the Administrative Procedures and Texas Register Act (APTRA) provide for public participation before the adoption of a rule. In the case of the project selection process, the rulemaking provisions would enable interested persons to have input into the factors that will be used to determine the costs and benefits of a proposed highway project. Examples of factors that the public may wish to consider include social, economic and environmental impacts related to projects. These factors are not currently in the cost effectiveness formulas in the project development process.
  - A formally adopted project selection process would serve as a standard to allow the public to clearly see how the department decides which roadway projects to build. It would then allow interested persons to evaluate how well the department's decisions reflect that standard.

## **PROBLEM**

Neither the statute nor agency rules set out any guidelines or criteria for deciding which roadway projects it should build. As a result, the process used to decide which roadway projects to build was developed within the department and approved by the highway commission, away from the requirements for public

participation contained in APTRA. In addition, without an established procedure set out in rules, the public has difficulty determining how the department makes its most important decisions. In 1989, these decisions involved spending over \$1.8 billion on roadway construction activities.

## **RECOMMENDATION**

- **The statute should be amended to require the commission to set out a process in rules to be used in deciding which roadway projects it will develop and build. The rules should specify the criteria and formulas that will be used to determine priorities for projects. The rules must be updated and re-adopted at least every five years**

---

This recommendation would require the department to adopt in rules a process for deciding which roadway projects will be built. The recommendation deals only with the overall process for ranking roadways, and does not require the department to list and approve individual roadway projects through rules.

In developing this process in rules, the department would determine which factors it should consider in ranking projects in the project development plan. These factors should include the project's cost and its need in terms of traffic counts or estimates as is the current practice and could also include other factors such as social, economic, and environmental effects and costs of a project.

The department should adopt this process in its rules to enable the public to participate in its development. These published rules would also show interested parties how the department decides which roadway projects it will build. The public would then be able to better judge how well the department's decisions reflect the established process. Updating and re-adopting the rules every five years would establish a mechanism for evaluating the framework for selecting roadway projects on a regular basis and would assure that the public has a continuing opportunity to participate.

## **FISCAL IMPACT**

Because the department already has a project development process in place, the fiscal impact of this recommendation would be limited to the costs of developing the rules and conducting hearings on those rules.

**ISSUE 9: The statute should be amended to require the department to adopt a process in rules for evaluating environmental impacts on state-funded highway projects.**

## **BACKGROUND**

The department frequently conducts environmental studies in developing highway construction projects. Federal law requires the department to conduct environmental studies for projects that use federal funds. However, state law does not require the department to conduct environmental studies for state-funded projects that do not use federal funds.

When a project is federally funded, the department conducts environmental studies under federal guidelines. Some projects, however, do not use federal funds and for these state-funded projects, the department has established a procedure for conducting environmental studies that roughly parallels the federal environmental process. In addition, both federal and state environmental reviews performed by the department follow provisions for intergovernmental cooperation and coordination specified in the Texas Review and Comment System (TRACS). Through the TRACS process, state and local officials have the opportunity to comment on the environmental impacts of individual roadway projects before they are approved or funded.

Both federal and state procedures provide for public hearings and both generally look at the need for the proposed action, alternatives and the affected environment. However, there is a significant difference in the state process and the federal process. Under the federal process, the environmental study must be approved by the Federal Highway Administration. Under the state process, the department approves its own efforts.

In 1989, the department conducted 146 environmental studies. Of these, 90 were for federal projects and 58 were for state-funded projects. An additional 315 brief studies were performed on small projects.

The review analyzed the need for providing a basis in statute and rules for the department's EIS process. The analysis compared the department's process with similar activities of state and federal agencies. The comparison focused on determining whether the public and other governmental agencies have a consistent opportunity to participate in the development of policies and procedures that significantly affect the public. Major findings resulting from the analysis and comparison indicated that:

- ▶ **Federal law establishes a process for environmental review that must be followed in federally-funded projects.**
- Because the department must comply with National Environmental Policy Act (NEPA) requirements on federally-funded roadway projects, the department already conducts environmental reviews

under federal guidelines for most major roadway projects. In 1989, the department contracted for 162 roadway construction projects for total contracts of \$994 million. Of these, 137, or 85 percent, received federal funds and went through the federally-required 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. They also specify the types of effects, such as ecological or aesthetic effects, that should be considered and how the federal agencies with responsibility for different issues should work together to assess those impacts.
- ▶ **The process used to guide the department in the development of environmental studies for state-funded projects has not been established in statute or rule.**
  - The department has established a process for conducting environmental reviews that has never been formally adopted in rules. This process was developed within the department, and it has evolved since its creation in the mid-1970's. The department refines the process to reflect changes in the department's operational and planning procedures and changes in state and federal law, but the public is not involved in these changes.
  - The department participates in the TRACS process which has been adopted in the rules of the governor's office. The TRACS process provides for input from state and local officials regarding the environmental impacts of specific roadway projects. The TRACS process does not lay out a framework for the department to follow in conducting environmental reviews other than for the review and comment by state and local officials.
- ▶ **State-funded projects are expected to grow in importance to the department's roadway program and could have major impacts on the environment.**
  - The department is relying increasingly on total state funding for its larger construction projects. Excluding farm-to-market road projects, the department contracted for nine major state-funded construction projects for \$23 million in 1989. Through the first nine months of 1990, the department contracted for seven major state-funded projects for \$47.7 million. For the remainder of 1990, the department was committed to state funding for an additional eight projects totaling \$134.5 million. The reliance on state funding is scheduled to peak in 1992, when the department plans to contract for eight large projects, totaling \$361 million.
  - Some of the roadways scheduled to be fully state funded are among the department's more controversial projects, which involve potentially significant impacts to both the natural and human

environments. Examples include segments of the Grand Parkway in Houston and the Outer Loop Parkway in Austin.

- ▶ **The statutes or rules of other state government agencies impose requirements for conducting environmental studies.**
  - Two provisions in state law require certain agencies to prepare environmental analyses or plans even when federal action is not required. The Texas Department of Health (TDH) must prepare an environmental analysis before issuing licenses for persons whose processing activities produce radioactive by-product materials. Specifically, TDH's statute requires it to consider certain elements in its environmental analysis and to provide for a public hearing on the analysis. The law also specifies that TDH's determination of action to be taken, based on its environmental analysis, is subject to judicial review. The second agency, the Texas Deepwater Port Authority, must 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 (TWC) and the Texas Water Development Board (TWDB) have adopted procedures for considering environmental impacts for activities under their responsibility which do not require federal environmental study. Both agencies adopted these rules under their general rulemaking authority. These rules establish guidelines for preparing environmental impact statements when a federal EIS is not required. These guidelines provide examples of significant adverse and beneficial impacts, and they detail the content of these impact statements. The rules also specify that the impact statement should consider alternatives, and it should support the decisions made in planning the project.
- ▶ **Several comparable states have statutory requirements for environmental reviews on state-funded projects.**
  - The review surveyed five states identified by the department as most like Texas in terms of the size of their roadway systems and total expenditures for roads. These states are California, Florida, Illinois, New York, and Pennsylvania. The survey sought to determine whether these states have established separate frameworks for studying the environmental effects of state-funded roadway projects that do not use federal funds.
  - The survey found that these states generally have stronger requirements for environmental reviews than Texas does. Three states, California, New York, and Pennsylvania, have requirements in statute for their transportation agencies to conduct environmental reviews on state-funded projects. These states also provide for legal action in state court to resolve challenges to environmental reviews.

The other states, Florida and Illinois, address environmental issues in their roadway activities through the regulations of their state environmental protection agencies.

- ▶ **Requiring the department to adopt its environmental review process for state-funded projects in rule would strengthen the public's ability to influence this important process.**
  - The rulemaking provisions of the Administrative Procedures 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 department uses to assess the environmental effects of a roadway 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 department addresses environmental concerns on state-funded projects. Adopting this process in rules would then allow interested persons to evaluate how well the department's actions reflect that standard.
  - A formally adopted process for conducting environmental studies of state projects would provide a basis for interested parties to resolve challenges to these reviews in court if an agreement cannot be reached with the department. With a basis in law or rules, the department's environmental reviews of state-funded projects could be reviewed in court. In this way, challenges to the adequacy of environmental studies or their findings could be settled outside the department, which actually conducts the review.

## **PROBLEM**

Neither the statute nor agency rules set out guidelines or criteria for conducting environmental studies for state-funded roadway projects. As a result, the important responsibility of developing environmental guidelines occurs within the department, away from the requirements for public participation contained in APTRA. In addition, because the department does not have a formal environmental review process set out in rules, the public has difficulty determining how the department assesses environmental impacts. Finally, this lack of a formal process in rules reduces the public's ability for challenging the department's findings in court.

## **RECOMMENDATION**

- **The department's statute should be amended to require the department to:**
  - **set out a process in rules for evaluating the environmental effects of state-funded projects;**

## **RECOMMENDATION** (cont.)

- specify in rules the types of impacts that the department will analyze in its environmental reviews;
- continue to conduct the environmental review of projects before determining roadway alignment; and
- update and re-adopt the rules at least every five years.

---

This recommendation would assure that the department considers environmental effects of all roadway projects and not just federally-funded projects. As part of this process, the department should develop a system for determining the extent of environmental review according to the characteristics and size of the roadway project. Some projects, because of their insignificant impacts, would not need to be reviewed. Others would be reviewed to determine if they would have significant impacts. Depending on the results of this review or on the size and nature of the project, the remaining projects would receive a full environmental impact statement. The procedure for making these decisions would be adopted by the commission in rules and should be consistent with other state requirements such as the TRACS process.

The process should contain provisions for public hearings that are similar to the federal NEPA requirements that the department already follows. Generally, only full EIS's would require public hearings. The public would be able to request hearings on the other environmental reviews. The department would not need to hold public hearings on projects that do need environmental review, such as signalization or resurfacing projects.

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

The department should consider including in its process a review of the same factors it already looks at under the NEPA process. 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 NEPA, the department could ensure that state roadway projects receive a similar level of environmental scrutiny that the department currently gives to federal projects.

Requiring the environmental review to occur before the department determines where the roadway will go would enable the department to continue to consider alternative routes as a way to reduce the potential threats to the environment. Finally, the department should adopt this process in its rules to enable the public to participate in its development. These published rules would also allow interested parties to assess the department's environmental review process and the reviews conducted under that process. Updating and re-adopting the rules every five years would establish a mechanism for evaluating the process for

conducting environmental reviews on a regular basis and would assure that the public has a continuing opportunity to participate.

**FISCAL IMPACT**

Because the department already has a review process in place, the fiscal impact of this recommendation would be limited to the costs of developing the rules and conducting hearings on those rules.



**ISSUE 10:** The statute should be amended to establish an advisory committee to assist the commission in developing and revising procedures used to prioritize roadway projects and to evaluate environmental impacts.

## BACKGROUND

Serving transportation needs in Texas is a large and complicated task. The department must consider many factors in determining how to develop the state's surface transportation system. The department must also consider a range of interests to assure that its approach to developing the transportation system also meets the needs and expectations of the public. The department has initiated a number of efforts to provide a structure for devising the transportation system. For example, the Strategic Plan and the Strategic Mobility Plan establish the department's 20-year goals and its strategies and resource needs for meeting those goals. The Project Development Plan guides which specific roadway projects will be built. In addition, department procedures such as its environmental review process for state-funded roadways, determine how roadway projects will be built. Generally, however, the department develops these plans and procedures in-house, with little or no public input.

The department has solicited public input in some of its more recent activities. For example, the department conducted public hearings statewide to gather input for Transportation 2020: The Texas Perspective. This effort arose from a national initiative to make recommendations to congress regarding the reauthorization of the Federal Highway Act. The department also conducted public hearings throughout the state in preparing the Texas Highway Trunk System. In addition, the commission regularly hears from delegations of local officials regarding proposed highway projects. It also allows for public testimony at its monthly meetings.

The department's roadway activities directly affect the safety and mobility of the public. The department should have a regular and consistent means of obtaining public input on the development of policies and procedures that lead to the department's roadway decisions. To be most effective, this public input should occur early in the department's decision-making process. The review of the department's provisions for obtaining public input on its policies and procedures indicated the following:

- ▶ The department's roadway activities significantly affect the citizens of Texas.
  - The department is responsible for 77,000 miles of roadway on the state system. The state system represents just one-quarter of all streets and roads in Texas, but the department estimates that the system handles two-thirds of the state's traffic.

- The location and size of roadway projects can significantly affect the human and natural environment. Roadways in urban areas may displace homes, cause noise, and change the character of neighborhoods. In other areas, roadways may affect water quality, threaten endangered species, and alter wetlands.
- ▶ **The department does not have a mechanism specifically designed to provide public review and comment on the processes by which it makes roadway decisions.**
  - The department does not have any advisory committees to provide input on its roadway development process.
  - The department developed two of its most important procedures in-house, without public involvement. The first is the department's process for ranking roadway projects in the project development plan. This process guides the selection of roadway projects that are planned and built in the state. The second is the department's process for evaluating the environmental effects of state-funded roadway projects.
  - The department does provide for public input on individual roadway projects. However, it does not provide for formal public input in devising the framework for selecting and developing these projects.
- ▶ **Other Texas agencies make extensive use of advisory committees to obtain public input on major issues under their jurisdiction.**
  - Advisory committees are a common approach in Texas for achieving public input into agencies' decision making. Last session alone, the legislature created 30 advisory committees in statutes to provide advice to various state agencies. Advisory committees typically provide assistance on matters of public concern. For example, the State Textbook Committee advises the State Board of Education on the adoption of public school textbooks. Another advisory committee works with the Texas Department of Health to improve the management of municipal solid waste. A third advisory committee advises the Texas Water Commission on developing strategies for promoting waste management in Texas.
  - Advisory committees are often set up to give boards and commissions a variety of viewpoints and technical expertise to assist the agency in the development and delivery of programs. One important purpose is to obtain this input from the various competing interests involved in a program area in order to best understand the potential impacts of an agency's decisions.
  - To meet this purpose, these committees are set up to generally represent a balance of interests and knowledge in the various subject areas. Typically, their duties include assisting in the development of program guidelines and priorities, providing technical assistance, reviewing and commenting on proposed rules, and recommending needed program changes.

- ▶ **Other states have established advisory committees within their transportation agencies.**
  - A review of organizational structures of state transportation agencies identified five states that have advisory committees. These include Hawaii, Kansas, North Carolina, Pennsylvania, and West Virginia.
  - Two of these states, Kansas and Pennsylvania, have advisory committees that deal with issues of planning and developing the overall roadway system. Pennsylvania's advisory committee helps determine the goals and the allocation of resources among the different modes of transportation. In Kansas, the advisory committee helps plan improvements to the entire state roadway system. It may also disapprove the location or construction of any highway projects.

### **PROBLEM**

The commission does not have a formal structure for obtaining regular and consistent public input on the policies and procedures that direct the selection and development of roadway projects. These policies and procedures have a significant impact on the state.

### **RECOMMENDATION**

- **The department's statute should be amended to create an advisory committee to the highway commission. The advisory committee should:**
  - be composed of nine members, appointed by the commission, with a balance of interests representing highway contractors and users, local governments, and environmental and public interest groups.
  - advise the commission in developing and updating the process used to rank roadway projects in the Project Development Plan, including reviewing and commenting on proposed rules;
  - advise the commission in developing and updating the procedures for evaluating the environmental impacts of roadway projects, including reviewing and commenting on proposed rules;
  - make recommendations, at least annually, to the engineer-director and commission for new policies or legislation on matters relating to project development and environmental review; and
  - perform other duties as determined by the commission.

An advisory committee to assist the commission in developing and revising procedures used to prioritize roadway projects and to evaluate environmental impacts would ensure that the public has input into the way the department evaluates and selects roadway projects. Among its responsibilities, the advisory committee would help the commission devise a framework for evaluating the placement and ranking of projects in the Project Development Plan. The committee would not be involved in approving or disapproving specific projects. In addition, the advisory committee would help the commission establish a process for conducting environmental reviews of state-funded projects.

Once the original sets of rules for the project selection and environmental review processes are adopted by the commission, the advisory committee would assist the department in evaluating how well these processes are working, suggest any changes that may be needed, and continue to assist in the development of additions or changes to the rules. In addition, the advisory committee would annually report on its activities to the commission.

### FISCAL IMPACT

Additional costs would result from expenses incurred by members of the committee as they attend meetings. Based on one-day, quarterly meetings, the expenses of the committee should not exceed \$10,000 annually.

**ISSUE 11: The statute should require the department to establish a disadvantaged business program for state-funded construction, maintenance and purchasing contracts.**

## BACKGROUND

The federal Surface Transportation Act requires state highway departments to contract with minority and woman-owned businesses on all construction contracts receiving federal funds. According to the Act, states must spend at least ten percent of federal highway funds with companies certified by the department as a disadvantaged business enterprise (DBE), which is a business owned and operated by socially and economically disadvantaged persons. The federal law defines as disadvantaged Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, Native Americans and women. In addition, a DBE in the highway construction industry cannot have annual gross receipts of more than \$14 million.

The federal Department of Transportation requires each state to enroll eligible businesses; verify that the business owner is socially and economically disadvantaged; set DBE contracting goals for federal-aid construction projects; and monitor the compliance of prime contractors with the DBE project goal. In order to reach the overall federal 10 percent minimum goal, construction division staff assign each federal-aid construction project a unique goal based on the number of DBEs in the state certified to do the kind of work required for the contract. The project goal, then, becomes a condition of the prime contract; however, if the prime contractor cannot meet the goal and can show a "good faith effort," the goal may be waived or lowered for that project.

Many contracts are funded entirely with state funds and do not fall under federal DBE regulations. These contracts, which cover construction, maintenance and goods and services, should meet the state DBE policy. In fiscal year 1989, these contracts exceeded \$517 million in total value.

The Texas DBE policy which applies to these contracts is set out in the 1990-91 Appropriations Act. This policy has been developed over a period of years beginning in 1975 with the Small Business Assistance Act and through executive orders and appropriation bill riders. Overall the policies set small and minority business contracting goals and encourage outreach and assistance efforts to increase the small and minority business contracting community's participation in state contracts.

The state policy was crafted to conform to a decision of the U.S. Supreme Court which prevents a state from imposing rigid goals or developing set-aside programs. Under this decision, state programs may contain 1) a method to set targets tailored to the capacity of the DBE community; and 2) an outreach program designed to locate and register DBE's, provide technical support, and aid in setting target goals.

A review of the department's DBE policies and programs was made to determine if they 1) include a method of setting targets tailored to the capacity of the DBE community; 2) include appropriate structures to locate and assist the DBE community; and 3) generally meet the intent of the Appropriations Act and the U.S. Supreme Court guidelines. Major findings resulting from the review indicated the following:

▶ **The current Appropriations Act sets a disadvantaged business enterprise policy for state agencies.**

-- Section 118, Article V, of the 1990-1991 Appropriations Act states that it is the intent of the legislature for state agencies to award contracts to disadvantaged businesses. Unlike a set-aside program where a certain number or type of contract must be awarded only to DBEs, the 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 method of calculating DBE targets set out in the Appropriations Act appears to meet the conditions laid out by the U. S. Supreme Court in the City of Richmond v. J.A. Croson Co. decision. Since the target is a goal and not a requirement, it does not affect the state's low bid policy nor restricts bidding or contracting opportunities for non-DBEs. Instead, the target helps an agency determine whether it needs to increase efforts to identify and assist the disadvantaged business community in contracting with the state.

-- The Act also states that the Texas Department of Commerce (TDOC) should 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 opportunities with the state.

▶ **The SDHPT has not set a policy for contracting with disadvantaged businesses that meets the intent of the Appropriations Act rider.**

-- The State Highway and Public Transportation Commission has not adopted a policy for contracting with minority and women-owned businesses on any state-funded projects, including construction, maintenance or general purchasing. Furthermore, the department does not attempt to calculate targets according to the formula prescribed by the Appropriations Act. Although the department has extended the federal 10 percent DBE goals to the state-funded portion of federal-aid construction projects, 45 percent of construction contracts were funded entirely with state funds.

-- The maintenance and procurement divisions have set targets by informal policy; however, these targets are based on executive order MW-8 and do not necessarily correlate to the actual volume of business that could be offered by the DBE community.

- ▶ **In comparison with the 10 percent minimum federal construction goal, the percent of DBE participation in state-funded contracts is low.**
  - Although the department currently exceeds its 10 percent DBE goal for federal construction funds, only 6.6 percent of all construction dollars went to DBE firms in fiscal year 1989.
  - The percent of contract dollars awarded to DBEs in fiscal year 1990 to date for maintenance was 5.1 percent. The percent of contract dollars awarded to DBEs in fiscal year 1989 for professional service contracts was 8.7 percent, for the procurement of goods was 8.6 percent, and for non-professional service contracts was 1.5 percent.
  - Of the 99 routine maintenance contracts worth \$15.1 million let by the Houston district in the first eight months of this fiscal year, only one was awarded to a DBE firm. This contract was worth \$3,990, or about .02 percent of the total maintenance contracts let by the district.
  - The Dallas district has let three DBE contracts this fiscal year representing about two percent of the district's total dollar expenditure for maintenance contracts.
  - Ten of the department's 24 districts, including the Ft. Worth district, have not awarded any maintenance contracts to DBE firms in the first nine months of this fiscal year. Further, all but five districts have let fewer than five DBE contracts.
- ▶ **The department does not conduct outreach sufficient to determine the number of disadvantaged businesses willing and able to do business with the state and, therefore, department staff cannot set fair and attainable targets.**
  - District personnel do not conduct outreach on a regular basis. Most outreach is handled from the Austin office even though virtually all the work to be done by DBEs is done through the district offices.
  - There are more DBEs registered with other state and local agencies than are registered with the department. Although not all those registered with other agencies are willing to work for the state or provide a product or service needed by the department, the figures illustrate the potential size of the pool of disadvantaged businesses available to the SDHPT state-wide. For instance, the department has 668 DBEs certified for federal-aid construction projects. In addition, a total of 48 engineering and maintenance companies contracted with the department on state-funded projects in the last fiscal year. As a point of comparison, 5,965 DBEs are certified with nine cities and five transit authorities around the state, roughly half of which offer professional and construction services.

- ▶ **Other states and other state and local agencies have set targets that appear to meet the guidelines of the Croson decision.**
  - California has extended and raised its federal-aid construction goal of 16 percent to 20 percent for state-funded construction contracts.
  - Capital Metro, the Austin metropolitan transit authority, set an agency-wide DBE target of 23 percent for fiscal years 1989 and 1990. In fiscal year 1989, the agency achieved 28 percent overall and 37 percent for federally-funded contracts. The agency calculates the annual overall target based on unique targets set in each of four areas: construction, professional services, goods and services, and miscellaneous contracts. To set appropriate percentages, Capital Metro staff survey the transit service area to determine the number of DBE and non-DBE firms that provide the work offered in each of the four areas.
  - The City of Austin has set a 15 percent target across all categories of contracting.
  - On average, the 50 states' highway departments achieved 15 percent DBE participation in federal-aid construction projects for fiscal years 1987 and 1988. In comparison to the Texas' 11.5 percent, 32 states awarded between 11.5 and 20 percent and five states awarded over 20 percent of federal-aid construction contracts to DBE firms.
- ▶ **The outreach programs sponsored by the department, other states and other state agencies have contributed to the success these agencies have realized in setting and meeting DBE targets.**
  - The programs offered by other states are aimed both at locating DBEs willing to work for the state and providing technical assistance to the disadvantaged business community.
  - The State Purchasing and General Services Commission initiated an outreach program in 1987 at the direction of the legislature. The number of disadvantaged businesses contracting with the state has tripled since the program began.
  - In the few months since the maintenance division has installed a toll-free telephone number for information on maintenance contracts, the department has received 857 calls.

## **PROBLEM**

The fiscal years 1990-91 Appropriations Act sets a policy for state agencies to contract with disadvantaged businesses. The Act also specifies a framework for agencies to use in implementing a disadvantaged business program. The department has not yet established a policy or developed a framework to meet the intent of the Act. The department does not set DBE targets tailored to the capacity of the DBE community for state-funded projects and has not established



an outreach program to locate and provide technical support to disadvantaged businesses.

### RECOMMENDATION

- The statute should require the department 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 department to:
  - set and strive to meet appropriate DBE targets for the department's state-funded construction, maintenance, supplies and service contracts; and
  - conduct outreach from the Austin and district offices.

---

This recommendation would require the department to establish a policy and program for contracting with the disadvantaged business community while staying within the statutory requirement for competitive bidding and the constitutional guidelines addressed in the recent Richmond v. Croson supreme court decision. In order to provide the DBE community with the maximum opportunity to participate in the department's state-funded contracts and in order to monitor the extent to which DBEs are awarded those contracts, the department should establish DBE targets which reflect the size and capacity of the existing DBE community. This recommendation does not establish a set-aside program or quota method of awarding contracts.

There is a concern that to set DBE targets department staff would have to research in considerable detail the total number of DBE and non-DBE firms in Texas offering each type of service and commodity purchased. Such a task would be time-consuming, if not impossible. Research conducted during the review indicated that, although targets must be narrowly tailored to meet the guidelines in Croson, they do not have to be set so precisely, for example, as to require a different target for every commodity purchased in every area of the state. The most appropriate method of setting targets will likely vary by division and might be set by project, by district, by commodity or by work skill. Department staff would have the flexibility to determine how to set the most appropriate targets. In addition, since targets must be set according to the known number of DBEs, the targets can be calculated from an in-house database of contractors and suppliers, provided comprehensive and aggressive outreach has expanded the database to reasonably reflect the available DBE contracting community.

This recommendation would require the department to enhance its outreach efforts, as the primary tool for setting and meeting equitable and realistic targets. Because of the size and diversity of the state and the department's decentralized district structure, each district should develop and implement an outreach program tailored to the particular needs of the community in addition to any outreach efforts conducted from the Austin office. The central and district outreach programs should endeavor to locate disadvantaged businesses to include on the department's bid lists and should provide technical assistance to help the DBE community increase its role in obtaining department contracts.

### FISCAL IMPACT

This recommendation would require the hiring of one additional employee to coordinate the DBE program from the Austin office at a cost of approximately \$30,000. District-level outreach could be assumed by existing personnel. All expenditures associated with the development and implementation of a disadvantaged business program would be charged to the state highway fund, and not to the general revenue fund.

**ISSUE 12:** The statutory provision that requires the department to pay for relocation of utilities on interstate highways is inconsistent with other state policy and should be removed.

## BACKGROUND

As population and traffic congestion grows, there is often a need to expand existing highways, primarily farm-to-market roads, state highways and interstate highways. In order to add lanes to an existing highway, the department either purchases additional right-of-way to expand into, or at times may have purchased extra land during an earlier construction phase in anticipation of a later road expansion. Because utility companies often share use of the highway right-of-way with the state, expansion of a road sometimes requires moving utility lines, such as pipelines, water mains or telephone poles, located on the state right-of-way.

When the utility corporation owns the property the department needs for the highway work, the department purchases the land and pays the company to relocate, or adjust, its utility lines just as they would pay to move any other private property owner. In the majority of cases, however, the utility companies locate their lines onto the right-of-way during or after the initial construction of the highway. Since utility lines must frequently cross or parallel roads, it is to the advantage of the utility company to place its lines on the right-of-way because use of the public land is free. Otherwise, to run lines across private land, the utility company must either purchase the land outright or acquire an easement. The easement allows the company to build on and have access to the tract of land along which the line runs.

A utility corporation is authorized to construct its lines on the right-of-way of state roads only with the consent of the State Department of Highways and Public Transportation. In exchange for access to the right-of-way, state utility laws specify that the utility company must agree to move its lines if the department needs the land for maintenance, rehabilitation or reconstruction work. The utility corporation must pay to relocate the lines since the SDHPT had the prior property interest. There is an exception to this procedure, however. State highway statutes require the SDHPT to pay all relocation expenses for utilities located on the right-of-way of interstate highways, regardless of whether the state or the utility company had the prior property interest.

The relocation of utility lines to accommodate highway construction should be equitable to both the state and the utility owner. The policies for paying the costs of relocating utility lines should be consistent if there are no particular reasons for statutory inconsistencies. A review of the statutes and policies for the relocation of utilities indicated the following:

- ▶ **An inconsistency exists in the department's statute for determining the responsibility for the cost of relocating utility lines on the interstate rights-of-way.**

- The authorizing statutes for utilities provide for the department to pay utility relocation expenses only if the utility was on the land before the road was built and, therefore, had the prior property interest.
- However, a provision in the highway statutes (Article 6674w-4, V.T.C.S.) requires the department to pay relocation expenses of utility companies with lines located on interstate rights-of-way, regardless of whether the state or the utility had the prior property interest.
- ▶ **The original purpose for this deviation in policy for the payment of utility relocation expenses on interstate highways is no longer relevant.**
- Article 6674w-4 was intended to increase the amount of federal funds that would go to the state for construction of the interstate highway system. The funding formula developed in the 1950's was based on cost estimates from the states for construction of their portion of the system. By including the cost of the relocation of utility lines in the estimate, Texas could pass onto the federal government costs the utility companies and their ratepayers would otherwise have had to pay.
- With the completion of the construction of the interstate system, the original federal funding formula changed. Federal funds are now allocated to the state based on the overall size of the state's highway system and other factors. The additional expenditures for utility reimbursements on interstate highways are no longer attracting a higher level of federal funds.
- ▶ **The existing statutory requirement results in the state paying significant utility relocation costs for some utilities and not for others depending only on the classification of road.**
- In fiscal year 1989, the department spent \$9.4 million for 96 claims to adjust utility lines on interstate right-of-way to companies that did not have a prior property interest. These costs accounted for nearly half of the total expenditures related to right-of-way acquisition and development on interstate projects for that year. Department staff estimate 90-95 percent of utility facilities on interstate highways are located on land for which the state had the prior property interest. This means that had these utilities been on any other classification of roadway, the department would not have had to pay relocation costs.
- Utility companies spent an estimated \$89.6 million to relocate utility lines on other, non-interstate highways in fiscal year 1989. These expenses were incurred where the utility did not have a prior property interest.
- ▶ **Texas is one of a minority of states that pays relocation expenses for interstate locations in a manner different from other classifications of roadway.**

- A survey conducted by the Transportation Research Board of the National Research Council found that only 15 states pay relocation expenses on interstate highways regardless of whether or not the state had the prior property interest. Research during the review indicated that these states passed their laws, as did Texas, to take advantage of the old federal funding formula.

## PROBLEM

State law creates an inconsistency in the way utility companies are paid to relocate utility lines. A utility company may run its utility lines on highway right-of-way provided that if the department needs the land in the future the utility will move the lines at the utility's own expense. Utilities on the interstate highway system, however, are exempt from this policy by a provision in the department's statute. This exemption was enacted to take advantage of a federal funding formula that is no longer in effect.

## RECOMMENDATION

- The department's statute should be changed to remove the requirement for the department to pay the cost of relocating utility lines on interstate rights-of-way.

---

This recommendation would remedy an inconsistency in the law which requires the state to pay to relocate utility lines located on interstate highway right-of-way even though the utility corporations, by their own statutory authority, are required to pay these expenses on any other classification of roadway. By removing the exemption for interstate highways, the inequity that results from this requirement would be lifted and the responsibility for the relocation expenses would be dependent only on whether or not the utility had a prior right of property.

Federal funds allocated to or received by the department would not be affected since the state currently uses all available federal highway funds for roadway construction. Nonetheless, this change would not deny the department the authority or ability to request federal reimbursement for expenses incurred in relocating utility lines on interstate highways if sufficient funds for that purpose were available in the future.

Finally, this change would not affect how railroad companies are paid by the SDHPT for adjustments made to their facilities on interstate right-of-way. Federal law dictates procedures for the relocation of railroad facilities which supersedes state law.

**FISCAL IMPACT**

It is estimated that this recommendation would result in savings to the highway fund of about \$8.9 million in fiscal year 1992 because the department would not have to pay the costs of adjusting utility lines on land to which the department held the prior property interest. However, the \$8.9 million in relocation expenses would be borne by the utilities to relocate their lines. Such expenses could be eligible for inclusion in the the utility's rate base and, therefore, could be passed on to its customers. It is estimated that the additional amount an average utility customer would have to pay would be less than one dollar per year. Also, the expense could not be carried indefinitely but could only be reflected in a utility's rates until the cost to relocate the utility line was paid off.

**ISSUE 13: A public transportation advisory committee should be established in statute.**

## **BACKGROUND**

The department's public transportation division administers several state and federal programs that provide funding to local transit systems. The division provides funds and technical assistance to the state's large urban, small urban, and rural transportation systems and transportation systems that serve the elderly and the handicapped. Specifically, the division establishes procedures and rules which the transit agencies follow in applying for state and federal financial assistance. The division also develops the application requirements for several sources of grant funds and evaluates the applications for those funds. It also provides technical assistance, sponsors research designed to enhance public transportation and prepares a statewide master plan for public transportation. In addition, the division assists the State Highway and Public Transportation Commission in the development of policies regarding mass transportation and represents the department in activities involving local governments, transit and research organizations, and the federal Urban Mass Transportation Administration.

In the past, the department has used informal committees consisting of members of the transit industry to give input on policies, issues and problems affecting public transportation in the state. For example, the department has met with a committee representing systems providing service to the elderly and handicapped. In this meeting the committee and the department worked out problems the systems were having with the department's rules and procedures.

The department should have a method to ensure that the transit industry has an opportunity to regularly provide input on issues and problems involving public transportation in the state. The public transportation division's activities were reviewed to see if its structure provided an opportunity for the transit industry to adequately participate in the development of the department's public transportation policies and procedures. The review showed the following:

- ▶ **The department does not have a regular, formalized procedure to obtain input from the transit industry on the development of rules and procedures affecting transit agencies.**
  - Although the division works informally with the Texas Transit Association and other members of the industry, there is no regular, formal mechanism to ensure that the transit industry has input into the development of rules and procedures.
- ▶ **Input of the transit industry in the department's decision-making process is important because of the significant effect that these decisions have on the industry.**

- Most of the systems that serve elderly and handicapped populations and the rural transit systems receive a significant portion of their funding in state and federal funds from the department. The department sets the allocation formulas for distribution of funds to elderly and handicapped, rural and small city transit systems. The department also sets grant application and decision procedures for the distribution of several sources of funds, such as funds received from the governor's office from oil overcharge refunds.
- Without requiring a formal mechanism in statute, there is no assurance that the department's efforts to provide the transit industry with an opportunity to participate in the development of rules and procedures affecting public transportation policy will continue on a regular basis.
- ▶ **Most state agencies regularly use advisory committees to assist in the development of policies and procedures.**
- Advisory committees are a common approach in Texas for achieving public input into an agency's decision making process. For example, in the last session alone, the legislature created 30 advisory committees to provide advice to various state agencies.
- Advisory committees are set up to provide a range of viewpoints or technical assistance to state boards and commissions from those affected by or interested in an agency's decisions. Generally, advisory committees represent a balance of interests relating to the program area. Typically, their duties include assisting in the development of program guidelines and priorities, providing technical assistance, reviewing and commenting on proposed rules, and recommending needed program changes.
- The Department of Human Services currently uses eight advisory committees. Two of these committees, the Medical Care Advisory Committee and the Advisory Committee for Services to the Aged and Disabled, consist of providers and consumers that advise the department's board on rules and procedures regarding provider reimbursements and qualifications for services under the state's Medicaid program. The SDHPT's public transportation division similarly provides reimbursements to providers and determines qualifications for funds.
- The Department of Health uses several advisory committees that assist the department to develop rules and regulations and to provide insight into potential advantages or disadvantages concerning program modifications or legislative proposals. Two of these include the Radiation and the Solid Waste advisory committees.
- Most of the metropolitan transit associations in Texas have advisory committees to assist in developing policies for providing services to their elderly and handicapped service population.



## PROBLEM

The department lacks a formal structure for obtaining input from the state's transit industry on matters concerning department policies and programs affecting public transportation in Texas. These policies have a significant impact on public transportation providers.

## RECOMMENDATION

- The department's statute should be amended to create a public transportation advisory committee. The advisory committee should:
  - be composed of nine members, appointed by the commission, with a balance of interests representing rural, small urban, large urban and elderly and handicapped transit agencies as well as members of the general public with knowledge and interest in the area of public transportation;
  - advise the commission on the needs and problems of the state's transit agencies, including the method for allocating state public transportation funds;
  - comment on rule changes during their development and prior to their final adoption unless an emergency requires immediate action; and
  - perform other duties as determined by the commission.

---

A statutorily created public transportation advisory committee ensures that the transit industry and interested groups have an opportunity to participate in transit policy development. Many of the department's decisions and procedures can have a significant impact on public transportation providers. The public transportation advisory committee would provide a means for the industry and others to have input into department decisions. The advisory committee would also be responsible for identifying needs and problems concerning the transit industry and for bringing them before the State Highway and Public Transportation Commission.

## FISCAL IMPACT

Additional costs would result from expenses incurred by members of the public transportation advisory committee as they attend meetings. Based on one day quarterly meetings, the expenses of the committee should not exceed \$10,000 annually.



10/10/10

10/10/10

10/10/10

10/10/10

**ISSUE 14:** The department should be given statutory authority to assess a highway maintenance fee for overweight vehicles permitted to operate on the highways. The fee would recover a portion of the costs of accelerated deterioration of the highway system caused by overweight vehicles.

## BACKGROUND

Highways are designed to carry specific levels of traffic. Of the existing 77,000 miles of highway in Texas, 3,000 miles of interstate highway, or four percent of the entire system, are designed for heavy-duty use. Close to 32,100 miles of state and U.S. highways, or roughly 46 percent of the state highway system, are designed for medium-duty use. About half of the state's highways, specifically farm- or ranch-to-market roads, are light-duty highways.

The structural integrity and the life span of a highway will be ensured if the highway is maintained properly and if the loads moving on the system do not exceed the weight limits the highway is designed to carry. However, the state's investment in its highways is jeopardized if vehicles exceeding the weight limits for which the highway was designed use the highways. This type of highway use results in an increased rate of deterioration of the state's highways and result in the need to repair these roads sooner than planned.

In an attempt to prevent the rapid deterioration of the nation's highways from operation of overweight vehicles, the Federal Highway Administration (FHWA) and the states have established laws and regulations limiting the weight a vehicle can carry on the highway system. Federal law limits the weights of vehicles traveling on the interstate system to loads of 80,000 pounds. Federal law then requires each state to enforce these federal weight limits. A state's federal highway construction funding can be withheld if a state fails to enforce these limits to the satisfaction of the FHWA. Texas law sets the weight limit for state and federal highways at 80,000 pounds and for county roads at 84,000 pounds.

As mentioned previously, under federal law vehicles exceeding the 80,000 pound limit are not allowed to operate on interstate highways. However, Texas allows loads that exceed the 80,000 pound weight limit to travel on state roads if the truck operator first obtains a permit from the department. The permit sets out conditions by which the overweight load can be transported. For example, the permit may specify the time of day the load can be transported and the route the vehicle is to travel.

The department's central permit operations section issues all overweight permits. The department issues permits primarily through an automated process whereby a trucker calls the department, gives information about the load, receives an approved route and other information needed to move, and pays for the permit with a credit card. The department limits the majority of overweight vehicles to single-trip permits. However, permits for mobile cranes and oil field servicing and drilling equipment can be issued on a single trip or quarterly basis. Fees for

mobile cranes and oil drilling and servicing equipment vary because they are based on a formula that takes into account the weight of the load and the distance it travels.

As a result of recent legislative changes, the permit fee was statutorily increased from \$20 to \$30. At the same time, the statute was changed to direct the fee revenue from the state highway fund to the general revenue fund to help pay for public education programs. This change did not affect fee revenue from mobile crane and oil servicing and drilling equipment permits which are still deposited in the state highway fund.

The construction and maintenance of the state's highways are primarily financed through federal funds, motor vehicle fuel taxes and registration fees assessed on vehicles operating on the highways. The motor vehicle fuel tax and registration fees serve as fees for using the highway system. In general, the amount of a user fee should be a reflection of the cost of providing a service or benefit. Overweight vehicles benefit significantly from the state having a quality, well maintained highway system. The review examined whether the fees paid for the operation of overweight vehicles reflect an appropriate share of the costs of maintaining the highway system. This review indicated the following:

- ▶ **Overweight vehicles pay less for the deterioration they cause to the highways than motorcycles, automobiles and light trucks.**
  - Recent studies conducted by FHWA and the American Association of State Highway and Transportation Officials (AASHTO) compared the cost of the wear and tear to the highway caused by the operation of motorcycles, automobiles, light trucks and vans, and overweight vehicles with the revenue these vehicles generated from fuel taxes and registration fees. The studies determined that overweight vehicles cause more damage but pay for a smaller share of this damage than automobiles, motorcycles, pickups and vans. In the AASHTO study, it was estimated that automobiles pay \$1.04 for every dollar of wear and tear to the highway system they cause light trucks pay \$1.10 for every dollar of wear and tear that they cause. Overweight vehicles only pay \$.71 for every dollar of wear and tear to the highway system that they cause. Colorado and Maine have also conducted studies that determined that automobiles and light trucks pay more for the wear and tear caused by their operation than overweight vehicles.
- ▶ **The overweight fee structure is not equitably applied. Lighter overweight vehicles pay the same fee as heavier vehicles that cause more damage to the highways.**
  - The 71st Legislature recently increased the overweight permit fee from \$20 to \$30. This fee is charged regardless of how much over the 80,000 pound limit the vehicle weighs. In fiscal year 1989, there were 143,128 overweight permits issued. The department estimates that the majority of overweight permits are for vehicles between 110,000 and 130,000 pounds. However, these vehicles pay the same fee as vehicles weighing between 80,000 and 110,000 pounds.

- ▶ **Texas is among a minority of states whose fees for overweight vehicles do not increase with vehicle weight.**
  - Only 18 states have a flat fee for overweight vehicles similar to Texas' approach. The remaining 32 states use a variety of methods to determine fees charged. These methods range from charging higher fees as vehicle weight increases to a flat fee with additional charges for mileage or for special services needed such as bridge inspections.
- ▶ **The revenue generated from the permitting of overweight vehicles has been inadequate to recover the estimated cost of accelerated deterioration of the highway system caused by overweight vehicles.**
  - The Texas Transportation Institute, in its study "Evaluation of Oversize/Overweight Permit Policy and Fee Structure" issued in November 1988, put the dollar amount of damage to the highway system in Texas caused by overweight vehicles at \$62 million dollars per year. In fiscal year 1989, the department collected approximately \$4.26 million in fees for 143,128 overweight permits which was used primarily to cover the program's administrative cost. The 71st Legislature has since directed overweight vehicle permit revenue to other uses.

## PROBLEM

The current fees paid by the trucking industry for overweight vehicles reflect a very small portion of the costs incurred by the state as a result of the operation of these vehicles. In addition, the current fee structure does not provide the flexibility to assess fees based on the weight of the vehicle or the distance it travels, the two factors most closely associated with damage a vehicle causes.

## RECOMMENDATION

- **The department should be authorized in statute to assess a highway maintenance fee on overweight vehicles based on a weight-distance formula and limited to a maximum of \$75. The revenue from the fee would be deposited in the state highway fund.**

---

A highway maintenance fee for overweight vehicles would help recover a portion of the accelerated deterioration of the highway system caused by overweight vehicles. This recommendation would be in addition to, and would not affect, the current statutory fees charged for the issuance of overweight permits. The statute would require the department to adopt a highway maintenance fee schedule, in rules, that is based on the weight of the vehicle and the distance it travels on the highways of the state. A fee schedule based on these two factors allows the department to charge a fee that is associated with the amount of deterioration of the roads caused by an overweight vehicle. The revenue from the fee would be deposited in the state highway fund to be used for highway maintenance. The

revenues would free highways funds currently used to pay for damages caused by overweight vehicles. These funds could then be used for other highway purposes, such as to relieve traffic congestion through new or expanded highways or for highway safety projects.

### FISCAL IMPACT

The actual amount collected under this proposal would depend on the fee schedule adopted by the department. The maximum amount that could be charged is \$75. As a rough estimate of revenues that could be generated, it could be assumed that the average fee would be \$37.50. Revenues generated from this amount would total about \$5.4 million. The revenue generated by the highway maintenance fee would be deposited in the state highway fund for use in repairing damage to the highway system caused by the operation of overweight vehicles. Administering the fee should not result in any significant costs for the department.

**ISSUE 15: The statute should be amended to authorize the attorney general's office to assess an administrative fine against violators of the state's overweight vehicle laws.**

## BACKGROUND

The State Department of Highways and Public Transportation issues overweight permits but is not responsible for enforcement of this program. Several state and local governmental entities provide enforcement. These include the Department of Public Safety (DPS), the Texas Railroad Commission, the attorney general's office, and the local courts.

The Department of Public Safety is primarily responsible for the enforcement effort. The department's troopers weigh trucks to determine whether they are in compliance with the law. In Texas, an operator or owner violates the state's overweight truck laws if a vehicle is operated without a permit or is found to be over the axle weight limit or gross weight limit set in their permit. Violating the state's weight limits is a Class C misdemeanor for the first offense and a Class B misdemeanor on subsequent offenses. The DPS trooper can ticket vehicles found out of compliance and require the operator to either unload the excess weight or shift placement of the load, depending on the situation. In fiscal year 1989, DPS stopped and weighed 774,065 vehicles. Approximately 34,000 vehicles were found to be overweight. Of this group, DPS troopers issued 33,118 tickets for violations of the state's overweight vehicle laws. These violations are handled in the justice of the peace and county courts. Also, DPS required operators to unload 6,700 vehicles and to shift the load of 5,058 vehicles in fiscal year 1989.

The Railroad Commission is primarily responsible for regulating the rates charged by intra-state carriers. The commission can revoke, cancel or suspend a carrier from operating in the state if the carrier is in violation of any state law or regulation, including those administered by the SDHPT. The commission performs audits to determine if motor carriers are charging the rates prescribed by the commission. Because the weight of the load is used to determine the rate charged by a carrier, an audit can reveal whether the load is within the state's weight limits. As a result, the commission can determine if violations of the state's weight limits have occurred while auditing a carrier for rate violations. If a carrier continues to overload, the Railroad Commission can ask the company to show cause why its certificate to operate in the state should not be revoked or suspended. The Railroad Commission also has the authority to assess an administrative penalty of up to \$10,000 to any carrier violating any of the state's laws relating to the regulation of motor carriers, including the state's truck weight limits.

The attorney general's office has filed suit against motor carriers violating size and weight laws and against individuals aiding and abetting in these violations. Beginning in January 1, 1985, the attorney general's office instituted a program to collect civil damages from those companies that flagrantly and continually violated the overweight laws of the state. Working closely with DPS and with the

Railroad Commission, the attorney general's office instituted lawsuits against these violators. These suits sought to recover monetary damages to compensate the state for the damages caused by overweight vehicles operating out of compliance with the state's weight limits. However, recent changes in the state's tort laws have resulted in the attorney general's office no longer pursuing these types of cases.

The penalty structure for overweight truck enforcement should be able to recover a reasonable portion of the costs to the state for the deterioration and damage to the highways caused by non-permitted and under-permitted overweight vehicles and the costs of an enforcement program. Revenues from the penalty structure should be available to the state for its use. The penalty structure should also be equitable and high enough to encourage compliance. A review of the enforcement structure for the state's permit and overweight laws indicated the following:

- ▶ **Fines levied against overweight vehicles operating without a permit or above permitted limits do not go to the state to pay for the enforcement program or for damages to the state highway system.**
  - The Department of Public Safety is authorized to issue citations to operators of vehicles found in non-compliance with the state's overweight vehicle laws. In fiscal year 1989, DPS issued 33,118 tickets for operating without a permit or at a higher weight than indicated on the permit. All of these citations were treated as Class C misdemeanors. Revenue generated from these citations goes to the counties in which the violation occurred. The counties can use these funds as they deem appropriate. The department receives none of this revenue to pay for deterioration or damage to the system caused by vehicles operating out of compliance with the state's overweight vehicle laws.
  - The revenue from overweight vehicle citations received by the counties in fiscal year 1989 totaled approximately \$3.3 million.
- ▶ **Texas is different from almost all other states in that its fine structure is not linked to the accelerated deterioration of the system caused by the overweight vehicle.**
  - Violations of the state's overweight laws are Class C misdemeanors for first-time violators and Class B misdemeanors for repeat violators. Class C misdemeanors are punishable by fines up to \$200 and Class B misdemeanors are punishable by fines up to \$500. A justice of the peace or county judge in the county where the violation occurred determines the amount of the fine, which is not linked to deterioration or damage to the highway system. No violations were treated as Class B misdemeanors in fiscal year 1989.
  - Four states, including Texas, use this type of misdemeanor approach to penalize operators who violate the states overweight vehicle laws. Forty-six states link the penalty to potential damage to the roadway by using a penalty structure that assesses fines on a sliding scale based on how much a vehicle exceeds the weight limit.



- ▶ **Some states that link fines to highway damage have penalty limits for significant violations that are greater than penalty limits in Texas.**
  - At least six states that link overweight vehicle fines to highway damage have fines for significant violations that are greater than the penalty limits in Texas. These states include Minnesota, Oregon, Nevada, Illinois, New York, California and Iowa. In these states the maximum fines for first-time violators operating a vehicle weighing more than 5,000 pounds over the 80,000 pound weight limit, without a permit, range from \$200 to \$500. In cases where the vehicle is 10,000 pounds over the 80,000 pound weight limit, fines range from \$600 to \$2,000. In Texas, the maximum fine for these violations is \$200.
  - Data are not available to show whether these higher penalty limits produce greater compliance in other states. However, given equal enforcement effort, it could be assumed that the possibility of higher fines would result in greater compliance.
- ▶ **In previous legislative sessions, there have been attempts to establish an administrative penalty structure for overweight truck violations.**
  - In fiscal year 1985, the department sought authority to assess administrative penalties against overweight vehicle violators from the 69th Legislature. The proposal was not enacted.
  - In 1987, a bill was introduced in the 70th Legislature that would have authorized the attorney general's office to assess administrative penalties against violators of overweight vehicle laws. The bill had the support of the State Department of Highways and Public Transportation and the DPS; however, the bill was not enacted.

## **PROBLEM**

The current system of fines for overweight vehicles operating without a permit or in excess of their permit is improperly structured in two ways. First, fine revenues go to the counties instead of the state where the revenues should be used for paying for the enforcement effort and repair of the state highway system. Second, the fine is not linked to the accelerated deterioration of the highway system resulting from the operation of an overweight vehicle.

## **RECOMMENDATION**

- **The statute relating to enforcement of overweight vehicles should be amended to:**

## RECOMMENDATION (cont.)

- replace the current penalty structure with an administrative penalty structure administered by the attorney general's office; and
- provide a percentage of the fines to the Department of Public Safety to support its enforcement actions regarding overweight vehicles, a percentage to the attorney general's office to recover its administrative expenses, and the remainder to the state highway fund.

---

This change is intended to help the state recover the costs associated with the accelerated deterioration of the highway system caused by overweight vehicles in non-compliance with the state's vehicle weight laws. A framework for an administrative penalty system would be placed in statute. The proposed penalty structure would be based on the structure developed and considered during the 70th Legislative session. The fine amount would be based on how much the load is over the authorized weight and how far the load has traveled in Texas.

As set out in that proposal, once a weight violation is cited, the DPS officer would have 15 days to deliver to the attorney general's office a sworn statement that would contain the date and nature of the violation, name and address of the registered owner and the operator of the vehicle, license plate and operator's license numbers and the amount by which the motor vehicle is alleged to have exceeded the weight limit. To determine the appropriate fine, the attorney general's office would use a schedule of fines set out in statute which is shown in Exhibit 5 in the Appendix. For example, the fine schedule would work as follows: A truck operating without a permit is found to weigh 90,000 pounds, which is 10,000 pounds and 13 percent over the 80,000 pound weight limit. Based on the fine schedule in Exhibit 5, the operator of the truck would be subject to a fine of five cents per pound overweight. The total penalty in this example would be \$500.

After determining the amount of the fine, the attorney general's office would send a notice of the assessment to the violator by certified mail. Payment would be due within 10 days after the notice is received. If payment is not received within the required period, the attorney general's office would be authorized to institute a suit to collect the fine, plus reasonable attorney's fees, interest, investigative costs, and court costs. The attorney general's office would also be authorized to place a lien against a vehicle involved if the assessment is not paid. In some cases, the attorney general's office could also foreclose on the vehicle. The DPS would be responsible for taking possession and selling the vehicle and would deposit the proceeds in the state highway fund.

A fine could be appealed within 20 days after receiving notice. The fine would not have to be paid until final judgment is made. The appeal would be heard by a justice of the peace or county court and would be tried de novo. Venue would be in Travis county or in the county in which the person or firm resides or where the person's or firm's principal place of business is located.

This new approach would not apply to damage to any bridge, overpass, underpass, bridge railing, or guardrail that is a part of the state highway system. This type of

damage would be covered by the carrier's liability insurance or by the surety bond each carrier must have under state law.

Ten percent of all sums collected under this fine structure would be deposited in the general revenue fund for use by the attorney general's office to cover the administrative costs associated with assessing the penalty. An additional 10 percent would go to the DPS to assist in their enforcement of the state's weight laws. The remaining 80 percent of the revenues would be deposited in the state highway fund.

### FISCAL IMPACT

House Bill No. 1367 of the 70th Legislature proposed a fine structure of this sort. The fiscal note on this bill indicated that there would be revenue in the first year of \$28.5 million and about \$4.4 million in revenue each year thereafter. This estimate assumes that in the first year there would be a significant amount of penalty assessments. After this period, compliance by the regulated community is expected to significantly improve and the revenue generated through the fines would be reduced. Therefore, after the first year there would be revenue of approximately \$3.5 million for the state highway fund, \$440,000 for the attorney general's office and \$440,000 for the Department of Public Safety to use for increased vehicle weight enforcement. In addition, there would be a loss to the local governments of approximately \$3.3 million annually since they would no longer process overweight violations as misdemeanors in local courts.



**ISSUE 16: The surety bond requirements for oversized and overweight vehicles should be repealed.**

## BACKGROUND

Beginning in 1929, the department's statute has required all applicants seeking a permit to move an overweight or oversized vehicle to also secure a surety bond. The amount of the bond is set by the department and is designed to cover actual damage that might be sustained to the highway by the operation of the vehicle for which the permit is issued. This would include damage to guardrails, overpasses, and bridges.

Currently, the department has set the bond amount for either overweight or oversized vehicles at \$5,000. The \$5,000 bond applies to an operator's or owner's entire fleet of overweight or oversized vehicles. In addition, individuals seeking a permit for ready mix vehicles (vehicles that mix cement while driving) or vehicles transporting solid waste must obtain a \$1,000 bond for each vehicle. Individuals operating vehicles under a special permit for up to 84,000 pounds must also obtain and file with the department a \$15,000 bond for each vehicle.

In fiscal year 1989, the department registered 8,176 bonds for individuals seeking permits for overweight or oversized vehicles. The department registered 197 bonds for vehicles operating under a special permit as described above, 3,660 bonds for ready mix vehicles, and 441 bonds for individuals operating solid waste vehicles. The total amount of these bonds for fiscal year 1989 was approximately \$47.8 million.

In addition to the bonding requirements of the state, the state and the federal government require operators or owners of commercial vehicles to carry liability insurance to cover any damage to the highway system caused by these vehicles. The amount of the liability insurance required by the federal government for commercial vehicles moving on the interstate highway system is \$750,000 to \$5,000,000, depending on the commodity being hauled and the potential hazard the load presents. In 1987, the Texas legislature also passed legislation requiring commercial vehicles operating within the state to carry liability insurance. Vehicles weighing greater than 26,000 pounds but less than 48,000 pounds must have liability coverage of \$20,000 for bodily injury or death for one person in one accident, \$40,000 of coverage for bodily injury or death of two or more in one accident, and \$15,000 of coverage for property damage (\$20,000/\$40,000/\$15,000). Commercial vehicles operating in excess of 48,000 pounds must have liability coverage of \$500,000.

The original purpose of the bond requirement was to provide the department with a means of recovering, from vehicle operators and owners, any financial loss from damages to highways caused by the operation of overweight trucks. An assessment of the bonding requirement was conducted to determine the effectiveness of the bond requirement considering the liability insurance the state

and the federal government now require of trucking firms. Major findings from this assessment indicated the following:

- ▶ **The bonding requirement for oversize and overweight vehicles has been used infrequently to cover the cost of damage caused by the operation of oversize and overweight vehicles.**
  - From 1929 to the present, damage reimbursements have been collected from 14 bonds. Collections from 11 of these bonds occurred from 1985 to 1987. The attorney general's office collected damage reimbursements totaling \$55,000 in this period. Changes in the state's tort laws since 1987 have limited the attorney general's office in its efforts to collect against the bonds. No bonds have been acted on since 1987. When damage has occurred, the vehicle's owner or operator has used liability insurance to cover the damage or has paid directly for the cost of repairing the damage.
  
- ▶ **State and federal liability insurance requirements duplicate the purpose and coverage of the bond.**
  - The state requires an owner or operator of a vehicle weighing greater than 26,000 pounds but less than 48,000 pounds to carry liability coverage of \$15,000 for property damage. The state requires operators or owners of commercial vehicles weighing in excess of 48,000 pounds to carry \$500,000 of liability insurance. The federal government also requires insurance coverage. The Department of Transportation requires vehicles operating on the interstate highway system to carry liability insurance of \$750,000 to \$5,000,000 depending on the commodity and hazardous nature of the load.
  - Any damage to the highway system attributable to a specific vehicle is covered either by this insurance or is settled directly by the owner. In fiscal year 1989, \$2.7 million of damage caused by bonded vehicles was repaid by liability insurance or trucking company resources. In contrast, no damages were recovered through the bonds in fiscal year 1989.
  
- ▶ **The bonds are an additional cost to the trucking industry that provides little benefit to the state.**
  - The industry spends approximately \$643,000 dollars per year on bonds for overweight permits. The cost of a \$1,000 to a \$5,000 bond is approximately \$50. The cost of a \$15,000 bond is approximately \$150.
  - The \$55,000 collected between 1985 and 1987 represents less than 0.11 percent of the over \$45 million face value of the bonds purchased during this period. No bonds have been collected on since 1987.
  - The department indicated that it spends approximately \$50,000 for 1.5 FTE's to administer the bond program for overweight vehicles.

▶ **Forty-six states do not have a bond requirement.**

- Texas is one of only four states that has a bond requirement. Louisiana requires a \$1,500 bond for single trips and allows an operator to obtain a \$10,000 annual bond. Maryland requires a \$1,000 credit bond and a \$10,000 performance bond, which serves as liability insurance. In Virginia, owners of vehicles over 115,000 pounds must have a surety bond or letter of credit on file.

**PROBLEM**

The surety bond requirement provides little benefit to the state and imposes an unnecessary financial burden on the trucking industry. Sufficient protection for the state is available through required liability insurance.

**RECOMMENDATION**

- **The surety bond requirements for operators of overweight and oversized trucks should be removed from statute.**

---

This recommendation removes a duplicative statutory requirement which has placed a burden on both the state and the trucking industry. Removing the bond requirement will eliminate the department's responsibility to administer bonds that are not used and will eliminate the trucking industry's expense to obtain the bonds. Removing the bond requirement will not have an adverse impact on the department because the liability insurance will cover damages caused by a vehicle.

**FISCAL IMPACT**

The department would save about \$50,000 in personnel and other costs from no longer having to administer a bond program. In addition, the trucking industry would save approximately \$643,000 per year from no longer having to obtain the surety bonds.



1111

1111



**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.

---

---

State Department of Highways and Public Transportation			
Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>A. GENERAL</b>
	X		1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			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.
		*	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.

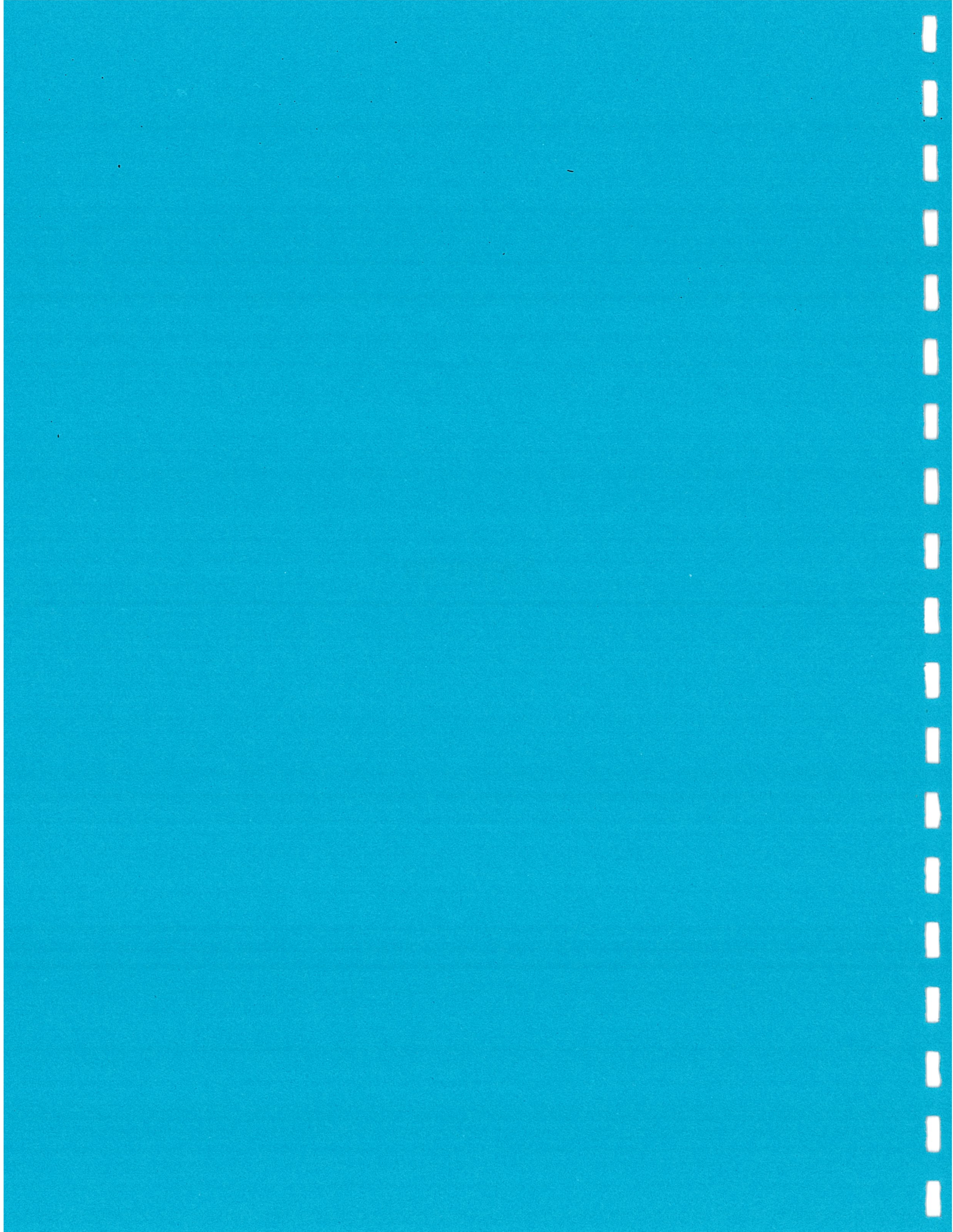
\*\* Already in law -- requires updating to reflect standard ATB language.

State Department of Highways and Public Transportation (cont.)			
Applied	Modified	Not Applied	Across-the-Board Recommendations
			<b>B. LICENSING</b>
		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	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.

# Appendix



SAC B-220/90

93

Sunset Staff Report

**Exhibit 1**  
**Contractor Payments by Days of Month**  
**Twelve Month Average: June 1989 to May 1990**

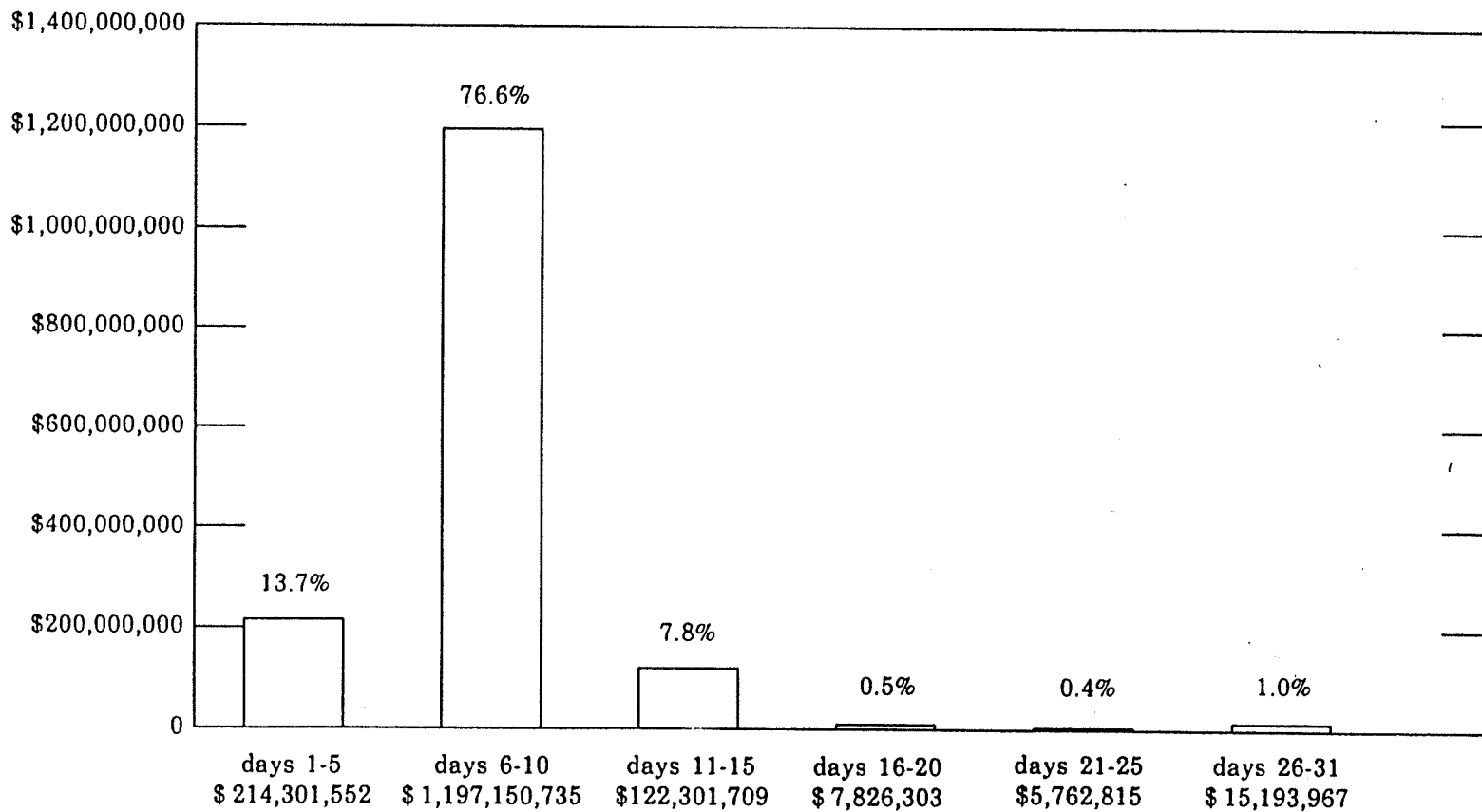


Exhibit 2

State Department of Highways and Public Transportation  
Female and Minority Employment: Years 1980 to 1990

Class/Year	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
% Black American	5.7	5.8	5.9	5.9	6.1	6.1	6.1	6.0	5.9	6.0	6.0
% Hispanic American	14.5	15.0	15.3	15.2	15.7	15.9	15.9	16.1	16.2	16.2	16.3
% Other Minority	0.5	0.5	0.4	0.5	0.5	0.7	0.7	0.8	0.8	0.8	0.8
% All Minorities	20.7	21.2	21.7	21.6	22.3	22.8	22.7	22.9	22.9	23.0	23.0
% All Females	13.2	13.8	14.4	14.5	15.0	15.8	16.4	17.1	17.4	17.9	18.0



Exhibit 3

State Department of Highways and Public Transportation  
Employment Statistics  
as of March 1990

Job Categories	Total		White		Black American		Hispanic American		Asian American		Native American		Total
	M	F	M	F	M	F	M	F	M	F	M	F	
Officials/ Administrators	186 97.9%	4 2.1%	181 93.8%	4 2.1%	0 0%	0 0%	8 4.1%	0 0%	0 0%	0 0%	0 0%	0 0%	193
Parity Goal	91.7%	8.3%	80.6%	7.0%	2.2%	0.5%	4.8%	0.5%	3.6%	0.2%	0.5%	0.0%	
Professionals	2,408 71.1%	981 28.9%	2,068 61.0%	847 25.0%	56 1.7%	45 1.3%	236 7.0%	79 2.3%	44 1.3%	8 0.2%	4 0.1%	2 0.1%	3,389
Parity Goal	73.7%	26.3%	64.3%	21.9%	2.3%	2.0%	5.1%	2.0%	1.7%	0.4%	0.3%	0%	
Technicians	3,039 88.3%	402 11.7%	2,492 72.4%	335 9.7%	136 4.0%	21 0.6%	385 11.2%	32 0.9%	21 0.6%	14 0.4%	5 0.1%	0 0%	3,441
Parity Goal	81.2%	18.8%	65.3%	14.5%	4.3%	2.0%	10.1%	1.8%	1.1%	0.4%	0.3%	0.1%	
Protective Services	11 100%	0 0%	3 27.3%	0 0%	5 45.5%	0 0%	3 27.3%	0 0%	0 0%	0 0%	0 0%	0 0%	11
Parity Goal	89.5%	10.5%	67.4%	7.1%	7.8%	1.7%	13.6%	1.5%	0.2%	0.1%	0.4%	0.1%	
Para Professionals	95 19.4%	394 80.6%	71 14.5%	332 67.9%	7 1.4%	23 4.7%	16 3.3%	38 7.8%	0 0%	1 0.2%	1 0.2%	0 0%	489
Parity Goal	52.1%	47.9%	40.4%	38.4%	3.9%	4.1%	7.3%	5.0%	0.2%	0.2%	0.3%	0.2%	
Office/Clerical	170 17.3%	810 82.7%	122 12.4%	635 64.8%	16 1.6%	62 6.3%	32 3.3%	109 11.1%	0 0%	3 0.3%	0 0%	1 0.1%	980
Parity Goal	18.6%	81.4%	12.5%	62.4%	2.3%	7.4%	3.6%	10.8%	0.2%	0.5%	0.1%	0.2%	
Skilled Craft	6,141 98.0%	125 2.0%	4,315 68.9%	91 1.5%	487 7.8%	18 0.3%	1,330 21.2%	16 0.3%	3 0.0%	0 0%	6 0.1%	0 0%	6,266
Parity Goal	89.0%	11%	48.2%	6.3%	15.6%	2.0%	24.6%	2.5%	0.3%	0.1%	0.3%	0.1%	
Service/ Maintenance	517 93.8%	34 6.2%	281 51.0%	20 3.6%	35 6.4%	5 0.9%	200 36.3%	8 1.5%	0 0%	1 0.2%	1 0.2%	0 0%	551
Parity Goal	97.3%	2.7%	69.6%	1.9%	6.8%	0.4%	20.1%	0.4%	0.3%	0.0%	0.4%	0.0%	
Total	12,570 82.0%	2,750 18.0%	9,533 62.2%	2,264 14.8%	742 4.8%	174 1.1%	2,210 14.4%	282 1.8%	68 0.5%	27 0.2%	17 0.0%	3 0.0%	15,320
Parity Goal	81.6%	18.4%	62.2%	14.4%	5.1%	1.7%	31.1%	2.0%	0.8%	0.2%	0.3%	0.0%	

Total Females: 18.0%  
Total Minorities: 23.0%

**LEGEND:**

M = Male Top Number = Actual Number  
F = Female Bottom Number = Percent of Total

Exhibit 4

State Department of Highways and Public Transportation  
State Minority Employment Goals

Job Category	State Minority Employment Goal (%)	Department Minority Workforce (%)
Upper Management (Officials/Administrators)	14%	4.1%
Professionals	18%	14.0%
Technicians	23%	17.8%
Protective Services	48%	72.8%
Para-Professionals	25%	17.6%
Office/Clerical	25%	22.7%
Skilled Craft	29%	29.7%
Service/Maintenance	52%	45.5%
Total	30%	23%

Exhibit 5

Proposed Overweight Vehicle Administrative Penalty Schedule

Schedule A: Gross Weight

Percentage in excess of lawful maximum gross weight that is at least:	Assessment per pound for each pound over lawful maximum gross weight:
5% but less than 8%	\$0.03
8% but less than 11%	.04
11% but less than 15%	.05
15% but less than 19%	.06
19% but less than 23%	.07
23% or more	.08

Schedule B: Axle Weight

Percentage in excess of lawful maximum weight that is at least:	Assessment per pound over lawful maximum axle weight:
10% but less than 13%	\$0.04
13% but less than 17%	.06
17% but less than 20%	.08
20% but less than 23%	.10
23% but less than 26%	.12
26% or more	.14

If a vehicle violates both gross weight and axle weight limits, the violation that produces the greater assessment would be used for purpose of assessing a penalty.



**State Department of Highways and  
Public Transportation**

**Report prepared by:**

**Ken Levine  
Bruce Crawford  
Joe Walraven  
Elizabeth Pyke  
David Holliand  
Karl Spock**

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

**(512) 463-1300**



