

Response to  
*State of Arkansas, Bureau of Legislative Research*  
Request for Proposals BLR-170003  
Procurement Process Consulting Services

**civicinitiatives**  
Government. Services. Transformed.



*Civic Initiatives, LLC*  
*823 Congress Avenue, #1433*  
*Austin, TX 78767*  
*August 18, 2016*



Jillian Thayer  
500 Woodlane Street  
State Capitol Building  
Room 315  
Little Rock, Arkansas 72201

Re: Solicitation RFP#BLR-170003 Procurement Process Consulting Services

Dear Ms Thayer:

Civic Initiatives, LLC is pleased to present our proposal to provide Arkansas with procurement process consulting services.

Civic Initiatives works exclusively with public sector clients with a singular focus on procurement assessment and transformation. We field a select team of veteran government executives and certified public procurement professional with over 70 years of collective experience in successfully delivering on high-visibility, high-risk public sector change projects.

For this response we have partnered with Sunset Solutions. That company's founder, Joey Longley, served as the director of the Texas Sunset Commission for 14 years, which served the Texas Legislature in the review and identification of transformation actions in over 180 legislative assessments. His unique experience complements the procurement experience of our team in a way that is a perfect fit for the needs of the Arkansas Legislature.

For this project Arkansas needs a vendor partner that can demonstrate the following:

- A team with active and current knowledge of Arkansas procurement policies and processes
- Direct knowledge of public procurement policies and processes in numerous peer states that can be as comparisons in development of recommendations and alternatives
- Proven experience in producing unbiased reports and associated legislation for legislative action

We hope you will find that Civic Initiatives team presents these characteristics. Since our inception, Civic Initiatives is honored to have served Chief Procurement Officers in the states of Arizona, Arkansas, Georgia, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nebraska, Ohio, Oregon, South Carolina, Tennessee, Texas, Vermont and Virginia.

We look forward to serving you to deliver a lasting platform for transformation, and to earning the right to serve as a trusted advisor for the State in the years to come.

Sincerely,



Dustin Lanier, Principal  
Civic Initiatives, LLC  
[dlanier@civicinitiatives.com](mailto:dlanier@civicinitiatives.com)  
Ph. (512) 523-4834

# RFP Response

---

## Executive Summary

### Our Understanding

As a part of its rules adopted on May 19, 2017, the Arkansas Legislative Council (ALC) assigned to the Review Subcommittee a study of all procurement laws, regulations, and policies in the State of Arkansas, with a report on the study to be presented to the Arkansas Legislative Council at its December 2018 meeting. The Review Subcommittee is seeking to contract for consultant services to assist the Subcommittee with its study of procurement statutes, regulations, policies, processes and practices and develop a report to be submitted to the ALC providing detailed and accurate information concerning the current state of procurement laws, regulations, and procedures and their impact in the State of Arkansas, as well as recommendations for legislative changes.

### Project Team Overview

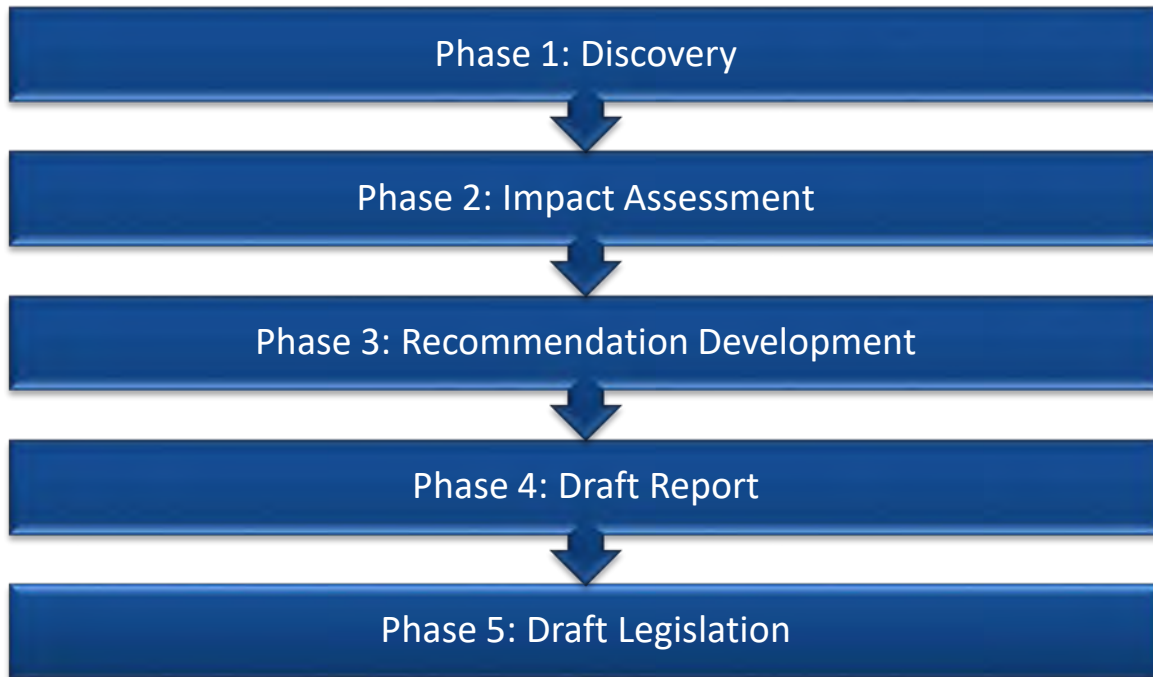
For this effort, Civic Initiatives has assembled a team with experience in procurement assessment, organizational assessment, legislative report development and legislative process that is specifically tailored to meet the needs of the BLR and Subcommittee.

Civic Initiatives, a Texas-based limited liability S corporation, is headquartered in Austin Texas. Civic Initiatives, led by veteran government executives, works exclusively with state and local government partners on procurement transformation. The Civic Initiatives team is experienced in delivering successful results on transformation of procurement processes, both during the team's public sector tenure and through Civic Initiatives projects across the nation. Project engagements span a broad spectrum of states including the States of Arizona, Arkansas, Georgia, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nebraska, Ohio, Oregon, South Carolina, Tennessee, Texas, Vermont and Virginia.

Our partner, Texas Sunset Solutions is a privately held Limited Liability Company that provides consulting services regarding effective government processes. That company's founder, Mr. Joey Longley, served as the director of the Texas Sunset Commission for 14 years, which served the Texas Legislature in the review and identification of transformation actions in over 180 legislative assessments. His unique experience complements the procurement experience of our team in a way that is a perfect fit for the needs of the Arkansas Legislature.

### Project Plan Overview

The following figure provides a graphical overview of the high-level project work plan. Details of each phase and the tasks to be completed, deliverables and associated resources has been provided in the Detailed Project Workplan section of this response.



### Phase 1: Discovery

The Discovery Phase will be composed of tasks necessary to review and assess existing statute, regulations, policies, processes and practices related to procurement. The focus will be on the review and assessment of all relevant policy impacting the full span of the procurement lifecycle from identification of a procurement need to closeout of a contract.

### Phase 2: Impact Assessment

The Impact Assessment Phase will focus on setting and facilitating interviews with internal and external stakeholders. Internal stakeholders will be interviewed for the purpose of validating the discovery, gathering input from procurement professional regarding impact of state policies on their ability to execute procurement needs, identifying possible areas for improvement and optimization. External stakeholders will be interviewed for the purpose of gathering input from suppliers, with specific focus on identified professions, regarding impact of state policies on their ability to respond to procurement needs of the State, identifying possible areas for improvement and optimization.

### Phase 3: Recommendation Development

The Recommendation Development Phase will focus on using information gathered in the Discovery and Impact Assessment phases to identify and draft recommendations for optimization of the State statutes, regulations, policies, processes and practices related to procurement.

### Phase 4: Draft Procurement Study Report

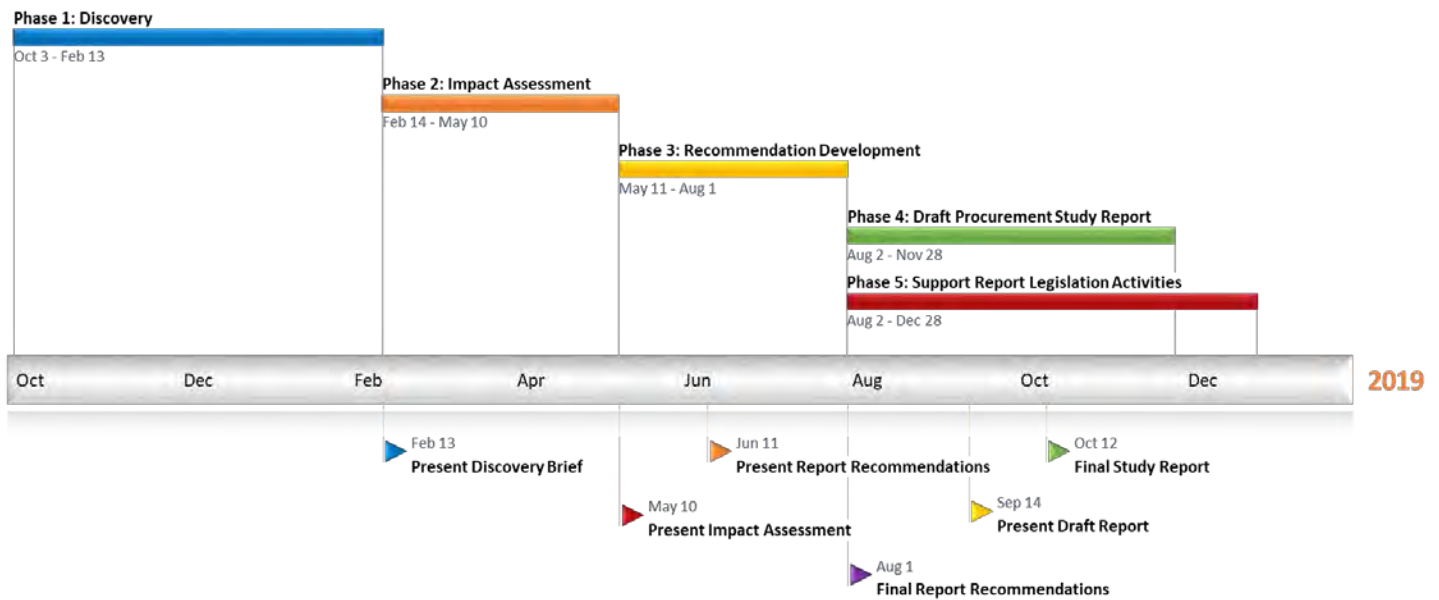
The Draft Report Phase will focus on assembling the component pieces of the work performed to date into a comprehensive report of the study for review and submission to the Arkansas Legislative Council.

## Phase 5: Support Report Legislation Activities

The Support Report Legislation Activities Phase will focus on identifying report recommendations adopted by the Subcommittee that have policy impacts requiring legislation and working with BLR to advise on draft legislation and review drafted legislation.

## Project Timeline Overview

The following figure provides a graphical overview of the timeline associated with each phase of the project and dates for key deliverables for the project.



## Vendor Profile

Civic Initiatives, a Texas-based limited liability S corporation, is headquartered in Austin Texas. The company, incorporated in 2010, has remained in current name and form since its incorporation. The primary contact and contact information for the company is:

Dustin Lanier  
823 Congress Avenue #1433  
Austin, TX 78767  
PH: (512) 523-4834  
FAX: (512) 351-4644  
[dlanier@civicinitiatives.com](mailto:dlanier@civicinitiatives.com)

Civic Initiatives is a privately held Limited Liability Company. The company has operated for six years with revenue growth and profit every year and has grown to twelve employees (from a single founder in 2010). As a company singularly focused on public sector procurement transformation projects, the team size is designed to be large enough to handle any type of issue but small enough to allow for competitive pricing appropriate for state clients.

The Civic Initiatives team is experienced in delivering successful results on high-visibility, high-risk transformation projects, both during the team's public sector tenure and through Civic Initiatives projects across the nation. Project engagements include the States of Arizona, Arkansas, Georgia, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nebraska, Ohio, Oregon, South Carolina, Tennessee, Texas, Vermont and Virginia.

Civic Initiatives is currently supporting the State of Arkansas, providing consulting services to document current procurement processes and technology, assess procurement automation readiness, and support the State in their efforts to establish a procurement automation solution that supports the streamlining of procurement processes and integrates with the State's existing ERP system of record.

Previous work performed by Civic Initiative in Arkansas has included work as a subcontractor in support of a procurement practices review for future automation efforts in 2013, which involved a comprehensive review of Arkansas procurement practices and opportunities for improvement.

In response to this solicitation, Civic Initiatives has named long time company practice leads – Dustin Lanier, CPPO and Derrek Davis, CPPB – and certified procurement professionals who have worked together on many projects matching the requirements of the State. In addition, Civic Initiatives has partnered with Sunset Solutions, a consulting services company with extensive experience in evaluating policy and working with the legislature and legislative processes that will be critical to the success of this project. That company's founder, Mr. Joey Longley, served as the director of the Texas Sunset Commission for over 20 years, which served the Texas Legislature in the review and identification of transformation actions in over 180 legislative assessments. His unique experience complements the procurement experience of our team in a way that is a perfect fit for the needs of the Arkansas Legislature.

Together this team provides a uniquely qualified and integrated project team to support the State of Arkansas Bureau of Legislative Research in its study of all procurement laws, regulations, and policies and development of a report on the study to be presented to the Arkansas Legislative Council at its December 2018 meeting. To further example this, samples of past work have been provided as Attachment D.

Neither Civic Initiatives nor its partner, Sunset Solutions, has had in the past or currently has outstanding civil or criminal litigation, indictment, bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation and has no financial or other conflicts of interest that would impede its ability to complete this work in a fair and unbiased manner.

Reputation and integrity are the basis for longevity in serving a small community such as State Chief Procurement Officers. Civic Initiatives has singularly focused on innovative and valuable service to this community, delivered with complete independence and integrity. Civic Initiatives clients with multiple year relationships – Missouri, Ohio, and Arkansas – are listed as corporate references to demonstrate the trust in our work. Multiple long term client relationships delivered with an efficient staffing structure ensure that Civic Initiatives is financially stable and able to continue to grow in the future.

A critical factor in differentiating teams presented to the State by multiple companies with admirable backgrounds is the following simple truth: **Companies don't have resumes, people do.** Arkansas must be confident that the team presented has actually done the innovative analysis, the critical thinking, and the completeness of the work. Arkansas should expect it is not being presented with company experience that does not translate to personal experience of proposed personnel. In this case, the principal consultants described in the Vendor Qualification Section have been the actual developers and producers of analysis in exactly the manner requested in this RFP.



## Civic Initiatives Service Categories

The figure below depicts our primary experience and work focus across three key service categories that are described in more detail below.



### Program Assessment & Transformation Assistance Services

This service category focuses on working with state and local governments to assess their organizations for the purpose of realigning activities according to best practices and guiding principles. A key outcome of this service is the transformation of the organization's procurement function into a strategic asset for the government entity. Assessments are performed in three work segments: Organizational Practices, Procurement Management Practices, and Procurement Automation Practices.

Through comprehensive reviews, Civic Initiatives helps state and local governments develop a full understanding of the maturity of the organization, critical gaps, constraints and inefficiencies. After gaining insight into the current state, Civic Initiatives works with the government entity to establish a common understanding of future state targets and discrete projects to optimize the procurement function. All assessment work is led by principal consultant Dustin Lanier, a Certified Public Procurement Officer, and all practice leads and senior consultants have previous management responsibilities in public sector procurement.

### Spend Analysis & Capability Development through Sourcing Services

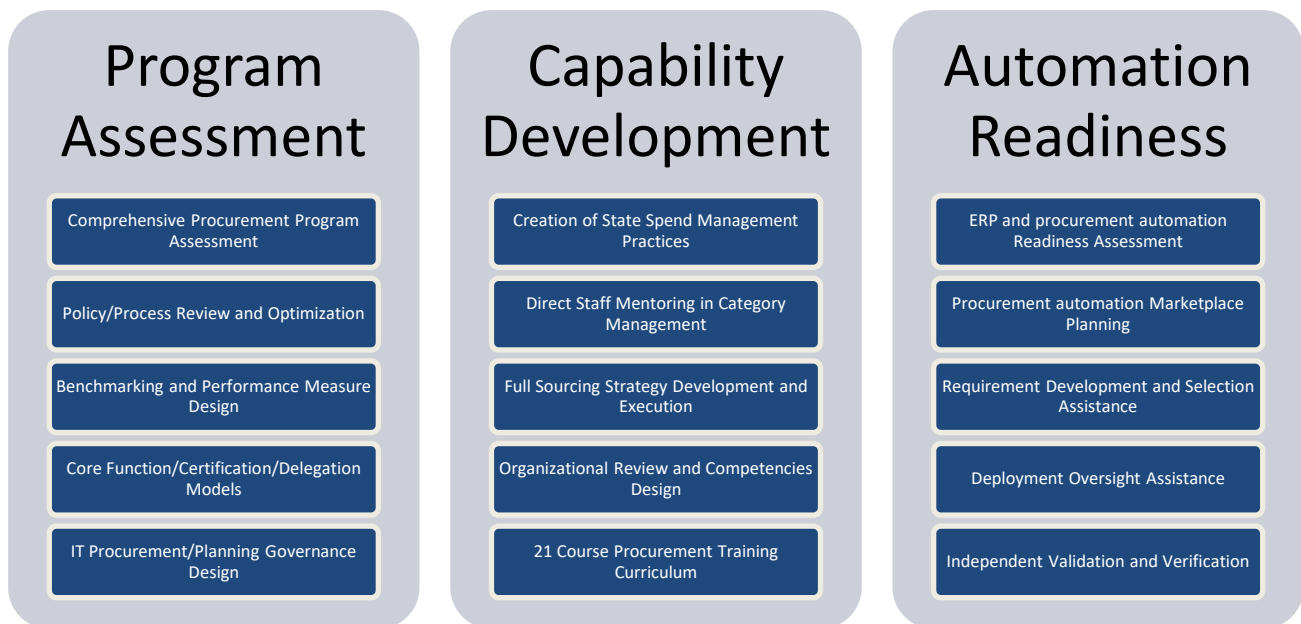
This service category focuses on helping procurement organizations understand how to use data to act proactively to establish strong contract portfolios, which is the basis for catalogs and therefore a foundational element of procurement automation success. These efforts include identifying data sources, assisting in cleansing and rationalization, establishing spend categories, and assisting in prioritizing categories for review. Because these efforts are typically new to organizations that have not established sourcing or spend management practices, or they have been applied in a non-uniform manner, it is not sufficient to merely provide the data that supports in decision-making.

A key differentiator for Civic Initiatives is a focus on knowledge transfer: teaching buyers how to use data, how to develop opportunity assessments, and how to assess sourcing alternatives. Capability development through sourcing refers to our methodology to work with buyers in support of these efforts in prioritized categories, resulting in actual sourcing events.

## Procurement Automation Readiness & Implementation Assistance Services

This service category focuses on working with state and local governments considering the deployment of procurement automation functionality. Civic Initiatives helps establish a consistent definition for procurement automation, assess the state or local government’s readiness for acquisition and deployment, support them in requirements definition and acquisition, and assist them during implementation to ensure the deployment that meets their identified requirements.




The following graphic provides an overview of the competencies Civic Initiatives is able to provide in each of the Service Categories outlined above:



## Client Portfolio

The following provides an overview of clients Civic Initiatives has performed work for in the past three (3) years. The list is broken into current and past clients, and provides details of the work performed and Civic Initiatives team members actively participating in the project.







### Current Client Engagements

	<p>State of Arkansas, Office of State Procurement <i>February 2017 – Present (Previous: October 2013-March 2014)</i></p> <p>Performed a comprehensive assessment of procurement statutes, rules and processes and technology preparedness for procurement automation leading to a formal plan for optimization of procurement automation solutions at the State. Documenting current procurement lifecycle and procurement method processes. Previously supported an assessment of the state procurement function, identifying opportunities to expand the use of data for performance monitoring and strategic sourcing efforts, and providing customized training for procurement professionals.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Charlene Rendon</i></p>
	<p>State of Nebraska, State Purchasing Bureau <i>May 2016 – Present</i></p> <p>Performed a comprehensive assessment of procurement statutes, rules and processes and technology preparedness for procurement automation leading to a formal plan for transformation of the procurement function. Leading configuration management for procurement automation efforts for the State and supporting implementation of transformation projects.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Bob Sievert, Charlene Rendon, Woody Fluharty, Lisa Rolik</i></p>
	<p>State of Ohio, Department of Administrative Services <i>October 2012 – Present</i></p> <p>Performed an assessment of the current procurement automation deployment to support identification and definition of a scope for future procurement automation needs of the State. Provided recommended go-forward options, and are currently supporting efforts for an integrated resolicitation. Supporting a variety of transformation initiatives for the state, including planning for a new enterprise IT contracting group, developing category management strategies, and working with procurement professionals for both IT and non-IT in sourcing planning.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Bob Sievert, Velissa Davis, Harry Pape</i></p>

	<p>State of Missouri, Office of Administration <b>January 2013 - Present</b></p> <p>Developed a comprehensive assessment of internal processes and preparedness for procurement automation. Managed development of a state of the art solicitation for procurement automation. Leading development of new procurement and contract administration practices and providing project management and testing support for implementation of the procurement automation solution.</p> <p><b>Team Members: Dustin Lanier, Derrek Davis, Bob Sievert, Woody Fluharty, Lisa Rolik</b></p>
	<p>State of Indiana, Office of Information Technology <b>August 2014 - Present</b></p> <p>Led an assessment of IT contract prioritization, management, governance and procurement. Assisting with implementation of key projects including establishing a Line of Business governance structure, optimizing IT project review and approval processes.</p> <p><b>Team Members: Dustin Lanier, Derrek Davis, Regina Rousseau</b></p>
	<p>State of Oregon, Department of Administrative Services <b>December 2016 - Present</b></p> <p>Researching state statute, rule, policy and process in the development of content for an online statewide Procurement Manual providing process guidance, and detailing roles, responsibilities and expectations of all actors in the procurement lifecycle.</p> <p><b>Team Members: Dustin Lanier, Derrek Davis, Regina Rousseau</b></p>
	<p>State of Vermont, Office of Purchasing and Contracting <b>May 2017 - Present</b></p> <p>Providing support in development of a solicitation document for the acquisition of a procurement automation solution for the State. Support includes development of content, validation of solution requirements, development of evaluation criteria and cost proposal, and support in drafting of demonstration scripts.</p> <p><b>Team Members: Dustin Lanier, Derrek Davis, Bob Sievert, Charlene Rendon, Velissa Davis</b></p>
	<p>State of Maine, Division of Purchases <b>Engaged August 2017 (Previous: October 2015 - June 2016)</b></p> <p>Performing a review of current procurement automation systems in an effort to identify and define a scope for future procurement automation needs of the State. Previously provided support to review procurement processes, and provide recommendations for optimization and readiness for automation.</p> <p><b>Team Members: Dustin Lanier, Derrek Davis, Bob Sievert, Woody Fluharty</b></p>



## Past Client Engagements

	<p>State of South Carolina, Department of Administration <i>June 2017 - August 2017</i></p> <p>Provided support in development of a solicitation document for the acquisition of statewide janitorial services.</p> <p><i>Team Members: Dustin Lanier, Woody Fluharty</i></p>
	<p>State of Oregon, Secretary of State <i>July 2106 - January 2017</i></p> <p>Provided acquisition support for the team leading the procurement of a procurement automation solution for the State. Developed a cost proposal for vendor response, supported team onsite visits, evaluation of vendor responses, award recommendation and negotiations efforts with awarded vendor.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Bob Sievert, Charlene Rendon</i></p>
	<p>Commonwealth of Kentucky, Office of Procurement Services <i>November 2013 - June 2016</i></p> <p>Led an assessment of the state procurement function, reviewing processes, policy, procedure, and opportunities for improvement. Assisting in transformation projects including policy development, organizational review assistance, and sourcing planning.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Woody Fluharty</i></p>
	<p>State of Hawaii, State Procurement Office <i>February 2015 - August 2015</i></p> <p>Led an assessment of the state procurement function, reviewing processes, policy, procedure, and providing recommendations for transformation of the state procurement function. Researched, designed and developed the Procurement Wizard, an online, interactive procurement manual.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Regina Rousseau</i></p>
	<p>State of Hawaii, Office of Information Management and Technology <i>May 2012 - July 2014</i></p> <p>Led development of an IT acquisition plan and review of factors affecting state IT procurement. Leading development of comprehensive training program in support of new administrative services responsibilities and enterprise IT procurement.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Regina Rousseau</i></p>
	<p>State of Texas, Department of Information Resources <i>April 2014 - August 2014</i></p> <p>Developed customized training for use in instructing agencies on best practices related to the planning, use and management of statements of work for the department's Deliverables Based Information Technology Services contract.</p> <p><i>Team Members: Dustin Lanier, Derrek Davis, Regina Rousseau</i></p>



## Additional Relevant Past Clients

The following is a list of additional past clients that Civic Initiatives has provided work for that is similar in nature and size to the work request in this RFP. They have been included to provide additional clarity into the types of procurement process consulting services that can be obtained from Civic Initiatives.

	<p><b>Commonwealth of Massachusetts, Operational Services Division</b></p> <p>Procurement subject matter experts responsible for process and program assessment in support of the development of a business case and solicitation for the acquisition of a procurement automation solution for the State led by Gartner.</p>
	<p><b>State of Arizona, State Procurement Office</b></p> <p>Procurement subject matter experts supporting the state in development of strategy, methodology and tools to use system data to track performance of procurement officers and proactive management of the contract portfolio.</p>
	<p><b>State of Michigan, Department of Technology, Management &amp; Budget</b></p> <p>Procurement subject matter experts for statewide vendor and sourcing management in a comprehensive assessment of the technology function for the state of Michigan led by Gartner.</p>
	<p><b>Texas Department of State Health Services</b></p> <p>Led an assessment regarding the effectiveness and security of the state's birth record systems and developed a comprehensive legislative report comprised of 30 specific recommendations spanning legislative issues, process issues and technology challenges, documenting background, rationale for change and implementation considerations for each.</p>
	<p><b>Texas Department of Transportation</b></p> <p>Led an assessment of roadway programs (511, rest areas, picnic areas, safety patrols, and adopt-a-highway sponsorship programs) toward identifying potential operational savings opportunities through contracted service approaches.</p>
	<p><b>Texas General Land Office</b></p> <p>Developed a comprehensive assessment of the disaster contracting policies, processes and supporting contract portfolio. Supporting implementation of revised policies and leading development of new and updated statements of work for strategic services contract portfolio. Previous work involved assessment of Texas State Veterans Homes pharmaceutical program operations including current pharmaceutical program contracts and operator agreements.</p>
	<p><b>City of Philadelphia, Procurement Department</b></p> <p>Performed and assessment of the procurement department, processes and staff focus, resulting in a comprehensive project plan and report being implemented by the city.</p>

## Relevant Partner Engagements

The following provides an overview of engagements Sunset Solutions has been recently engaged in that are similar in nature and size to the work request in this RFP.

	<p><b>State of Arkansas, Department of Human Services</b></p> <p>Working as a partner with the Stephen Group, supporting efforts of the Department Of Human Services to reorganize its division of Medical Services that houses its Medicaid program. One segment of the project involves looking at the agency’s approach to procurement, contract monitoring and vendor management related to its large Medicaid contracts.</p>
	<p><b>State of Texas, Comptroller of Public Accounts</b></p> <p>Worked as a partner with RSM to conduct a comprehensive study and benchmarking of the state procurement process for the Texas Comptroller of Public Accounts, As part of a concerted effort to reform contracting, the legislature asked the Comptroller for a thorough review and report of the state’s current approach to procurement and contracting, and options for future restructuring.</p>

## Vendor Qualifications

### Project Team

The following provides an overview of the team members committed to this project. All team members presented will be immediately available to begin work upon execution of the contract in accordance with the Detailed Work Plan presented. Resumes for each team member have been provided in Attachment C.

Dustin Lanier, CPPO

---

#### *Founder and Principal, Civic Initiatives*

Dustin Lanier is an experienced professional with over 15 years of leadership in large scale organizational change in public sector initiatives of national significance. Through executive leadership roles in technology strategy and procurement strategy for the state of Texas, Lanier gained a strong experience in developing clear strategies, and executing those strategies from concept to contracts. Lanier is a Certified Public Procurement Officer (CPPO).

Lanier's roles in Texas state government included Director of Strategic Initiatives for the state Chief Information Officer, and Director of the Council on Competitive Government, a managed service procurement group that reported directly to state leadership. As Deputy CIO, Lanier was responsible for IT Governance, oversight redesign, and strategic plan development. As Executive Director for CCG, Lanier was responsible for direct creation of strategic sourcing and spend management efforts.

At Civic Initiatives, Lanier is the principal consultant responsible for the strategy, direction and outcomes of client engagements, with a focus on innovative procurement, program maturity assessments and oversight, optimizing the contract portfolio, and managing vendor relationships. Lanier has personally established and led company projects in the states of Arizona, Arkansas, Georgia, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nebraska, Ohio, Oregon, South Carolina, Tennessee, Texas, Vermont and Virginia.

Relevant experience includes:

- Led multiple assessments of a state's procurement organization to determine strategic capacity and readiness for procurement automation. Leading development of new procurement and contract administration practices, requirement development and strategy for procurement automation, and support of business process redesign necessary to accomplish outcomes from tools.
- Led multiple assessments of a state's organizational model regarding information technology acquisitions, and successfully reconciled divergent views to establish cohesive transformation plans. Led development of staffing models and transition to new organizational approach to technology acquisition.
- Creation of a proprietary process to support states in creation of internal spend management programs, with an emphasis on support of staff capabilities, savings generation and calculation, and support of future automation through procurement automation.
- Creation of an extended training methodology for procurement professionals, designed to support a step program for professional development, and also to support nuanced delegation and certification models.



- Led development of IT Governance models for the state of Texas, including the Texas Project Delivery Framework and the core processes of the state Quality Assurance Team
- Direct oversight of successful contracting initiatives in a wide ranging array of government operations, including energy, fuel, fleet, print, mail, software licensing, document imaging, payment cards, GIS and contingent labor, producing biennial savings over 37million.

Lanier graduated with Bachelor of Arts degrees in Public Policy Studies, and in Latin American Studies, from Duke University.

## Derrek Davis, CPPB, PMP

### *Engagement Manager, Civic Initiatives*

Derrek Davis is an experienced professional with a background in business, financial and technology process analysis and reengineering garnered during his 10 years of services with the State of Texas. With the Council on Competitive Government, Davis evaluated the effectiveness of state contracts and was responsible for taking complex strategic procurement opportunities from concept to contract. Prior to this Davis was an Internal Auditor for the State Comptroller where he lead process and system audits, providing recommendations for improvements.

At Civic Initiatives, Davis is responsible for managing the portfolio of client engagements for the company. Davis is responsible for making certain that all projects and resources are actively managed and all projects are meeting client expectations for scope, schedule and deliverables. Davis is also actively involved in aspects of work across all Civic Initiatives competencies including process and technical assessments, implementation support, and capability development, for client engagements in over 15 states.

Davis also brings complementary current skills as a Certified Public Procurement Buyer, Certified Internal Auditor, Certified Information Systems Auditor, a Certified Project Management Professional and a Certified Texas Procurement Manager.

Relevant experience includes:

- Extensive expertise in the evaluation of public sector entities, including operational, financial, consulting and technology assessments. Strong understanding of business processes, financial analysis, strategic planning, risk management and stakeholder management.
- Direct leadership experience managing agency and statewide procurements from concept to contract. Certified Public Procurement Buyer and Certified Texas Procurement Manager, with deep knowledge of all phases of the procurement lifecycle including planning and assessment, solicitation development, negotiations and contract and vendor management.
- Experience and strong understanding of public sector procurement statutes, regulations, policies, processes and best practices. Responsible for researching and drafting content for numerous State Procurement Manuals that seek to distill statute and policy into a clear “how to” guide for public procurement professionals.
- Led broad stakeholder teams in development of procurement strategies and execution of solicitations for complex service categories including energy, fuel, fleet, print, legal research services, document imaging, and GIS.

- Developed business cases supporting acquisition of procurement automation technical solutions including identification and documentation of project vision, goals, and objectives, project scope and functional requirements, implementation strategies and timelines, project cost and funding models, and project benefits and risks.

Davis graduated with a Bachelor of Arts degree in Government and a Master of Arts degree in International Affairs from the California State University, Sacramento.

## Joey Longley

---

### *Founder and Principal, Sunset Solutions*

Joey Longley, a state government efficiency expert and veteran of almost 38 years in and around the public sector. Longley spent 30 years working for the Texas Sunset Commission, a legislative oversight agency charged with review of the state's government agencies. During his tenure, 14 years of which were as Director of the Commission, he led or oversaw more than 180 agency reviews. Many of those reviews dealt with some of the state's largest agencies with significant procurement and contracting efforts. During his tenure, the Sunset Commission helped the legislature create a best practices model to use as a template for government contracting. As Director, he was responsible for day-to-day operations of the staff, planning the course of agency reviews, producing reports, conducting public hearings, and interacting with the Commission and the Legislature.

After leaving the Sunset Commission, Longley began work in the private sector, advising clients of the idiosyncrasies of state government, the Sunset process, and the legislative environment. He then went on to work with Grant Thornton, where he led the firm's business development efforts in Texas. Longley returned to state government when he was asked to be part of Commissioner George P. Bush's transition team at the General Land Office. He helped with Bush's transition into office, oversaw a major program area and initiated an internal "sunset" of the agency, aimed at creating greater efficiency, reducing redundancies in programs, and increasing accountability. He recently returned to the private sector, working again in the role of a government affairs advocate and consultant.

Longley has extensive experience dealing with state government, the legislative process, project management, government policy and process analysis, agency management, consulting, and advocacy. A longtime staple in Texas state government and a Texas A&M graduate, Joey is known and respected throughout the government landscape and the public sector consulting world.

## Charlene Rendon, CPPO

---

### *Senior Consultant, Civic Initiatives*

Charlene Rendon is an experienced procurement professional with over ten years of service spanning several statewide procurement programs. Prior to joining Civic Initiatives, Charlene managed multiple teams in the Strategic Sourcing Division and Statewide Procurement Divisions of the Texas Comptroller's Office.

She specializes in (1) Developing, implementing and managing statewide eProcurement systems; (2) assessing contracts and procurement operations to developing plans for successful eProcurement deployment; (3) leading and managing the entire life-cycle of high dollar contracts including category

analysis, risk assessment, solicitation creation, negotiations and vendor management; (4) Designing and maintaining systems for tracking programs goals, policies, processes, procedures and performance measures; and, (5) Proactively identifying program risks and implementing innovative solutions. Charlene Rendon is a Certified Public Procurement Officer (CPPO).

Recent experience includes:

- Served as strategic sourcing subject matter expert on the development and implementation of multiple eProcurement systems for the State of Texas.
- Managed Texas' statewide e-procurement support teams.
- Conducted an eProcurement assessment for the State of Oregon, including a comprehensive eProcurement system fit-gap analysis.
- Developed and delivered an eProcurement workshop for Santa Barbara County.
- Awarded and managed statewide contracts with an annual value over \$350M in the state of Texas resulting in significant savings and process improvements.
- Administered multiple statewide strategically sourced contracts; including a best-in-class road materials program valued at over \$270M annually. The project resulted in hard dollar annual savings of over \$13M.
- Managed the state of Texas' Vendor Performance Tracking program and oversaw the launching of a newly optimized system.

Rendon graduated from the University of Texas at Austin with a Bachelor of Arts degree in Government, and a Master of Public Administration degree from The University of Texas at Arlington.

## Regina Rousseau, PMP

---

### *Senior Consultant, Civic Initiatives*

Regina Rousseau is an experienced professional with a background in government technology planning and policy. As the former Assistant Director of Technology Planning and Policy at the Texas Department of Information Resources (DIR), Regina managed a broad range of activities that drove statewide planning and policy. At DIR, she led project teams in the development and delivery of strategic plans and reports with the goal of increasing readership, improving collaboration opportunities across agencies, delivering resource and planning support, and highlighting agency progress on the state's technology priorities. Rousseau is a Project Management Professional with the Project Management Institute.

Rousseau graduated with a Bachelor of Science in Anthropology from Kansas State University.

## Project Team Organization and Management

The project will be managed in accordance with appropriate Project Management Body of Knowledge (PMBOK) processes tailored to meet the unique needs of the project. The team will be managed in a federated servant-leader model, with each team member working independently and contributing to a collective result based on their individual expertise, knowledge, skills and abilities. Team members are managed based on a foundation of trust and accountability.

Prior to commencement of work Civic Initiatives will request a Contract Initiation Meeting with the executive project team to ensure there is a common understanding of:

- Project goals and objectives;
- Key contract elements (Scope, Schedule, etc.);
- Project management requirements;
- Roles and responsibilities; and,
- Administrative contract items (Invoicing, Payment, etc.).

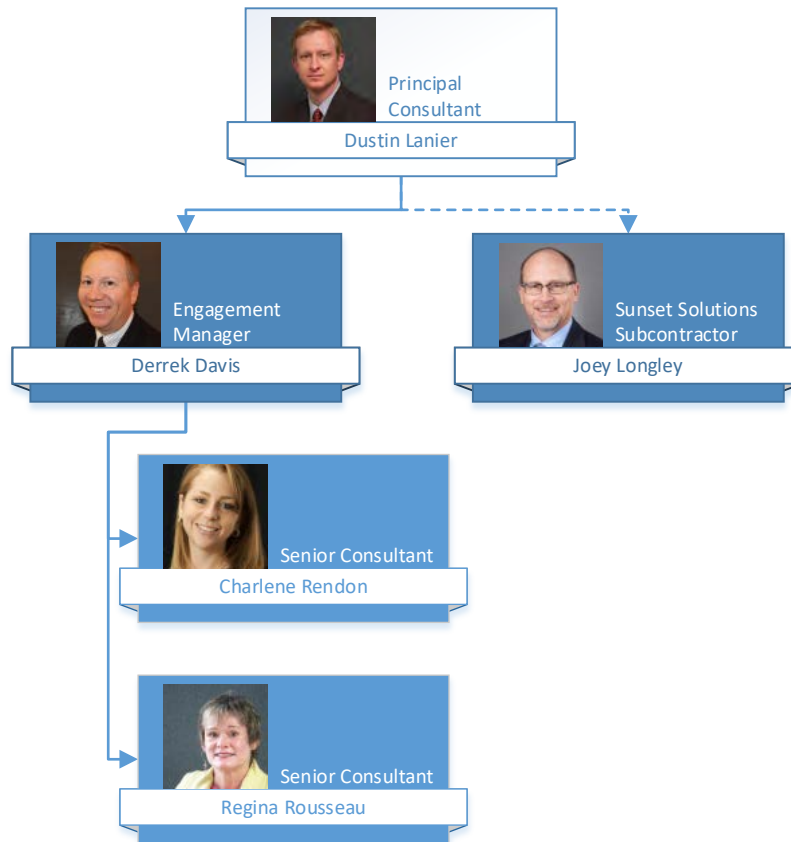
Following this meeting the project work will commence guided by the agreed upon project schedule. The purpose of this phase of the project is to manage every aspect of project delivery to assure the project is successful.

Derrek Davis will serve as the Engagement Manager and will be responsible for day-to-day project management, assuring deliverables are completed and delivered in accordance with the schedule. In this role, Davis will meet with the team on a weekly basis to discuss project status and identify any issues or risks that may need to be communicated to the State in the monthly project status updates. Davis will also be the primary contact for the State for communications related to project coordination and actions on deliverables.

Dustin Lanier will serve as the Contract Manager and will be responsible for all contract related activities, and is the primary contact for the State for communication related to contract revisions or issues. Civic Initiatives takes its role as a trusted advisor seriously, and as such seeks to foster long-standing mutually beneficial relationships with our clients. Should issues arise in the performance of work, Civic Initiatives believes in working closely with the client with open and honest communication to address issues immediately, within the confines of the contract relationship. Should changes to the contract be required, it is expected that they will be documented and agreed to between both parties, formally amending the original contract. We believe if issues escalate or disputes arise, we have failed in our role as trusted advisor.



The following figure provides a graphical view of the team, team structure, and organization.



## References

Similar in size and scope to the required effort described in this RFP, Civic Initiatives has performed complex assessments of procurement statutes, regulations, policies and practices in several states including Arkansas, Hawaii, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nebraska, Ohio and Oregon.

The following three references are the most recent clients for which Civic Initiatives has performed a full procurement assessment that directly contributed to procurement transformation efforts for the State through policy and process optimization. All project work completed for the referenced clients was completed on schedule and on budget in accordance with the contract and Statement of Work.

**State of Missouri, Office of Administration, Division of Purchasing & Materials Management****Scope of Services**

- Performed an assessment of the state central procurement function including statutes, regulations, policies, processes and practices
- Identified critical gaps in the procurement management lifecycle and catalog establishment approach
- Established a broad multi-project initiative to address policy and process gaps in the state, and assisted the state to implement projects to remedy identified gaps
- Reviewed the state readiness for a procurement automation deployment
- Developed an estimated budget and funding model for a procurement automation solution
- Developed comprehensive procurement automation specifications, requirements and solicitation document, associated data flows and narrative elements
- Provided extensive support during procurement automation solicitation evaluation and solution selection
- Assisted the state in pre-award project management activities
- Assisting the state in post-award procurement automation solution implementation through IV&V and project management mentoring activities
- Providing and assistance to develop staff capacity through sourcing events
- Providing support to category management teams to analyze the existing statewide contracts portfolio for eMarketplace readiness, and to prioritize, develop, and complete rebids and new procurements identified as having a critical gap for eMarketplace
- Providing support to develop an integrated contract management team with associated policy and process guidance, tools, templates and training

**Outcomes**

- Deployment of new Lifecycle based Procurement Manual, Integrated Contract Management Team and Contract Management Guide
- Development of a best of breed procurement automation Solicitation and assisted the state staff to complete a successful procurement automation award
- Establishment of the primary Contract Administration Plan, Master Requirements Repository approach, and independent Validation and Verification plans that continue today as the primary management tools for the effort
- Successful launch and on-going implementation of state-wide procurement automation system incorporating Vendor Registration, Sourcing, On-line Bidding, Contract Management, Catalog & Punchout management, Requisitioning, Workflow-Approvals, eOrdering, eInvoicing, spend analytics/reporting and full integration with state finance system

- Completed detailed assessment of statewide contracts portfolio that identified “eMarketplace” candidates for catalogs or punchouts, defined migration paths including where rebidding or amending is needed, and identified new contracting opportunities to expand the portfolio to an adequate level of eMarketplace-ready contracts to support procurement automation funding needs and meet customer expectations for a complete catalog shopping experience

#### **Point of Contact**

**Point of Contact:** Karen Boeger, Director, Department of Purchasing and Materials Management

**Address:** P.O. Box 809, Jefferson City, MO 65109

**Phone:** (573) 751-1699

**Email:** [karen.boeger@oa.mo.gov](mailto:karen.boeger@oa.mo.gov)

**Period of Performance for Work:** January 2013 – Present

#### ***State of Ohio, Department of Administrative Services, General Services Division***

##### **Scope of Services Performed**

- Performed an assessment of the state central procurement function including statutes, regulations, policies, processes and practices
- Assisted central procurement function in transformation efforts including development of new processes and procedures in a lifecycle based Procurement Manual
- Provided staffing analysis necessary to support the implementation, rollout and on-going support of the procurement automation solution
- Assisting the state to implement a category management framework and developing strategic sourcing capabilities in multiple categories with state staff in a capability development approach
- Assisting the state to define its procurement automation approach and strategy
- Assisting as Subject Matter Expert in discovery assessments of Agency procurement processes to identify process, policy, staffing and procurement automation needs
- Assisting as Subject Matter Expert in finalization of procurement automation requirements and drafting of solicitation document

##### **Outcomes**

- Updated and developed new policy and process documents for implementation of a new Procurement Manual and Contract Management Guide
- Completed detailed analysis of spend data and developed a multi-year prioritized sourcing plan
- Provided training to central procurement staff on category management and spend analysis
- Completed Capability Maturity Model (CMM) analysis and provided management briefings which served to establish a common definition of procurement automation for Ohio, defined ‘future state’ expectations and assessed current capabilities both centrally and at the agency level

- Developed comprehensive procurement automation requirements to replace the Ohio Marketplace with broad procurement automation functionality including Sourcing, On-line Bidding, Contract Management, Catalog & Punchout management, Requisitioning, Workflow-Approvals, eOrdering, spend analytics/reporting and full integration with state PeopleSoft finance system including vendor
- Provided detailed state staffing requirements including team organization, anticipated project phasing and associated tasks to support all phases of the procurement automation project including BPR/ discovery, Solution sourcing/selection, Implementation, Rollout and on-going system support
- Developed a training and certification model based on staff competency requirements that provided the state an equivalent certification mechanism to national certification entities for state procurement professionals

**Point of Contact:**

**Point of Contact:** Kelly Sanders, Chief Procurement Officer, State of Ohio

**Address:** 4200 Surface Road, Columbus, OH 43215

**Phone:** 614-752-5259

**Email:** [kelly.sanders@das.ohio.gov](mailto:kelly.sanders@das.ohio.gov)

**Period of Performance for Work:** October 2012 – Present

***State of Arkansas, Department of Finance & Administration, Office of State Procurement***

**Scope of Services**

- Performed an assessment of the state central procurement function including statutes, regulations, policies, processes and practices
- Performed an assessment of the state's procurement automation readiness utilizing the Civic Initiatives methodology
- Performed a gap analysis and developed key project initiatives in support of procurement automation practices
- Developed a Transformation Plan providing discrete projects to address policy, process and technology gaps
- Identifying current technology systems and process/data flows related to procurement activities of the state to provide the state with a comprehensive understanding of the transition required to move to a procurement automation solution and for use in a future eProcurement solicitation
- Developing specifications for future procurement automation solution based on identified procurement automation scope to support acquisition
- Developing detailed process maps of state procurement processes and providing recommendations for process optimization



## Outcomes

- Completed Transformation Plan providing a broad multi-project initiative to address procurement automation technology gaps in the state. Currently working with project team to define projects and resources needs to execute required projects.

## Point of Contact:

**Point of Contact:** Edward Armstrong, Director, Office of State Procurement

**Address:** 1509 West 7<sup>th</sup> Street, Little Rock, AR 72201

**Phone:** (501) 324-9316

**Email:** [edward.armstrong@dfa.arkansas.com](mailto:edward.armstrong@dfa.arkansas.com)

**Period of Performance for Work:** February 2017 – Present (Previous: October 2013-March 2014)

## Detailed Project Work Plan

The Detailed Project Work Plan establishes work phases and tasks necessary to meet the desired statement of work and key deliverables as outlined in the RFP.

The following figure provides a graphical overview of the project work plan, followed by detailed descriptions of each work plan phase, task, and associated subtasks.



### Phase 1: Discovery

The Discovery Phase will be composed of tasks necessary to review and assess existing statute, regulations, policies, processes and practices related to procurement. The focus will be on the review and assessment of all relevant policy impacting the full span of the procurement lifecycle from identification of a procurement need to closeout of a contract. Tasks to be completed include, but are not limited to:

- Research and assess current procurement statute
- Research and assess current procurement regulations
- Research and assess current procurement policies
- Research and assess current enterprise procurement processes and practices
- Identify, map and document current enterprise processes and practices
- Facilitate interviews with key stakeholders, as required, to gain clarity on researched items
- Compile research and draft a Discovery Brief capturing the research performed to date
- Submit and present Discovery Brief to project executive team
- Respond to inquiries from the Subcommittee, as required

### Deliverable

**Discovery Brief** capturing and compiling the research performed to date for the purpose of documenting an agreed upon current state for the State’s statutes, regulations, policies, processes and practices prior to beginning interviews with internal and external stakeholders regarding impact. The deliverable will be provided in a Microsoft Power Point document and will be presented to the project executive team.

### Consulting Resources

Phase 1 will commence on October 3, 2017 and will conclude on February 13, 2018 with presentation of the Discovery Brief deliverable. The resources to be utilized for this task are as detailed below:

Consultant	Role	Hours
<b>Dustin Lanier</b>	Principal Consultant	100
<b>Derrek Davis</b>	Senior Consultant	150
<b>Regina Rousseau</b>	Senior Consultant	50
<b>Charlene Rendon</b>	Senior Consultant	75
<b>Joey Longley</b>	Subcontractor	100

### Phase 2: Impact Assessment

The Impact Assessment Phase will focus on setting and facilitating interviews with internal and external stakeholders. Internal stakeholders will be interviewed for the purpose of validating the discovery, gathering input from procurement professional regarding impact of state policies on their ability to execute procurement needs, identifying possible areas for improvement and optimization. External stakeholders will be interviewed for the purpose of gathering input from suppliers, with specific focus on identified professions, regarding impact of state policies on their ability to respond to procurement needs of the State, identifying possible areas for improvement and optimization. Task to be completed include, but are not limited to:

- Work with the Subcommittee and BLR to identify internal stakeholders to be interviewed
- Work with the Subcommittee, BLR and Office of State Procurement to identify supplier stakeholders to be interviewed
- Draft communications to be used in outreach to internal and external stakeholders
- Support BLR in refining communication and identifying appropriate method of delivery
- Contact internal and external stakeholders to schedule interview and identify most appropriate method for facilitating interview (e.g., conference call, in person, etc.)
- Facilitate interviews with identified stakeholders
- Compile interviews and draft an Impact Assessment document
- Submit and present Impact Assessment to project executive team
- Respond to inquiries from the Subcommittee, as required

### Deliverable

**Impact Assessment** document capturing and compiling impacts identified by the interviewed stakeholders. The deliverable will be provided in a Microsoft Power Point document and will be presented to the project executive team. The Impact Assessment, coupled with research performed in development of the Discovery Brief will be used in Phase 3 to identify and develop recommendations for consideration and adoption by the Subcommittee for inclusion in the Final Report.

### Consulting Resources

Phase 2 will commence on February 14, 2018 and will conclude on May 10, 2018 with presentation of the Impact Assessment deliverable. The resources to be utilized for this task are as detailed below:

Consultant	Role	Hours
<b>Dustin Lanier</b>	Principal Consultant	110
<b>Derrek Davis</b>	Senior Consultant	150
<b>Regina Rousseau</b>	Senior Consultant	50
<b>Charlene Rendon</b>	Senior Consultant	75
<b>Joey Longley</b>	Subcontractor	110

### Phase 3: Recommendation Development

The Recommendation Development Phase will focus on using information gathered in the Discovery and Impact Assessment phases to identify and draft recommendations for optimization of the State’s statutes, regulations, policies, processes and practices related to procurement.

- Assess recommendations received from stakeholders to determine feasibility of implementation
- Assess peer state statutes, regulations, policies, processes and practices related to procurement to identify relevant best practices
- Develop recommendations for discrete actions that can be taken to optimize State statutes, regulations, policies, processes and practices related to procurement
- Submit and present draft recommendations to project executive team
- Discuss draft recommendations with project executive team and refine based on review and feedback received
- Submit and present refined draft recommendations to Subcommittee for review and feedback
- Revise draft recommendations based on review and feedback received
- Submit final revised recommendations to Subcommittee for adoption
- Respond to inquiries from the Subcommittee, as required

### Deliverables

**Report Recommendations** document compiling all recommendations for legislative and other policy related changes necessary to optimize the procurement function of the state. The deliverable will be provided in a Microsoft Power Point document and will be presented to the project executive team as a draft prior to final delivery to the State as a completed deliverable. The State of Arkansas will be provided ten (10) business days to provide feedback and comments to Civic Initiatives that will be incorporated into a final deliverable within five (5) business days.

### Consulting Resources

Phase 3 will commence on May 11, 2018 and will conclude on August 1, 2018 with delivery of the Final Report Recommendations. The resources to be utilized for this task are as detailed below:

Consultant	Role	Hours
<b>Dustin Lanier</b>	Principal Consultant	75
<b>Derrek Davis</b>	Senior Consultant	100
<b>Regina Rousseau</b>	Senior Consultant	38
<b>Charlene Rendon</b>	Senior Consultant	75
<b>Joey Longley</b>	Subcontractor	75

### Phase 4: Draft Procurement Study Report

The Draft Report Phase will focus on assembling the component pieces of the work performed to date into a comprehensive report of the study for review and submission to the Arkansas Legislative Council. Tasks to be completed include, but are not limited to:

- Compile components of the report completed to date in Phase 1 through Phase 3
- Submit and present draft Procurement Study Report to executive project team
- Discuss draft Report with project executive team and refine based on review and feedback received
- Submit and present refined draft Report to Subcommittee for review and feedback
- Revise draft Report based on review and feedback received
- Submit final revised Report to Subcommittee for adoption
- Support Subcommittee as required in lead-up to final Report delivery to ALC
- Respond to inquiries from the Subcommittee, as required



**Deliverable**

1. **Procurement Study Report** providing a compiled report of research performed and recommendations for legislative or similar action including the following key sections, at a minimum:
  - Executive Summary
  - Introduction
  - Study Background
  - Study Scope
  - Current State Overview
  - Impact Assessment
  - Recommendations
  - Appendices with Supporting Documentation (as required)

An initial draft of the Report will be provided in a Microsoft Word document will be presented to the project executive team as a draft prior to final delivery to the State as a completed deliverable. The State of Arkansas will be provided ten (10) business days to provide feedback and comments to Civic Initiatives that will be incorporated into a final deliverable within five (5) business days.

**Consulting Resources**

Phase 4 will commence on August 2, 2018 and will conclude on October 12, 2018 with delivery of the Final Procurement Study Report. Additional resource hours have also been provided to support the Subcommittee as required in the lead-up to the delivery of the final report to the Arkansas Legislative Council on December 1, 2018. The resources to be utilized for this task are as detailed below:

Consultant	Role	Hours
<b>Dustin Lanier</b>	Principal Consultant	96
<b>Derrek Davis</b>	Senior Consultant	144
<b>Regina Rousseau</b>	Senior Consultant	144
<b>Charlene Rendon</b>	Senior Consultant	75
<b>Joey Longley</b>	Subcontractor	96

**Phase 5: Support Report Legislation Activities**

The Support Report Legislation Activities Phase will focus on identifying report recommendations adopted by the Subcommittee that have policy impacts requiring legislation and working with BLR to advise on draft legislation and review drafted legislation. Tasks include, but are not limited to:

- Review adopted report recommendations to identify recommendations requiring legislative changes
- Support BLR to research and identify potential examples of legislation in other states that addresses gaps/issues identified in the recommendation
- Work with BLR to draft legislation, as required
- Review drafts of legislation and provide feedback to BLR

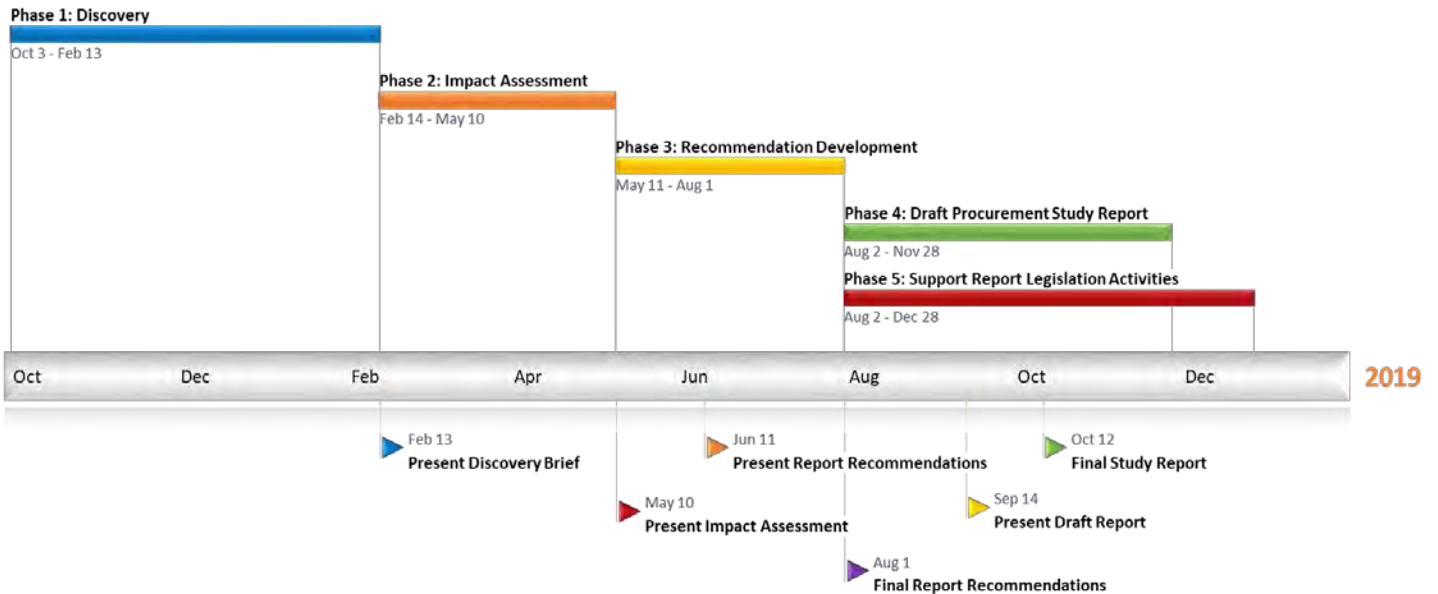
### Consulting Resources

Phase 5 will commence on August 2, 2018 and will conclude on December 31, 2018. This phase is primarily provision of subject matter expertise, and as such no deliverable is specified for this phase. The resources to be utilized for this phase are as detailed below:

Consultant	Role	Hours
Dustin Lanier	Principal Consultant	144
Derrek Davis	Senior Consultant	144
Charlene Rendon	Senior Consultant	75
Joey Longley	Subcontractor	144

### Project Timeline

The following graphic provides a high level overview of the project timeline for project phases, and associated deliverables.



## Project Assumptions

The following are key assumptions and consideration critical to ensure the project team is maximally effective for Arkansas in meeting described objectives and in executing the Detailed Work Plan.

Assumption	Consideration
<b>The BLR will provide an identified resource(s) to act as project and contract manager</b>	It is critical for project success to have identified resources acting as project and contract manager responsible for being the primary contact for project and contract related items.
<b>The BLR will establish a standing project executive team</b>	It is critical for project success to have a standing team of key project decision-makers that are the primary team for the project who can receive and review deliverables.
<b>The State will provide timely reviews of submitted deliverables in order to keep the project on the schedule presented</b>	The schedule assumption for State reviews of deliverables is ten (10) working days. Civic Initiatives will then provide a revised final draft of the deliverable, incorporating any feedback, to the State within ten (10) business days.
<b>The Project Work Plan Schedule, Deliverables &amp; Due Dates is based on a project start date of October 3, 2017</b>	Should the project start date change, the Project Work Plan Schedule, Deliverables & Due Dates will be updated to reflect the new project start date in agreement with the State.
<b>Civic Initiatives will be responsible for providing advice and subject matter expertise during drafting of legislation related to report recommendations</b>	Although Civic Initiatives will support the State in development of legislation, as identified in the Detailed Work Plan, it is expected that the BLR will be the party responsible for drafting of legislation in accordance with responses from the RFP Q&A
<b>The BLR will provide a detailed schedule of dates for Subcommittee meetings requiring attendance by Civic Initiatives.</b>	To ensure we are able to schedule travel to be present onsite for Subcommittee meetings, the BLR will need to provide a detailed list of dates for Subcommittee meetings upon execution of the contract. If a list cannot be provided the BLR will need to provide a minimum of 2 weeks notice (preferably 4 weeks) to allow for proper time to schedule travel to attend required Subcommittee meetings.

# Attachment A: Completed RFP Document



State of Arkansas  
 Bureau of  
 Legislative Research

Marty Garrity, Director  
 Kevin Anderson, Assistant Director  
 for Fiscal Services  
 Matthew Miller, Assistant Director  
 for Legal Services  
 Richard Wilson, Assistant Director  
 for Research Services

**REQUEST FOR PROPOSAL**

RFP Number: BLR-170003	
Commodity: <b>Procurement Process Consulting Services</b>	Proposal Opening Date: <b>August 18, 2017</b>
Date: <b>July 21, 2017</b>	Proposal Opening Time: <b>4:30 P.M. CDT</b>

PROPOSALS SHALL BE SUBMITTED IN HARD COPY AND ELECTRONIC FORMAT AND WILL BE ACCEPTED UNTIL THE TIME AND DATE SPECIFIED ABOVE. THE PROPOSAL ENVELOPE MUST BE SEALED AND SHOULD BE PROPERLY MARKED WITH THE PROPOSAL NUMBER, DATE AND HOUR OF PROPOSAL OPENING, AND VENDOR'S RETURN ADDRESS. THE ELECTRONIC SUBMISSIONS SHOULD BE CLEARLY MARKED AS A PROPOSAL IN RESPONSE TO RFP NO. BLR-170003. IT IS NOT NECESSARY TO RETURN "NO BIDS" TO THE BUREAU OF LEGISLATIVE RESEARCH.

Vendors are responsible for delivery of their proposal documents to the Bureau of Legislative Research prior to the scheduled time for opening of the particular proposal. When appropriate, Vendors should consult with delivery providers to determine whether the proposal documents will be delivered to the Bureau of Legislative Research office street address prior to the scheduled time for proposal opening. Delivery providers, USPS, UPS, FedEx, and DHL, deliver mail to our street address, 500 Woodlane Street, State Capitol Building, Room 315, Little Rock, Arkansas 72201, on a schedule determined by each individual provider. These providers will deliver to our offices based solely on our street address.

MAILING ADDRESS: 500 Woodlane Street State Capitol Building, Room 315 Little Rock, Arkansas 72201	PROPOSAL OPENING LOCATION: Bureau of Legislative Research Director's Office State Capitol Building, Room 315
E-MAIL: thayerj@blr.arkansas.gov	
TELEPHONE: (501) 682-1937	

Company Name: [Civic Initiatives, LLC](#)

Name (type or print): [Dustin Lanier](#)

Title: [Principal](#)

Address: [823 Congress Avenue, #1433, Austin, Texas 78767](#)

Telephone Number: [512-523-4834](#)

Fax Number: [512-351-4644](#)

E-Mail Address: [dlanier@civicinitiatives.com](mailto:dlanier@civicinitiatives.com)

Signature:



**USE INK ONLY; UNSIGNED PROPOSALS WILL NOT BE CONSIDERED**

Identification:

Federal Employer ID Number  
27-3944234

Social Security Number

**FAILURE TO PROVIDE TAXPAYER IDENTIFICATION NUMBER MAY  
RESULT IN PROPOSAL REJECTION**

Business Designation (check one):	Individual [ ]	Sole Proprietorship [ ]	Public Service Corp [ ]
	Partnership [ ]	Corporation <input checked="" type="checkbox"/>	Government/ Nonprofit [ ]

GENERAL DESCRIPTION:	Procurement Process Consulting Services
TYPE OF CONTRACT:	Term

**MINORITY BUSINESS POLICY**

Participation by minority businesses is encouraged in procurements by state agencies, and although it is not required, the Bureau of Legislative Research ("BLR") supports that policy. "Minority" is defined at Arkansas Code Annotated § 15-4-303 as "a lawful permanent resident of this state who is: (A) African American; (B) Hispanic American; (C) American Indian; (D) Asian American; (E) Pacific Islander American; or (F) A service-disabled veteran as designated by the United States Department of Veteran Affairs". "Minority business enterprise" is defined at Arkansas Code Annotated § 15-4-303 as "a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons". The Arkansas Economic Development Commission conducts a certification process for minority businesses. Vendors unable to include minority-owned businesses as subcontractors may explain the circumstances preventing minority inclusion.

**EQUAL EMPLOYMENT OPPORTUNITY POLICY**

The Vendor shall submit a copy of the Vendor's Equal Opportunity Policy. EO Policies shall be submitted in hard copy and electronic format to the Director of the Bureau of Legislative Research accompanying the solicitation response. The Bureau of Legislative Research will maintain a file of all Vendor EO policies submitted in response to solicitations issued by the Bureau of Legislative Research. The submission is a one-time requirement, but Vendors are responsible for providing updates or changes to their respective policies.

**EMPLOYMENT OF ILLEGAL IMMIGRANTS**

The Vendor must certify prior to award of the contract that it does not employ or contract with any illegal immigrants in its contract with the Bureau of Legislative Research. Vendors shall certify online at <https://www.ark.org/dfa/immigrant/index.php/disclosure/submit/new> . Any subcontractors used by the Vendor at the time of the Vendor's certification shall also certify that they do not employ or contract with any illegal immigrant. Certification by the subcontractors shall be submitted within thirty (30) days after contract execution.

**DISCLOSURE FORMS**

Completion of the EO-98-04 Governor's Executive Order contract disclosure forms located at <http://www.dfa.arkansas.gov/offices/procurement/Documents/contgrantform.pdf> is required as a condition of obtaining a contract with the Bureau of Legislative Research and must be submitted with the Vendor's response.

## SECTION I. GENERAL INFORMATION

### 1.0 INTRODUCTION

The purpose of this Request For Proposal (“RFP”) issued by the Bureau of Legislative Research (“BLR”) is to invite responses (“Proposals”) from Vendors desiring to provide procurement process consulting services for the Review Subcommittee of the Arkansas Legislative Council (the “Subcommittee”). **All references to the Subcommittee herein are with the understanding that the Subcommittee is an entity created by the Arkansas Legislative Council and that no actions of the Subcommittee are considered final without the approval or adoption of the Arkansas Legislative Council, unless final authority is specifically granted by the Arkansas Legislative Council.**

Read & Agreed

The Subcommittee intends to execute one contract as a result of this procurement (“the Contract”), if any contract is issued at all, encompassing all of the products and services contemplated in this RFP, and Proposals shall be evaluated accordingly. All Vendors must fully acquaint themselves with the Subcommittee’s needs and requirements and obtain all necessary information to develop an appropriate solution and to submit responsive and effective Proposals.

### 1.1 ISSUING AGENCY

This RFP is issued by the BLR for the Subcommittee. The BLR is the sole point of contact in the state for the selection process. Vendor questions regarding RFP-related matters should be made in writing (via e-mail) through the Director of the BLR’s Legal Counsel, Jillian Thayer, thayerj@blr.arkansas.gov. Questions regarding technical information or clarification should be addressed in the same manner.

Read & Agreed

### 1.2 SCHEDULE OF EVENTS

- Release RFP July 21, 2017
- Deadline for submission of questions August 11, 2017
- Closing for receipt of proposals and opening of proposals August 18, 2017 at 4:30 p.m. CDT
- Evaluation of proposals by BLR Between August 18, 2017 and September 5, 2017
- Proposals released to Subcommittee September 5, 2017
- Selection of Vendors to make Oral Presentations September 8, 2017 meeting of the Subcommittee
- Oral Presentations/Intent to Award September 13, 2017, meeting of the Subcommittee
- Approval of draft contract by Chairs Within 1 week after intent to award
- Approval of contract by the Policy Making Subcommittee of the Legislative Council September 21, 2017
- Contract Execution/Contract Start Date Upon approval of the Policy Making Subcommittee
- Final Report Due December 1, 2018

Read & Agreed

Proposals are due no later than the date and time listed on Page 1 of the RFP.

### 1.3 CAUTION TO VENDORS

- During the time between the proposal opening and contract award, any contact concerning this RFP will be initiated by the issuing office or requesting entity and not the Vendor. Specifically, the Bureau of Legislative Research will initiate all contact.
- **Vendors are requested to respond to each numbered paragraph of the RFP.**
- Vendors must submit one (1) signed original hard copy of the proposal on or before the date specified on page one of this RFP. In addition, the Vendor should submit, on or before the date specified on page one of this RFP, two (2) electronic versions of the proposal (one (1) redacted electronic version and one (1) unredacted electronic version), preferably in MS Word/Excel format, on CD, flash drive, or via e-mail. **Do NOT include any pricing from the Official Proposal Price Sheet on the copies, including on the CD, flash drive, or in the e-mail. Pricing from the Official Proposal Price Sheet, attached as Attachment A, must be separately sealed and submitted from the proposal response and clearly marked as pricing information. The electronic version of the Official Proposal Price Sheet must also be sealed and submitted separately from the electronic version of the proposal and, if submitted via e-mail, the e-mail must clearly state that the attachment contains pricing information.** Failure to submit the required number of copies with the proposal may be cause for rejection.
- For a proposal to be considered, an official authorized to bind the Vendor to a resultant contract must have signed the proposal **and** the Official Proposal Price Sheet.
- All official documents shall be included as part of the resultant Contract.
- The Subcommittee reserves the right to award a contract or reject a proposal for any or all line items of a proposal received as a result of this RFP, if it is in the best interest of the Subcommittee to do so. Proposals will be rejected for one or more reasons not limited to the following:
  - a. Failure of the Vendor to submit his or her proposal(s) on or before the deadline established by the issuing office;
  - b. Failure of the Vendor to respond to a requirement for oral/written clarification, presentation, or demonstration;
  - c. Failure to supply Vendor references;
  - d. Failure to sign an Official RFP Document;
  - e. **Failure to complete the Official Proposal Price Sheet(s) and include them sealed separately from the rest of the proposal;**
  - f. Any wording by the Vendor in their response to this RFP, or in subsequent correspondence, which conflicts with or takes exception to a requirement in the RFP; or
  - g. Failure of any proposed services to meet or exceed the specifications.

### 1.4 RFP FORMAT

Any statement in this document that contains the word “**must**” or “**shall**” means that compliance with the intent of the statement is mandatory, and failure by the Vendor to satisfy that intent will cause the proposal to be rejected. It is recommended that Vendors respond to each item or paragraph of the RFP in sequence. Items not needing a specific vendor statement may be responded to by concurrence or acknowledgement; a failure to provide a response will be interpreted as an affirmative response or agreement to the BLR conditions. Reference to handbooks or other technical materials as part of a response must not constitute the entire response, and Vendor must identify the specific page and paragraph being referenced.

### 1.5 ALTERATION OF ORIGINAL RFP DOCUMENTS

The original written or electronic language of the RFP shall not be changed or altered except by approved written addendum issued by the Bureau of Legislative Research. This does not eliminate a Vendor from taking exception(s) to these documents, but it does clarify that the Vendor cannot change the original document's written or electronic language. If the Vendor wishes to make exception(s) to any of the original language, it must be submitted by the Vendor in separate written or electronic language in a manner that clearly explains the exception(s). If Vendor's submittal is discovered to contain alterations/changes to the original written or electronic documents, the Vendor's response may be declared non-responsive, and the response shall not be considered.

Read & Agreed

#### **1.6 REQUIREMENT OF AMENDMENT**

THIS RFP MAY BE MODIFIED ONLY BY AMENDMENTS WRITTEN AND AUTHORIZED BY THE BUREAU OF LEGISLATIVE RESEARCH. Vendors are cautioned to ensure that they have received or obtained and responded to any and all amendments to the RFP prior to submission.

Read & Agreed

#### **1.7 RFP QUESTIONS**

Any questions regarding the contents and requirements of the RFP and the format of responses to the RFP should be directed to Jillian Thayer via email only at [thayerj@blr.arkansas.gov](mailto:thayerj@blr.arkansas.gov). Questions must be submitted by the deadline set forth in Section 1.2, Schedule of Events. Questions submitted by Vendors and answers to questions, as provided by the Bureau of Legislative Research, will be made public.

Read & Agreed

#### **1.8 SEALED PRICES/COST**

The Official Proposal Price Sheet submitted in response to this RFP must be submitted separately sealed from the proposal response or submitted in a separate e-mail. **Vendors must include all pricing information on the Official Proposal Price Sheet and any attachments thereto and must clearly mark said page(s) and e-mail as pricing information. The electronic version of the Official Proposal Price Sheet must also be sealed separately from the electronic version of the proposal and submitted on CD, flash drive, or in a separate e-mail.** Official Proposal Price Sheets may be reproduced as needed. Vendors may expand items to identify all proposed services and costs. A separate listing, which must include pricing, may be submitted with summary pricing.

Read & Agreed  
OPPS Has been  
submitted as  
separate sealed  
envelope and  
separate email  
submittal

All charges included on the Official Proposal Price Sheet, must be valid for one hundred eighty (180) days following proposal opening, and shall be included in the cost evaluation. The pricing must include all associated costs for the service being bid.

The BLR will not be obligated to pay any costs not identified on the Official Proposal Price Sheet. Any cost not identified by the Vendor but subsequently incurred in order to achieve successful operation will be borne by the Vendor.

The total maximum amount of the bid listed on the Official Proposal Price Sheet will be the maximum amount that may be paid out under any resulting Contract. The amount paid by the BLR to the Successful Vendor will be based on billing for actual hours worked and documented in the hourly rates set forth in the Official Proposal Price Sheet, as well as reimbursements for actual expenses, documented by receipts, up to the maximum contract amount.

#### **1.9 PROPRIETARY INFORMATION**

Proposals and documents pertaining to the RFP become the property of the BLR, and after release to the Subcommittee shall be open to public inspection pursuant to the Arkansas Freedom of Information Act, § 25-19-101, *et seq.* It is the responsibility of the Vendor to identify all proprietary information by providing a redacted copy of the proposal, as discussed below, and to seal such information in a separate envelope or e-mail marked as confidential and proprietary.

Read & Agreed  
1 electronic copy  
of the redacted  
proposal has  
been submitted  
by email.

**The Vendor must submit one (1) complete electronic copy of the proposal from which any proprietary information has been removed, i.e., a redacted copy.** The redacted copy should reflect the same pagination as the original, show the empty space from which information was redacted, and be submitted on a CD, a flash drive, or in a separate e-mail. Except for the redacted information, the electronic copy must be identical to the original hard copy. The Vendor is responsible for ensuring the redacted copy on CD, flash drive, or submitted via e-mail is protected against restoration of redacted data.

#### **1.10 DELIVERY OF RESPONSE DOCUMENTS**

It is the responsibility of vendors to submit proposals at the place and on or before the date and time set in the RFP solicitation documents. Proposal documents received at the Bureau of Legislative Research Offices after the date and time designated for proposal opening are considered late proposals and shall not be considered. Proposal documents that are to be returned may be opened to verify which RFP the submission is for. Proposals may be submitted via e-mail to Jillian Thayer, Legal Counsel to the Director, at thayerj@blr.arkansas.gov.

Read & Agreed

#### **1.11 BID EVALUATION**

The Subcommittee will evaluate all proposals to ensure all requirements are met. The Contract will be awarded on the basis of the proposal that most thoroughly satisfies the relevant criteria as determined by the Subcommittee.

Read & Agreed

#### **1.12 ORAL AND/OR WRITTEN PRESENTATIONS/DEMONSTRATIONS**

The Subcommittee will select a small group of Vendors from among the proposals submitted to attend the September 13, 2017 meeting of the Subcommittee to answer questions and to make oral and/or written presentations to the Subcommittee. All presentations are subject to be recorded.

Read & Agreed

All expenses of the Vendor associated with attending the September 13, 2017 Subcommittee meeting will be borne by the Vendor.

The Successful Vendor selected by the Subcommittee shall attend the September 15, 2017 meeting of the Legislative Council and the September 21, 2017 meeting of the Policy Making Subcommittee of the Legislative Council, and actual expenses of the Vendor in attending these meetings will be reimbursed under the contract.

#### **1.13 INTENT TO AWARD**

After complete evaluation of the proposal, the intent to award will be announced at the September 13, 2017, meeting of the Subcommittee. The purpose of the announcement is to establish a specific time in which vendors and agencies are aware of the intent to award. The Subcommittee reserves the right to waive this policy, the Intent to Award, when it is in the best interest of the state.

Read & Agreed

#### **1.14 APPEALS**

A Vendor who is aggrieved in connection with the award of a contract may protest to the Executive Subcommittee of the Legislative Council. The protest shall be submitted in writing within five (5) calendar days after the intent to award is announced. After reasonable notice to the protestor involved and reasonable opportunity for the protestor to respond to the protest issues cited by the Executive Subcommittee, the Arkansas Legislative Council, or the Joint Budget Committee if the Arkansas General Assembly is in session, shall promptly issue a decision in writing that states the reasons for the action taken. The Arkansas Legislative Council's or the Joint Budget Committee's decision is final and conclusive. In the event of a timely protest, the Bureau of Legislative Research shall not proceed further with the solicitation or with the award of the contract unless the co-chairs of the Arkansas Legislative Council or the Joint Budget Committee make a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

Read & Agreed

#### **1.15 PAST PERFORMANCE**

A Vendor's past performance may be used in the evaluation of any offer made in response to this solicitation. The past performance should not be greater than three (3) years old and must be supported by written documentation submitted to the Bureau of Legislative Research with the Vendor's RFP response. Documentation shall be in the form of a report, memo, file, or any other appropriate authenticated notation of performance to the vendor files.

#### **1.16 TYPE OF CONTRACT**

This will be a term contract commencing on the date of execution of the Contract and terminating on December 31, 2018, with an option for one (1) renewal of up to six (6) months. The BLR will have the option to renegotiate at time of renewal.

Read & Agreed

### **1.17 PAYMENT AND INVOICE PROVISIONS**

Read & Agreed

All invoices shall be delivered to the BLR and must show an itemized list of charges. The Invoice, Invoice Remit, and Summary must be delivered via email to Jillian Thayer, Legal Counsel to the Director, at [thayerj@blr.arkansas.gov](mailto:thayerj@blr.arkansas.gov).

The BLR shall have no responsibility whatsoever for the payment of any federal, state, or local taxes that become payable by the Successful Vendor or its subcontractors, agents, officers, or employees. The Successful Vendor shall pay and discharge all such taxes when due.

Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the BLR. The BLR may not be invoiced in advance of delivery and acceptance of any services. Payment will be made only after the Successful Vendor has successfully satisfied the BLR as to the reliability and effectiveness of the services as a whole. Purchase Order Number and/or Contract Number should be referenced on each invoice.

The Successful Vendor shall be required to maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the BLR. Access will be granted to state or federal government entities or any of their duly authorized representatives upon request.

Financial and accounting records shall be made available, upon request, to the BLR's designee(s) at any time during the contract period and any extension thereof and for five (5) years from expiration date and final payment on the Contract or extension thereof.

### **1.18 PRIME CONTRACTOR RESPONSIBILITY**

Read & Agreed

The Successful Vendor will be required to assume prime contractor responsibility for the Contract and will be the sole point of contact.

The Subcommittee reserves the right to interview the key personnel assigned by the Successful Vendor to this project and to recommend or require reassignment of personnel deemed unsatisfactory by the Subcommittee.

The Subcommittee reserves the right to approve subcontractors for this project and require primary contractors to replace subcontractors that are found to be unacceptable.

If any part of the work is to be subcontracted, the Vendor must disclose the same information for the subcontractor as for itself. Responses to this RFP must include a list of subcontractors, including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's business organization.

### **1.19 DELEGATION AND/OR ASSIGNMENT**

Read & Agreed

The Vendor shall not assign the Contract in whole or in part or any payment arising therefrom without the prior written consent of the BLR, as approved by the Subcommittee. The Vendor shall not delegate any duties under the Contract to a subcontractor unless the BLR, as approved by the Subcommittee, has given written consent to the delegation.

### **1.20 CONDITIONS OF CONTRACT**

Read & Agreed

The Successful Vendor shall at all times observe and comply with federal and state laws, local laws, ordinances, orders, and regulations existing at the time of or enacted subsequent to the execution of the Contract which in any manner affect the completion of the work. The Successful Vendor shall indemnify and save harmless the BLR, the Subcommittee, the Arkansas Legislative Council, the Arkansas General Assembly, and the State of Arkansas and all of their officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order, or decree by an employee, representative, or subcontractor of the Successful Vendor.



### **1.21 STATEMENT OF LIABILITY**

The BLR, the Arkansas Legislative Council, and the Subcommittee will demonstrate reasonable care but shall not be liable in the event of loss, destruction, or theft of contractor-owned technical literature to be delivered or to be used in the installation of deliverables. The Vendor is required to retain total liability for technical literature until the deliverables have been accepted by the authorized BLR official. At no time will the BLR, the Arkansas Legislative Council, or the Subcommittee be responsible for or accept liability for any Vendor-owned items.

Read & Agreed

The Successful Vendor shall indemnify and hold harmless the Subcommittee and its members, the Arkansas Legislative Council and its members, the BLR and its officers, directors, agents, retailers, and employees, and the State of Arkansas from and against any and all suits, damages, expenses, losses, liabilities, claims of any kind, costs or expenses of any nature or kind, including, with limitation, court costs, attorneys' fees, and other damages, arising out of, in connection with, or resulting from the development, possession, license, modification, disclosure, or use of any copyrighted or non-copyrighted materials, trademark, service mark, secure process, invention, process or idea (whether patented or not), trade secret, confidential information, article, or appliance furnished or used by a vendor in the performance of the Contract.

The resulting Contract shall be governed by the laws of the State of Arkansas, without regard for Arkansas' conflict of law principles. Any claims against the Bureau of Legislative Research, the Subcommittee, the Arkansas Legislative Council, or the Arkansas General Assembly, whether arising in tort or in contract, shall be brought before the Arkansas State Claims Commission as provided by Arkansas law, and shall be governed accordingly. Nothing in this RFP or the resulting contract shall be construed as a waiver of sovereign immunity.

### **1.22 AWARD RESPONSIBILITY**

The BLR will be responsible for award and administration of any resulting contract(s).

Read & Agreed

### **1.23 INDEPENDENT PRICE DETERMINATION**

By submission of this proposal, the Vendor certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:

- The prices in the proposal have been arrived at independently, without collusion, and that no prior information concerning these prices has been received from or given to a competitive company; and
- If there is sufficient evidence of collusion to warrant consideration of this proposal by the Office of the Attorney General, all Vendors shall understand that this paragraph may be used as a basis for litigation.

Read & Agreed

### **1.24 PUBLICITY**

News release(s), media interviews, or other publicity by a Vendor pertaining to this RFP or any portion of the project shall not be made without prior written approval of the BLR, as authorized by the Subcommittee chairs. Failure to comply with this requirement is deemed to be a valid reason for disqualification of the Vendor's proposal.

Read & Agreed

The Successful Vendor agrees not to use the BLR's, the Subcommittee's, the Arkansas Legislative Council's, or the Arkansas General Assembly's names, trademarks, service marks, logos, images, or any data arising or resulting from this RFP or the Contract as part of any commercial advertising or proposal without the express prior written consent of the BLR and the Subcommittee in each instance.

### **1.25 CONFIDENTIALITY**

The Successful Vendor shall be bound to confidentiality of any confidential information that its employees may become aware of during the course of performance of contracted services. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of the Contract.

Read & Agreed

The Successful Vendor shall represent and warrant that its performance under the Contract will not infringe any patent, copyright, trademark, service mark, or other intellectual property rights of any other person or entity and that it will not constitute the unauthorized use or disclosure of any trade secret of any other person or entity.

### **1.26 PROPOSAL TENURE**

All Proposals shall remain valid for one hundred eighty (180) calendar days from the Proposal due date referenced on Page 1 of the RFP.

### **1.27 WARRANTIES**

- The Successful Vendor shall warrant that it currently is, and will at all times remain, lawfully organized and constituted under all federal, state, and local law, ordinances, and other authorities of its domicile and that it currently is, and will at all times remain, in full compliance with all legal requirements of its domicile and the State of Arkansas.
- The Successful Vendor shall warrant and agree that all services provided pursuant to this RFP and the Contract have been and shall be prepared or done in a workman-like manner consistent with the highest standards of the industry in which the services are normally performed. The Successful Vendor further represents and warrants that all computer programs implemented for performance under the Contract shall meet the performance standards required thereunder and shall correctly and accurately perform their intended functions.
- The Successful Vendor shall warrant that it is qualified to do business in the State of Arkansas and shall file appropriate tax returns as provided by the laws of this State.

### **1.28 CONTRACT TERMINATION**

Subsequent to award and execution of the Contract, either party may terminate the Contract by providing ten (10) days prior written notice.

### **1.29 VENDOR QUALIFICATIONS**

The Successful Vendor must, upon request of the Subcommittee, furnish satisfactory evidence of its ability to furnish products or services in accordance with the terms and conditions of this proposal. The Subcommittee reserves the right to make the final determination as to the Vendor's ability to provide the services requested herein.

The Vendor must demonstrate that it possesses the capabilities and qualifications described in Sections 3 and 5, including without limitation the following:

- Be capable of providing the services required by the Subcommittee;
- Be authorized to do business in this State; and
- Complete the Official Proposal Price Sheet in Attachment A.

### **1.30 NEGOTIATIONS**

As provided in this RFP, discussions may be conducted by the BLR with a responsible Vendor who submits proposals determined to be reasonably susceptible of being selected for award for the purpose of obtaining clarification of proposal responses and negotiation for best and final offers.

### **1.31 LICENSES AND PERMITS**

During the term of the Contract, the Vendor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections, and related fees for each or any such licenses, permits, and/or inspections required by the state, county, city, or other government entity or unit to accomplish the work specified in this solicitation and the contract.

### **1.32 OWNERSHIP OF DATA & MATERIALS**

All data, material, and documentation prepared for the Subcommittee pursuant to the Contract shall belong exclusively to the BLR, for the use of the Subcommittee and other committees of the Arkansas General Assembly, as authorized by the Subcommittee.

## **SECTION 2. OVERVIEW**

### **2.0 PROCUREMENT STUDY OVERVIEW**

As a part of its rules adopted on May 19, 2017, the Arkansas Legislative Council assigned to the Review Subcommittee a study of all procurement laws, regulations, and policies in the State of Arkansas, with a report on the study to be presented to the Arkansas Legislative Council at its December 2018 meeting. The Review Subcommittee voted on June 14, 2017, to procure consultant services to assist the Subcommittee with its study.

### **2.1 OBJECTIVES**

It is the objective of the Subcommittee, by entering into a Contract for consultant services, to provide to the members of the Arkansas Legislative Council detailed and accurate information concerning the current state of procurement laws, regulations, and procedures and their impact in the State of Arkansas, as well as recommendations for legislative changes. The Subcommittee has been tasked to:

- Study current procurement processes and requirements, including without limitation the process and requirements for requests for qualifications and the process and requirements for evaluating responses to requests for proposals and requests for qualifications;
- Study the impact of procurement processes on the legal, architectural, engineering, construction management, and land surveying professions; and
- Recommend changes to the procurement laws, regulations, and processes in a report to the full Legislative Council at its December meeting in each even-numbered year.

The Subcommittee is seeking a consultant to assist with conducting this study and to provide the Subcommittee with an objective analysis of the procurement laws, regulations, and procedures in the State as well as recommendations for revisions and improvements to them.

**The Vendor shall provide this information in a timely manner to the Subcommittee in order to assist the Subcommittee in compiling its report due December 1, 2018.** This information will allow the Subcommittee to adequately assess the needs in the state in order achieve the requirements of the study assigned to it under the rules of the Arkansas Legislative Council.

This Request for Proposal is designed to obtain a Contract to provide procurement process consulting services to the Subcommittee. All responses to this RFP shall reflect the overall goals and objectives stated herein. The Vendor shall bill the BLR on an hourly basis for the services provided.

## **SECTION 3. PROCUREMENT PROCESS CONSULTING SERVICES**

### **3.0 SCOPE OF WORK/SPECIFICATIONS**

It will be the responsibility of the Vendor to provide the Subcommittee and, ultimately, the members of the Arkansas Legislative Council, with accurate and detailed reports, including information set forth in Section 2, above.

In order to achieve the objectives set forth in Section 2.1 above, the Successful Vendor will provide:

- Monthly status updates on the project, which will require monthly attendance at meetings of the Subcommittee to answer questions regarding the status updates;
- Answers to research requests or data inquiries by members of the Subcommittee, as authorized by the Subcommittee Co-chairs;
- Assistance with draft legislation based on recommendations adopted by the Subcommittee; and
- Assistance with drafting a final report for the Subcommittee to submit to the Legislative Council no later than December 1, 2018.

In addition, the Successful Vendor will need to:

- Gather information from and meet with interested stakeholders; and
- Be available to attend meetings of the Subcommittee and other legislative committees, as requested and authorized by the Subcommittee Co-Chairs.

In the event that services in addition to those described in this Section 3.0 Scope of Work/Specifications are required during the term of the Contract, the Co-chairs of the Arkansas Legislative Council shall have the power to approve the additional services and an additional fee for those services in an amount not to exceed ten percent (10%) of the Vendor's total maximum amount of the bid as submitted in the Official Proposal Price Sheet and agreed upon in the Contract, upon recommendation of the Subcommittee.

The Vendor may find it necessary and prudent to pull data from existing studies recently undertaken by other consultants or state agencies. In the event that the Vendor utilizes any information from other reports or studies, the Vendor shall first verify the methodology employed in compiling the data in the reports and the accuracy of the data therein. Documentation of this verification process shall be provided in the reports of the Vendor to the Subcommittee.

### **3.1 PROCUREMENT PROCESS CONSULTING**

The procurement process consulting services provided by the Successful Vendor pursuant to this Request for Proposal must address the stated specifications and requirements. These services will be provided to the Subcommittee.

As requested by the Subcommittee, the Vendor must attend various meetings of the Subcommittee and other legislative committees of the Arkansas General Assembly. Hourly compensation will be paid for meeting times in addition to reimbursement of actual travel expenses. The Vendor shall explain any anticipated limitations in its ability to attend meetings of the Subcommittee in its response to this RFP.

All projects shall be paid pursuant to the fee schedule, as stated in the Official Proposal Price Sheet and any attachments thereto. The Vendor shall submit itemized invoices to the BLR, which will pay the invoices on a monthly basis.

The Subcommittee does not grant the Vendor exclusive rights to all procurement process consulting services contemplated under this RFP. In the event the Subcommittee decides that the acquisition of these services by another Vendor is in the Subcommittee's best interest, the Subcommittee reserves the right to contract and purchase procurement process consulting services from a different source outside of the contract resulting from this RFP, and the Subcommittee's action to procure services outside of the Contract does not infringe upon, nor terminate, the contract resulting from this Request For Proposal.

### **3.2 PROCUREMENT OF GOODS AND SERVICES**

If the Vendor anticipates the need to procure additional goods or services in order to provide the procurement process consulting services requested in this RFP, the Vendor must identify the goods and/or services that may be procured, the reason the procurement is necessary, the name of the vendor from whom the goods or services are to be procured, and the anticipated cost of the goods and/or services to be procured.

A Vendor does not need to restate each item listed in this Section 3.2 but will be bound by all applicable specifications. Information relating to these matters should be incorporated into the Proposal. A Vendor must provide in detail any limitations in meeting the requirements stated in Section 3.

## **SECTION 4. COST PROPOSAL**

### **4.0 COMPENSATION**

Compensation for procurement process consulting services shall be paid based upon the work performed as specified in this RFP. The budget is subject to approval by the Subcommittee. A Vendor seeking consideration shall submit a compensation proposal as required below for procurement process consulting services as provided throughout the RFP.

The fee schedule, as set forth on the Official Proposal Price Sheet, will cover the time spent in the completion of the requested task or project, as well as other administrative costs (including, but not limited to, secretarial, bookkeeping, budget preparation, monitoring and auditing services, etc.) The fee schedule will cover any and all travel expenses anticipated in relation to conducting the work required under this RFP and resulting Contract. The fee schedule will cover the time expended inclusive of all overhead or any other costs associated with the particular individuals who may be performing the services.

#### **4.1 PAYMENT SCHEDULE**

The BLR shall pay the Vendor based on the hours expended for approved projects on a monthly basis or as otherwise may be agreed to in writing by the parties. The BLR may request and the Vendor shall provide timesheets or other documentation as may be directed by the BLR prior to the payment for any services rendered. Failure to provide appropriate and satisfactory documentation will be sufficient grounds to withhold payment for the disputed amount, but other nondisputed amounts must be paid in a timely manner.

#### **4.2 TRAVEL, LODGING, AND MEALS**

The Successful Vendor may submit invoices and receive reimbursement for travel expenses allowed by law related to attending meetings of the Subcommittee and other legislative committees of the Arkansas General Assembly. Reimbursement of travel expenses will be included in the total maximum contract amount.

Estimates of expenses as allowed by law for travel related to field work required by the Contract and this RFP should be included by the Vendor in the fee schedule, as required by Section 4.0.

### **SECTION 5. ADDITIONAL VENDOR REQUIREMENTS**

#### **5.0 COMPREHENSIVE VENDOR INFORMATION**

All proposals should be complete and carefully worded and should convey all of the information requested by the Subcommittee. If significant errors are found in the Vendor's proposal, or if the proposal fails to conform to the essential requirements of the RFP, the Subcommittee will be the sole judge as to whether that variance is significant enough to reject the proposal. Proposals should be prepared simply and economically, providing a straightforward, concise description of the Vendor's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of the content. Proposals that include either modifications to any of the contractual requirements of the RFP or a Vendor's standard terms and conditions may be deemed non-responsive and therefore not considered for award.

#### **5.1 VENDOR PROFILE**

In addition to information requested in other sections of the RFP, the Vendor shall submit the following:

- Business Name;
- Business Address;
- Alternate Business Address;
- Primary Contact Name, Title, Telephone, Fax, and E-mail Address;
- How many years this company has been in this type of business;
- Proof that the Vendor is qualified to do business in the State of Arkansas;
- A disclosure of the Vendor's name and address and, as applicable, the names and addresses of the following: If the Vendor is a corporation, the officers, directors, and each stockholder of more than a ten percent (10%) interest in the corporation. However, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed; if the Vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; if

the Vendor is an association, the members, officers, and directors; and if the Vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

- A disclosure of all the states and jurisdictions in which the Vendor does business and the nature of the business for each state or jurisdiction;
- A disclosure of all the states and jurisdictions in which the Vendor has contracts to supply procurement process consulting services and the nature of the goods or services involved for each state or jurisdiction;
- A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the Vendor for any felony or any other criminal offense other than a traffic violation committed by the persons identified as management, supervisory, or key personnel;
- A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including without limitation bonded indebtedness, and any pending litigation of the Vendor;
- A disclosure of any conflicts of interest on the part of the Vendor or its personnel that will be working on this project, especially regarding financial interests that would be impacted depending on the recommendations ultimately made by the Subcommittee.
- Additional disclosures and information that the Subcommittee may determine to be appropriate for the procurement involved.

## **5.2 GENERAL INFORMATION**

Vendor shall submit any additional information for consideration such as specialized services, staffs available, or other pertinent information the Vendor may wish to include.

## **5.3 DISCLOSURE OF LITIGATION**

A Vendor must include in its Proposal a complete disclosure of any civil or criminal litigation or indictment involving such Vendor. A Vendor must also disclose any civil or criminal litigation or indictment involving any of its joint ventures, strategic partners, prime contractor team members, and subcontractors. This disclosure requirement is a continuing obligation, and any litigation commenced after a Vendor has submitted a Proposal under this RFP must be disclosed to the BLR in writing within five (5) days after the litigation is commenced.

## **5.4 EXECUTIVE SUMMARY**

A Vendor must provide a summary overview and an implementation plan for the entire project being proposed. The intent of this requirement is to provide the Subcommittee with a concise but functional summary of the discussion of each phase of the Vendor's plan in the order of progression. While the Subcommittee expects a Vendor to provide full details in each of the sections in other areas of the RFP relating to its plan, the Executive Summary will provide a "map" for the Subcommittee to use while reviewing the Proposal.

Each area summarized must be listed in chronological order, beginning with the date of Contract execution, to provide a clear indication of the flow and duration of the project. A Vendor may use graphics, charts, pre-printed reports, or other enhancements as a part of this section to support the chronology or add to the presentation. Any such materials must be included in the original and each copy of the Proposal.

## **5.5 VENDOR'S QUALIFICATIONS**

A Vendor shall provide resumes or short biographies and qualifications of all management, supervisory, and key personnel to be involved in performing the services contemplated under this RFP. The resumes shall present the personnel in sufficient detail to provide the Subcommittee with evidence that the personnel involved can perform the work specified in the RFP. A Vendor shall provide a brief history of its company, to include the name and location of the company and any parent/subsidiary affiliation with other entities. If a Vendor is utilizing the services of a subcontractor(s) for any of the service components listed, the Vendor

Vendor certifies that there is no outstanding civil or criminal litigation or indictment involving the vendor.

Provided in Executive Summary Section of RFP Response

Provided in Vendor Qualifications Section of RFP Response



shall include in its proposal response a brief history of the subcontractor's company to include the information requested herein.

A Vendor shall provide:

- A brief professional history, including the number of years of experience in procurement process consulting or related experience and any professional affiliations and trade affiliations.
- A listing of current accounts and the longevity of those accounts.
- An organizational chart highlighting the names/positions that will be involved in the contract, including the individual who will be primarily responsible for managing the account on a day-to-day basis.
- An outline of the Vendor's or employees' experience in procurement process assessment, research, and reporting.
- A full explanation of staffing, functions, and methodology to be used in areas of procurement process assessment and account management, identifying specifically the personnel that will be assigned to the account. All such personnel are subject to Subcommittee approval. Describe any staff functions that are considered unique to the account.
- A detailed description of the plan for assisting the Subcommittee in meeting its goals and objectives, including how the requirements will be met and what assurances of efficiency and success the proposed approach will provide.
- An indication of how soon after the contract award the personnel named would be available and indicate any possible scheduling conflicts that might exist during the period of the contract. Any other limitations on the availability to perform under this RFP or to attend meetings must be fully explained.
- An indication of the timeframe the Vendor would require to assist the Subcommittee in meeting its goals and objectives.
- A detailed, narrative statement listing the three (3) most recent, comparable contracts (including contact information) that the Vendor has performed and the general history and experience of its organization.
- At least two (2) samples of the Vendor's work on comparable projects.
- At least three (3) references from entities that have recent (within the last three (3) years) contract experience with the Vendor and are able to attest to the Vendor's work experience and qualifications relevant to this RFP.
- A list of every business for which Vendor has performed, at any time during the past three (3) years, services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, Vendor represents that the list is complete.
- List of failed projects, suspensions, debarments, and significant litigation.
- An outline or other information relating to why the Vendor's experience qualifies in meeting the specifications stated in Section 3 of this RFP.

The Vendor should demonstrate the work the Vendor has done for clients during the past three (3) years and indicate which individual on its staff was responsible for the work. Referenced work should provide a clear indication of the types of procurement process consulting services that can be obtained for the Subcommittee.

A Vendor shall provide information on any conflict of interest with the objectives and goals of the Subcommittee that could result from other projects in which the Vendor is involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the response.

A Vendor or its subcontractor(s) must list all clients that were lost between January 2014 and the present and the reason for the loss. The Subcommittee reserves the right to contact any accounts listed in this section. A Vendor must describe any contract disputes involving an amount of thirty-five thousand dollars (\$35,000) or more that the Vendor, or its subcontractor(s), has been involved in within the past two (2) years. Please indicate if the dispute(s) have been successfully resolved.

#### **5.5.1 BACKGROUND INVESTIGATION**

Vendors must allow the BLR to perform an investigation of the financial responsibility, security, and integrity of a Vendor submitting a bid, if required by the Subcommittee.

Read & Agreed

## **5.6 SUBCONTRACTOR IDENTIFICATION**

If Vendor intends to subcontract with another business for any portion of the work and that portion exceeds ten percent (10%) of the Proposal price, Vendor's offer must identify that business and the portion of work that they are to perform. Identify potential subcontractors by providing the business's name, address, phone, taxpayer identification number, and point of contact. In determining Vendor's responsibility, the Subcommittee may evaluate Vendor's proposed subcontractors.

# **SECTION 6. EVALUATION CRITERIA FOR SELECTION**

## **6.0 GENERALLY**

The Vendor should address each item listed in this RFP to be guaranteed a complete evaluation. After initial qualification of proposals, selection of the Successful Vendor will be determined in a meeting of the Subcommittee by evaluation of several factors.

The Subcommittee has developed evaluation criteria that will be used by the Subcommittee and that is incorporated in Section 6.1 of this RFP. Other agents of the Subcommittee may also examine documents.

The Subcommittee requires that the procurement process consulting services requested under this RFP be available for use by the Subcommittee the day after the Contract Execution Date. Submission of a proposal implies Vendor acceptance of the evaluation technique and Vendor recognition that subjective judgments must be made by the Subcommittee during the evaluation of the proposals.

The Subcommittee reserves, and a Vendor by submitting a Proposal grants to the Subcommittee, the right to obtain any information from any lawful source regarding the past business history, practices, and abilities of Vendor, its officers, directors, employees, owners, team members, partners, and/or subcontractors.

## **6.1 EVALUATION CRITERIA**

The following evaluation criteria are listed according to their relative importance; however, the difference between the importance assigned to any one criterion and the criteria immediately preceding and following is small:

- Directly related experience;
- Price, including individual amounts and total maximum amount;
- Plan for providing services;
- Availability to perform work and attend meetings;
- Proposed schedule for providing services;
- Proposed personnel and the credentials of those assigned;
- Compliance with the requirements of the RFP; and
- Past performance.

# Attachment B: Required Response Forms

## CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR:  Yes  No  
 CIVIC INITIATIVES, LLC

TAXPAYER ID NAME: 27-3944234

IS THIS FOR:  Goods?  Services?  Both?

YOUR LAST NAME: Lanier

FIRST NAME: Dustin

ADDRESS: 823 Congress Avenue, #1433

STATE: TX

ZIP CODE: 78767

COUNTRY: USA

**AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:**

### FOR INDIVIDUALS \*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (✓)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and how are they related to you? [i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]	Relation
	Current	Former		From MM/YY	To MM/YY		
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

### FOR AN ENTITY (BUSINESS) \*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (✓)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?	Ownership Interest (%)	Position of Control
	Current	Former		From MM/YY	To MM/YY			
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

## Contract and Grant Disclosure and Certification Form

*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.*

**As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:**

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.*

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

***I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.***

Signature  Title Principal Date 08/17/2017

Vendor Contact Person Dustin Lanier Title Principal Phone No. 512-523-4834

*Agency use only*

Agency Number \_\_\_\_\_ Agency Name \_\_\_\_\_ Agency Contact Person \_\_\_\_\_ Contract Phone No. \_\_\_\_\_ or Grant No. \_\_\_\_\_



### CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR:  Yes  No SUBCONTRACTOR NAME: Tx. Sunset Solutions

TAXPAYER ID NAME: 45-3037908 IS THIS FOR:  Goods?  Services?  Both?

YOUR LAST NAME: Longley FIRST NAME: Joey M.I.: D

ADDRESS: 1507 Bamfield Cove

CITY: Round Rock STATE: Tx. ZIP CODE: 78665 COUNTRY: US

**AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:**

#### FOR INDIVIDUALS \*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/ commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and how are they related to you? <small>[i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

#### FOR AN ENTITY (BUSINESS) \*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies



## Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.*

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature Joey Longley Title Owner Date 8/7/17  
Vendor Contact Person Joey Longley Title Owner Phone No. 512-296-7558

Agency use only  
Agency Number \_\_\_\_\_ Agency Name \_\_\_\_\_ Agency Contact Person \_\_\_\_\_ Contact Phone No. \_\_\_\_\_ Contract or Grant No. \_\_\_\_\_

# DFA Illegal Immigrant Contractor Disclosure Certification

## DFA Illegal Immigrant Contractor Disclosure Certification View Submission Details

**Disclosure forms are valid for one year.**

**Vendor:** Civic Initiatives, LLC

**Tax ID:** 4234

**Disclosure Statement:** I certify that I **DO NOT** employ or contract with an illegal immigrant.

**Contact E-mail:** dlanier@civicinitiatives.com

**Submitted on:** 08-07-17

**Valid through:** 08-06-18

# DFA Illegal Immigrant Contractor Disclosure Certification

## DFA Illegal Immigrant Contractor Disclosure Certification View Submission Details

**Disclosure forms are valid for one year.**

**Vendor:** Tx Sunset Solutions

**Tax ID:** 7908

**Disclosure Statement:** I certify that I **DO NOT** employ or contract with an illegal immigrant.

**Contact E-mail:** jlongley@txsunsetsolutions.com

**Submitted on:** 08-07-17

**Valid through:** 08-06-18

Civic Initiatives, LLC is committed to providing a non-discriminatory employment environment for its employees.

The policy of Civic Initiatives, LLC is to fully comply with applicable federal, state and local laws, rules and regulations in the area of non-discrimination in employment. Discrimination against employees and applicants due to race, color, religion, sex (including sexual harassment), national origin, disability, age (40 years or older), military and veteran status is prohibited. Violations of this policy will be subject to discipline, up to and including termination.

Equal employment opportunity and non-discriminatory commitments include, but are not limited to, the areas of hiring, promotion, demotion or transfer, recruitment, discipline, layoff or termination, rate of compensation and company sponsored training.

All employees are expected to comply with this Equal Employment Opportunity Policy. Managers and supervisors who are responsible for meeting business objectives are expected to cooperate fully in meeting Civic Initiatives, LLC's equal employment opportunity objectives.

Any employee who believes he or she has been discriminated against must immediately report any incident to the company's Principal.

The company will not tolerate retaliation against any employee who reports acts of discrimination or provides information in connection with any such complaint.

If you have any questions regarding this policy, please contact Dustin Lanier, Principal.

***Civic Initiatives, LLC is an equal opportunity employer***



# **TX. Sunset Solutions**

## **EEO Policy**

Tx. Sunset Solutions, LLC, is an equal opportunity employer. Sunset Solutions is committed to providing a non-discriminatory employment environment for its employees. Sunset Solutions fully complies with all applicable federal, state and local laws, rules and regulations related to non-discrimination in employment.

Discrimination against employees, and applicants, due to race, color, religion, sex (including sexual harassment), national origin, disability, age (40 years or older), military and veteran status is prohibited. Violations of this policy will be subject to discipline, up to and including termination. Equal employment opportunity and non-discriminatory commitments include, but are not limited to, the areas of hiring, promotion, demotion or transfer, recruitment, discipline, layoff or termination, rate of compensation, and company sponsored training.

All employees are expected to comply with this Equal Employment Opportunity Policy. Any employee who believes he or she has been discriminated against must immediately report any incident to the company's owner. The company will not tolerate retaliation against any employee who reports acts of discrimination or provides information related to any such complaint. If you have any questions regarding this policy, please contact Joey Longley, owner.

# Attachment C: Team Member Resumes



# Dustin Lanier, CPPO

823 Congress Avenue #1433 ♦ Austin, TX 78767

[dlanier@civicinitiatives.com](mailto:dlanier@civicinitiatives.com) ♦ O: 512.523.4834 ♦ C: 512.653.0055

---

- **State Scale Procurement Leadership** – Executive leadership in creating and managing statewide procurements from concept to contract. Strong understanding of contracting challenges and strategies to ensure stakeholder involvement, successful completion of challenging procurements, and success for all parties.
  - **Organizational Transformation** – Direct leadership experience in large scale organizational change in public sector initiatives of national significance. Strong understanding of business process, financial analysis, strategic planning, communication strategies, risk management, and cultural issues.
  - **Creative Problem Solver** – Consistently successful at achieving innovative and effective solutions between stakeholders, managing negotiations and strategy in single opportunity high pressure situations. In addition, direct experience and success in traditional business development, individual sales and sales team lead roles.
  - **Technology Strategy** – Expertise in understanding and applying the power of technology to help organizations design around constituents. Direct experience in the use of technology to innovate, aligning technology with business needs, integrating services, and achieving success in technology projects.
  - **Legislative and Key Stakeholder Relations Expertise** - Strong understanding and proven working knowledge of the legislative and appropriations processes, and communication strategies to retain positive relationships with oversight entities, agency executives and constituents in difficult change situations.
- 

## PROFESSIONAL EXPERIENCE

---

**Civic Initiatives, LLC, Austin, Texas**

**November 2010 – Present**

**Founder, Principal Consultant**

- Founded a successful national practice with multiple employees to work with state and local clients on assessment and transformation efforts, with a focus on program maturity assessments, business process reengineering, and transforming procurement through optimizing the contract portfolio and the use of eprocurement systems.
  - Leadership of assessments of multiple state level procurement organizations across the nation, including leading transformation initiatives in Ohio and Missouri, assessment of the procurement function for Minnesota, Michigan, Kentucky, Hawaii and Nebraska and Massachusetts.
  - Additional referenceable client work includes States of Arkansas, Oregon, Indiana, Maine, City of Philadelphia, City of Austin, Texas Department of State Health Services, Texas Department of Information Resources and Texas General Land Office.
- 

**Council on Competitive Government, Austin, Texas**

**October 2007 – October 2010**

**Executive Director - Reported to the Council On Competitive Government**

- Led the reengineering of a government program responsible for identifying and acting on opportunities to innovate in state government through new contracting approaches and improved business methods. The Council approach to identifying state services and large scale contracting is unique across the nation.
  - Responsible for independently solving problems in a variety of contract issues and for making strategic determinations to maximize the opportunity for competitive bidding and negotiations.
  - Drove creative, successful solutions from concept to contract in a wide ranging array of government operations, including energy, fuel, fleet, print, mail, software licensing, document imaging, payment cards, GIS and contingent labor. Implemented a variety of solutions that were individual and appropriate to the market space.
  - Expanded the use of CCG contracts with an annual spend value over 64 million, producing biennial savings over 37million in the 2010-2011, and over 10 million in new savings for future bienniums
  - Recognized for innovative efforts through written articles about successes in GIS data acquisition, fleet sharing, and establishing state print shops as internal service providers.
-

**Director of Strategic Initiatives - Reported to the Texas Chief Information Officer**

- Led division chartered to develop statewide technology policy, to strategically plan for statewide technology standards integration, and to maximize the value of current and future state technology investments.
- Developed vision and construction of key arguments in three state strategic plans and two biennial performance reports, which resulted in many fundamental transformations in the Texas public sector.
- Architected major technology legislative packages; developed and supported safe passage of HB 1516, 79<sup>th</sup> Legislature, the legislation that enabled the key powers and authority of DIR in regards to state technology centers, state commodity purchasing and the Texas Project Delivery Framework.
- Initiated the establishment, transfer, funding or governance of several key state infrastructure initiatives, including the state Data Center System, the consolidated state health and human telecommunications network (HHSCn), and the state's Lone Star Education and Research Network (LEARN).
- Instituted new outreach vehicles, including focus and working groups, searchable document libraries, email channels and interest group liaison activities. Created constituent-focused services models.

---

**Office of the Governor, Austin, Texas**

**September 2002 - December 2003**

**Special Assistant for Technology Policy – Reported to Director of Budget, Planning and Policy**

- Developed strong experience in research and policy development, including the importance of stakeholder involvement and the intricacies of the state legislative and budgetary process.
- Developed and brokered SB 1701, 78<sup>th</sup> Legislature, a significant piece of technology legislation to assign new responsibilities and accountability expectations to the Department of Information Resources.
- Played significant role in the funding and thereby the establishment the state LEARN project, a high speed research and education network used to connect Texas universities for improved research and collaboration.

---

*Other work experience – Product Planning, Rome Corporation, 2002; Technology Partner Business Development, Acuity 1998-2000; Co-Founder, networker.com, 2000-2002; Political Consulting Engagements (Various), Austin, TX 1994 – 1998; Policy Analyst, Instituto Libertad y Desarrollo, 1993*

---

**CIVIC**

---

Commissioner, Austin Urban Transportation Commission (current)

Alumni: Leadership Austin, Class of 2008; Governor's Executive Development Program, Austin Downtown Commission, Austin Library Commission

---

**EDUCATION**

---

Bachelor of Arts in Public Policy Studies, Duke University, Durham, NC, May 1993

Bachelor of Arts in Comparative Areas Studies: Latin America, Duke University, Durham, NC, May 1993

# Joey Longley

Thirty-eight years of experience working in and around state government. Spent 30 years working for the Texas Legislature at the Texas Sunset Commission, serving 14 years as the agency Director. Sunset is the periodic legislative review of state government agencies, to determine their continuing need and improve their operations. State experience includes extensive work with the legislative process, project planning and oversight, detailed evaluation and assessment of government programs, agency management, and extensive report writing and editing.

Once in the private sector, have consulted with state agencies; and helped private companies with business development and procurement advocacy, pursuing opportunities to provide services to government agencies. Have also engaged in advocacy and lobbying activities with private sector associations and companies, particularly as it relates to the Sunset process.

## **Gateway Partners Government Affairs** *(October 2015- present)*

*Partner*

Partner in a government affairs practice, offering a suite of assistance to its clients, including client advocacy, business development assistance, and Sunset advisory services.

## **Sunset Solutions** *(October 2015- present)*

*Owner*

Returned to public sector consulting, working with clients doing business with state and local government, including advising on the Sunset process.

## **Texas General Land Office** *(December 2014 – October 2015)*

*Director, Program Management*

Served as part of the Bush transition team. As part of the agency senior management team, responsible for overseeing several major programs, including Coastal, Disaster Recovery, and Construction Services. Led internal efforts to perform efficiency and effectiveness reviews of agency operations.

## **Grant Thornton LLP** *(September 2012 – December 2014)*

*Director, Global Public Sector*

Led the firm's business development efforts for its state and local practice in Texas. Responsible for the local office's advisory services. Also served as the firm's resource for Texas state government operations.

## **Civic Initiatives, Sunset Solutions** *(July 2011- September 2012)*

*Senior Client Advisor*

Business development and project oversight for independent public sector consulting firms. Primary engagement was with the Texas Department of State Health Services, overseeing a mandated study of the state's behavioral health system. Served as liaison and facilitator between the contractor, the state agency, stakeholders, and the Legislature.

**Blackridge** (*October 2009 – July 2011*)

*Director, Sunset Practice Group*

Guided clients through the Sunset review process. The practice was designed to make the process more manageable for companies and organizations.

**Texas Sunset Commission** (*August 1979 – October 2009*)

*Director (1995- 2009)*

Led the agency in support of the Commission in carrying out its responsibilities. The Sunset process is a legislative review of the state's agencies to determine their continuing need and improve their operations. Led the Commission through 180 agency reviews. Served as primary agency contact with Commission members and the Legislature. Responsible for agency day-to-day activities; planning and budgeting; and the hiring, training, and development of staff. Acted as the contact with various groups and state agencies; and responded to inquiries and requests from the public, the media, and other interested parties. Oversaw the planning and conducting of Sunset reviews, including research, report writing, and public presentation of findings to the Commission. During legislative sessions, led the staff's work with the Legislature, leadership, legislative committees, and individual members; supported and acted as a resource on the Commission's recommendations.

**Education**

B.B.A., Business Management, Texas A&M University, 1979

Contact

[joey.longley@att.net](mailto:joey.longley@att.net)

512-296-7558

# Derrek M. Davis, CPPB

823 Congress Avenue #1433 ♦ Austin, TX 78701

[ddavis@civicinitiatives.com](mailto:ddavis@civicinitiatives.com) ♦ O: 512.523.4834 ♦ C: 512.694.5216

---

- **Large Scale Procurement Leadership** – Direct leadership experience managing agency and statewide procurements from concept to contract. Certified Texas Procurement Manager, with deep knowledge of all phases of the procurement cycle including planning and assessment, solicitation development, negotiations and contract and vendor management.
  - **Organizational Assessment** – Extensive expertise in the evaluation of public sector entities, including operational, financial, consulting and technology assessments. Strong understanding of business processes, financial analysis, strategic planning, risk management and stakeholder management.
  - **Experienced Auditor** – Certified Internal Auditor and Certified Information Systems Auditor with experience managing audit engagements and audit teams through all phases of audit projects. Knowledge in all types of audit engagements and phases of audit projects including reporting and communication of audit findings to management at all levels of the organizations.
  - **Strategic Sourcing** – Experience and strong understanding of strategic sourcing including the use of technology tools, process evaluation, spend analysis, demand aggregation, category management, and supplier management techniques to optimize performance and increase the value of procurement dollars spent.
- 

## PROFESSIONAL EXPERIENCE

---

**Civic Initiatives, LLC, Austin, Texas**

**April 2011 – Present**

### *Engagement Manager*

- Manage project and client relations for consulting engagements for independent public sector consulting company.
  - Oversee client deliverables at all phases of work including initial assessment research, opportunity identification, recommendation development and report drafting.
  - Coordinate communications between Civic Initiatives executives, independent contractors and external organizations.
  - Developed reports and major project deliverable content for vast client portfolio including ten (10) states, three (3) cities and numerous state government departments and divisions
- 

**Council on Competitive Government, Austin, Texas**

**April 2008 – April 2011**

### *Procurement Lead*

- Performed highly advanced business process and financial analysis work. Reviewed, analyzed, and evaluated state agency business processes and associated financial data.
- Prepared reports and responded to inquiries from State leadership, legislators and state and local government stakeholders.
- Recommended and approved appropriate actions in the identification, study and implementation of Identified State Services (ISS) categories.
- Coordinated with internal and external stakeholders to gather detailed information on expenditures, processes, and outcomes associated with state services categories. Developed category reports for state services for presentation to Council and use in development of solicitations.
- Developed process maps and process narratives used in developing feasibility studies and RFPs.
- Managed the solicitation process including the development of solicitation documents, including RFP, RFO, RFI and statements of work for strategic sourcing of statewide managed service contracts.
- Coordinated with state agency and local government experts to develop detailed matrices and charts to establish key performance indicators and performance metrics for use in tracking operational outcomes to be achieved by service providers.

**Office of the Comptroller, Austin, Texas**

**March 2005 - April 2008**

***Senior Information Systems Auditor***

- Performed complex auditing of information systems both individually and as a member of an audit team.
  - Assisted in the planning and development of the annual audit plan.
  - Performed planning, scope and objective development, fieldwork testing and documentation, finding documentation and reporting, and project follow-up for assigned information systems audits.
  - Reviewed management operations, internal controls, and information systems for adequacy, effectiveness, accuracy, and compliance with legal regulations, using industry standards and best practices.
  - Recommended changes to business processes, information systems and accounting or management procedures as necessary.
  - Provided consulting assistance to agency divisions, and served as the agency representative on several state-level committees and task forces.
- 

**Office of the Comptroller, Austin, Texas**

**August 2001 - March 2005**

***Information Resources Planner***

- Analyzed and developed written analyses, identify issues, alternatives, and consequences, and made recommendations for information resource needs for the agency.
  - Acted as Project Manager for large enterprise level information resource procurements and projects.
  - Managed the solicitation process for large enterprise level information resource procurements including requirements gathering, solicitation development, evaluation and contract negotiation and award.
  - Prepared statutorily required budget and planning documentation for the agency related to information technology projects and procurements for submission to the legislature.
  - Developed information resource related policies and procedures for use at the agency.
  - Served as agency representative on statewide and agency level committees and task forces.
  - Analyzed legislation for impact on information resource needs and reporting requirements of the agency.
- 

*Other work experience – Assistant Financial Budget Analyst, Department of Finance, State of California, Sacramento, CA, 2000 – 2001; Management Trainee, Franklin Resources, Inc., Rancho Cordova, CA, 1997 - 2000; Campaign Manager, United Way, Sacramento, CA, 1996-1997*

---

## **EDUCATION**

---

Master of Arts in International Affairs, California State University, Sacramento, California, August 2001  
Bachelor of Arts in Government, California State University, Sacramento, California, June 1994  
Graduate Coursework in Finance/Accounting, Golden State University, Sacramento, California

---

## **CERTIFICATIONS**

---

Certified Public Procurement Buyer (CPPB), May 2014  
Certified Texas Procurement Manager (CTPM), January 2011  
Certified Internal Auditor (CIA), January 2008  
Certified Information Systems Auditor (CISA), March 2006  
Project Management Professional (PMP), January 2003



# Charlene Rendon, MPA, CTPM, CTCM

11504 Eric Heiden Ct. ♦ Austin, TX 78748

[crendon@civicinitiatives.com](mailto:crendon@civicinitiatives.com) ♦ O: 512.423.3835

---

- **eProcurement System Management** – Extensive experience managing agency and statewide procurements from concept to contract in an eProcurement environment. Certified Texas Procurement Manager with advanced understanding of all phases of the procurement cycle, including solicitation development through contract administration.
  - **Large-scale Strategic Sourcing** – Extensive experience with and in-depth knowledge of strategic sourcing principals, including the use of process evaluation, data analytics and implementation of innovative solutions to create value within the procurement process.
- 

## PROFESSIONAL EXPERIENCE

---

**Office of the Comptroller, Austin, Texas**

**October 2015 – December 2016**

### ***Manager-Strategic Initiatives and Systems Support***

---

- Oversee the requirements gathering, design and implementation of purchasing functions in an eProcurement system.
  - Lead highly complex strategic initiatives for the statewide procurement division and ensure customer expectations are met.
  - Provide guidance to staff and the community regarding contract management/administration, policies and procedures; as well as solutions to related issues for stakeholders.
  - Oversee contractor marketing campaigns and review/approve all promotional materials
  - Edit and review contracts, communication and project plans for accuracy, compliance with all applicable agency and statutory policies and regulations.
  - Manage statewide technical systems (e-procurement) support teams.
  - Manage the state of Texas' Vendor Performance Tracking System.
  - Serve as strategic sourcing subject matter expert on agency's e-procurement system (TxSmartBuy) project team.
  - Develop and deliver training to state procurement officers and contractors on procurement systems and CPA policies.
  - Develop division strategic, contingency and succession plans.
  - Act as a liaison with all other divisions internally and agencies externally to provide guidance and promote division strategy and goals while adhering to strict budget allocations.
  - Manage and prioritize resources (including division staff) for multiple projects to ensure that critical deadlines and expectations are met while maintaining a high-quality work product.
  - Oversee solicitation development, contract implementation and negotiation of terms and pricing on major state contracts (\$50 million-\$200 million per year).
  - Conduct needs analyses and risk assessments to understand the interrelation and interdependency of statewide procurement and contracting practices to determine requirements for major contract solicitations.
  - Designs, implements and maintains systems for tracking programs goals, policies, processes, procedures and performance measures. Proactively identify risks and implement innovative solutions.
  - Serve as division legislative liaison; review proposed legislation and write impact analyses and draft legislation, as necessary.
  - Participate in National Association of State Procurement Officials (NASPO) events and serve on committees as a key representative of the State of Texas.
- 

**Office of the Comptroller, Austin, Texas**

**August 2012 – October 2015**

### ***Contract Administration Manager***

- Plan, perform and manage highly complex strategic sourcing projects while meeting all deadlines.

- Prepare complex written reports on assigned categories based on extensive research and data analysis.
- Create and review official correspondence on behalf of the agency and the Council on Competitive Government.
- Provide guidance to staff regarding contract management/administration and resolves related issues.
- Continued to serve as a contract management and procurement SME on the development of enhancements to the TxSmartBuy e-procurement system.
- Oversee the operations and activities of monitoring contract performance.
- Develop and deliver training to state procurement officers and contractors on procurement systems and CPA policies.
- Plan and conduct needs analyses, interviews, risk assessments, presentations and meetings.
- Translate large amounts of complex agency financial data into accurate and concise reports for stakeholders.
- Evaluate risk, assess savings opportunities, prepare market forecasts, scenarios and other reports concerning the supply market and make recommendations.
- Lead RFP development, contract implementation and negotiation of terms and pricing on major state contracts (\$50 million-\$200 million per year).
- Serve as division legislative liaison; reviewing proposed legislation and writing impact analyses, as necessary.
- Serve as marketing liaison for all strategically sourced contracts and those managed by the Council on Competitive Government.
- Participate in NASPO events and committees to gain national perspective on public purchasing.

**Office of the Comptroller, Austin, Texas**

**August 2011 – August 2012**

***Statewide Contract Manager***

- Served as a senior contract manager within the Contract Management Office (CMO), coordinated contract management work with CMO contract manager team members, contract monitors, statewide purchasers and other statewide programs.
- Served as contract manager for high-profile, strategically sourced statewide term contracts.
- Created, edited and disseminated official contract communication to all stakeholders.
- Developed and interpreted contract administration policies and procedures; advised and assisted staff and customers with contract management rules; provided consulting expertise on all facets of contract development, management, and close-out; identified need and conducted contract management training.
- Served as a contract management and procurement SME on the development of enhancements to the TxSmartBuy e-procurement system.
- Assisted with the development and delivery of regional TxSmartBuy system training for public purchasers.
- Gathered, monitored, and analyzed statewide expenditure data from a variety of CPA sources and implemented strategic sourcing strategies to ensure best value in all state procurements.
- Developed solicitation instruments; monitored the evaluation and award process; managed and monitored statewide contracts; negotiated contract renewals and amendments; and participated in contract-closeout.
- Coordinated contract risk assessment analysis with the statewide Contract Monitors; investigated and resolved contract compliance issues, complaints, or discrepancies by recommending appropriate solutions.
- Served as a liaison for cross-divisional agency teams, executive management, as well as external customers.

**Office of the Comptroller, Austin, Texas**

**April 2008 – August 2011**

***State of Texas Cooperative (CO-OP) Purchasing Program Coordinator***

- Manage multiple projects simultaneously to achieve program goals.
- Participated in the development of a new online state TxSmartBuy e-procurement system through the requirements building, testing and implementation phases.
- Created and edited official state correspondence for various audiences.
- Developed and delivered training to public purchasers on how to use state contracts and other procurement

resources, including TxSmartBuy.

- Trained state contract holders on how to market their contracts to state and local government entities.
- Reviewed, edited and approved contractor marketing campaigns.
- Conducted market research to determine state contract/program competitiveness.
- Provided timely purchasing, contract management and CO-OP Program information to internal and external customers in a professional manner.
- Coordinated and allocated resources to effectively market the CO-OP Program to maintain and increase membership enrollment
- Resolved contract issues between purchasers and vendors.
- Worked with IT department to develop new web-based administration tool for the CO-OP Program.
- Interpreted state contract terms and conditions on behalf of purchasers and ensure contract compliance.
- Served as liaison between local government purchasers, statewide purchasing operations and TCMO to ensure the needs of local governments were met.
- Compiled and analyzed procurement data to determine where to focus contract marketing efforts.
- Assigned and supervised work of marketing interns.

---

**Office of the Comptroller, Austin, Texas**

**September 2005 – April 2008**

***HUB Compliance Analyst***

- Reviewed HUB Program documents for certification and compliance.
- Conducted on-site reviews of HUBs to communicate information about state contracting and ensure compliance.
- Performed outreach efforts on behalf of the State of Texas HUB Program, including creating and reviewing program communications and promotional materials.
- Worked with marketing team to increase enrollment in the HUB Program.
- Provided women and minority owned companies with training and strategies to properly market their businesses.
- Served as liaison between agency HUB Coordinators, purchasers and certified HUB vendor community.
- Worked with IT department to develop new web-based program administration tool for the HUB Program.

---

*Other work experience –Public Relations and Marketing Intern, Kelleher Communications, Austin, Texas, May-September 2005*

---

## **EDUCATION**

Master of Public Administration, The University of Texas at Arlington, December 2009

Bachelor of Arts in Government, The University of Texas at Austin, May 2005

---

## **CERTIFICATIONS**

Certified Texas Contract Manager (CTCM), September 2014

Certified Texas Procurement Manager (CTPM), September 2014

# Regina Rousseau

823 Congress Avenue #1433 ♦ Austin, TX 78701

[rrousseau@civicinitiatives.com](mailto:rrousseau@civicinitiatives.com) ♦ O: 512.523.4834 ♦ C: 512.815-6205

---

- **Program and Project Management** – Certified project management professional with experience in program and project management.
  - **Quality Assurance** – Experience in turning around at-risk projects. Revamped state's quality assurance team guidelines and participated in assessing risk, reviewing, and monitoring of major information technology projects.
  - **Contract Management** – Experience in requirements development, solicitation, negotiation, and management of statewide contracts.
  - **Strategic Planning** – Expertise in managing a broad range of activities that drive statewide planning and policy development and deployment.
  - **Performance Measurement** – Experience working with business users to identify, quantify, and implement metrics to track and improve operational performance.
  - **Research and Report Writing** – Expertise in applying comprehensive research and analysis techniques to inform and support the development of a persuasive argument.
- 

## PROFESSIONAL EXPERIENCE

---

**Civic Initiatives, LLC, Austin, Texas**

**May 2012 – Present**

***Client Advisor***

- Work with public sector clients to assess opportunities to strengthen service delivery. Working with the state's health services agency, researched and developed legislative report, comprising recommendations and implementation considerations to modernize the policies, processes, and technologies that support the state's birth record information system.
  - Working with a major credit and collections agency, assessed current state and developed recommendations and roadmap for organizational improvement and compliance of technology policies with regulatory framework, including PCI and service organization control reporting.
- 

**Department of Information Resources, Austin, Texas**

**February 2000 – March 2012**

***Assistant Director, Technology Policy and Planning (2004-2012)***

- Led the development and implementation of biennial statewide technology plans and performance reports to outline the state's technology priorities and improve technology management through adoption of a shared technology infrastructure, increased collaboration, and resource and planning support.
  - Led technology policy development to align and integrate emerging technologies and develop statewide standards for use and management of technology.
  - Led the migration of report publishing from print media to online format, with the goal of increasing readership and providing greater transparency in statewide technology planning.
  - Managed a broad range of policy and administrative rule development and implementation, including use of state websites, government transparency and open data, social media, Internet domain name management.
  - Established transformative processes within the division to improve technology management across the state, such as, chartering and managing project team to design and develop project delivery framework that increased accountability for project success across all state agencies.
- 

***Project Manager, Program Management Office (2001-2004)***

- Worked with the State Auditor's Office and Legislative Budget Board to improve risk management and quality assurance requirements for electronic government projects.
  - Participated and led project office activities, such as development of standard formats for entities regulated by the Office of Consumer Credit Commissioner to electronically provide reportable data to law enforcement agencies, evaluation of electronic travel system and electronic procurement system for state agencies' use.
-

---

**Contract Manager, Business Operations Division (2000-2001)**

---

- Managed and administered the PeopleSoft Software License and Services Agreement for all state agencies and universities, including development of a software support services cost model to assist agencies in developing a business case for participation in the statewide license.
  - Led interagency workgroup to address issues related to the state's legacy administrative systems and developed legislative proposal to consolidate state agencies' PeopleSoft implementations and plan for systematic migration to one or more instances of a centrally-managed integrated statewide administrative system.
  - Worked with interagency team to develop enterprise resource planning implementation standards.
  - Led an interagency panel that was charged to develop and implement provisions of state law regarding software portfolio management, consisting of classroom training and periodic briefings on software asset management.
- 

**Legislative Budget Board, Austin, Texas**  
**Department of Information Resources, Austin, Texas**

**September 1999 – February 2000**  
**July 1996 – September 1999**

***Planning Analyst, Major Information Systems Group and Oversight Operations Division***

---

- Performed agency planning/oversight functions that promoted strategic and operations planning for technology statewide to ensure that appropriate and effective technology solutions, consistent with agencies' goals and objectives and with the General Appropriations Act, were successfully planned, implemented, and managed.
  - Consulted with and served as quality assurance monitor over health and human services agencies with major information systems projects, including electronic benefits transfer, integrated eligibility enrollment, and Medicaid claims management systems.
  - Participated on the interagency task forces, such as the Medicaid and Public Assistance Fraud Oversight Task Force and the Interagency Task Force on Electronic Benefits Transfer that examined opportunities for state agencies to utilize smart card and other technologies for benefits and other service delivery programs.
- 

**Office of the Attorney General, Austin, Texas**

**November 1988 – June 1996**

***Deputy Assistant Director, Project and Customer Service Support, Data Services Support (DSS) Section***  
***Child Support Enforcement (CSE) Division***

---

- Through progressively responsible positions, chartered and oversaw technology planning and customer and help desk support for the state's child support enforcement program.
  - Managed 45 employees, consisting of unit managers, supervisors, analysts, help desk, and support specialists.
  - Identified CSE technology requirements and gained approval for federal and state funding to support project and operating budgets, including justification and tracking of expenditures totaling more than \$25M annually.
  - Led a business process re-engineering and systems development project for the CSE Division's Receiving section that enhanced accountability and efficiency.
- 

*Other work experience – Technical Writer, Cost Estimator, Publications Support, Tracor, Inc., Austin, Texas; 1982-1988*

---

---

## **CERTIFICATIONS**

---

Member, Project Management Institute (PMI), 1997-present; PMP® Certification (293858)

Alumni: Greater Austin Quality Council (GAQC), Board of Examiners, 1998-1999

Alumni: Software Quality Institute, Software Project Management Certificate Program, Sequence IX, 1998

---

---

## **EDUCATION**

---

Bachelor of Science in Anthropology, Kansas State University, Manhattan, KS, May 1979

# Attachment D: Work Samples





# **STRENGTHENING THE TEXAS BIRTH RECORD INFORMATION SYSTEM**

Vital Statistics Unit  
Texas Department of State Health Services

September 1, 2012



# CONTENTS

<b>Executive Summary .....</b>	<b>1</b>
<b>Section 1: Introduction .....</b>	<b>7</b>
Purpose .....	7
Report Organization .....	7
<b>Section 2: Background .....</b>	<b>9</b>
Call to Action.....	9
National Vital Statistics Program .....	10
Texas Vital Statistics Program.....	11
<b>Section 3: Birth Record Phases.....</b>	<b>15</b>
<b>Section 4: Recommendations .....</b>	<b>17</b>
1   Consolidate Local Registrar Functions.....	21
2   Criminal History Background Checks.....	25
3   List of Non-Institutional Health Care Providers.....	29
4   Delayed Birth Registrations .....	31
5   Standardize Birth Registrar Practices.....	35
6   Segregation of Duties .....	37
7   Data Exchange Capabilities.....	39
8   Improve Database Structure and Scalability.....	43
9   Reconcile Reported Births.....	45
10   Identification Requirements.....	47
11   Connecting Individuals and Identification .....	51
12   Identification Verification and Validation.....	55
13   Document Relationship.....	59
14   Consolidate Purchase of Issuing Materials.....	63
15   Enhance Wrongful Possession Provisions.....	67
16   Age Verification.....	69
17   Educate Citizens .....	71
18   Review Fees and Funding.....	73
19   Physical Access Standards .....	77
20   Standardize Forms.....	79
21   Strengthen System Use Monitoring .....	81
22   Evaluate Standards for Vital Events Verification.....	83
23   Schedule Decommissioning of TER and Move to a Single State Birth and Death Records System.....	87
24   Protect the Integrity of State Birth and Death Data.....	91
25   Increase Timetable for Public Release of Data.....	95
26   Require Death Match for All Ages .....	97
27   Enhance Birth/Death Matching Criteria.....	99
28   Appropriate Notation of Deceased.....	101
29   Evaluate Standards for Data Exchange across Jurisdictions .....	103
30   Coordinate with Federal Agencies on Soldiers.....	107
<b>Appendix A: Scope of Assessment .....</b>	<b>109</b>
<b>Appendix B: Governing Laws and Regulations.....</b>	<b>113</b>
<b>Bibliography.....</b>	<b>117</b>

## ACKNOWLEDGMENTS

The Texas Department of State Health Services gratefully acknowledges the valuable contributions and insights provided by each of the workgroup members.

### **Workgroup Members**

Milton A. Rister, Jr., Office of the Governor  
Cindy Alexander, Morphotrak  
Richard Mendez, Department of Homeland Security/Custom and Border Patrol  
Hector F. Davila, Antares Development Corporation  
Stephen W. Bell, Department of Public Safety  
Virginia Cobarrubias, San Antonio Public Health Department, Vital Statistics  
Jim Thomas, San Antonio Public Health Department, Vital Statistics,  
Local Registrar (Acting)  
Glenn Maddox, Office of Inspector General, Health and Human Services  
Commission  
Dianne Wilson, Fort Bend County Clerk and Local Registrar  
Nancy Rister, Williamson County Clerk and Local Registrar  
Chuck Hardester, National Association for Public Health Statistics and Information  
Systems (NAPHSIS)  
Bennett Fellows, U.S. Department of State, Passport Fraud  
John Salazar, U.S. Department of State, Passport Fraud, Texas Department of State  
Health Services Liaison

### **Texas Department of State Health Services Staff**

Geraldine Harris, State Registrar and Vital Statistics Unit Director  
Sandra Lackey, Vital Statistics Unit  
Albert Rivera, Vital Statistics Unit  
Vivian Owens, Office of Government Affairs  
Marc Connelly, Office of General Counsel  
Chris Guerrero, Information Technology  
Kevin White, Information Technology  
Gene Willard, Center for Health Statistics

### **Technical Assistance**

Julia Kowalski, Centers for Disease Control and Prevention, National Center  
for Health Statistics

### **Project Facilitation and Report Development**

Civic Initiatives, LLC

# EXECUTIVE SUMMARY

Over the past decade, technological innovation, government regulations, and citizen expectations have radically changed how individuals access and utilize personal information. An individual's first record of personal information – the birth record – must be securely and effectively managed to serve the range of purposes the record has come to fulfill.

## **Authority**

The Texas Department of State Health Services, in conjunction with the workgroup established as a provision of the General Appropriations Act (Article II, Texas Department of State Health Services, Rider 72, H.B. 1, 82nd Texas Legislature, Regular Session, 2011), developed a set of recommendations that addresses the security and effectiveness of the state's birth record information system. Specifically, the workgroup:

1. Evaluated the effectiveness and security of the state's birth record information system;
2. Evaluated the feasibility of restructuring and upgrading the birth record information system and documents with advanced technology to prevent fraud and reduce inefficiency;
3. Identified the roles and responsibilities of the Texas Department of State Health Services, local governments, and others in a central issuance birth record information system; and
4. Identified ways to leverage private sector investment and user fees to restructure and upgrade the birth record information system and documents without the use of general revenue funds.

This report describes the issues identified by the workgroup and other stakeholders and the recommendations developed in response to those issues.

## **Overview**

As part of its review of the state's birth record information system, the State Registrar of the Texas Department of State Health Services convened a workgroup comprising representatives of:

- Office of the Governor
- Department of Homeland Security/Customs and Border Patrol
- Management Solutions Industry
- Department of Public Safety, Driver License Division
- Local Registrar's offices
- Public Health Departments
- County Clerk's offices

- National Association for Public Health Statistics and Information Systems (NAPHSIS)
- Department of State/Passport Fraud Office
- Office of Inspector General, Health and Human Services Commission
- Centers for Disease Control and Prevention (CDC)/National Center for Health Statistics (NCHS)

The project was organized across four phases of work:

- **Current State Baseline** – this phase encompassed a review of all policies, procedures, statutes and rules related to the vital registry program and validation of the documented current state by the workgroup.
- **Best Practices Review** – this phase consisted of a review of information system and document-based security standards to determine current best practices. The Vital Statistics Unit project team surveyed and conducted interviews of other states to gain insight into their practices. The workgroup reviewed and discussed the documented practices shared by other states.
- **Opportunity Assessment** – this phase encompassed an examination of opportunities to improve effectiveness and security of information systems through the creation, use, and retirement of a birth record.
- **Report Development and Communication** – this phase involved the documentation of findings and recommendations and the development of a communication plan to report to internal and external stakeholders upon report completion and submission.

### Summary of Findings

The following issues summarize the findings of the workgroup. For each of these issues, the report describes a recommendation for action, and outlines factors present in the current environment, the rationale for change, implementation considerations, and a summary of benefits.

1. A high level of decentralization in the local registrar function limits the state’s ability to ensure that the detailed policies and processes related to birth registration are implemented in a standardized manner, thereby risking overall security of the system.
2. Background investigations on all individuals who have the ability to create a birth record are not conducted, which contributes to the potential to create fraudulent records in the state’s birth record information system.
3. Health care providers who are authorized to register non-institutional births are licensed by various entities in the state. Today, there is not a consolidated ability to verify if these health care providers are currently licensed.
4. Evidence required by applicants for a delayed registration of birth should be specified and prioritized in more detail. Implementation of the statutes regarding documentary evidence for a delayed registration of birth through the courts may

vary across the state. These inconsistencies may contribute to a higher level of fraudulent delayed records of birth being filed.

5. The Field Services Department of VSU requires from three to five years to conduct a complete audit of sites that perform vital records functions. This time period is too long to ensure that VSU can implement the appropriate level of oversight required to ensure the security of the state's birth record information system.
6. A single authorized user has the capability to create, certify, and release a birth record in the state's birth record information system. A lack of system controls in the birth registration process creates a higher risk for fraudulent birth records to be generated. While the State Registrar may discontinue any institution's or individual's participation in electronic birth registration for failure to comply with the Texas Electronic Registrar (TER) User Agreement, the ability for VSU to enforce a practice that ensures segregation of duties is difficult to validate.
7. The majority of birth record data is manually entered into the state's birth record information system, which creates conditions for errors, impacting the quality and integrity of the state's vital records.
8. The birth record information system's database structure does not currently provide the capability to properly capture some naming conventions and diacritical markers that are common naming features amongst the diverse Texas population.
9. Without reconciling the number of births that are documented as occurring in a licensed institution with the number of births registered in TER, an opportunity for fraudulent practices exists.
10. Current identification requirements to purchase a certified copy of a birth record allow for an unmanageable variety of acceptable forms of proof, and lead to complex and inconsistent practices across registration districts.
11. Currently, the ability to connect an identification document with a person is not effectively implemented for either mail-in or online requests made through the state portal, Texas.gov. Because these ordering methods represent a much larger percentage of orders for birth certificate copies than those processed in person, greater opportunities for fraud exist.
12. Local registrars who issue birth certificate copies are not uniformly equipped with the tools needed to recognize attributes of valid identification and methods used to verify and validate authenticity of identification.
13. In most cases, there are not clear, published processes that require an applicant to demonstrate their relationship to the registrant when applying to purchase a birth certificate copy.
14. Disaggregated purchasing of security paper leads to unnecessary variation of paper among issuers and the publication of security requirements in public documents.
15. The birth certificate is a document that is used for many day-to-day activities – going to school, playing in sports – but in the wrong hands serves to create a false identity, false credit lines, and other fraudulent uses. In the right hands it is a tool, in the wrong hands, a weapon, and the state should create provisions that



- discourage the casual treatment of the birth certificate by parties using the document for day to day certification practices.
16. Copies of individuals' birth certificates are requested by and provided to organizations as a means to verify age only, and not identity.
  17. Improvements to birth record security cannot be made without the communication, outreach, and education of all stakeholders in the process.
  18. VSU is funded through a series of fees that have been amended and changed over time. Several recommendations in this report would further refine the nature of use of the data, and it is an appropriate time to reassess and establish a funding structure that ensures the long-term sustainability of the oversight of this critical asset.
  19. Measures to control access to archived paper birth certificates and the paper used to print certified copies and abstracts of birth are not uniformly applied across locations.
  20. The state does not currently utilize one standard format for the certified issuance of a birth record, which creates unnecessary challenges in validating the birth certificate copies by both Texas organizations and external partners.
  21. The current birth record information system lacks certain security features, as well as the ability to monitor and track system usage, and provide auditing controls, that are critical components to safeguarding birth record data.
  22. Texas does not employ national standards for providing secure electronic access to verify birth record information with other state and federal agency programs that provide government services or issue identification.
  23. Advances in technology, expectations of customers, and government regulations in response to terrorism have created a need to strengthen and modernize the functionality and security of the state's birth record information system.
  24. Data warehouses, which have not been sanctioned by VSU, that are derived through replicated data can undermine the security and integrity of the state's birth record information system.
  25. Information about a person's birth is made publicly available 75 years after the date of birth. This can result in birth record information becoming publicly available while the individual is still alive, jeopardizing the individual's privacy and security of personal information.
  26. Texas does not perform a birth/death match for every citizen born in Texas who dies, which leaves a significant portion of birth certificates un-marked as "deceased."
  27. The criteria currently used to conduct the birth/death match may be insufficient as a significant number of records not being matched.
  28. Local registrars may not be systematically receiving all notifications of deaths of individuals who were born in their jurisdictions. As a result, paper records of selected individuals may not be stamped as "deceased," even if the individual has died.
  29. The timely exchange of vital statistics data between Texas and other states is not automated, which creates delays in receiving critical information to protect citizens' data.

30. Texans who die in the military are, on average, at an age targeted for identity theft. Consistent processes do not exist to properly process death information for this critical constituency.

### **Next Steps**

The recommendations contained in this report represent specific actions that can be accomplished through changes to policy, process, and/or technology. Many of these recommendations can be implemented through administrative rulemaking or process changes within VSU. A few of the recommendations require legislative action. In combination, the recommendations are set forth as an important first step in advancing a secure and resilient birth record information system for the State of Texas.



## SECTION 1

# INTRODUCTION

### Purpose

The purpose of this report is to assess the effectiveness and security of the state's birth record information system in order to protect Texas residents from identity theft and reduce fraud related to vital records.

At the direction of the 82nd Texas Legislature, the Texas Department of State Health Services initiated a project to evaluate the security of the state's birth records.<sup>1</sup> The State Registrar convened a workgroup comprising representatives from the Governor's office, Department of Homeland Security, the Department of Public Safety, local registrars, the State Auditor's office, the identity management solutions industry, and other government entities. The workgroup was charged with the following:

1. Evaluate the effectiveness and security of the state's birth record information system;
2. Evaluate the feasibility of restructuring and upgrading the birth record information system and documents with advanced technology to prevent fraud and reduce inefficiency;
3. Identify the roles and responsibilities of the Texas Department of State Health Services, local governments, and others in a central issuance birth record information system; and
4. Identify ways to leverage private sector investment and user fees to restructure and upgrade the birth record information system and documents without the use of general revenue funds.

This report describes the issues identified by the workgroup and other stakeholder and the recommendations developed in response to those issues.

### Report Organization

- **Section 2: Background** provides a brief overview of the relevant factors regarding the assessment, and serves as a call to action to strengthen the security and integrity of vital records. Additionally, this section provides an overview of the management and use of birth records as a component of the national vital statistics program.

---

<sup>1</sup> 2012-13 General Appropriations Act (Article II, Texas Department of State Health Services, Rider 72, H.B. 1, 82nd Texas Legislature, Regular Session, 2011).

- **Section 3: Birth Record Phases** defines and describes the key phases that comprise the life cycle of a birth record: *create*, *use*, and *retire*.
- **Section 4: Recommendations** provides a description of the recommendations for enhancing the effectiveness and security of the state's birth record information system.

The appendices comprise:

- **Appendix A: Scope of Assessment** – description of the methodology employed for the review and assessment of the state's birth record information system.
- **Appendix B: Governing Laws and Regulations** – description of the federal and state laws and regulations that govern the management and use of birth records.
- **Bibliography**

## SECTION 2

# BACKGROUND

This section provides a brief overview of the factors relevant to the assessment of the state's birth record information system and serves as a call to action to strengthen the security and integrity of vital records. Additionally, this section provides an overview of the management and use of birth records as a component of the national vital statistics program.

### Call to Action

A core function of vital records offices is the issuance of certified copies of birth and death records. Across the nation, birth certificates are issued by more than 6,400 state and local vital records offices, and are subject to each jurisdiction's unique issuance processes and controls. A birth certificate is considered to be a "breeder" document, in that it is the base document that establishes identity for the purpose of obtaining other identification documents or gaining access to a benefit or privilege.

Certified copies of birth records, alone or in combination with additional identification, enable citizens to:

- Obtain a social security card
- Obtain a driver license
- Obtain a passport
- Obtain government services
- Enroll in school
- Participate in sports

In the hands of an imposter, a birth certificate can enable an individual to establish a false identity. Using false identities, career criminals, traffickers, fugitives, child support evaders, terrorists, and others can commit offenses such as fraud associated with insurance, banking, public assistance, organized crime, document suppliers, human trafficking, and other illegal activities.

Throughout the United States, valid birth certificates are stolen, counterfeited, forged, loaned out or sold, enabling someone to impersonate the owner of the record. Some of these incidents include:

- In 1996, more than 10 midwives in the Texas Rio Grande Valley were convicted of supplying false birth certificates to the parents of Mexican-born children, enabling the children to gain access to U.S. schools and benefits. In one instance, more than 3,400 false records were filed in a 19-year period.<sup>2</sup>

---

<sup>2</sup> James Pinkerton, "Birth certificate fraud booms at border/Midwives offer access to U.S. citizenship," *Houston Chronicle*, December 8, 1996.

- As of 2003, the former U.S. Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services) reported seizing 2,000 American birth certificates a month from people whose citizenship claims were determined to be false. At that time, ninety percent of the fraud tracked by the El Paso Intelligence Center was grounded on authentic, not counterfeit, documents. The U.S. Department of State calculated a similar rate for birth certificates used in passport fraud.<sup>3</sup>
- In June 2012, approximately 500 blank certificates were reported misplaced within a local registrar’s office in Texas when they were moved to accommodate an upgrade to the office copy machine.<sup>4</sup>

## National Vital Statistics Program

Within the United States, birth and death records form the core of vital statistics that is used for policy making, planning, management and administration of public affairs, including public health, education, population, and other economic and social concerns.

### National Vital Statistics Program

- 57 jurisdictions
- 6,400+ state and local registrars
- 14,000 different birth certificate formats

*Source: NAPHSIS*

For an individual, a birth record establishes citizenship, a record of family history, and other purposes. Federal and state agencies rely on birth certificates for proof of age, proof of citizenship, identification for employment purposes, to obtain other documents (including driver licenses, social security cards, and passports) or to assist in determining eligibility for public programs or benefits.

Each of the 57 vital registration jurisdictions – 50 states, five island territories (Puerto Rico, U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands), the District of Columbia and New York City – is responsible for registering births, deaths, fetal deaths, marriages, and divorces. Additionally, each jurisdiction maintains individual birth and death registry systems.

Historically, vital registration jurisdictions have had responsibility for both the civil registration of vital events and the collection of public health data. Since the events of 9/11, the recognition that birth certificate issuance can create opportunities for fraud

---

<sup>3</sup> Barry Newman: “Born yesterday: terrorists don’t need visas when they can get a real U.S. birth certificate,” *Washington Monthly*, May 2002,

[http://www.washingtonmonthly.com/features/2001/0205\\_newman.html](http://www.washingtonmonthly.com/features/2001/0205_newman.html).

<sup>4</sup> Vital Statistics Unit, Texas Department of State Health Services, internal email correspondence, June 27, 2012.



has served as the catalyst for a third, equally important, function of vital records offices: helping to ensure national security.<sup>5</sup>

The National Center for Health Statistics (NCHS) is legislatively mandated to collect vital statistics annually from registration jurisdictions and to produce national health statistics through this decentralized system.<sup>6</sup> State data is transmitted to the National Vital Statistics System (NVSS) as part of the Vital Statistics Cooperative Program (VSCP).

In 2007, the Centers For Disease Control And Prevention (CDC) commenced a five-year program – the State Vital Statistics Improvement Program – to enhance the operational efficiencies of states’ vital statistics programs and states’ ability to provide timely, high quality, and comparable data to the NVSS.<sup>7</sup> The program is a collaborative activity between the NCHS and the National Association of Public Health Statistics and Information Systems (NAPHSIS) Foundation.

## Texas Vital Statistics Program

The State Registrar directs the Vital Statistics Unit within the Texas Department of State Health Services (DSHS). The Registrar’s office is responsible for the creation and maintenance of a statewide system of vital statistics, which includes:

- Compilation of data pertaining to births, adoptions, paternity

### NVSS Vital Statistics Improvement Program

Goals of the program include:

- Implementing the 2003 U.S. Standard Certificates for Birth and Death
- Facilitating re-engineered birth, death and fetal death systems that:
  - utilize national edit specifications;
  - integrate or harmonize easily with other public health systems; and
  - facilitate the electronic sharing of records among states to coordinate birth and death matching.
- Expanding the use of cost effective business practices and procedures
- Enhancing vital statistics programs’ ability to meet the needs of citizens for secure, legal copies of their birth and death records, including the ability to:
  - provide paper certificates to citizens for their immediate legal or personal use, and
  - provide electronic birth and death verifications to validate citizenship or age.
- Providing support and guidance for future vital registration regulatory activities at the state and federal levels

Source: NAPHSIS

---

<sup>5</sup> Steven Schwartz, “The United States Vital Statistics System: The Role of State and Local Health Departments,” p 5, April 23, 2008, <http://www.naphsis.org/NAPHSIS/files/ccLibraryFiles/Filename/000000000676/NAS%20VS%20Workshop-%20State%20Perspective-%204-23-08.pdf>.

<sup>6</sup> Public Health Service Act of 2010, 42 U.S.C. Section 242k, Section 306(h), <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42.pdf>.

<sup>7</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, State Vital Statistics Improvement Program, “Funding Opportunity Number: CDC-RFA-SH07-701,” <http://www.cdc.gov/od/pgo/funding/SH07-701.htm>.

determinations, deaths, fetal deaths, suits affecting parent-child relationship, court of continuing jurisdiction, marriage applications, report of divorce, and such other necessary data [25 TAC Section 181.1 (35)].

- Amending birth, death, and fetal death records upon presentation of satisfactory evidence proving the record is incomplete or inaccurate, and attaching amendments to the legal record of the birth, death, or fetal death if the amendment is accepted for filing [HSC Section 191.028].
- Matching of birth and death records

The Vital Statistics Unit (VSU) strives to ensure the quality, security, confidentiality, and utility of its statewide system to monitor and improve public health, and to provide citizens service across each of its key functional areas. VSU works with local registrar districts across the state to maintain the same high standard.

### **TEXAS BIRTH RECORD INFORMATION SYSTEM**

VSU maintains an electronic system for managing birth, death and fetal death records, as well as paper copies of those records. Paper copies are maintained in a secured location. VSU has largely completed a project to image and index all of its paper records. Data from these imaged records will have the capability to be stored and referenced electronically.

The state's birth record information system is a component of a statewide records system that includes electronic birth records and electronic death records. The current statewide electronic system, TER, is deployed across registration districts, licensed institutions, including hospitals and birthing centers, and funeral homes throughout Texas. The electronic birth record component of TER was implemented in 2004.

In addition to TER, the Remote Birth Access (Remote) system is deployed at various registrar offices across the state to enable remote issuance of an abstract copy of a birth certificate for a citizen regardless of where he or she was born in Texas.

### **DUAL REGISTRATION**

Texas supports a dual registration of birth records. Historically, the local registrar of a district in which a birth occurred would record the birth, make a copy of the birth record, and send the original to Austin to be stored in the state's record storage facility. With the advent of technology, the process of registering a birth is now automated. All records are retained in the state's birth record information system. The function of recording births is still performed at the local level, in licensed institutions, such as hospitals or birthing centers; or, for non-institutional births, the function of registration resides with the local registrar.

Data about selected vital events is maintained centrally within VSU, as well as locally, in statutorily designated local registration jurisdictions. These jurisdictions are overseen by local registrars, who may also serve as county clerks, city secretaries, municipal clerks, or justices of the peace, depending on the size of the jurisdiction, and whether consolidations of jurisdictions have occurred. Currently, Texas has 469 jurisdictions.

The roles and responsibilities for the State Registrar, VSU, and Local Registrars are described in the following table.

State Registrar	VSU	Local Registrars
<ul style="list-style-type: none"> <li>• Assists the public</li> <li>• Oversees policies, procedures and technology for VSU</li> <li>• Coordinates with state agencies to ensure appropriate use and safeguarding of vital statistics data</li> <li>• Contracts with NCHS to share state vital statistics data between states, and at a national and international level, through the VSCP</li> <li>• Provides expert technical assistance to support the state’s birth record information system, effective implementation of statutory requirements, and develops and delivers training and education</li> </ul>	<ul style="list-style-type: none"> <li>• Conducts day-to-day operations of registration, maintenance and security of vital statistics records for Texans</li> <li>• Registers birth and death certificates for all Texans</li> <li>• Fulfills requests for birth, death and other vital statistics documentation</li> <li>• Maintains paper and electronic birth, death and other vital records for Texans</li> <li>• Oversees and periodically audits operations at local registrars</li> </ul>	<ul style="list-style-type: none"> <li>• Registers selected births, such as non-institutional, that occur in their jurisdiction</li> <li>• Registers deaths of individuals born in their jurisdiction</li> <li>• Fulfills requests for birth, death and other vital statistics documentation</li> <li>• Maintains paper and electronic birth and death certificates for events occurring in the respective jurisdiction</li> <li>• Coordinates with VSU</li> </ul>

### LOCAL REGISTRAR

The local registration official is required to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the registrar’s jurisdiction [25 TAC Section 181.1 (19)]. The official is also responsible for issuing certified copies of records. The type of record the official can produce depends on the place of birth or death of the registrant, as well as the technology utilized by the local registrar’s office.

Local registrars maintain full legal copies of the birth and death certificates of the vital events that occurred in their jurisdiction. Applicants can purchase a certified copy of their birth record directly from the office in the jurisdiction in which they were born. Local registrars have access to the long form versions of the paper copies within their jurisdiction because of the statutory provisions for dual registration in the state and can sell certified copies to qualified applicants.

The local registrar may also have a database of information about vital statistics events for their jurisdiction. The official may utilize this database to generate the certified copy of a birth and/or death record.

Approximately 200 of the 469 local registrars utilize the Remote system. Remote connects centrally to the statewide database and enables users to print an abstract copy of a birth certificate. Local registrars may choose to use Remote to generate copies of records for individuals born in their jurisdiction.

Remote also can be used to issue certified abstract copies of birth records for registrants not born in a local registrar's jurisdiction. For a state as large as Texas, the ability to purchase a certified abstract at any local registrar that accesses the system is a convenient service.

## SECTION 3

# BIRTH RECORD PHASES

For the purpose of completing a systematic assessment, the review identified three key phases that comprise the life cycle of a birth record: create, use, and retire.

**Create** – The initial act of creating and officially registering a birth within the State of Texas.

**Use** – The issuance of proof of birth through certified copies of documents, as well as the functions that support the management of birth records.

**Retire** – The matching of birth records with death records, and appropriately marking or flagging the birth record with a “deceased” notation after such a match occurs.

Using these common definitions of the birth record life cycle, the workgroup examined the current state, best practices employed across jurisdictions outside of Texas, and opportunities for change in each of three areas. In each area, identifications were further segmented into implementation categories: policy, process, and technology.

**Policy** – State of Texas policy established by state law. Recommendations on improvements would require action by the Legislature to implement.

**Process** – Implementation of policy into standard operating procedure. Process can be changed without legislative action, although it may require rule changes to the Texas Administrative Code (TAC).

**Technology** – The implementation of policy and process through automation systems, ensuring flexible and scalable solutions that support citizens and facilitate effective data management practices.

Appendix A provides additional information on the assessment methodology and the framework used to develop this report.



## SECTION 4

# RECOMMENDATIONS

On the following pages is a detailed description of each recommendation presented by phase: create, use, and retire.

### CREATE

1. *Consolidate Local Registrar Functions* – Reduce the number of local registrars by prioritizing consolidation based on the following criteria: metropolitan health district, county, registration district with a population over 100,000.
2. *Criminal History Background Checks* – Require that all individuals who can register a birth record or interact with the birth record information system undergo a criminal history background check.
3. *List of Non-Institutional Health Care Providers* – Ensure that VSU and local registrars have an accurate list of registered, certified, or documented health care providers practicing outside of licensed institutions.
4. *Delayed Birth Registrations* – Strengthen safeguards related to delayed certificate of birth registration.
5. *Standardize Birth Registrar Practices* – Leverage online educational materials and self-certifying courses to standardize data collection, data entry practices, and system access and use by all birth registrars.
6. *Segregation of Duties* – Enhance functionality of the state’s birth record information system by requiring a segregation of duties within the birth registration process.
7. *Data Exchange Capabilities* – Enhance functionality of the state’s birth record information system by improving the data exchange capabilities with hospital electronic health records.
8. *Improve Database Structure and Scalability* – Enhance functionality of the state’s birth record information system by improving database structure and scalability.
9. *Reconcile Reported Births* – Perform a periodic reconciliation of the number of births documented as occurring in a licensed institution with the number of births registered in the state’s birth record information system by that institution.

### USE

10. *Identification Requirements* – Applicants seeking to purchase a birth certificate should be required to present a government issued, non-expired, photo identification with signature, or provide two forms of identification from a specified list.
11. *Connecting Individuals and Identification* – Applicants seeking to purchase a birth certificate online or through the mail should be required to provide



additional information that establishes that the identity presented belongs to the applicant.

12. *Identification Verification and Validation* – Leverage a third party identification verification and validation system and/or an identification attribute database for all forms of accepted identification.
13. *Document Relationship* – Establish processes whereby an applicant ordering birth certificates for someone other than themselves can document their relationship to the individual whose birth certificate they are requesting.
14. *Consolidate Purchase of Issuing Materials* – Consolidate purchasing of security paper/issuing medium through a contract established by VSU with distribution done through the approved vendor(s).
15. *Enhance Wrongful Possession Provisions* – Enhance provisions regarding the possession of birth certificates of others in order to discourage the casual treatment of the birth certificate.
16. *Age Verification* – Implement the consistent use of a document that certifies age, but not identity, such as the Birth Verification letter, as a substitute for the issuance of a certified copy of a birth record.
17. *Educate Citizens* – Implement a communications plan to educate citizens regarding their responsibility for safeguarding their birth certificates, stressing the criminal penalties for wrongful possession and use, and communicating updated and new policies and procedures.
18. *Review Fees and Funding* – Initiate a review of fees and funding structure within VSU.
19. *Physical Access Standards* – Establish minimum standards for physical access to security paper, certificates, and archival paper record storage.
20. *Standardize Forms* – Standardize the form of certified birth certificate to one statewide format.
21. *Strengthen System Use Monitoring* – Enhance functionality of the state’s birth record information system by improving the security processes and monitoring of system use, including consideration of a pilot of biometric identity validation.
22. *Evaluate Standards for Vital Events Verification* – Assess implications of adopting national standards for Electronic Verification of Vital Events (EVVE) data across jurisdictions and programs against current capabilities and program funding model.
23. *Schedule Decommissioning of TER and Move to a Single State Electronic Birth and Death Records System* – Schedule the decommissioning of TER and Remote Birth Access, and require VSU, in coordination with local registrars, to develop and deploy a new system that can serve as a single state electronic birth and death records system.

24. *Protect the Integrity of State Birth and Death Data* – Protect the integrity of VSU birth and death registration system(s) by applying consistent practices on the use of the data by other organizations.

## **RETIRE**

25. *Increase Timetable for Public Release of Data* – Establish the timetable for publicly releasing vital records information to 125 years after a birth and 50 years after a death.
26. *Require Death Match for All Ages* – Require that death records for individuals of all ages who were born in Texas be matched with birth records, not only those under 55.
27. *Enhance Birth/Death Matching Criteria* – Re-evaluate and enhance the birth/death matching criteria.
28. *Appropriate Notation of Deceased* – Ensure that both paper and electronic birth records, maintained centrally at VSU and locally at registrars' offices are appropriately notated as “deceased.”
29. *Evaluate Standards for Data Exchange across Jurisdictions* – Assess implications of adopting national standards for electronic exchange of data across jurisdictions and programs using the State and Territorial Exchange of Vital Events (STEVE) against current capabilities and program funding model.
30. *Coordinate with Federal Agencies on Soldiers* – Coordinate with the relevant federal departments to ensure the receipt of death notifications of soldiers born in Texas.



## Consolidate Local Registrar Functions

**RECOMMENDATION 1:** Reduce the number of local registrars by prioritizing consolidation based on the following criteria: metropolitan health district, county, registration district with a population over 100,000.

### ISSUE

A high level of decentralization in the local registrar function limits the state's ability to ensure that the detailed policies and processes related to birth registration are implemented in a standardized manner, thereby risking overall security of the system.

#### In 2011

Texas had 469 local registration districts, representing more than 7% of the total number of districts that comprise the national vital registry program.

*Source: Derived from VSU and NAPHSIS data*

### CURRENT ENVIRONMENT

Health and Safety Code provides that Texas is divided into registration districts for the purposes of registering births, deaths, and fetal deaths. These districts include justice of the peace precincts and municipalities with a population of 2,500 or more [HSC Section 191.021].

There are currently 823 justice of the peace precincts and 606 municipalities with a population over 2,500 in Texas, allowing for more than 1,400 registration districts by law. A separate provision of Health and Safety Code provides that the justice of the peace may transfer the responsibilities of registration, thus consolidating the registry function, if agreed to with the county clerk and approved by the commissioner's court. Consolidation of offices allows local registrars to combine their efforts when it is in the best interest of the public. At present, Texas is divided into 469 registration districts.

### RATIONALE FOR CHANGE

Vital registry functions occur at the local level. It is critical that the state's vital statistics program support a regional and community presence to serve the citizens of Texas. The policies and processes in place in the current decentralized structure, however, contribute to a lack of uniformity and standardization across registration districts. Requirements of Texas law, administrative rule, and agency procedures establish the framework to effectively manage a statewide system of vital statistics. However, the complexity of implementing these provisions can be significant.

Ensuring that state law and regulations are followed in a consistent and uniform manner may be simpler with fewer registrars. For example, more than 1,100 individuals can create birth records at each of the state's local registrar offices. Challenges exist for VSU to ensure that each of these districts establishes and

maintains consistent controls that meet minimum standards for ensuring the security and integrity of birth records.

The function of birth registration occurs almost exclusively within licensed institutions. The local registrar's office is primarily responsible for the filing and issuance of certified copies of birth records. The registration of non-institutional births also occurs at these offices. Registration of a non-institutional birth is an infrequent (less than one percent of births registered in the state), yet complex process that demands standardization.

Local registrar offices in major population areas file a significant percentage of the births registered in the state. However, many local registrar offices across the state coordinate a very small amount of activity. In 2011, approximately 48 percent of the registration districts that filed births or deaths in Texas filed less than 50 each, and in combination, filed less than one percent of the total number of births and deaths recorded in 2011.<sup>8</sup> Additionally, the distribution of registrars per county varies widely throughout the state. For example, many smaller counties throughout the state are divided into several justice of the peace precincts, each with their own local registrar. With just over 545 square miles and a population of approximately 34,000, one county supports more than four justice of the peace precincts currently also serving as local registrars.

VSU delivers support through training and outreach, and oversight through system monitoring and site visits. These functions require a significant allocation of VSU resources in order to meet customer demand. Reducing the number of registration districts without impacting the ability to serve citizens would utilize limited state resources more effectively and ensure greater uniformity of birth registry practices.

Reducing the number of local registrar offices will likely reduce the number of individuals that have direct access to create a birth record. This consolidation will help improve security of the birth records information system, without impacting service to the citizens of Texas.

## **IMPLEMENTATION CONSIDERATIONS**

This recommendation calls for a reduction in the number of local registrars by prioritizing consolidation based on the following criteria: metropolitan health district, county, registration district with a population over 100,000. Through the authority of the Executive Director of the Health and Human Services Commission, DSHS may combine or divide registration districts to facilitate registration. However, by implementing this recommendation, consolidation would effectively reduce the number of registration districts from 469 to approximately 300. Given the scope of

---

<sup>8</sup> Vital Statistics Unit, Texas Department of State Health Services.

the recommended transfers, the Legislature may wish to consider action to optimize the parameters regarding local registrar districts and eligibility.

## **BENEFITS**

Benefits of consolidation of registration districts include:

- Improving quality and fraud control
- Improving statutory compliance
- Improving oversight and support from VSU
- Centralizing vital registration and record archiving





## Criminal History Background Checks

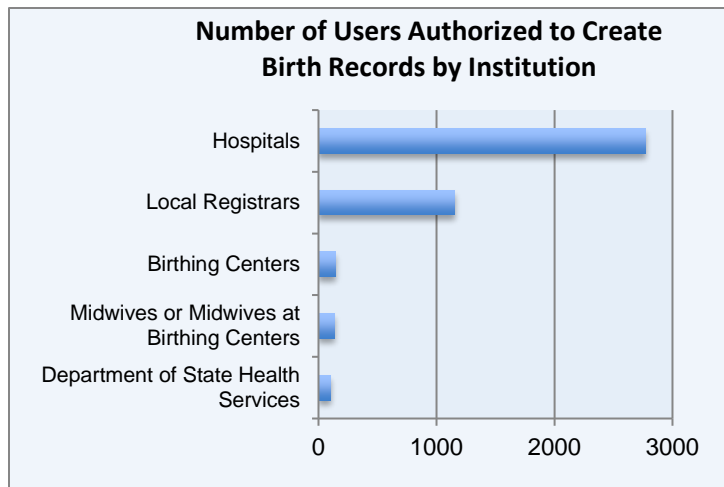
**RECOMMENDATION 2:** Require that all individuals who can register a birth record or interact with the birth record information system undergo a criminal history background check.

### ISSUE

Background investigations on all individuals who have the ability to create a birth record are not conducted, which contributes to the potential to create fraudulent records in the state's birth record information system.

### CURRENT ENVIRONMENT

In 2011, more than 34,000 individuals were granted access to the TER system, including activities involving the registration, issuance, processing, storage, dissemination, or destruction of vital records. Of this total, more than 4,000 system users had the ability to create birth records.<sup>9</sup>



Conducting verifications on prospective employees, including criminal history background checks, has become a staple of the health care industry. The Texas Hospital Association encourages hospitals to perform background checks on their employees, and as a result, many health care practitioners involved in direct patient care undergo a criminal history background check.

At present, midwives and certified nurse-midwives are not required to have completed a criminal history background check to gain a license. However, the Texas Occupations Code outlines that organizations issuing licenses in Texas may require a background check as part of qualifying for a license.

- Licensed midwives are regulated by the Texas Midwifery Board within the Texas Department of State Health Services. There are approximately 200 licensed midwives in Texas.<sup>10</sup>
- Certified nurse-midwives (CNMs) are regulated by the Texas Board of Nursing. Approximately 350 CNMs are licensed to practice in Texas.<sup>11</sup>

<sup>9</sup> Vital Statistics Unit, Texas Department of State Health Services.

<sup>10</sup> Texas Midwifery Board, Department of State Health Services, last updated July 31, 2012, [http://www.dshs.state.tx.us/midwife/mw\\_roster.shtm](http://www.dshs.state.tx.us/midwife/mw_roster.shtm).

Additionally, the Texas Department of State Health Services is entitled to obtain criminal history record information from the Texas Department of Public Safety relating to prospective and current employees of, or contractors providing goods or services to, VSU [TGC Section 411.110].

## **RATIONALE FOR CHANGE**

Individuals who are authorized to create birth records have opportunities to use that information for identity theft or other fraudulent purposes. Given the number of individuals with access to the TER system, the state's exposure to potentially fraudulent activities is significant.

An additional reason to conduct background checks on individuals with access to the TER system is to ensure the confidentiality of the state's vital records. While the fact of birth (name, date, and place) of an individual is public knowledge, the birth certificate is a confidential record for the first 75 years after filing and may be released only to a properly qualified applicant [TGC Section 552.115].

Confidentiality is crucial when working with birth records, as they contain personally identifiable information, such as a name and place of birth, or indirectly, such as mother's name and birthplace.

For several years, public health information organizations and government oversight agencies have recommended criminal history background checks on prospective and current employees charged with creating, maintaining, and securing vital records.

- In its report on birth certificate fraud in 2000, the federal Office of Inspector General reported that 25 state registrars had identified instances of birth certificate fraud by vital records employees in their jurisdictions.<sup>12</sup>
- With cases of embezzlement related to vital records in Oklahoma in 2005<sup>13</sup> and theft of more than 100 blank birth certificates by vital records staff in New York City in 2009,<sup>14</sup> potential fraud and theft by employees remains a concern.

NAPHSIS recommends that all state and local vital records and health statistics offices conduct background investigations and criminal record checks (dependent on

---

<sup>11</sup> Association of Texas Midwives, Certified Nurse Midwives, last updated November 16, 2007, <http://www.texasmidwives.com/TexasMidwivesChart.asp>.

<sup>12</sup> Office of Inspector General, Department of Health and Human Services, "Birth Certificate Fraud," p 17, September 2000, <http://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf>.

<sup>13</sup> Kelly Baker and Sue Bordeaux, Oklahoma State Department of Health, "Oklahoma Embezzlement Case," presentation at the 2008 Annual NAPHSIS Meeting, June 2008, <http://www.naphsis.org/index.asp?bid=1102>.

<sup>14</sup> Anemona Hartocollis, "Dozens of blank birth certificates are stolen from city records office," *New York Times*, April 24, 2009, [http://www.nytimes.com/2009/04/25/nyregion/25records.html?\\_r=1](http://www.nytimes.com/2009/04/25/nyregion/25records.html?_r=1).

level of sensitive position) and determine which convictions or offenses result in the individual being unsuitable for a position designated as sensitive.

## **IMPLEMENTATION CONSIDERATIONS**

NAPHSIS defines three levels of sensitive positions and recommends that the scope of investigation be gauged to the sensitivity of the position, which may range from a criminal history check to a full examination and verification including personal interviews.

Implementing this recommendation could be handled through the state's vital statistics program. With the exception of VSU employees where clear statutory authority exists to require a criminal history background check [TGC Section 411.110], there is no mandatory requirement that individuals who can register a birth are subject to a criminal history background check.

As a provision of the TER User Agreement, VSU requires all individuals who are authorized to access the state's birth and death records to sign a confidentiality statement subject to the release of information or records under Texas law [TGC Section 552.115 (a) (1 – 2)].

To address provisions for criminal history background checks, VSU should consider amending the TER User Agreement to include this requirement. Depending on their duties and responsibilities, individuals who may require a criminal history background check include:

- Staff who create or release a birth record as a function of registering a birth in a local registrar or county clerk's office,
- Staff who create or release a birth record as a function of registering a birth in a hospital or other licensed institution, and
- Midwives or other practitioners or their staff who create or release a birth record as a function of registering a birth in a non-licensed institution.

In some cases, organizations that obtain criminal history record information are required to attend a training session that is conducted by a representative of the law enforcement community. This requirement should be factored into the criminal history background check services established to implement this recommendation.

## **BENEFITS**

Benefits of requiring criminal history background checks include:

- Reducing the opportunity for fraudulent records to be created
- Establishing a minimum level of security for birth records regarding the number of individuals with access
- Ensuring personal information contained on a birth certificate will not be viewed by individuals with an unacceptable criminal history
- Aligning the state's process with NAPHSIS guidelines that call for criminal history background checks on individuals with "sensitive" positions
- Creating a minimum standard for each individual with access to register or interact with the birth record information system



## List of Non-Institutional Health Care Providers

---

**RECOMMENDATION 3:** Ensure that VSU and local registrars have an accurate list of registered, certified, or documented health care providers practicing outside of licensed institutions.

### ISSUE

Health care providers who are authorized to register non-institutional births are licensed by various entities in the state. Today there is not a consolidated ability to verify if these health care providers are currently licensed.

### In 2011

Less than 2% of all births occurred in settings outside of a licensed institution, such as a hospital or birthing center. Generally, these births were attended by one of more than 500 registered, certified, or documented health care providers in Texas.

*Source: Vital Statistics Unit*

### CURRENT ENVIRONMENT

A local registrar may file a record of a non-institutional birth that is attended by a registered, certified, or documented health care provider, including more than 500 licensed midwives and CNMs. Additionally, once the license or registration of the health care provider is verified, the registrar can file the certificate without need of any further proof of birth facts.<sup>15</sup>

As a further streamlining measure, administrative rule provides that local registrars can accept birth registration forms for non-institutional births by mail from health care providers, provided they maintain the signatures of the providers on file in their local offices [25 TAC Section 181.26 (b)].

While the overall percentage of non-institutional births is less than one percent in the state, the number of health care providers who can file a birth record outside of a licensed institution is substantial. Currently, local registrars do not have access to a consolidated and comprehensive list of these providers. In instances where health care providers retire or lose their licenses there is no process in place to notify local registrars or VSU.

### RATIONALE FOR CHANGE

The state's vital statistics program depends on the integrity of all licensed health care providers to ensure that births in Texas are accurately and efficiently registered by only those providers who are legally permitted to perform such duties.

---

<sup>15</sup> Local Registrar Handbook, Chapter 2, p 10, December 2010, <http://www.dshs.state.tx.us/vs/handbooks/Local/Local-Registrar-s-Handbook.doc>

While administrative rule provides efficiencies in the registration process, ensuring that VSU and local registrars are updated about licensure status reduces the opportunity for fraudulent records to be created by an unauthorized individual. To effectively perform their functions, VSU and local registrars need to have access to a valid list of health care providers who attend births outside of a licensed institution.

Administrative rule also provides that a non-institutional birth that is attended by a registered, certified or documented health care provider, may alternatively be recorded in the state's birth record information system. Verifying user access against a current list of health care providers could serve as a reference to validate profiles and user access rights to the system.

### **IMPLEMENTATION CONSIDERATIONS**

To implement this recommendation, VSU should coordinate with the Texas Midwifery Board and the Texas Board of Nursing to ensure that ongoing reporting of licensed midwives and CNMs occurs. Any disciplinary action on a health care provider that suspends or revokes the provider's license or registration should be flagged and communicated to VSU and local registrars.

### **BENEFITS**

Benefits of establishing a consolidated and regularly updated list of non-institutional health care providers include:

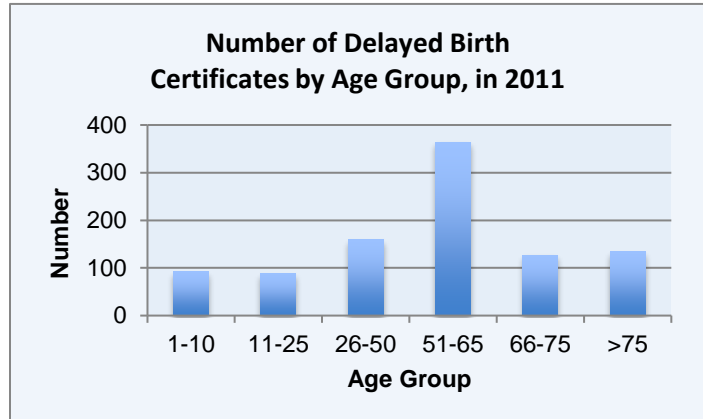
- Ensuring that local registrars release birth registrations created by a valid health care provider
- Maintaining efficiency in the registration process, while improving the validity of birth records
- Discouraging fraudulent behavior by informing health care providers their signature will be compared to an updated list provided by the appropriate licensing board
- Improving communication between licensing boards and local registrars and VSU

## Delayed Birth Registrations

**RECOMMENDATION 4:** Strengthen safeguards related to delayed certificate of birth registration.

### ISSUE

Evidence required by applicants for a delayed registration of birth should be specified and prioritized in more detail. Implementation of the statutes regarding documentary evidence for a delayed birth registration through the courts may vary across the state. These inconsistencies may contribute to a higher level of fraudulent delayed records of birth being filed.



### CURRENT ENVIRONMENT

Texas law establishes that a request for delayed birth registration, initiated after the one-year anniversary of the date of birth, must be submitted to the State Registrar [HSC Section 192.022]. Evidentiary documentation requirements vary based on:

- Delay of one year or more,
- Delay of more than one but less than four years, and
- Delay of four years or more.

In circumstances where a delayed certificate of birth has been administratively denied by the State Registrar, Health and Safety Code provides that an applicant may file a petition in the probate court of the county in which the birth occurred to obtain a registration by judicial order [HSC Section 192.027].

In 2011, VSU approved 892 delayed birth records for filing. In this same year, VSU sent notification to 217 applicants that they did not meet the requirements to file a delayed birth certificate administratively. Also during this period, VSU received 75 court-ordered delayed certificates of birth initiated in 2011 or earlier.

At nearly eight percent of the total number filed in 2011, the number of court-ordered delayed birth certificates is on the rise due to an increase in the number of requests that are denied by the State Registrar. Denied requests are typically based on conflicting evidence uncovered during processing. Some examples of conflicting evidence include the determination that a birth certificate of foreign origin exists or that verification documentation reflects out of state birth information.



## RATIONALE FOR CHANGE

In its report on birth certificate fraud in 2000, the federal Office of Inspector General (OIG) indicated that vital records staff consistently reported that birth certificates issued based on delayed and amended birth registrations were more likely to be fraudulent than those issued in a timely manner.<sup>16</sup>

### In 2011

More than 30% of all delayed birth certificates originated in 6% of Texas registration districts.

*Source: Vital Statistics Unit*

In 2011, the median age for filing a delayed birth in Texas was 57.8 years, in part due to the push to establish identity that has been emphasized through the Intelligence Reform and Terrorism Prevention Act of 2004 and other federal law. More than half of the 967 combined administrative and court-ordered delayed birth registrations that were processed in 2011 were for applicants between the ages of 25 and 65, illustrating the need to strengthen current processes and apply greater rigor to establish a basis for registering a delayed certificate of birth.

Because delayed birth registrations are viewed with caution, greater diligence is needed to ensure that fraudulent registrations are deterred, including strengthening requirements around documentary evidence. Currently, a wide variety of documentation is accepted for the purpose of establishing the birth facts for a delayed certificate of birth. The document types are not ordered by preference or priority, and therefore, conformance to a specific standard is not a function of the review process. VSU has initiated administrative rulemaking that outlines acceptable documentary evidence and implements other provisions of law. Standardizing the type of acceptable documentation, and reducing the number of documents required by an applicant, regardless of age, would enable a more consistent and uniform review process.

Additionally, because there is substantial variability in documentary evidence that is considered as part of the judicial process for delayed birth registrations, it is important to validate that the evidence used to satisfy the court in establishing the facts of birth are summarized on the delayed certificate of birth form.

## IMPLEMENTATION CONSIDERATIONS

Strengthening safeguards and implementing changes related to delayed birth registration can be accomplished through revisions to policy and process.

---

<sup>16</sup> Office of Inspector General, Department of Health and Human Services, "Birth Certificate Fraud," p 14, September 2000, <http://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf>.

To implement this recommendation, the Texas legislature may wish to consider:

- Standardizing and streamlining documentation requirements for delayed birth registrations, and
- Ensuring uniformity across court districts by requiring an independent review of all court-ordered delayed birth registrations to:
  - Verify that the facts of birth were reviewed and that documentary evidence supplied was as described in the summary; and
  - Require that the court find additional basis to grant an order, beyond what VSU had determined inadequate through administrative review.

To implement this recommendation, VSU should:

- Promulgate rule that implements provisions of statute and specifies the documentary evidence that is acceptable for delayed birth registration; and
- Develop education and outreach for court judges and their staff on best practices for enhancing security and preventing birth certificate fraud.

Additionally, it is important to monitor all unusual increases or trends in delayed certificate of birth applications and investigate the reasons and origins of the requests. Strengthening this function will enable the state to maintain a proactive approach in detecting, exposing, and taking action on fraudulent activities.

One resource available is the Fraud Early Warning System (FEWS), which is administered by the American Association of Motor Vehicle Administrators. FEWS has been extended to incorporate requirements of vital records offices and can serve as a critical resource to the state. VSU should explore options for enhancing fraud awareness within the unit and implementing FEWS.

Upon passage of the federal Model State Vital Statistics Act and Regulations (Model Law), VSU should review Texas statute related to delayed birth registration to determine opportunities to streamline and harmonize provisions with national standards. Based on implementation of these recommendations, VSU should assess areas for improvement within administrative and court-ordered processes and address proposed changes as part of its review process.

## **BENEFITS**

Benefits of strengthening safeguards regarding delayed birth records include:

- Enforcing consistent review standards to deter fraudulent practices
- Enhancing the documentation requirements to prevent false records from being created
- Improving efficiency by decreasing the number of delayed registrations, which often require more staff resources to process than a standard birth registration



## Standardize Birth Registrar Practices

**RECOMMENDATION 5:** Leverage online educational materials and self-certifying courses to standardize data collection, data entry practices, and system access and use by all birth registrars.

### ISSUE

The Field Services Department of VSU requires from three to five years to conduct a complete audit of sites that perform vital records functions. This time period is too long to ensure that VSU can implement the appropriate level of oversight required to ensure the security of the state's birth record information system.

### Field Office Visits

VSU requires 3 – 5 years to complete a full audit of the local registrars under its jurisdiction.

*Source: Vital Statistics Unit*

### CURRENT ENVIRONMENT

As a function of oversight, VSU conducts field office visits to local registrars in Texas. With 469 offices across the state, scheduling and auditing these facilities is a time and resource intensive effort. Additionally, 583 hospitals and licensed birthing centers and other locations are audited on an ad hoc basis.

Training and outreach opportunities are extended periodically through regional conferences, training clinics, and other venues. As a result of its field office visits, audits, periodic reviews, and training events, VSU has identified a growing number of issues that highlight the need to standardize practices and increase education and training.

### RATIONALE FOR CHANGE

To ensure birth registrars receive proper training in areas such as data collection, security and fraud prevention, customer service, and system processes, and to balance the impact to the state's resources, there is a need to augment training opportunities beyond field office visits, audits, and training events. One example is the creation of a distance-learning program, including certification, for the more than 4,000 birth registrars working in hospitals, birthing centers, and registration districts across the state.

A birth registrar certification program will enable individuals within facilities to effectively demonstrate knowledge and skills that increase their ability to comply with the program standards. Providing local registrars, facility administrators, and other individuals responsible for registering birth records with the tools to self-certify that their data collection and data entry conforms to established procedures provides a means of ensuring accurate record keeping.

Additionally, by establishing performance standards for vital registry functions and measuring against those standards will enable VSU to:

- Gather quantitative data to more accurately assign risk by facility, and
- Prioritize field office site visits based on assigned risk to fully leverage VSU's resources.

## **IMPLEMENTATION CONSIDERATIONS**

To ensure birth registrars receive proper training in areas such as data collection, security and fraud prevention, customer service, and system processes, VSU developed a certification program for birth registrars, facility administrators, medical staff, midwives, local registrars and individuals responsible for registering birth records.

In December 2011, VSU announced details of the program at the 57th Texas Vital Statistics Annual Conference and sought input and feedback. As envisioned, the Birth Registrar Certification Program will be mandatory and renewed every two years once all of the program components have been finalized. Reviews for compliance will be conducted during scheduled site visits.

After the rulemaking process is complete, the Birth Registrar Certification Program will be implemented. VSU has initiated the development and posting of program materials on its website.<sup>17</sup> These materials provide details of the program, including who is affected, components of certification, and draft rule language, creating 25 TAC, Chapter 181, Subchapter D. Once the program is underway, VSU staff will monitor compliance rates on a regular basis, including biennial re-certification.

## **BENEFITS**

Benefits of implementing a Birth Registrar Certification Program include:

- Setting a minimum standard for birth registrars to improve data quality, accuracy, and completeness
- Decreasing the number of errors, reducing the number of amendments submitted to correct user errors
- Providing greater access to training and continuing education
- Reducing administrative costs of conducting audits
- Enabling VSU to allocate resources to higher risk entities

---

<sup>17</sup> Vital, Statistics Unit, Texas Department of State Health Services,  
<http://www.dshs.state.tx.us/vs/field/birthcertification.shtm>

## Segregation of Duties

---

**RECOMMENDATION 6:** Enhance functionality of the state’s birth record information system by requiring a segregation of duties within the birth registration process.

### ISSUE

A single authorized user has the capability to create, certify, and release a birth record in the state’s birth record information system. A lack of system controls in the birth registration process creates a higher risk for fraudulent birth records to be generated. While the State Registrar may discontinue any institution’s or individual’s participation in electronic birth registration for failure to comply with the TER User Agreement, the ability for VSU to enforce a practice that ensures segregation of duties is difficult to validate.

#### In 2011

99.7% of all birth records were created in the state’s birth record information system.

*Source: Vital Statistics Unit*

### CURRENT ENVIRONMENT

In 2011, 99.7 percent of all birth records were created in the TER system. Individuals creating birth records in the system are required to enter into the TER User Agreement with VSU that directs their activities related to the registration and certification of birth records in the system.

In order to register a birth record in the TER system, an individual must initiate the creation of a record. That individual then enters birth registration information into the system. When all the data is entered, as specified in the TER User Agreement, a separate individual is required to certify the record, which indicates that the record is officially created and ready for release.

Currently, there are no automated controls in the system to enforce a segregation of duties across these functions. Additionally, current auditing practices cannot validate that this process is being enforced at every location.

### RATIONALE FOR CHANGE

A system-based segregation of duties is an effective way to ensure security and significantly limit the ability for fraudulent records to be created in the system. Segregation of duties is the separation of functions in a key process across at least two individuals in such a way that no single individual, or single group of individuals, should be in a position to both perpetrate and conceal errors or irregularities in the normal course of their duties. It also creates an automated system of checks and balances, requiring a minimum of two sets of eyes to see every transaction.

Segregation of duties is a key internal control that plays an important role in preventing and detecting fraud, and reducing or eliminating errors. It is considered one of the most effective internal controls in combating fraud because it:

- Virtually eliminates the ability for inappropriate action, and
- Forces collusion of two individuals acting in an illegal manner to bypass the control.

### **IMPLEMENTATION CONSIDERATIONS**

Administrative rule provides that the State Registrar specify requirements for a User Agreement to implement electronic birth registration and that hospitals, licensed birthing centers, midwives, and local registration officials must comply with the User Agreement in order to participate in electronic birth registration [25 TAC Section 181.13].

To implement segregation of duties that can be effectively enforced, VSU should enhance the state's birth record information system to define acceptable actions, such as "create" and "certify," by role, and to disallow the same user and role from executing both actions.

Further, administrative rules should be reviewed and updated, as necessary, to establish segregation of duties for the creation of a birth record as a policy requirement.

### **BENEFITS**

Benefits of requiring the segregation of duties include:

- Reducing the number of fraudulent or inaccurate birth records
- Deterring fraudulent record creation as it would require for two individuals to collude
- Improving the state's audit capabilities
- Enabling the enforcement of the TER User Agreement
- Aligning technology with policy requirements



## Data Exchange Capabilities

**RECOMMENDATION 7:** Enhance functionality of the state’s birth record information system by improving the data exchange capabilities with hospital electronic health records.

### ISSUE

The majority of birth record data is manually entered into the state’s birth record information system, which creates conditions for errors, impacting the quality and integrity of the state’s vital records.

### CURRENT ENVIRONMENT

A birth record contains two separate sections – legal and medical – which have different, but critical functions. Registered records administrators, or their designees, serve as birth registrars who are responsible for working with mothers to complete a medical data worksheet to collect medical information about the mother and child. The data from this worksheet, which is often filled out by hand, must then be entered into the TER system.

The legal portion of the birth record contains the information used for identification purposes, including an individual’s name, parent(s) name(s), the date and time of birth, the place of birth, among other items. The fields in this portion of a birth record are accessed to create certified birth certificates for citizens.

The medical portion of a birth certificate contains prenatal health information about the mother, such as the mother’s health habits, pregnancy risk factors, among others, as well as information about the labor, delivery, and the newborn. Health and Safety Code specifies that the data used in the medical portion is confidential and not released publicly [HSC Section 192.002 (b)]. This data is used for statistical purposes in the aggregate by state, federal, and other agencies to study health trends and outcomes.

### RATIONALE FOR CHANGE

As more institutions implement more robust electronic health record systems, there is an opportunity to improve the accuracy of the information and reduce rework necessary to accurately capture birth events.

#### Medical Data Worksheet

A medical data worksheet, containing 47 questions, some of which may have multiple responses, is manually completed for each of birth that occurs in the state.

In 2011, birth registrars manually entered more than 18 million data elements into the birth record information system. Because many of these data elements are derived from the mother’s medical information, they also exist in the mother’s electronic health record.

*Source: Vital Statistics Unit*

Linking vital record systems with hospital-based electronic health records for the transmission of patient information has been demonstrated to improve efficiency in the collection of vital record data. According to NAPHSIS, several states have pioneered the transmission of Electronic Health Record (EHR) data to vital record systems (primarily birth data) to demonstrate the technical feasibility of connecting hospital with vital record systems. These projects have also revealed the significant challenges to be faced with the quality and comparability of data collected in different settings and for such different purposes, and the level of resources required to make the data exchange work.<sup>18</sup>

Furthermore, CDC/NCHS and NAPHSIS recommend that the mother's and infant's health records serve as the source for more than half of all data items collected on the 2003 U.S. Standard Certificate of Live Birth.<sup>19</sup>

## IMPLEMENTATION CONSIDERATIONS

The vital statistics community has been collaborating on developing data exchange standards for medical and vital record systems data. Working with NAPHSIS and other vital records stakeholders, the CDC/NCHS developed vital records standards that are supported by multiple standards organizations, including the Health Level Seven International (HL7).<sup>20</sup>

To date, these standardization projects have documented a model, functional requirements, and messaging standards for trial use for health record/vital record data exchange. Some upcoming activities within this collaboration include:

- Development of HL7 messages to be used for this exchange
- Pilot testing of interfaces with multiple vendor products
- Data quality assessment of the data received from the EHR<sup>21</sup>

In August 2011, NAPHSIS established the e-Health Committee to monitor health information technology activities and to provide NAPHSIS comments to the draft rules and regulations being promulgated at the federal level.

VSU should consider leveraging the work being done at the national level and coordinate, as appropriate, with other organizations. Working with the Texas Hospital Association may facilitate communication between VSU and the hospitals where the

---

<sup>18</sup> NAPHSIS, Resolution 2012-1, "Electronic Health Record (EHR) Data Exchange with Vital Records Systems," p 1, June 2012, <http://www.naphsis.org/naphsis/files/ccLibraryFiles/Filename/000000001646/Resolution%20on%20Electronic%20Health%20Record%20Exchange.pdf>.

<sup>19</sup> Michelle Williamson and Hetty Khan, CDC/NCHS, Standards Development for EHR-Vital Record Exchange, November 18, 2011, <http://wiki.siframework.org/PH+Reporting+User+Story+-+Birth+%26+Fetal+Death+Registration>.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

majority of birth records are recorded. The Texas Health Services Authority (THSA) has several health information technology and health information exchange initiatives underway. As a public-private partnership, THSA is responsible for coordinating the implementation of health information exchange plans for Texas.

VSU may seek to coordinate a secure data exchange pilot with selected large providers. Large hospital networks are likely to have centralized EHRs and data warehousing capabilities. A limited pilot can provide insight into technical implications, such as data accuracy, quality, and the level of resources required to make the data exchange work. The agency should work with the pilot provider to address data quality issues and error rates on a quarterly basis.

## **BENEFITS**

Benefits of a birth record information system/EHR data exchange include:

- Reducing the number of errors entered into the system
- Reducing time spent on data entry and corrections
- Protecting patient privacy by reducing the need to communicate personal health information to third parties
- Minimizing the risk of losing the paper forms or the need for ensuring proper destruction as the use of paper can be eliminated



## Improve Database Structure and Scalability

**RECOMMENDATION 8:** Enhance functionality of the state’s birth record information system by improving database structure and scalability.

### ISSUE

The state’s birth record information system database structure does not currently provide the capability to properly capture some naming conventions and diacritical markers that are common naming features amongst the diverse Texas population.

### CURRENT ENVIRONMENT

The current birth record information system is capable of capturing 50 characters each for a child’s first name, middle name, and last name. This additional information can be critical to helping connect an individual with their correct birth record. Limiting the data fields in a birth record inhibits the birth/death matching process if an accurate accounting of a person’s name is not stored correctly.

Texas has a large Hispanic population, whose culture has certain naming traditions that might be restricted by the database limitations. In particular, children may take both the mother’s maiden and the father’s last name as their last name. They may or may not include the Spanish word “y”, sometimes used to connect the two names. If the newborn’s given name is too long, it may be abridged in the system, and may not accurately correlate to the individual.

Additionally, the use of diacritical marks, such as an acute, grave, tilde, and umlaut, are common features of foreign names. While the current birth record information system has the capability to capture diacritical marks, other systems that are connected to the state’s system are unable to receive these elements in a data transfer.

### RATIONALE FOR CHANGE

As the population of the state continues to grow and become more diverse, the value of the data captured in a birth record becomes increasingly important. Serving as a “breeder” document, the certificate of birth is the most important form of identification for an individual. The ability to accurately enter the name of the child in the record is critically important. The birth record also serves as a repository for demographic and medical information that is invaluable to the state. Due to system

#### Field Limitations in the TER System

Based on 2009 census data, there were 401,977 births in the State of Texas; 50% of these births were to mothers of non-Anglo origin.

Traditional surnames and given names for these birth records may be restricted by field attributes of the state’s birth record information system.

*Source: National Vital Statistics Reports  
Volume 60, Number 1*

limitations some of these important data elements are either not captured or are incomplete.

Ensuring that an individual's name is accurately captured at birth will enable a more efficient means to access the birth record through the individual's life and death. Establishing an accurate and complete baseline of data makes finding a record simpler. Rather than taking time to search through a database or through physical records, matches can be done efficiently. This saves time for issuing agents, VSU staff, and the customer.

Additionally, the birth/death match process can be done more efficiently, since the more specificity a system can capture, the easier it will be to match records by name. This will help reduce the number of unmatched birth records in the system and reduce the potential for fraud.

Citizens expect that the given names of their children will be accurately reflected on the birth certificates. When names do not appear as expected, citizens may sometimes apply for an amendment or re-apply for a birth certificate. This creates confusion and results in additional administrative processing time and resources. Additionally, the creation of multiple records for the same child, either advertently or inadvertently, creates opportunity for fraud.

## **IMPLEMENTATION CONSIDERATIONS**

The current birth record information system database would require significant modification to address the issues outlined. VSU should review this and other alternatives, including decommissioning and replacing the current birth record information system to address limitations of the current database architecture.

## **BENEFITS**

Benefits of improving the structure and scalability of the current birth record information system's database include:

- Improving accuracy of data elements in the birth record information system, most notably the name of the child
- Reducing the need for changes to the record after release
- Improving efficiency of locating the correct record
- Improving the birth/death matching process

## Reconcile Reported Births

**RECOMMENDATION 9:** Perform a periodic reconciliation of the number of births documented as occurring in a licensed institution with the number of births registered in the state's birth record information system by that institution.

### ISSUE

Without reconciling the number of births that are documented as occurring in a licensed institution with the number of births registered in TER, an opportunity for fraudulent practices exists.

#### In 2011

Texas hospitals and birthing centers registered 99.36% of all birth records filed in the state.

*Source: Vital Statistics Unit*

### CURRENT ENVIRONMENT

Health and Safety Code requires that the birth of each child be registered [HSC Section 192.001]. However, there is no cross-check, or reconciliation, between the number of births documented in licensed institutions and the number of births registered in the TER system to confirm that the numbers match.

For every birth registration in the state's birth record information system there should be supporting documentation at the institution that supports the fact that a child was born. Conversely, if there is a record reflecting a licensed institution birth, but no documentation from the institution to support that, an error may have occurred when registering the birth in the state's birth record information system – either intentionally, or inadvertently.

Because current processes do not require a reconciliation of the number of births registered in the system with the number of births that occurred at the licensed institution, it is possible for false records to be created in the electronic system by individuals acting fraudulently.

### RATIONALE FOR CHANGE

Without reconciling between licensed institutions and the TER system, it is not possible to ensure an accurate number of registrations. The reconciliation process could ensure that no additional birth records are being created in the TER system that are not also being recorded and documented by the licensed institution.

Additionally, performing reconciliations on a regular basis could alert VSU to institutions, regions, or individuals that may have regular discrepancies. Performing a regular reconciliation will help the state ensure accurate record keeping regarding birth registrations, allowing for a more accurate count of births occurring in licensed institutions.



## **IMPLEMENTATION CONSIDERATIONS**

To effectively implement this recommendation, legislative action is needed that directs hospitals and birthing institutions to coordinate with VSU to perform periodic reconciliations of the births documented as occurring in the licensed institution, with the births registered in the state's birth record information system by that institution.

Working in conjunction with licensed institutions, VSU should determine the frequency and the matching parameters for the reconciliation. A match by gross numbers may be satisfactory if the birth dates of the newborns were used. Performing the matches would have to be delayed by a long enough period of time to ensure that all the newborn data was entered into the system.

Additionally, a name match may be completed. A name match may identify specific potential fraudulent birth records, if the names appear in the TER system, but not in the hospital birth record. Utilizing the name may also enable law enforcement agencies to track the user(s) responsible for creating the birth record(s).

To ensure that the data is reviewed on a regular basis, VSU should identify the anticipated workload on its resources and develop an implementation strategy accordingly. If the results of the reconciliation are not reviewed in a timely manner, there may be cases of fraud that go undetected.

## **BENEFITS**

Benefits of reconciling reported births include:

- Reducing the risk of fraudulent records by ensuring each record in the system corresponds to a physical birth in an institution
- Improving the validity of data in the State's birth record information system
- Creating a process that will alert VSU of suspicious activity, or institutions that regularly report inconsistencies
- Deterring fraudulent behavior by individuals with access to create a birth record

## Identification Requirements

**RECOMMENDATION 10:** Applicants seeking to purchase a birth certificate should be required to present a government issued, non-expired, photo identification with signature, or provide two forms of identification from a specified list.

### ISSUE

Current identification requirements to purchase a certified copy of a birth record allow for an unmanageable variety of acceptable forms of proof, and lead to complex and inconsistent practices across registration districts.

### CURRENT ENVIRONMENT

Administrative rule outlines that applicants seeking a birth certificate must present a current form of government issued photo identification along with his or her application. If the applicant is unable to present a current form of photo identification, he or she must supply two valid supporting forms of identification, one of which bearing the applicant's signature [25 TAC Section 181.1 (13)].

### In 2011

More than 250,000 copies of birth certificates were issued through multiple ordering methods. Currently, a wide variety of identification may be presented, including:

- 19 forms of primary identification (photo requirement on each), or
- 20 forms of secondary identification (2 different types of government-issued document), or
- 19 forms of supporting identification (if 2 different types of secondary information is unavailable, 1 type of secondary plus 2 different types of supporting identification is required).

*Source: Vital Statistics Unit*

A list of suggested forms of identification is listed in the Local Registrar Handbook.<sup>22</sup> The list is tiered into primary, secondary, and supporting, with suggested combinations of identifications from these lists to be required by local registrars in order to issue a birth certificate. In total, 58 forms of identification comprise these three lists.

### RATIONALE FOR CHANGE

By reducing the number of accepted forms of identification, the state can reduce its exposure to the presentation of fraudulent documents. Issuing offices should be strongly encouraged to request a non-expired government issued photo identification

<sup>22</sup> Local Registrar Handbook, Chapter 5, p 9, December 2010, <http://www.dshs.state.tx.us/vs/handbooks/Local/Local-Registrar-s-Handbook.doc>.

with signature, such as a driver license or U.S. Passport, that can be verified for authenticity.

There are cases where an individual may not have a government issued photo identification with signature, ranging from those who have lost their identification due to accident or theft, or to those whose identification has merely expired due to lack of usage. Other cases may involve non-United States citizens acting as qualified applicants for their minor children, who were legitimately born in the United States. These individuals will likely not have the access to such a specific form of identification, but need to be accommodated in the process.

If this type of identification is not available, issuing agents should require two forms of secondary identification, at least one of which should have a picture of the applicant. Examples might include, but are not restricted to:

- Federal or state identification card
- Federal, state or city law enforcement employment identification card, or employment badge accompanied by employment identification card
- Offender identification card issued by the Department of Criminal Justice correctional facility or institution
- Military identification card
- Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) issued Employment Authorization Document (EAD), Permanent Resident Card (green card), among others
- United States Department of State issued Border Crossing card or Visa
- Concealed handgun license
- Pilot's license

Strengthening the identification requirements needed to request a copy of a birth certificate is a critical component of combating fraud. Requiring that acceptable forms of identification must be current provides an additional measure of assurance and limits the ability for this documentation to be misused or abused.

Additionally, VSU should require that all forms of copied identification presented, such as for mail-in applications, be legible. Specifying that all copies be legible deters fraud in issuing offices by enabling them to reject identification they cannot read, and/or pictures they cannot see. Copies of legible identification are also necessary as a means to help support potential future investigations of fraud, as these copies may be used as evidence in these cases.

## **IMPLEMENTATION CONSIDERATIONS**

VSU should consider amending administrative rule [25 TAC Section 181.1 (13)] to strengthen the controls related to the identification required to issue a birth certificate. This provision of rule outlines the definition for "Identification of Applicant."

Issuing agents and their communities will need to be educated regarding the change to identification requirements. Strengthening the documentation requirements may be viewed as restrictive to citizens. However, given the criticality of controlling the issuance process as a means to prevent fraud, serious consideration should be given to implementing new requirements.

## **BENEFITS**

Benefits of requiring a government issued, non-expired, photo identification with signature, or two alternate documents from a specified list, for purchasing a birth certificate copy include:

- Helping registrars recognize fraudulent documents by reducing the number of alternative documents that are accepted
- Eliminating the need to rely on an individual registrar's discretion when accepting alternate documentation
- Creating a process that is more understandable by registrants seeking to obtain a certified copy of a birth record
- Creating a heightened awareness that issuing a certified copy of a birth record requires greater diligence on the part of the applicant and registration districts

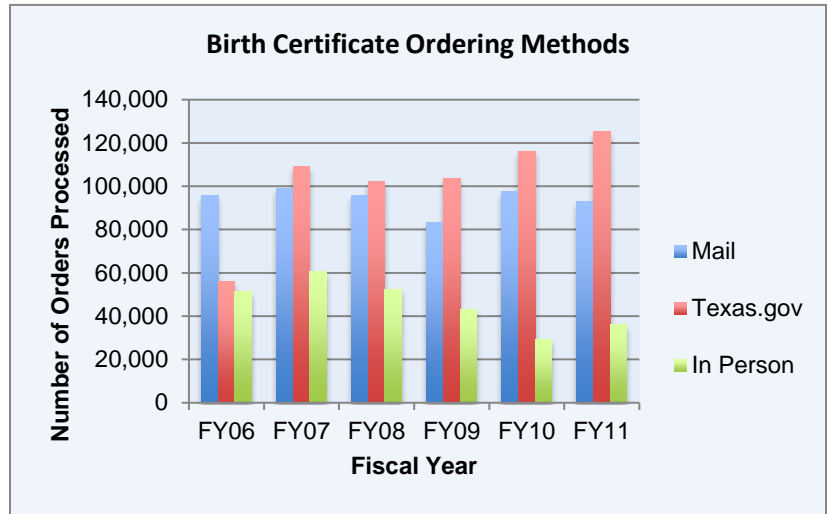


## Connecting Individuals and Identification

**RECOMMENDATION 11:** Applicants seeking to purchase a birth certificate online or through the mail should be required to provide additional information that establishes that the identity presented belongs to the applicant.

### ISSUE

Currently, the ability to connect an identification document with a person is not effectively implemented for either mail-in or online requests through the state portal, Texas.gov. Because these ordering methods represent a much larger percentage of orders for birth certificate copies than those processed in person, greater opportunities for fraud exist.



### CURRENT ENVIRONMENT

In 2011, more than a quarter of a million copies of birth certificates were issued in Texas. According to ordering trends monitored by VSU, less than 36,000 (approximately 16 percent) were processed in-person, either at VSU or local registration districts. During this same period, more than 125,000 (approximately 49 percent) of the applications received were processed through the official state portal, Texas.gov, and approximately 93,000 (approximately 37 percent) were processed through the mail.

Administrative rules specify that photocopies of the identification be made for mail-in applications, however no comparable provisions for online applications exist in rule. Regardless of the method in which a certified copy of a birth record is purchased – in-person, through the mail, or online – issuing agents must ensure that the identification being presented actually belongs to the individual making the request.

### RATIONALE FOR CHANGE

It is critical to ensure that stringent controls are in place to validate the identity of all qualified applicants who seek to purchase a certified copy of a birth record. While birth certificate fraud can occur by creating a counterfeit document, improvements to the features of bank note paper and other medium have changed the paradigm for

committing birth certificate fraud. Fraud can also be committed by altering an original certificate or by an imposter obtaining a duplicate certificate.<sup>23</sup>

The most direct way to connect identification with an individual is to require that the application be done in-person. However, demands for expanded access, convenience, and citizen expectations must be met. Approximately 85 percent of all applications for copies of birth certificates are processed remotely. Thus, a reliable means to match the individual with the identification should be established.

Documentation that connects the identification to the applicant is necessary in reducing opportunities for fraud in the birth certificate issuance process. Whether photocopied and sent via the mail or scanned and uploaded as part of an online ordering process, photo identification serves as a source of documentation to help ensure that the identification belongs to the applicant.

Further, use of a notary could serve to connect an individual with his or her identification. An additional safeguard to verify proof of identity through online ordering may be through the use of authentication questions based on personal knowledge, such as a mother's place of birth or other family data that a potential imposter would not know.

## **IMPLEMENTATION CONSIDERATIONS**

To help ensure the security of birth certificates and to verify the identity of the person requesting a document, VSU should review and assess modifications to the written and online application for a certified copy of a birth record. Depending on the ordering method, implementation considerations include:

- In-person – issuing agents should be strongly advised to check the photo on the applicant's identification with the person presenting it and to verify that the identification presented is current (see Recommendation 10).
- Through the mail – photocopies of legible identification documents should be submitted. VSU may consider using a third party, such as a notary, to validate that the identification matches the individual.
- Online – scanned copies of legible identification documents could be uploaded. Alternatively, VSU should require that the online ordering application include a series of authentication questions for the applicant.

## **BENEFITS**

Benefits of connecting individuals and identification include:

- Reducing opportunities for imposters to gain access to birth records
- Adding an additional security measure to protect an individual's birth certificate

---

<sup>23</sup> Marti Dinerstein, Center for Immigration Studies, "America's Identity Crisis: Document Fraud is Pervasive and Pernicious," April 2002, <http://www.cis.org/articles/2002/back302.html>.

- Creating a heightened awareness that issuing a certified copy of a birth record requires greater diligence on the part of the applicant and registration districts





## Identification Verification and Validation

**RECOMMENDATION 12:** Leverage a third party identification verification and validation system and/or an identification attribute database for all forms of accepted identification.

### ISSUE

Local registrars who issue birth certificate copies are not uniformly equipped with the tools needed to recognize attributes of valid identification and methods used to verify and validate authenticity of identification.

### CURRENT ENVIRONMENT

There are currently three categories of documents that may be presented to establish proof of identity, and a total of 58 different types of identification and supporting documentation exists within those categories. The acceptability of the identification presented by the requestor is at the discretion of the processor and more documentation can be requested.

Local registrar districts that use third party services, such as VitalChek, to process online applications for certified copies of birth, take advantage of their identification verification features, such as driver license verification with DPS. Applications through the mail, which require identification to be photocopied, may be harder to examine to determine their validity.

### RATIONALE FOR CHANGE

Verification of identification documentation is a necessary function to deter fraud in issuing copies of birth certificates. Several recommendations in this report address areas for improvement in the current issuance process (see Recommendations 10 and 11). With at least 58 different types of identification that can be submitted to request a copy of a birth certificate, it is important that local registrars have a common understanding, and can recognize the attributes, of the variety of identification forms that are currently accepted.

The Internet has enabled any individual with a credit card to buy a fraudulent identification online. Providers of false identifications can create documents with

#### In federal fiscal year 2011

- 12.6 M passports issued
- 860 total confirmed passport fraud cases:
  - 61% involved genuine birth certificates
  - 6.3% involved counterfeit birth certificates
  - 16.8% involved a falsely filed birth certificate

The overwhelming majority of cases involve impostors with fraudulently obtained genuine documents

*Source: Cracking the Case Together:  
Passport Fraud and Vital Events  
2012 NAPHSIS/NCHS Joint Meeting*

holograms and magnetic strips. Often, these identification cards appear authentic and a casual review will not discern the features and attributes that are present or absent that validate that the identification card is fraudulent. Working with more than 58 possible forms of identification requires knowledge and skill in discerning the validity and authentication of documents whose origins arise from one of 254 counties and other jurisdictions.

Motor vehicle and public safety agencies, such as DPS, that issue driver licenses, make use of a broad array of resources to verify identification. For example, DPS conducts a verification process to ensure that new applicants do not hold a driver license from another jurisdiction through a multi-jurisdiction verification hub.

## **IMPLEMENTATION CONSIDERATIONS**

Understanding and recognizing the features of fraudulent documents requires access to tools and training. As part of the review process, local registrars should verify authenticity of third party agents, such as notaries, through the Secretary of State's website.

VSU should explore technologies implemented in DPS and other agencies, such as identification verification systems. Additionally, other secure systems that provide a reference database populated with attributes of different types of identification and information issued by those agencies should be considered. VSU should explore opportunities to establish a secure method to verify the identification used for mail-in applications.

Other resources available include:

- The American Association of Motor Vehicle Administrators (AAMVA) issued the first international specification for personal identification for driver licenses and identification cards design. Many jurisdictions voluntarily comply with this specification and use it when they procure vendors to create and issue these documents.
- Additionally, AAMVA developed fraud prevention e-learning courseware originally designed for DMV staff around the nation that can be applied to any organization that comes in contact with driver licenses and other forms of identification.
- Standards bodies, such as the American National Standards Institute's (ANSI) Identity Theft Prevention and Identity Management Standards Panel (IDSP), work to develop and promulgate the use of voluntary consensus standards and guidelines that will aid government and other sectors in minimizing the scope and scale of identity theft and fraud.
- Third party systems, such as VitalChek, provide a secure ordering process to ensure that birth certificates are issued to only those persons that are legally entitled to receive a certificate.
- Consideration of authenticating proof of identity through the use of specific biometrics, that are unique to an individual, such as fingerprints, retina or iris images, among others. Based on the outcome of a limited pilot to test

effectiveness of biometrics in enhancing system monitoring (see Recommendation 21), VSU may wish to consider the impact of this technology in birth certificate issuance.<sup>24</sup>

Ensuring that VSU and local registrar offices have access to the resources and training that will enable them to adopt more advanced methods to detect fraud will require funding. VSU should examine a variety of options to implement a range of practices – basic to advanced – and evaluate methods of funding specific initiatives, based on cost and impact to the vital statistics program.

## **BENEFITS**

Benefits of leveraging external verification practices include:

- Deterring fraudulent requests for birth certificates by enabling the detection of fraudulent identification
- Utilizing technology to verify and validate an individual's identification
- Creating a heightened awareness that issuing a certified copy of a birth record requires greater diligence on the part of the applicant and registration districts

---

<sup>24</sup> Document Security Alliance, "Call To Action: Birth Certificate Security," p 4, November 2010, [www.documentsecurityalliance.org](http://www.documentsecurityalliance.org).



## Document Relationship

**RECOMMENDATION 13:** Establish processes whereby an applicant ordering birth certificates for someone other than themselves can document their relationship to the individual whose birth certificate they are requesting.

### ISSUE

In most cases, there are not clear, published processes that require an applicant to demonstrate their relationship to the registrant when applying to purchase a birth certificate copy.

### CURRENT ENVIRONMENT

In addition to affiliation by blood, marriage, adoption, guardianship, legal agent, or law enforcement or government agencies and other persons with a direct and tangible interest, a properly qualified applicant may also be a person who has submitted an application for request to release personal information and has been approved as outlined in administrative rule [25 TAC Section 181.1 (22)].

Local registrars and VSU use documented processes, as well as their discretion, in requiring applicants to demonstrate their relationship to a registrant for whom they are seeking a birth certificate copy.

Orders processed through the mail or submitted online do not require applicants to provide documentation showing their relationship to the registrant.

### RATIONALE FOR CHANGE

The current process creates an opportunity for the fraudulent purchase of birth certificates. Rather than attempt to assume someone's identity to purchase a copy of a birth certificate, potential perpetrators of fraud can use their actual identification to

#### A properly qualified applicant is:

- Immediate family member by blood, marriage, or adoption
  - Self
  - Father (on record or through court order)
  - Mother
  - Grandfather
  - Grandmother
  - Brother
  - Sister
  - Husband
  - Wife
  - Legal guardian
  - Legal representative

#### Considered properly qualified applicant:

- When the need for the record is to implement a statutory provision or to protect a property right:
  - Local, state, and federal law enforcement or government agency
  - Other persons who have a direct and tangible interest

*Source: Local Registrar Handbook,*

gain access to another person's birth certificate by assuming a relationship to the registrant as a qualified applicant.

Documentation requirements vary based on relationship. For example, a guardian, who is considered immediate family, is required to submit legal papers as proof of guardianship. On the other hand, an individual who represents him or herself as a family member, such as brother or grandmother, is not necessarily required to present documentation.

Further, siblings who have married, parents who have divorced and/or remarried, and stepparents may be legally qualified applicants for a certified copy of a birth record of a registrant whose last name is different than theirs. Without requiring proof of their relationship to the registrant, individuals in these categories may be suspect.

### **IMPLEMENTATION CONSIDERATIONS**

To implement this recommendation, VSU should consider amending administrative rule [25 TAC Section 181.22]. Additional provisions may be required, outlining the specifics related to ensuring that all qualified applicants prove their relationship to the registrant.

Approving the status for some applicants may be straightforward. For example, parents of the registrant may be exempt from providing documentation of their relationship to the child, so long as their name is on the child's birth certificate, and the age on the birth certificate is coordinated with the age shown on the parent's current identification.

Other applicants, such as grandparents, stepparents and/or legal guardians, may need to provide documents which may not be readily available and/or more than one piece of documentation to demonstrate their relationship. For example, in the case of a grandparent, the individual might show their relationship by providing a birth certificate of their child, whose name would then be checked against a parent's name on the birth certificate for which they are applying. Siblings with married names may have to provide a marriage certificate and their birth certificate, to demonstrate their relationship to the registrant.

VSU may consider creating a relationship matrix for issuing agents to use to aid in ensuring that copies of birth certificates are provided to qualified applicants only. Each type of applicant would be listed, along with the specific relationship documentation required to apply for the birth certificate. This information should be made available to the public to ensure that they are aware of the processes related to this complex process.

### **BENEFITS**

Benefits of requiring documentation to prove the applicant's relationship with the registrant include:

- Ensuring only qualified individuals can access an individual's birth certificate

- Improving the security of personal information
- Standardizing the process by which qualified applicants can purchase a birth certificate





## Consolidate Purchase of Issuing Materials

**RECOMMENDATION 14:** Consolidate purchasing of security paper/issuing medium through a contract established by VSU with distribution done through the approved vendor(s).

### ISSUE

Disaggregated purchasing of birth certificate paper leads to unnecessary variation of paper among issuers and the publication of security requirements in public documents.

### CURRENT ENVIRONMENT

Currently, VSU and 469 local registrars have the ability to purchase security paper from several vendors, provided that the paper purchased meets the security features specified in administrative rule [25 TAC Section 181.28 (c)].

In order to create that compliance, the state publishes all of the required security features in the public domain. Security paper can be purchased from different vendors with slight variations in compliance with required certification standards.

Additionally, each local registrar disposes of his or her own unused, or voided, security paper through individual processes.

### RATIONALE FOR CHANGE

Through consolidated purchasing of the issuing medium, the state can improve the security features and the cost, and in the same action create automated processes to track the number of birth certificates issued across the state.

Currently, to enable vendors to comply with security paper specifications, the required security features are published in administrative rule. Public disclosure of the security features creates an opportunity for fraudulent use as individuals may reference these requirements in an attempt to create false documents. Security features embedded in other state-issued identification, such as Texas driver licenses, are not published publicly, making it more difficult to create false identifications.

**As specified in administrative rule, some of the security features of certified copies or abstracts of birth records include:**

- Consecutive numbers – documents that contain sequential numbers for control purposes
- Background security features – a repetitious design consisting of a pattern that hinders counterfeiting efforts
- A copy void pantograph – the word void appears when the document is photocopied
- An engraved border – a border that is produced from engraved artwork containing images from fine lines to very complex patterns
- Microline printing or security thread – a line of small alpha characters in capitol letters that requires a magnifying glass to read

*Source: 125 TAC Section 181.28 (c)1*

Additionally other state registrars maintain secret features in their issued birth certificate copies.

One of the weaknesses of the current issuance process is that the state cannot quantify the exact number of birth certificate copies issued each year. The ability for each local registrar to purchase paper for its own use, and maintain separate systems, impedes the state's ability to reconcile the number of certificate copies issued across the state with the amount of security paper purchased. Ensuring that the security paper, or other issuing medium, is purchased and disseminated in a controlled fashion is a critical component to preventing the creation of fraudulent certificates. Although there are established security features for paper, purchasing paper from more than one vendor creates the opportunity for variations in format and style. Differing formats and styles can create difficulty in recognizing whether a certificate is authentic, increasing the chance of fraud.

A centralized volume purchasing agreement will create new opportunities to realize cost savings for all parties, while providing enhanced and new security features. Additionally, the ability to track and monitor issued copies of birth certificates, issued paper, and voided paper is possible, providing a method to identify trends and potentially fraudulent practices. Finally, by initiating a procurement event, consideration for an issuing medium other than paper, which could potentially provide an entirely new level of security features, can be employed.

## **IMPLEMENTATION CONSIDERATIONS**

To implement this recommendation, VSU should initiate a procurement planning effort that considers paper/issuing medium delivery in a broader context of distribution and validation that supports other security processes of the state. The procurement would need to incorporate mechanisms that allow for direct payment by registrars and distribution directly to registrars in order to minimize the operational impacts.

As part of this effort, VSU should amend administrative rule to remove specifications for security paper, enabling the State Registrar to establish and maintain enhanced security provisions for paper issued statewide.

## **BENEFITS**

Benefits of centralizing the purchasing of security paper or other issuing medium include:

- Reducing price by aggregating the small quantity of paper purchased by individual local registrars into statewide volume
- Enabling the inclusion of security features without having to publish those features into the public domain
- Distributing paper from the approved vendor(s) enables enumeration of paper that can be tracked, monitored, and reported to the state

- Revising or implementing new paper security features, or switching to a different issuing medium, as conditions warrant



## Enhance Wrongful Possession Provisions

**RECOMMENDATION 15:** Enhance provisions regarding the possession of birth certificates of others in order to discourage the casual treatment of the birth certificate.

### ISSUE

The birth certificate is a document that is used for many day-to-day activities – going to school, playing in sports – but in the wrong hands serves to create a false identity, false credit lines, and other fraudulent uses. In the right hands it is a tool, in the wrong hands, a weapon, and the state should create provisions that discourage the casual treatment of the birth certificate by parties using the document for day-to-day certification practices.

#### False Records

A person commits an offense if the person intentionally or knowingly makes a false statement or directs another person to make a false statement in an application for a certified copy of vital records.

*Source: [HSC Section 195.003(d)]*

### CURRENT ENVIRONMENT

Health and Safety Code specifies that the possession of a birth certificate “for purposes of deception,” to possess, use, sell, or furnish a certified copy of a birth record related to another individual, is a third degree felony [HSC Section 195.003 (d) and (f)].

Individuals who possess a copy of a birth certificate that is not their own pose a risk to the birth registrant in the event that the document is lost, stolen, or subject to careless action. Yet, as a means to verify age, copies of birth certificates are commonly requested by schools and sports leagues, institutions and organizations that have no intent to defraud.

To reduce the potential that well meaning individuals may cause birth certificates to be exposed to careless action or loss, the use of long form birth certificate copies for these purposes should be discouraged; new abstracts (see Recommendation 16) should be utilized for these purposes.

### RATIONALE FOR CHANGE

While the provision of statute is enforceable regarding malicious intent, it does not address the culture of using copies of birth certificates without malicious intent. For example, asking for a birth certificate when other identification would suffice, or when taking possession of the birth certificate of another without responsibility to safeguard that document to a sufficient standard. Having certified copies of birth records in the possession of a third party can create a significant security risk to the registrant if the birth record is not treated with care.

Recent legislation regarding the security of electronic medical records may provide some guidance regarding the responsibility to safeguard critical private information of others such as a birth certificate. Additionally, Transportation Code may provide some guidance in creating provisions discouraging the possession of another's birth certificate. For example, Transportation Code makes it a Class A misdemeanor to lend a driver license to another person [TC Section 521.451 (2)]. While not an exact template for this issue, Transportation Code addresses the importance of treating identification documents seriously and restricting their handling.

### **IMPLEMENTATION CONSIDERATIONS**

The Texas Legislature may consider alternative methods to establish restrictions on possession of another's birth certificate along the lines described above.

As noted, there is no statute currently in effect to restrict who may possess an individual's birth certificate. To give equal or more stringent consequences for wrongful possession, legislative action will be required, either by creating a new statute, or amending a related existing statute.

### **BENEFITS**

Benefits to creating a law restricting possession of a birth certificate copy to only an affected qualified applicant include:

- Creating individual heightened awareness to better secure birth certificates
- Enhancing the security of personal information since only qualified applicants will be able to retain copies of an individual's birth certificate, and the number of birth certificates in circulation should decrease
- Giving parents legal grounds to deny coaches' and program leaders' requests for copies of a child's birth certificate
- Deterring fraudulent use by prosecuting punishments for wrongful possession of a birth certificate that include jail time and/or monetary fines, pursuant to provisions of Health and Safety Code

## Age Verification

**RECOMMENDATION 16:** Implement the consistent use of a document that certifies age, but not identity, such as the Birth Verification letter, as a substitute for the issuance of a certified copy of a birth record.

### ISSUE

Copies of individuals' birth certificates are requested for and provided to organizations as a means to verify age only, and not identity.

### CURRENT ENVIRONMENT

To enroll a child in sports organizations or other youth programs, parents may request several copies of birth certificates to satisfy verification of age requirements as most youth programs currently accept only certified copies of birth. National organizations, such as Little League, offer suggestions for parties required to show the age of the prospective participant, directing individuals to purchase a copy of the child's birth certificate from the State Registrar.

#### How To Obtain Acceptable Documents Proving Date Of Birth

"Certified copy-of-birth records may be obtained from the Registrar of Vital Statistics of each state, province or local office where the child was born."

*Source: Little League Online*

Administrative rule provides for verification of age and defines birth verification, as "a noncertified statement only of the registrant's name, date of birth, and place of birth as it appears on the birth index" [25 TAC Section 181.1 (30)]. The intent of birth verification documentation is to provide proof of age for sports organizations, youth programs, and similar functions.

A separate, but related, provision of rule specifies that after ten certified copies of a birth record are issued since the original date of filing, the birth record is flagged as abused [25 TAC Section 181.24 (a) (1)].

### RATIONALE FOR CHANGE

Organizations that retain birth certificate copies for proof of age may not understand the security risk of improper safeguarding of birth certificates. Reducing the amount of personal information shared will improve privacy and reduce the probability of the information being used fraudulently.

Birth verification is intended to provide a means for authorized organizations to conduct checks on vital records information where data elements are primarily limited to name and date of birth. Using birth verification within sports organizations will reduce the number of birth certificates issued and distributed, eliminating the need to expose personal information.



Additionally, with a maximum issuance of ten certified copies of birth, there is a risk of incurring a possible flag of the record as abused, depending on the number of programs for which a certified copy is needed.

Other states, such as Minnesota and New Mexico, have implemented or plan to implement similar age verification processes. By creating a national heightened sense of awareness around securing birth certificate copies, fraudulent use could decline. Additionally, because many of the youth sports organizations and youth programs have a national presence, if more states begin implementing an age verification document the reliance on certified copies of birth certificates should decrease.

### **IMPLEMENTATION CONSIDERATIONS**

In cases where only the age of an individual needs to be verified, a letter containing the birth verification should be used. Birth verification does not contain other personal information, thereby limiting the amount of personal information shared with the sports organization or youth program.

VSU has initiated a process to implement a viable alternative to issuing certified copies of birth records that can meet the needs of youth programs. In the future, VSU may also consider expanding this process to include online verification, with consideration for incorporating appropriate security controls and fee structure.

The implementation of a communications plan that educates youth sports organizations and youth programs is also critical to successful implementation of this recommendation. This initiative could also pose an opportunity to collaborate with other states in raising awareness amongst youth sports organizations with a national presence to encourage such entities to accept age verification documents over original birth certificates (see Recommendation 17).

### **BENEFITS**

Benefits of implementing a document that verifies age, but not identity, such as the Birth Verification letter, include:

- Improving the security of personal information on a birth certificate copy by not disseminating to third parties, unnecessarily
- Reducing the number of copies of birth certificates in circulation
- Maintaining a revenue source for VSU through age verification

## Educate Citizens

**RECOMMENDATION 17:** Implement a communications plan to educate citizens regarding their responsibility for safeguarding their birth certificates, stressing the criminal penalties for wrongful possession and use, and communicating updated and new policies and procedures.

### ISSUE

Improvements to birth record security cannot be made without the communication, outreach, and education of all stakeholders in the process.

When citizens become aware of the sensitivity associated with a birth certificate, they may be more apt to safeguard their own documents.

Keeping track of a copy of one's birth certificate, should be viewed with the same sensitivity that one would consider for a driver license or a passport.

### CURRENT ENVIRONMENT

Concerns about identity theft are a staple of media news coverage. From concerns about information shared on social media websites, to appropriate usages of personal credit cards, there are a multitude of safeguards about which citizens are educated to help ensure the privacy of their personal information.

Birth certificates may be used for purposes other than establishing an individual's proof of citizenship, identification, and relationship to his or her parent(s). One concern is the growing number of birth certificate copies requested to verify an individual's age, rather than their identity (see Recommendation 16). In these cases, individuals are requesting sensitive data, but may not be safeguarding the birth certificates provided as proof of age. This exposes individuals to a significant opportunity for identity theft.

### RATIONALE FOR CHANGE

Vital records, including birth certificates, are critical pieces of identity information and must be maintained securely. Educating citizens on the role of the birth certificate in gaining access to other forms of identification, as well as access to state and federal programs, is a component of a statewide strategy to heighten awareness and strengthen security of the birth record information system.

Citizen-facing topics that should be addressed in a communications plan include:

- Potential VSU process or system changes – provide advance notice of any factors that may affect certificate issuance to minimize delay or inconvenience to citizens. Topics such as changes to identification requirements, requiring proof of relationship between an applicant and the individual whose birth certificate is being purchased can impact documentation necessary to apply for a birth certificate.

- Consolidation of local registrar offices – consolidation may inconvenience individuals in smaller towns, who may have to travel further to get access to an issuing office.

Other stakeholders who are more directly involved in the process, such as local registrars, health administrators, and health care practitioners, will also be impacted by changes. Ensuring that these individuals are apprised of changes will be critical.

### **IMPLEMENTATION CONSIDERATIONS**

VSU should develop a communications plan that addresses how changes to policy, process, and technology within the vital statistics program will affect citizens and program stakeholders. Extending outreach to constituents, such as youth sports organizations and youth programs, will be important to implement changes in practice, such as the Birth Verification letter.

VSU should evaluate existing communications channels within the agency that will reach the broadest number of individuals with appropriate presentation of information and access to provide input into the process.

### **BENEFITS**

Benefits of implementing a communications plan include:

- Facilitating statewide initiatives to improve security within the birth record information system
- Educating citizens on state law, policies, and processes in place regarding birth certificate issuance
- Heightening awareness about the sensitive nature of birth certificates
- Improving communication opportunities with third party entities, such as youth sports organizations and other youth programs

**RECOMMENDATION 18:** Initiate a review of fees and funding structure within VSU.

### ISSUE

VSU is funded through a series of fees that have been amended and changed over time. Several recommendations in this report would further refine the nature of use of the data, and it is an appropriate time to reassess and establish a funding structure that ensures the long-term sustainability of the oversight of this critical asset.

VSU's funding model is complicated by the interaction of statutory requirements, appropriations funding, and third-party contractual agreements.

### CURRENT ENVIRONMENT

The state's vital statistics program maintains more than 47 million records of important events in Texans' lives, including births, deaths, marriage applications, report of divorces, adoptions, and paternity changes. VSU produces documents that federal and state entities use to establish identity, citizenship, ownership, entitlement to benefits, and passport travel authorizations. VSU is the fundamental source of natality, mortality, and demographic data by registering these vital events, including births, deaths, fetal deaths, and suits affecting the parent-child relationship. VSU issues nearly one million copies of certified records annually.<sup>25</sup>

Health and Safety Code enables VSU to charge fees for providing services and maintaining the state's vital statistics system [HSC Section 191.0045]. Statute further specifies that a vital statistics fund in the state treasury is to be used to defray expenses incurred in the administration and enforcement of the state's vital statistics system [HSC Section 191.005]. Statute also provides that local registrars charge the same fees as VSU, but allows a separate \$1 fee per transaction to be charged by local registrars for preserving vital statistics records in their jurisdiction [HSC Section 191.0045 (d) (h) (1)].

Through administrative rules, VSU has established 19 different fees for services: ranging from generating certified copies of birth records to processing and issuing a disinterment permit [25 TAC Section 181.22]. A primary source of revenue from authorized fees is the sale of certified copies of birth and death records.

Additional revenue is received through federal initiatives, such as Social Security Administration (SSA) data sharing and participation in the NCHS Vital Statistics

---

<sup>25</sup> Health and Human Services System, "Health and Human Services System Strategic Plan 2013 – 17," Vol 1, p 238, July 6, 2012, <http://www.hhs.state.tx.us/StrategicPlans/SP-2013-2017/Volume-I.pdf>.

Cooperative Program. Also, revenue is generated by interagency contracts to support other state agencies' programs.

The Registrar's office is responsible for the creation and maintenance of a statewide system of vital statistics, which includes services provided by and for VSU:

- A wide variety of services and functions is performed by VSU to provide appropriate vital records information to authorized state agencies and other government entities and to maintain the state's system of vital statistics. Fees established for these services vary across contracts.
- A contractual relationship that supports the state's vital statistics program is the use of the official state portal, Texas.gov. Through the master work order, online ordering and imaging of VSU vital records is provided. This contract, which ends in August 2014, has substantial impact on fees collected and distributed.

### **RATIONALE FOR CHANGE**

Given VSU's critical mission to safeguard vital statistics records and data, the organization must be able to identify business needs and plan for the development of solutions that secure and safeguard citizen information, deliver a responsive and resilient information system, ensure the integrity and accuracy of data and information, and enhance the customer experience.

Using these tenets as the foundation to deliver a strengthened and effective birth record information system, a viable fee and funding model should be explored. A new funding model that supports the implementation of best practices should be put in place, which will yield more meaningful results than introducing incremental changes to the current funding model.

### **IMPLEMENTATION CONSIDERATIONS**

Agency and state leadership support is critical to the success of this recommendation. A comprehensive review and reengineering of funding models requires a collaborative work effort to succeed. Coordination with all stakeholders, including local registrars, will be crucial, as fiscal impacts to these entities will need to be considered.

The opportunity to end or renegotiate the master work order regarding collected fees will happen during the upcoming biennium. This event provides a critical opportunity to either address several challenges described in this report, or to capture fees to accomplish the recommendations through other means.

### **BENEFITS**

Benefits of reviewing the fee and funding structure include:

- Creating the transparency of a public agency regarding expenditures and revenue
- Allowing VSU to better understand how resources are allocated
- Improving accountability to stakeholders and public citizens

- Providing a clear understanding of current state to better assess if a new fee structure is necessary



**RECOMMENDATION 19:** Establish minimum standards for physical access to security paper, certificates, and archival paper record storage.

### ISSUE

Measures to control access to archived paper birth certificates and the paper used to print certified copies and abstracts of birth are not uniformly applied across locations.

### CURRENT ENVIRONMENT

Current processes at VSU call for restricted access to paper assets. VSU maintains archived copies of all birth records for the State of Texas in a secured facility with controlled access and a fire suppression system to protect the storage of these records.

#### Securing Paper Assets

While administrative rule refers to 13 security features that must be included on security paper used to issue a certified copy of a birth record, the rules do not address specific measures for securing the paper assets.

*Source: [25 TAC Section 181.28 (c)]*

Access to this facility is available to selected VSU employees with the appropriate credentials. Additionally, access to the books that contain archived records is restricted to within the records room.

Local registrar processes to secure access to archived paper birth certificate and security paper vary throughout the state. The Local Registrar Handbook states that a local registrar is responsible for preserving the vital records in his or her office. As a function of site visits, VSU staff review and address requirements for establishing minimum security standards.

### RATIONALE FOR CHANGE

Requiring minimum standards that must be met to maintain paper records can help ensure the security of birth certificates, and the personal information on the birth certificates. For VSU, the appropriate administrative, physical, and technical security safeguards, documented in VSU's internal security manual should be consistent with industry standards and should be adhered to.

Local registrars do not maintain the same volume of records as VSU; however, with 469 districts, comparable security measures should be maintained. As noted previously in this report, in June 2012, approximately 500 blank certificates were misplaced or unaccounted for during the replacement of office equipment. To secure paper records and assets, and the information contained on those records, a minimum standard of physical access should be established and adhered to.



By establishing minimum standards related to access to paper records, VSU and local registrars will improve the security and confidentiality of the documents and personal information of citizens.

### **IMPLEMENTATION CONSIDERATIONS**

VSU should consider amending administrative rules to require that local registrars conform to minimum standards for securing access to paper, consistent with security policies and procedures adopted by DSHS.

Based on requirements of minimum standards and the extent to which local registrar offices currently have the ability to conform to those standards, there could be a substantial fiscal impact to consider. For example, the cost of new security features such as doors, card readers, or keypads likely would require a more significant financial commitment.

### **BENEFITS**

Benefits of establishing minimum standards for physical access to security paper include:

- Ensuring each location stores paper assets in a sufficient and secure manner
- Standardizing how paper assets are secured throughout the state
- Reducing the opportunity for theft or misuse
- Aligning state policy with NAPHSIS guidelines more closely

## Standardize Forms

**RECOMMENDATION 20:** Standardize the form of certified birth certificate to one statewide format.

### ISSUE

The state does not currently utilize one standard format for the certified issuance of a birth record, which creates unnecessary challenges in validating the birth certificate copies by both Texas organizations and external partners.

### CURRENT ENVIRONMENT

One of the primary reasons that certified copies of birth records are issued to individuals is to enable them to establish proof of their identity. Texas issues more than one type of certified copy of a birth. Variations in the form exist based on where and for what purpose the certificate is being purchased, as well as the technology used to generate the certificate.

#### Certified copies of birth can be issued as

- A full legal reproduction of the legal portion of the record
  - In the office of the jurisdiction where the registrant was born
  - From the State VSU
- An abstract of birth facts taken from the birth record
  - Derived from data electronically stored centrally at VSU
  - Abstracts include:
    - Standard certified abstract
    - Wallet certified abstract
    - Heirloom style abstract (only issued by the State Registrar)

*Source: [25 TAC Section 181.28 (a) (1)]*

Administrative rule provides that two types of certified copies of birth records can be issued [25 TAC Section 181.28 (a) (1)].

- A full legal reproduction of the legal portion of the record
- An abstract of birth facts taken from the birth record

Individuals who order a certified copy of birth from the jurisdiction where the registrant was born may purchase a reproduction of the legal portion of the birth certificate on file at that registrar's office. In this case, the paper record is located in storage, unbound from the book in which it is stored, copied, and rebound and returned to the stacks. Alternatively, registration districts that utilize imaging systems can access an imaged copy of the certificate and print it.

If a local registrar utilizes the Remote system, the local registrar can provide an applicant with an abstract of the birth record, regardless of where in Texas the registrant was born.

### RATIONALE FOR CHANGE

Issuance of certified copies of birth – and the format used to produce those copies – varies across the 469 local registrar districts. Locally-issued certified copies of birth records differ by issuing office and with variations in seal placement, signature line,

and other features, making it difficult to discern the document as being a certified copy of a Texas birth certificate.

Agencies that issue identification, such as U.S. Passport Services issuing offices, must verify authenticity of the certified copy of birth. With variations across each type of acceptable certified copy or abstract of birth that exists in the state, it is a challenge to recognize and maintain knowledge of the legitimate variations that exist. Standardizing the certified copy or abstract of birth to one format would create uniformity and simplify the identification issuance processes.

To further simplify issuance processes, VSU should consider reducing the number of different types of abstracts of birth records available for purchase. Because a wallet-sized abstract of birth is generally not accepted as a form of identification by many issuing agencies, such as U.S. Passport Services issuing offices, its use is limited. VSU should consider eliminating the certified copy of the wallet-sized birth certificate as an option for purchase.

## **IMPLEMENTATION CONSIDERATIONS**

To implement this recommendation, administrative rule would need to be amended [25 TAC Section 181.28 (a) (1)] to eliminate the issuance of a wallet-sized certified abstract. Through consolidated purchasing (see Recommendation 14), VSU can incorporate requirements for a standard format for security paper used to print certified copies and abstracts of birth records in the solicitation process.

Gaining access to all available types of certified copies and abstracts can be facilitated through access to a central database (see Recommendation 23). By accessing a central database, local registrars could eliminate the time consuming practice of copying paper records. This will not only save administrative time, but it reduces the potential for documents to be damaged, lost, or stolen as part of the binding and unbinding process. Additionally, all registrars would have access to print certified abstracts of birth records, regardless of the applicant's place of birth in Texas.

## **BENEFITS**

Benefits of requiring standardized forms of birth certificate copies include:

- Recognizing fraudulent Texas birth certificates more easily
- Reducing the time spent by registrars and other verifying agencies on authenticating a Texas birth certificate
- Allowing for the purchase of one type of security paper
- Incorporating the same security features on all Texas birth certificates issued during the same time period

## Strengthen System Use Monitoring

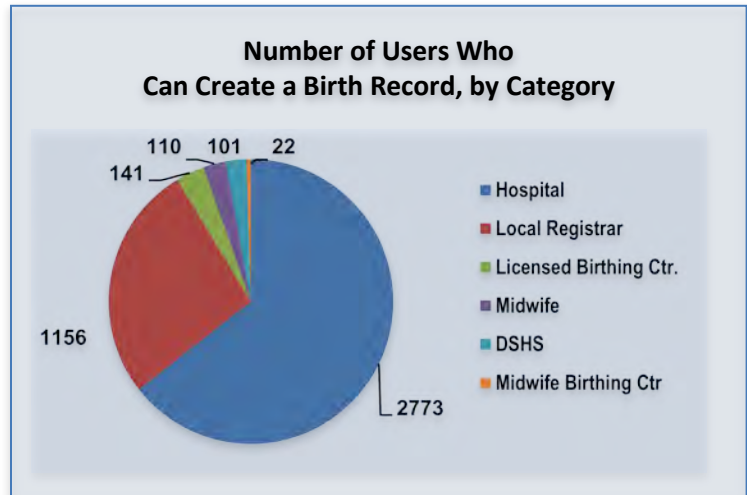
**RECOMMENDATION 21:** Enhance functionality of the state’s birth record information system by improving the security processes and monitoring of system use, including consideration of a pilot of biometric identity validation.

### ISSUE

The current birth record information system lacks certain security features, as well as the ability to monitor and track system usage, and provide auditing controls that are critical components to safeguarding birth record data.

### CURRENT ENVIRONMENT

More than 38,000 users have varying levels of access to the TER system. Each user has a unique name and password, which are required to access the system. Passwords are updated every 90 days.



With no timeout feature in the system, once a user has signed on, that individual’s access remains active until the user has manually signed off. Currently there are no formalized audits of user access by VSU or local administrators to be certain that those users who have left service or changed positions have had their access suspended in the system.

The TER system also provides minimal logging of activities. Within the registration module, transaction logging is limited to the creation of the record and the most recent transaction executed. After completion of the registration module, all transactions are logged and tracked.

### RATIONALE FOR CHANGE

Due to the sensitivity of the data in the TER system, and potential for fraudulent activity or use of that data, ensuring adequate security, tracking, and monitoring functionality is of paramount importance. VSU may be exempt from certain regulations related to health information technology, such as the Health Insurance Portability and Accountability Act (HIPAA). However, the standards set forth in these regulations serve to guarantee measurable assurance and auditability of system activities. These types of system controls are critical to safeguarding data, and ensuring the integrity of the state’s birth record information system.

In the current system, a user could simply give an unauthorized individual their user name and password allowing them full access to the system. Proper logging of activities, coupled with application monitoring functionality, would provide VSU with tools to identify usage patterns associated with inappropriate or fraudulent activities. Monitoring tools would provide VSU the ability to conduct system audits of user activity and provide key information needed to effectively manage the system.

## **IMPLEMENTATION RECOMMENDATIONS**

To implement this recommendation, VSU should conduct an evaluation of the functionality needed to strengthen system security and monitoring, and based on the results, develop a business case to enhance or replace the system.

Additionally, VSU should coordinate with facility administrators to verify that each user authorized to create a birth record actually performs that function. The principle of least privilege should be enforced and conducting a survey that verifies user privileges will provide insight into procedural controls that may need to be established or enforced.

As noted, the current system has over 38,000 users and each user has a unique user name and password to access the system. This level of access security to the system is adequate; however, the importance and sensitive nature of the data held in the system speaks to the need for added layers of access controls.

Examples of access controls VSU may wish to consider include:

- Strengthened authentication requirements for login
- Password reset requirements
- System timeouts after a period of inactivity
- Additional security question when accessing system from another computer

In concert with other recommendations in this report and to reduce exposure to security incidents and opportunities for fraud, VSU may consider piloting the use of some biometric capabilities as a component of certifying system access for users. This pilot may be rolled out by type of facility, by geography, a combination of these factors, or other criteria. Biometrics may be used in a variety of ways to support the user identification process. Any such project should have the goal of enhancing the security of vital records and enhancing VSU's mission.

## **BENEFITS**

Benefits of improving the security processes and monitoring of system use include:

- Improving the audit capabilities that could be performed
- Creating a way for VSU to be alerted to suspicious activity or usage
- Enhancing the security of personal information by timing out the user after a period of inactivity
- Allowing for the possibility to incorporate biometrics in a system upgrade/replacement

## Evaluate Standards for Vital Events Verification

**RECOMMENDATION 22:** Assess implications of adopting national standards for Electronic Verification of Vital Events (EVVE) data across jurisdictions and programs against current capabilities and program funding model.

### ISSUE

Texas does not employ national standards for providing secure electronic access to verify birth record information with other state and federal agency programs that provide government services or issue identification.

### CURRENT ENVIRONMENT

Many federal and state agencies rely on birth certificates for proof of age, proof of citizenship, identification for employment purposes, issuance of benefits or other documents (driver licenses, Social Security cards, and passports) and to assist in determining eligibility for public programs or benefits.

Verifying that a certified copy of birth, or the information contained in the birth record, presented to any government office across the country matches an official state record allows for these agencies to serve citizens promptly, while providing protection against the potential use of birth certificates for fraudulent activities and safeguarding the confidentiality of birth and death data.

In collaboration with federal and state entities, NAPHSIS has developed and implemented the Electronic Verification of Vital Events (EVVE) system. EVVE allows immediate confirmation of the information on a birth certificate presented by an applicant to a government office anywhere in the nation regardless of the place or date of issuance.

In response to a system query by an authorized federal or state agency user, a participating vital records jurisdiction either verifies or denies the match with official state records. It also flags positive responses when the person matched is now deceased.

### In 2011

Top 5 states and territories claimed as places of birth in confirmed cases of passport fraud

\*Puerto Rico: 29.5%

\*Texas: 22.0%

California: 16.3%

\*New York: 4.8%

Florida: 2.2%

\* State/territory does not participate in EVVE

*Source: Cracking the Case Together:  
Passport Fraud and Vital Events  
2012 NAPHSIS/NCHS Joint Meeting*



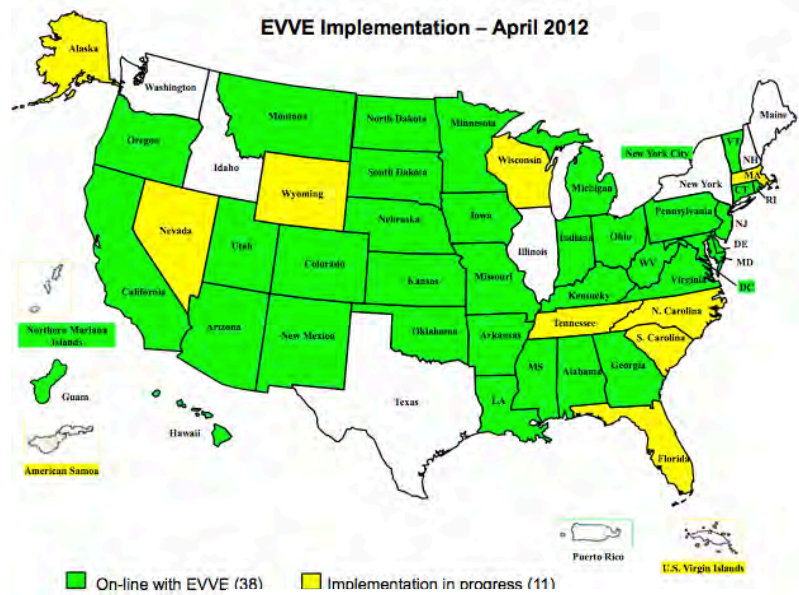
At present, VSU does not participate in the national system. However, the state’s birth record information system supports verification queries with authorized agencies and organizations. As of April 2012, 38 states had implemented EVVE.<sup>26</sup>

### RATIONALE FOR CHANGE

EVVE was developed and deployed as a pilot in 2002 to verify social security benefit eligibility in a timely and secure fashion. Today the Social Security Administration uses EVVE to verify proof of age and place of birth as a program requirement before issuing social security benefits.<sup>27</sup>

Additional agencies that are currently using EVVE include:

- State Medicaid offices
- U.S. Passport Services facilities
- State motor vehicle administration offices
- Office of Personnel Management



Source: NAPHSIS

EVVE establishes commonality across 57 vital registry jurisdictions and conforms to the various laws that govern access and use of birth records across these jurisdictions. Using EVVE, a variety of government agencies can securely and rapidly verify accuracy of vital records information through a standard Internet-based user interface against 250 million birth records in vital record databases nationwide.<sup>28</sup>

### IMPLEMENTATION CONSIDERATIONS

Participation in EVVE would have fiscal impact to the state’s vital statistics program. Because the program is funded in part through database queries and birth verification

<sup>26</sup> Angela Newton, Minneapolis Passport Agency, “Cracking the Case Together: Passport Fraud and Vital Events,” (presentation at the 2012 NAPHSIS/NCHS Joint Meeting, June 2012). [http://www.naphsis.org/naphsis/files/ccLibraryFiles/Filename/000000001638/NEWTON\\_NAPHSISJune2012.pdf](http://www.naphsis.org/naphsis/files/ccLibraryFiles/Filename/000000001638/NEWTON_NAPHSISJune2012.pdf).

<sup>27</sup> Social Security Administration, Program Operations Manual System, Section GN 00302.980, “Electronic Verification of Vital Events – Age,” <https://secure.ssa.gov/poms.nsf/lnx/0200302980>.

<sup>28</sup> Steven Schwartz, “The United States Vital Statistics System: The Role of State and Local Health Departments,” p 7, April 23, 2008, <http://www.naphsis.org/NAPHSIS/files/ccLibraryFiles/Filename/000000000676/NAS%20VS%20Worshop-%20State%20Perspective-%204-23-08.pdf>.

transactions within the state's birth record information system, VSU participation in the EVVE system would negatively impact revenue for the program.

VSU will gain additional insight into funding options through its review of its fees and its funding structure (see Recommendation 18). Concurrent with this assessment, VSU should develop a business case to evaluate functional and technical impacts to implementing the EVVE system.

## **BENEFITS**

Benefits of implementing national standards include:

- Improving customer service by facilitating rapid access to accurate and verifiable vital record data
- Supporting future transactions between the vital records offices and EVVE users
- Offering a secure mechanism for communication between agencies and vital records offices





## Schedule Decommissioning of TER and Move to a Single State Birth and Death Records System

---

**RECOMMENDATION 23:** Schedule the decommissioning of TER and Remote Birth Access, and require VSU, in coordination with local registrars, to develop and deploy a new system that can serve as a single state electronic birth and death records system.

### ISSUE

Advances in technology, expectations of customers, and government regulations in response to terrorism have created a need to strengthen and modernize the functionality and security of the state's birth record information system.

As Texas looks towards the future, securing the vital information of its citizens is a critical priority. This goal cannot be effectively achieved through incremental modifications to the legacy TER system.

### CURRENT ENVIRONMENT

The TER system contains a birth and death module, each specifically designed to support the processes related to the respective activities. All birth records are contained in a birth records master file. Users are supplied varying levels of access to the system, depending on their function.

Almost all births in Texas are registered directly into the TER system, primarily through hospitals. Upon authorization by VSU, certified health care providers – hospitals, birthing centers, midwife birthing centers or independent midwives – can set up access to the TER system at their facilities. Installation for health care providers can be completed online.

Each facility must assign an administrator, who designates access to local users at each facility. Users access the system online using passwords to gain access to the system. Birth record data is manually entered at the facilities. Once the records are officially released, the data is sent to the birth master file at VSU. Any record released in Texas can be issued by VSU within 24 hours.

Local registrars are typically granted access right to create birth records directly in the TER system to register the small percentage of non-institutional births that occur in the state. In these instances, local registrars collect supporting documentation in order to enter the birth into the TER system. Local registrars do not have direct access to the birth records master file.

Local registrars who are authorized to use the Remote system, an application that shares the database but is not integrated into the TER system, use this application to print a certified abstract of a birth certificate for any individual born in the state.

Queries of the master birth index are performed through Remote to locate a registrant. Once the birth record is located, an abstract can be printed by the registrar.

In addition to local registrar's access to Remote, other health and human services agencies are authorized to utilize this system to serve applicants and customers of their programs. As a means to provide authorized users a lookup capability, a gateway that queries the state database has been implemented to verify birth data for the Texas Medicaid Program within HHSC. The gateway provides online responses to requests for verification of birth records for applicants of Medicaid services.

### **RATIONALE FOR CHANGE**

The TER system is based on proprietary and outdated technology. While TER provides a measure of data security, the system requires implementation of manual controls to ensure limited data access and security monitoring. Additionally, the amount of manual intervention required to ensure data is protected requires ongoing effort on the part of VSU, which impedes its ability to provide consistent and timely data to DSHS and health and human services programs without significant cost.

Through replacement of the TER legacy system, VSU will be able to support real time, secure health information data exchanges. In pursuing a modernization effort, VSU will establish safeguards with the system to protect client data and ensure privacy from inappropriate or illegal access, as well as enable efficient data exchange with health and human services agencies.

As a benefit to citizens, a single records system will allow for birth and death certificates to be issued from any county, not only the county of birth. While a statewide solution exists today, it is not integrated into the TER system, and many local registrars do not participate in this solution. In these locations, to meet citizens' needs, such as printing a an abstract copy of a birth record, the local registrar would be required to print from a duplicate record of the state's database, which is not the system of record.

A critical success factor in implementing a number of recommendations in this report is heavily impacted by the implementation of a new system. Throughout this report, issues related to the need to enhance system functionality and strengthen security within the state's birth record information system have been identified (see Recommendations 6, 7, 8, 20, 21, 22, 23, and 29). Auditing, searches, standardized reports, and data matching can all be improved with an improved birth record information system. Additionally, interactions with other systems, including EHRs, health information exchanges, data verification, and exchanges across jurisdictions will be facilitated by implementing modern technologies within the state's birth record information system.

### **IMPLEMENTATION CONSIDERATIONS**

Decommissioning the TER system is a process that will require careful planning and coordination with users of the system, especially local registrars. Incremental

improvements to the current system during the replacement planning process should continue. Overall, the TER system has a fairly high user satisfaction rating, and ensuring its continuous operation is critical.

Decommissioning TER will require an examination of the existing fee structure (see Recommendation 18) to develop a model that supports a single, central database for use in the state. The system today serves citizens, and local registrars take great pride in their service to citizens through their systems. That capacity for delivering quality customer service must continue.

The system architecture will need to be flexible enough to support the access requirements of local registrars. It will also need an infrastructure flexible enough to share data across systems securely and efficiently, either through direct connections or messaging.

## **BENEFITS**

Benefits of decommissioning of TER and implementing a single statewide system include:

- Enabling VSU to manage one central database
- Incorporating recent security features and enhancements into a new system that could not be added to TER in a cost effective manner
- Allowing all local registrars to access records for events that did not occur in their jurisdiction
- Creating a flexible platform that will enable VSU's birth record information system to interact with other systems both on a state and national level



## Protect the Integrity of State Birth and Death Data

---

**RECOMMENDATION 24:** Protect the integrity of VSU birth and death registration system(s) by applying consistent practices on the use of the data by other organizations.

### ISSUE

Data warehouses, which have not been sanctioned by VSU, that are derived through replicated data can undermine the security and integrity of the state's birth record information system.

### CURRENT ENVIRONMENT

Health and Safety Code requires that birth, death, and fetal death certificates be maintained in a systematic manner by the State Registrar [HSC Section 191.032]. Local registrars must also maintain paper records of the birth certificates, for at least one year, of the births that occur in their jurisdiction. If the local registrar has electronic access to birth, death, and fetal death records maintained by VSU, and certifies to the State Registrar that a record has been verified against the records contained in VSU's database, the registrar is able to destroy that record after one year [HSC Section 191.026 (e)].

**Local Registrars** – Some local registrars store their own databases of information that contain information about registrants born in and/or out of their jurisdiction. This enables the local registrar to print records without triggering a fee to use the Remote system and/or enables the local registrar to issue a record without the requirement of unbinding paper records of registrants.

If records are issued from the local databases rather than VSU's database, then VSU cannot have an accurate count of the number of certified copies of birth records issued to the community. Additionally, any changes to records that may occur centrally at VSU, such as court-ordered name changes, amendments and/or delayed records of birth, may not be updated in local registrars' databases. These inconsistencies may be problematic when registrants are attempting to access their records, and vital statistics data can have inconsistencies because of the existence of independent databases.

Local registrars with access to the Remote system can print abstract birth certificates of registrants not born in their jurisdiction. Utilizing the Remote system to print such records requires that a fee be paid by the local registrar to VSU.

**Other Governmental Agencies** – VSU has contracts with other governmental agencies to enable access to the VSU database. For eligibility determination, HHSC has approximately 7,000 employees who access the Remote system. With the use a

secure gateway, that enables pass-through connections to the database, HHSC is able to perform queries to support its eligibility determination processes.

The Texas Department of Family and Protective Services (DFPS) also has a contractual relationship with VSU. The DFPS user group is not as large as HSCS's, and DFPS access to the system is not query-based, but allows for a closer view into some components of the VSU database.

**Non-Governmental Agencies** – For-profit companies are in regular contact with VSU in attempts to secure some level of access to VSU's data. Texas Government Code provides that an individual's birth record data is not made public until the 75th year after an individual's birth, and death information is not publicly available until after 25 years from when an individual died (see Recommendation 25) [TGC Section 552.115 (a) (12)].

**Health Information Exchanges** – Looking towards the future, the development of Health Information Exchanges (HIEs), may also pose an issue for the external warehousing of data. As HIEs mature, they will be warehousing components of vital statistics data from a number of sources. Collectively, this information could be compiled in a construct that may mirror a birth record, whether by design or not. This potential for the inadvertent re-creation of a birth record can create a security risk for data that citizens will expect to be safeguarded.

## **RATIONALE FOR CHANGE**

Ensuring that VSU has control over Texas citizens' vital statistics data, as expected by the Legislature, is a critical priority. While entities need to leverage data to validate other responsibilities they hold, VSU must be proactive in how it allows that validation without enabling the replication of data it is charged with safeguarding; high security standards must be consistently applied to the data.

VSU's interagency contracts specify that the unauthorized replication of data is a violation of its agreement. Partners must understand that being granted the authority to view a record does not also grant the authority to replicate or store a record. Conversion of any viewed data, from data fields to screen shots, into a warehouse utilized by a third party without VSU's authorization, must be strictly prohibited.

Once vital statistics data leaves the security of VSU, the ability to certify its accuracy is compromised. Data about citizens can be, intentionally or not, manipulated, deleted and/or misrepresented in some fashion. VSU should discourage any warehousing of data that does not support its mission.

## **IMPLEMENTATION CONSIDERATIONS**

VSU should consider how to extend and standardize methods to allow external parties to validate data in the database without sending raw data to entities with different security levels from those maintained by VSU. Requests for raw data should be treated as any other request for personal information and appropriately addressed, or,

at minimum, redacted to the level that limits the opportunity for identity theft. The Legislature may also provide additional guidance as to establishing an extremely high standard that would have to be met regarding the release of raw birth certificate data.

In order to best serve the stakeholders interested in data maintained by VSU, the organization may consider establishing a secured gateway for access to its data. VSU should work with stakeholders to determine the most commonly queried data sets and create a secured means of requesting this data. Any such mechanism may be developed with safeguards to minimize the ability of third parties from storing data queried.

## **BENEFITS**

Benefits of protecting the integrity of state birth and death data include:

- Enhancing the overall security by ensuring central control of the data and access to the data
- Sharing accurate information of any changes made centrally to records, which reduces inconsistencies in vital statistics information
- Redirecting financial and operational investments made by local registrars to maintain their own databases to other projects, which can improve service and security at the local level
- Enhancing agency revenue if data in the public domain can be packaged and certified
- Creating a gateway interface for VSU to accept other state agencies' data for electronic verification





## Increase Timetable for Public Release of Data

**RECOMMENDATION 25:** Establish the timetable for publicly releasing vital records information to 125 years after a birth and 50 years after a death.

### ISSUE

Information about a person's birth is made publicly available 75 years after the date of birth. This can result in birth record information becoming publicly available while the individual is still alive, jeopardizing the individual's privacy and security of personal information.

From 1970 to 2010, the average life expectancy in the United States increased by 10.6%.

*Source: U.S. Census Bureau*

### CURRENT ENVIRONMENT

Under existing state law, a birth record is made publicly available 75 years after the date of birth recorded in the file, and a death record is made publicly available 25 years after the date of death recorded in the file [TGC Section 552.115 (a) (1 – 2)]. With an increase in average life expectancy, an individual's birth record may be made public while he or she is still alive.

### RATIONALE FOR CHANGE

Current provisions of the Federal Model State Vital Statistics Act and Regulation (Model Law) specify that the length of time before which birth record information can be made publicly available is 100 years, and the length of time before which death record information can be released to 50 years. As the Model Law is currently under review, consideration is being given to increase the length of time for making these records publicly available to 125 years and 75 years, respectively.

An increase to 125 years is proposed for the release of birth record information since the number of centenarians continues to increase. According to U.S. Census Bureau data, the number of centenarians is projected to increase from 131,000 in 2010 to 834,000 in 2050.<sup>29</sup> Planning for this expected increase in population aged over 100 years calls for increasing the number of years to 125 before birth record information can be released.

Securing death record information for an increased length of time also is important. As identity theft and other fraudulent activities increase, it is important to maintain the security of personal information for a substantial enough period of time after a person's death. By extending the length of time that must pass before birth and death

<sup>29</sup> Constance A. Krach and Victoria A. Velkoff, U.S. Census Bureau, "Centenarians in the United States," July 1999, <http://www.census.gov/prod/99pubs/p23-199.pdf>.

record information can be made publicly available, individuals' personal information can be better safeguarded, decreasing the probability of identity theft and other fraudulent activities.

It is noted that genealogists request this information for legitimate reasons. However, for the purpose of strengthening the security of the state's birth record information system, the potential for birth and death record information to be used fraudulently must be the foremost consideration.

### **IMPLEMENTATION CONSIDERATIONS**

To implement this recommendation, the Texas legislature may wish to consider amending state law to increase public release of birth and death data to 125 years after a birth and 50 years after a death.

### **BENEFITS**

Benefits of increasing the timetable for the public release of data include:

- Improving the security of personal information by delaying its public release
- Decreasing the chance of identity theft by retaining the confidentiality of death records, which contain more identifying information than do birth records
- Aligning Texas policy more closely to NAPHSIS guidelines, and improving upon the timetable for the release of vital records
- Acting proactively to protect birth and death records for a population whose life expectancy continues to increase

## Require Death Match for All Ages

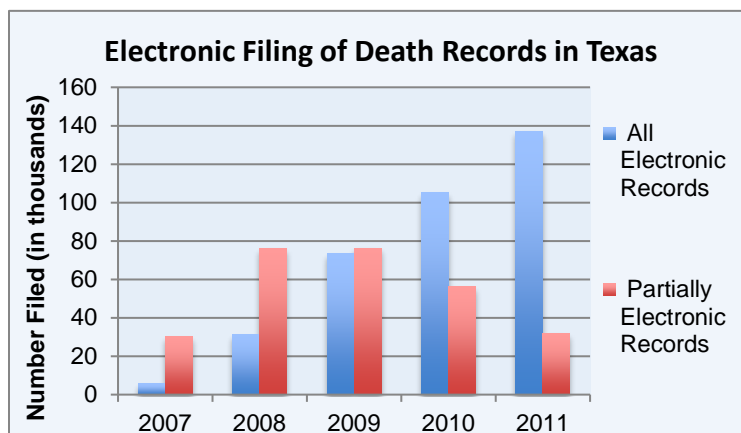
**RECOMMENDATION 26:** Require that death records for individuals of all ages who were born in Texas be matched with birth records, not only those under 55.

### ISSUE

Texas does not perform a birth/death match for every citizen born in Texas who dies, which leaves a significant portion of birth certificates un-marked as “deceased.”

### CURRENT ENVIRONMENT

VSU, upon receipt of a death certificate of a person younger than 55 who was born in Texas, identifies and notates the decedent’s birth record as “deceased” [HSC Section 191.034].



Currently, 91 percent of all deaths that occur in the state are entered directly into the TER system by funeral homes and medical certifiers. A data merge is performed to match these deaths with births.

For automatic matches:

- Death records received are placed in a queue to be potentially matched with the pool of birth records in VSU’s data warehouse.
- VSU initiates an electronic matching process to perform an exact match of the individual’s name as well as selected other information
- For records where exact (or true) matches are obtained, the electronic birth records are automatically flagged as “deceased.”
- For all flagged records, the electronic versions of the birth records are automatically watermark flagged as “deceased.”
- The paper records at VSU are hand-stamped as “deceased.”
- Notifications are not sent to the local registrars over the jurisdiction where the registrant was born to hand stamp their paper records as “deceased.”

For manual matches:

- For records where exact matches are not obtained, the information is forwarded to OIG for review.
- If OIG finds a match, OIG will hand stamp paper records at VSU in Austin. They will also electronically watermark flag birth records as “deceased.”
- Notifications are sent to the local registrars in the jurisdiction where the registrant was born to hand stamp their paper records as “deceased.”

## **RATIONALE FOR CHANGE**

The birth/death match for individuals who have died at age 55 and younger is a priority as individuals in this age category are much more susceptible to identity theft. This group has, on average, access to higher credit lines. They may travel internationally more frequently than older citizens. Ensuring the birth records in this population are stamped as “deceased” aids many agencies, both governmental (Passport Control, Immigration) and private (banks, credit unions).

Conducting a birth/death match for individuals deceased at age 56 and over will provide consistency and accuracy in the VSU program. Foremost is the need to reduce the incidence of fraud from identity theft. While SSA has made significant improvements in uploading death data to their database to cease social security payments to the deceased, other benefits may be fraudulently gained by assuming the identity of an individual over 55.

In addition to risks identified for deceased individuals younger than 55, older citizens may have pensions, retirement funds, or life insurance policies that may be at risk if their identities are stolen.

## **IMPLEMENTATION CONSIDERATIONS**

A key to performing birth/death matching process is automation. The ability for the state to conduct automated matches has significantly increased. In 2007, only 5,719 (approximately 3.5 percent) of all death records were matched electronically. In 2011, that number increased to 136,985 (approximately 80 percent) of all death records filed.

Resource constraints require that the state prioritize this function. Where true matches are not obtained, potentially substantial levels of effort may be needed to perform manual matching activities. However, to the extent that true matches are obtained through electronic birth/death matching, VSU should seek to expand current electronic data matching functions.

The Texas legislature may wish to consider amending state law to require that death certificates registered for individuals of all ages be matched with births, not only those under 55.

## **BENEFITS**

Benefits of requiring that death records be matched for individuals of ages (not only those under 55) include:

- Reducing the potential for identity theft
- Decreasing misuse of public aid programs such as Medicaid and Social Security
- Creating a standard process for matching the death record with the birth record, regardless of age

## Enhance Birth/Death Matching Criteria

---

**RECOMMENDATION 27:** Re-evaluate and enhance the birth/death matching criteria.

### ISSUE

The criteria currently used to conduct the birth/death match may be insufficient as a significant number of records not being matched.

OIG estimates that of the manual matches they are charged to investigate, only about 25% of the records can be matched. This translates to several thousand permanently unmatched records per year.

### CURRENT ENVIRONMENT

Currently, the birth/death matching process is completed for individuals born in Texas who died at age 55 or younger. Birth and death record matches are performed using automatic and manual methods (see Recommendation 26).

In 2011, 20,560 deaths were in the pool to be potentially matched:

- 10,987 were true matches completed electronically.
- 9,573 were attempts to do manual matches by OIG. OIG estimates they can match about 25 percent of the records that they receive.

### RATIONALE FOR CHANGE

Birth/death matching is a challenging process for a variety of reasons. Nicknames are oftentimes used on a death certificate, whereas more formal names are listed on a birth certificate. An example may be a “Robert Nathaniel Rushmore” on a birth certificate and a “Bob Nathaniel Rushmore” on a death certificate.

Also, individuals may change their names through the course of their lifetime, and are under no legal obligation to notify VSU of a court-ordered name change. This makes matching a death certificate to a birth certificate an extraordinary challenge, without the assistance of family or close members of the decedent.

Other scenarios, such as marriages, divorces and adoptions, can complicate the birth/death matching process. With much of the matching criteria based on name, nickname mismatches are not given a secondary level of scrutiny, and remain as unmatched records.

### IMPLEMENTATION CONSIDERATIONS

To implement effective birth/death matching criteria, VSU should consult with OIG to assess key factors that limit or impede the matching process. Criteria used in the electronic process should relate to the mechanisms used by OIG.

Certain nickname combinations, like Robert and Bob, or Margaret and Peggy, are very common. VSU and OIG might consider establishing a nickname database and using it in conjunction with the matching process. This may generate a series of matches that could go through a second review and might result in a higher percentage of matched records.

Expanding the fields for matching may also improve the birth/death match rate. Utilizing social security numbers as part of the process can aid in the matching process as this number, typically assigned at birth, does not change throughout an individual's life. Establishing another round of review criteria, for records with the name un-matched but with social security numbers matched, may aid VSU and OIG to reduce the number of unmatched records.

VSU will need to coordinate with SSA to gain authority to house social security numbers of individuals once they are assigned post-birth. These numbers should not be accessible by external parties, like local registrars, but should remain in a separate, secure data warehouse to be accessed by VSU for the sole purpose of performing the birth/death matching process.

As part of the Communications Plan (see Recommendation 17) individuals who request a court ordered name change should be encouraged to report the information to VSU. If citizens understand the long-term impact of ensuring that their birth records are appropriately flagged upon their death, they may be more apt to improve communication with VSU regarding name changes.

## **BENEFITS**

Benefits of improving the criteria for the birth/death matching process include:

- Reducing the percentage of unmatched records in the system, which reduces the agency's exposure to fraud through identity theft
- Safeguarding the surviving members of the families, as any fraudulent activity derived at the expense of the deceased may become the responsibility of the families
- Improving resource utilization for both VSU and OIG, enabling more birth/death matches

## Appropriate Notation of Deceased

---

**RECOMMENDATION 28:** Ensure that both paper and electronic birth records, maintained centrally at VSU and locally at registrars' offices are appropriately notated as “deceased.”

### ISSUE

Local registrars may not be systematically receiving all notifications of deaths of individuals who were born in their jurisdictions. As a result, paper records of selected individuals may not be stamped as “deceased,” even if the individual has died.

Despite a requirement in the Health and Safety Code [HSC Section 191.034 (b)], not all local registrars are stamping birth records as “deceased” in all cases of manually matched birth and death records.

### CURRENT ENVIRONMENT

Birth records are maintained centrally at VSU in both paper and electronic form. Local registrars also maintain paper records of the registrants born in the local registrars’ jurisdiction. Upon the death of an individual from that jurisdiction, local registrars are required to be notified, and are required to mark the paper records conspicuously as “deceased” [HSC Section 191.034 (b)].

Currently, the birth/death matching process is completed for individuals born in Texas who died at age 55 or younger. Birth and death record matches are performed using automatic and manual methods. Recommendation 26 outlines the scenarios for the birth/death matching process. While the automated matching process flags the birth record in the TER system as “deceased,” automated notifications of matches are not sent to the local registration districts where the registrant was born to hand stamp the records locally as “deceased.”

### RATIONALE FOR CHANGE

Not properly noting any birth record as “deceased” once the registrant has died creates opportunities for fraud. Individuals may attempt to assume the identity of a deceased person by requesting their birth certificate. If the record is not conspicuously marked, the deceased individual’s identity can be used to perpetrate fraud. Additionally, not marking records on the local level creates inconsistencies in records keeping, with the data at VSU conflicting with the information maintained locally.

### IMPLEMENTATION CONSIDERATIONS

OIG, VSU and the local registrars must work in concert to ensure that all records are marked appropriately. Both the method and frequency with which communication is made between VSU and the local registrars may be contributing to the issue.



Regardless of the challenges in receiving the information, all parties must work together to ensure that records are marked appropriately as expeditiously as possible.

## **BENEFITS**

Benefits of properly notating records as “deceased” include:

- Standardizing the process of matching death records with birth records
- Reducing the ability to commit fraud by assuming the identity of a deceased person if records are appropriately marked in all locations where they are maintained
- Creating consistent records keeping at all levels in the Texas VSU organization

## Evaluate Standards for Data Exchange across Jurisdictions

---

**RECOMMENDATION 29:** Assess implications of adopting national standards for electronic exchange of data across jurisdictions and programs using the State and Territorial Exchange of Vital Events (STEVE) against current capabilities and program funding model.

### ISSUE

The timely exchange of vital statistics data between Texas and other states is not automated, which creates delays in receiving critical information to protect citizens' data.

In 2010, Texas had the largest migration of residents in the country, with close to 75,000 people moving to the state.

*Source: US Census Bureau*

### CURRENT ENVIRONMENT

Currently, data exchange between VSU and federal agencies, such as the National Center for Health Statistics (NCHS), the SSA's Enumeration at Birth project, and other states' vital records offices is managed through interfaces developed specifically for those purposes or as a manual process.

While NAPHSIS developed standard record layouts for electronic exchange, most jurisdictions are unable to exchange records electronically due to lack of resources and an inefficient exchange platform. Instead, these entities may exchange copies, computer abstracts or line listings with each other.<sup>30</sup>

In 2008, NAPSHIS, working with NCHS, SSA, and CDC identified requirements and developed the State and Territorial Exchange of Vital Events (STEVE) system to facilitate and automate these exchanges. This secure, standards-based, messaging system is currently being implemented nationwide. STEVE enables jurisdictions to securely transmit:

- Birth, death, and other events with other jurisdictions
- Birth records to SSA for enumeration at birth
- Birth, death and fetal death records to NCHS under the Vital Statistics Cooperative Program
- Death records to the NCHS for the National Death Index

---

<sup>30</sup> NAPHSIS, "State and Territorial Exchange of Vital Events (STEVE) System Integration Overview," p 1, October 20, 2008, <http://www.naphsis.org/NAPHSIS/files/ccLibraryFiles/Filename/000000000843/STEVE%20System%20Overview%20Oct2008.pdf>.

- Specific data to designated data sharing partners, such as newborn hearing or child support enforcement
- Data for approved research
- Single files on request

As of April 2012, participating STEVE jurisdictions included a total of 25 states, districts, and territories.

### RATIONALE FOR CHANGE

Inter-jurisdictional exchange of information is critical to the vital statistics

program. Since a person often dies in a different jurisdiction from where the individual was born, a national system that enables rapid data sharing and matching is needed.

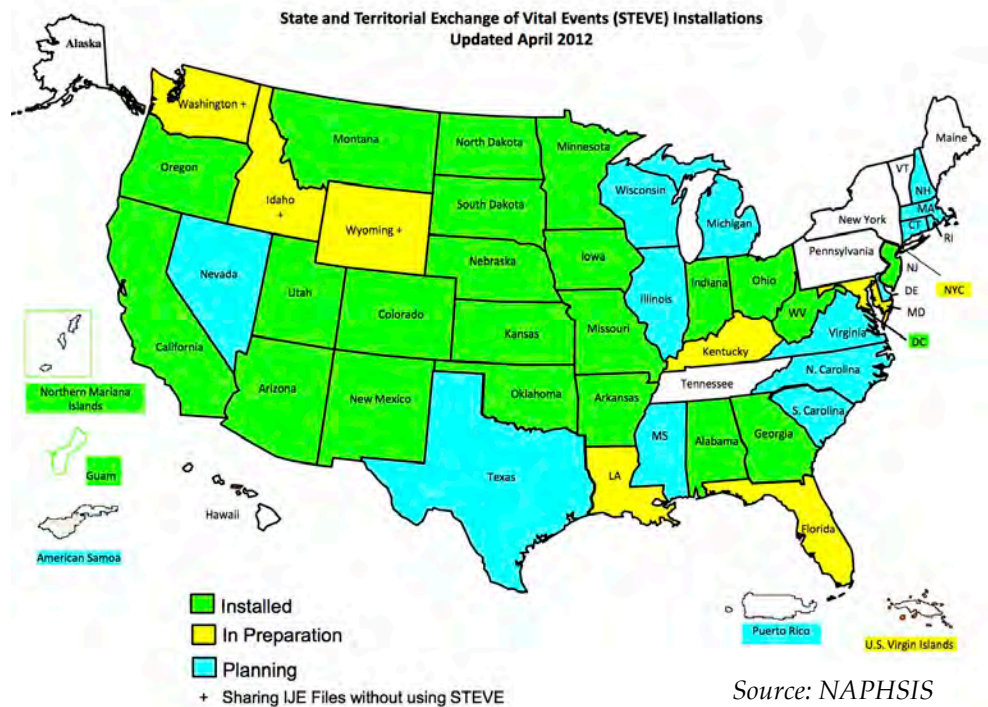
The current process of transferring records has created duplicative, time intensive efforts that are inefficient and costly to jurisdictions. STEVE provides an automated way to apply and enforce the rules of 57 jurisdictions and allows jurisdictions the flexibility to configure the software based on their needs.

By implementing STEVE, Texas can take full advantage of a secure messaging system for critical birth/death matching processes to detect fraud, as well as vital events exchange with other approved trading partners, authorized public health agencies and programs, including immunization, newborn screening, and birth defects.

### IMPLEMENTATION CONSIDERATIONS

As a requirement of the Vital Statistics Cooperative Program (VSCP), between NCHS and states, participation in the STEVE system will be required for Texas, effective January 1, 2014. VSU will work with NCHS and NAPHSIS to identify technical requirements needed to implement STEVE.

### BENEFITS



Benefits of assessing the implications of adopting STEVE include:

- Determining how a fee structure could be put in place for adoption
- Determining how implementation could improve the birth/death matching process
- Increasing the number of out-of-state death notifications, should STEVE be implemented, thereby decreasing the chance of a birth certificate being used fraudulently



## Coordinate with Federal Agencies on Soldiers

**RECOMMENDATION 30:** Coordinate with the relevant federal departments to ensure the receipt of death notifications of soldiers born in Texas.

### ISSUE

Texans who die in the military are, on average, at an age targeted for identity theft. Consistent processes do not exist to properly process death information for this critical constituency.

Since 2005, 449 Texans in the military have been killed in active duty.

*Source: Military Times*

### CURRENT ENVIRONMENT

Fort Hood, located in Killeen, Texas, is the largest active duty armored post in the United States.<sup>31</sup> Based on 2010 census data, there are nearly 1.7 million veterans in the State of Texas, which is the second largest veteran population in the country.<sup>32</sup>

Notifications of deaths of Texans who died outside of the country are coordinated through the U.S. Department of State. Deaths of the military are handled with special care by both the Department of State and the Department of Defense.

### RATIONALE FOR CHANGE

Young citizens are targets for identity theft once they have died largely due to their potential credit line. Assuming the identity of a younger individual invokes less suspicion if this individual's identity is used to apply for certain programs and privileges, such as enrollment in Medicaid, or applying for credit cards or home loans.

Given the young age of many of those serving in the military, this constituency is a prime target for identity theft. Therefore, it is critical to ensure that the birth records of any individual who was born in Texas and has served and died as a member of the armed forces are appropriately marked.

<sup>31</sup> U.S. Army, "The Official Website of Fort Hood, Texas," <http://www.hood.army.mil/newcomers.hood.aspx>.

<sup>32</sup> U.S. Census Bureau, "Statistical Abstract of the United States: 2012," Table 520, Veterans by Selected Period of Service and State: 2010, <http://www.census.gov/compendia/statab/2012/tables/12s0520.pdf>.

## **IMPLEMENTATION CONSIDERATIONS**

The United States military follows strict procedures related to the handling of the death of soldiers. While VSU would like information about the deaths of these individuals as quickly as possible, this priority will likely be superseded by the military's procedures.

Certain circumstances, such as notification of the family and/or transportation of the body may first be required before VSU receives any information. Additionally, the death of some soldiers may be classified, so notification of their death to VSU may have special considerations altogether.

To ensure that the process of the state's notification of death is streamlined, VSU may wish to coordinate with other federal agencies and other states' registrars to determine how best state practices can be synchronized with military procedures.

## **BENEFITS**

Benefits of coordinating with federal agencies to ensure the receipt of soldier's death notifications include:

- Protecting the personal information of soldiers who are killed in the line of duty
- Ensuring that a soldier is not subject to identity theft, as their deaths are often published in newspapers and online, making their identities vulnerable to fraudulent activity
- Improving coordination between agencies

## APPENDIX A

# SCOPE OF ASSESSMENT

This section describes the methodology employed in assessing the effectiveness and security of the state's policies, processes, and technologies that support vital statistics functions.

In evaluating the security of birth records, VSU conducted an extensive review of current practices within the state and across other states' vital registry jurisdictions; review of other state and federal programs that use identity documents, including birth certificates; and a review of the impact of current and proposed federal law, regulations, national standards, and guidelines on the state's vital statistics program.

VSU engaged a consultant to assist in project areas related to assessment, analysis, policy tracking, and solution development related to security and effectiveness of the state's birth record information system.

The State Registrar convened a workgroup comprising department staff and representatives of:

- Office of the Governor
- Department of Homeland Security/Customs and Border Patrol
- Management Solutions Industry
- Department of Public Safety, Driver License Division
- Local Registrar's offices
- Public Health Departments
- County Clerk's offices
- National Association for Public Health Statistics and Information Systems
- Department of State/Passport Fraud Office
- Office of Inspector General, Health and Human Services Commission
- Centers for Disease Control and Prevention(CDC)/National Center for Health Statistics
- Office of General Counsel, Texas Department of State Health Services

The project was organized across four phases of work:

**Current State Baseline** – this phase encompassed a review of all policies, procedures, statutes and rules related to the vital registry program and validation of the documented current state by the workgroup.

Activities included:

- Reviewed statutes, rules, policies, and procedures related to vital registry program.
- Set up workgroup with bi-weekly meeting and cross-stakeholder membership.
- Identified entities and their roles and responsibilities in the birth certificate issuance process.



- Interviewed VSU program staff.
- Researched and analyzed program materials and data.
- Reviewed information system access, capabilities, and policies.
- Conducted an online survey of local registrars and other stakeholders regarding birth certificate security.
- Provided project update and elicited input from local registrars and other attendees at the 2012 Vital Statistics Regional Conferences in June.

**Best Practices Review** – this phase consisted of a review of information system and document-based security standards to determine current best practices. The VSU project team surveyed and conducted interviews of other states to gain insight into their practices. The workgroup reviewed and discussed the documented practices shared by other states.

Activities included:

- Contacted registrars in ten jurisdictions to learn about their respective best practices related to vital statistics security.
- Sent questionnaires and conducted phone interviews covering topics including processes to register births, purchase records, secure records, conduct employee background checks, access vital registry systems by non-state employees, and perform birth/death matching.
- Conducted interviews of
  - Office of Inspector General, Health and Human Services Commission
  - Department of State/Passport Fraud Office
  - Dallas Passport Agency
  - American Banknote, security paper vendor
- Reviewed and documented applicable document based security standards and information system standards related to birth records to determine current best practices.
- Documented and reported best practices information to workgroup to generate ideas for the Texas vital registry program.

**Opportunity Assessment** – this phase encompassed an examination of opportunities to improve effectiveness and security of information systems through the creation, use, and retirement of a birth record.

Activities included:

- Conducted three workgroup meetings, each focused on risks and opportunities present in the policies, processes, and technologies affecting vital registry functions. The three meetings were organized around the creation, use, and retirement of a birth record, respectively.
- Documented the outcomes of the workgroup meetings.
- Researched opportunities to partner with government entities and/or private sector, as needed, to implement

**Report Development and Communication** – this phase involved the documentation of findings and recommendations and the development of a communication plan to

report to internal and external stakeholders upon report completion and submission.



## APPENDIX B

# GOVERNING LAWS AND REGULATIONS

This section provides a description of the federal and state laws and regulations that govern the management and use of vital records.

**Federal laws** that govern vital records include:

- **Model State Vital Statistics Act and Regulations (Model Law)** was developed to serve as a model for states in preparing their own laws and regulations. The Model Law, last amended in 1992, was designed to improve the quality and uniformity of state data by establishing standard reporting requirements, definitions, and procedures for registering vital events. The Model Law influences how vital statistics data is collected at the state level, which in turn impacts national vital statistics.<sup>33</sup>

The Model Law defines a “system of vital statistics” as:

- the registration, collection, preservation, amendment, and certification of vital records;
- the collection of other reports required by law; and
- activities related to the tabulation, analysis, publication, and dissemination of vital statistics.

A revision to the Model Law is currently underway.

- **Intelligence Reform and Terrorism Prevention Act of 2004** (Public Law 108-458, Section 7211), which requires minimum standards for the use of birth certificates by federal agencies for official purposes.<sup>34</sup>

Prior to the enactment of this law, national standards for the issuance of birth certificates did not exist and issuance was determined on a state-by-state basis.

The Act requires that the certificate incorporate document security features to protect birth documents against alteration and counterfeiting. The Act does not require a single design to which states must conform and it is up to the state to determine how non-official copies of birth certificates are issued.<sup>35</sup>

Additionally, the Act establishes grants to assist states in:

---

<sup>33</sup> NAPHSIS, Resolution 2011-1, “2011 Revision of the Model State Vital Statistics Act and Regulations,” <http://www.naphsis.org/index.asp?bid=1346>

<sup>34</sup> Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3642, Sec. 7211 (2002), <http://www.gpo.gov/fdsys/pkg/PLAW-108publ458/pdf/PLAW-108publ458.pdf>.

<sup>35</sup> Charles N. Davis, The Society of Professional Journalists, “Public Access to Vital Records Threatened by Terrorism Prevention Act,” *SPJ News*, March 8, 2006, <http://www.spj.org/news.asp?ref=552>.

- computerizing their birth and death records;
  - developing the capability to match birth and death records within each state and among the states; and
  - notating the fact of death on the birth certificates of deceased persons.
- **REAL ID Act** and its corresponding regulations (6 CFR Part 37) require that
    - applicants for driver licenses present their birth certificate to the motor vehicle agency to validate their U.S. citizenship and their date of birth, and
    - birth certificates must be verified by the state.

Sec. 37.13 of the identification standards regulations recommends that states' departments of motor vehicles (DMV) use the Electronic Verification of Vital Events (EVVE) system, operated by NAPHSIS, to verify birth certificates presented by applicants.<sup>36</sup>

**Texas State law**, Health and Safety Code, Title 3, Chapters 191-195, in conjunction with other provisions of state law, establishes requirements for vital records in the state.

Among other provisions, these governing laws specify that:

- All births in Texas must be registered [HSC Section 192.001]
- A birth certificate must be filed within five (5) days of the date of birth for every live birth [HSC Section 192.003 (d)]
- Birth certificate data is kept confidential for the first 75 years of a person's life [TGC Section 552.115 (a) (1)]
- A local registrar secures a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction [HSC Section 191.026 (a)]
- It is a third degree felony to falsely obtain, use, or alter another person's birth certificate [HSC Section 195.003 (f)]

In 2007, the Texas Legislature amended the Health and Safety Code to require electronic filing of death certificate information to create greater efficiency in the reporting process and increase the accuracy of death records [HSC Section 193.002].<sup>37</sup>

Texas Administrative Code (TAC), Title 25, Part 1, Chapter 181, implements provisions of state law. Among other provisions, Chapter 181:

---

<sup>36</sup> NAPHSIS, Statement for the Public Record of National Association for Public Health Statistics and Information Systems to the Committee on Homeland Security and Governmental Affairs United States Senate, "Reevaluating REAL ID: Strengthening Birth Certificate Verification," July 15, 2009, <http://www.naphsis.org/NAPHSIS/files/ccLibraryFiles/Filename/000000001077/NAPHSIS%20on%20REAL%20ID-July%202009.pdf>.

<sup>37</sup> H.B. 1739, 80th Texas Legislature, Regular Session, 2007.

- Provides that infants born in a non-institutional setting by a licensed professional only require the license of the individual who performed the birth to enable the creation of the birth certificate [25 TAC Section 181.26 (b)].
- Defines a properly qualified applicant to receive a certified copy of a birth certificate as [25 TAC Section 181.1 (22)]:
  - The registrant
  - An immediate family member of registrant either by blood, marriage, or adoption; the registrant's guardian; or the registrant's legal agent or representative
  - Local, state, and federal law enforcement or governmental agencies and other persons who are designated as properly qualified applicants by demonstrating a direct and tangible interest in the record because the information in the record is necessary to implement a statutory provision or to protect a personal legal property right
  - A person who has submitted an application for a request to release personal information and has been approved as outlined in rule
- Each applicant must present a current form of government-issued photo identification along with his or her application. If the applicant is unable to present a current form of photo identification, two valid supporting forms of identification may be presented, one of which bears the applicant's signature [25 TAC Section 181.1 (13)].
- Requires additional proof before a non-institutional birth can be registered [25 TAC Section 181.26].
- Describes the fees charged for vital records [25 TAC Section 181.22 (a-s)].



# BIBLIOGRAPHY

- 2012-13 General Appropriations Act (Article II, Texas Department of State Health Services, Rider 72, H.B. 1, 82nd Texas Legislature, Regular Session, 2011).
- 42 U.S.C. Section 242k, Section 306(h) of the Public Health Service Act.
- Association of Texas Midwives. Certified Nurse Midwives, last updated November 16, 2007.
- Baker, Kelly, and Sue Bordeaux. Oklahoma State Department of Health. "Oklahoma Embezzlement Case." June 2008.
- Bureau of Transportation Statistics. Border Crossing/Entry Data. User generated report from "Query Data Statistics" for Texas in 2011, All Texas Ports Detail.
- Davis, Charles. The Society of Professional Journalists. "Public Access to Vital Records Threatened by Terrorism Prevention Act." *SPJ News*. March 8, 2006.
- Dinerstein, Marti. Center for Immigration Studies, "America's Identity Crisis: Document Fraud is Pervasive and Pernicious." April 2002.
- Document Security Alliance. "Call To Action: Birth Certificate Security." November 2010.
- Federal Office of the Inspector General. Department of Health and Human Services. "Birth Certificate Fraud." September 2000.
- Hartocollis, Anemona. "Dozens of blank birth certificates are stolen from city records office." *New York Times*. April 24, 2009.
- H.B. 1739. 80th Texas Legislature, Regular Session. 2007.
- Intelligence Reform and Terrorism Prevention Act of 2004. Public Law No. 108-458, 118 Statute 3642, Section 7211.
- Krach, Constance A., and Victoria A. Velkoff. U.S. Census Bureau. "Centenarians in the United States." July 1999.
- Little League Online. "Proof of Age Requirements: Acceptable Forms of Proof of Birth Date."
- Local Registrar Handbook. Vital Statistics Unit. Texas Department of State Health Services. December 2010.
- Military Times. "Honor the Fallen."
- National Association for Public Health Statistics and Information Systems. Resolution 2011-1. "2011 Revision of the Model State Vital Statistics Act and Regulations."



- . Resolution 2012-1. “Electronic Health Record (EHR) Data Exchange with Vital Records Systems.” June 2012.
  - . “State and Territorial Exchange of Vital Events (STEVE) System Integration Overview.” October 20, 2008.
  - . Statement for the Public Record of National Association for Public Health Statistics and Information Systems to the Committee on Homeland Security and Governmental Affairs United States Senate. “Reevaluating REAL ID: Strengthening Birth Certificate Verification.” July 15, 2009.
- National Vital Statistics Report. U.S. Department of Health and Human Services. Centers for Disease Control and Prevention/National Center for Health Statistics. “Births: Final Data for 2009.” November 3, 2011.
- Newman, Barry. “Born yesterday: terrorists don't need visas when they can get a real U.S. birth certificate,” *Washington Monthly*. May 2002.
- Newton, Angela. Minneapolis Passport Agency. “Cracking the Case Together: Passport Fraud and Vital Events.” Presentation at the 2012 NAPHSIS/NCHS Joint Meeting. June 2012.
- Pinkerton, James. “Birth certificate fraud booms at border/Midwives offer access to U.S. citizenship.” *Houston Chronicle*. December 8, 1996.
- Schwartz, Steven. “The United States Vital Statistics System: The Role of State and Local Health Departments.” April 23, 2008.
- Social Security Administration. Program Operations Manual System. Section GN 00302.980, “Electronic Verification of Vital Events – Age.”
- Texas Administrative Code. Title 25. Health Services, Chapter 181. Vital Statistics.
- Texas Department of Health and Human Services. Health and Human Services System. “Health and Human Services System Strategic Plan 2013 – 17.” Volume 1. July 2012.
- Texas Government Code. Section 552.115. Exception: Confidentiality of Birth and Death Records.
- . Section 411.110. Access to Criminal History Record Information: Department of State Health Services.
- Texas Health and Safety Code. Title 3. Vital Statistics, Chapter 191. Administration of Vital Statistics Records.
- . Chapter 192. Birth Records.
  - . Chapter 193. Death Records.
  - . Chapter 195. Enforcement of Vital Statistics Reporting.
- Texas Midwifery Board. Texas Department of State Health Services.

- Texas Transportation Code. Chapter 521. Driver's Licenses and Certificates.
- United States Army. "The Official Website of Fort Hood, Texas."
- United States Census Bureau. "Statistical Abstract of the United States: 2012," Table 520, Veterans by Selected Period of Service and State: 2010.
- . Table 104, Expectation of Life at Birth, 1970 to 2008, and Projections, 2010 to 2020.
- United States Department of Health and Human Services. Centers for Disease Control and Prevention, State Vital Statistics Improvement Program. "Funding Opportunity Number: CDC-RFA-SH07-701."
- Vital Statistics Unit, Texas Department of State Health Services.
- Williamson, Michelle, and Hetty Khan. Centers for Disease Control and Prevention/ National Center for Health Statistics. "Standards Development for EHR-Vital Record Exchange." November 18, 2011.

# SUNSET ADVISORY COMMISSION

## FINAL REPORT

Texas Department  
of Transportation

July 2009



# Sunset Advisory Commission



**Representative Carl Isett, Chair**  
**Senator Glenn Hegar, Jr., Vice Chair**

Representative Dan Flynn

Senator Robert F. Deuell, M.D.

Representative Linda Harper-Brown

Senator Craig Estes

Representative Lois Kolkhorst

Senator Juan "Chuy" Hinojosa

Representative Ruth Jones McClendon

Vacant\*

Ike Sugg, Public Member

Charles McMahan, Public Member\*\*

\* Senator Kim Brimer served on the Commission from December 2005 through December 2008.

\*\* Charles McMahan was appointed to fill the unexpired term of Michael Stevens.

Joey Longley  
Director

---

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

# TEXAS DEPARTMENT OF TRANSPORTATION



**SUNSET FINAL REPORT**  
**JULY 2009**



This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission and the Legislature for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and members of the public, as well as action taken by the Sunset Commission and the Legislature in each step of the Sunset process.

- ◆ *Sunset Staff Report* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
- ◆ *Hearing Material* – Summarizes all responses from agency staff and members of the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission.
- ◆ *Decision Material* – Includes additional responses, testimony, or new policy issues raised during the public hearing for consideration by the Sunset Commission in its decision meeting on an agency.
- ◆ *Commission Decisions* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
- ◆ *Final Report* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.



*Staff Report – June 2008*  
*Commission Decisions – January 2009*  
*Final Report – July 2009*

# Table of Contents

---

	PAGE
<b>SUMMARY</b>	
Staff Recommendations .....	1
Legislative Action .....	6-a
 <b>ISSUES/RECOMMENDATIONS</b>	
1 Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.....	7
<b>Commission Decision (page 20-n)</b>	
<b>Legislative Action (page 20-o)</b>	
2 The State’s Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made .....	21
<b>Commission Decision (page 34-l)</b>	
<b>Legislative Action (page 34-l)</b>	
3 TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Meaningful Public Involvement.....	35
<b>Commission Decision (page 42-i)</b>	
<b>Legislative Action (page 42-j)</b>	
4 Elements of TxDOT’s Contracting Functions Lack Efficiency and Could Expose the State to Unacceptable Levels of Risk.....	43
<b>Commission Decision (page 60-j)</b>	
<b>Legislative Action (page 60-j)</b>	
5 Key Elements of TxDOT’s Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices.....	61
<b>Commission Decision (page 70-g)</b>	
<b>Legislative Action (page 70-g)</b>	
6 Key Elements of TxDOT’s Regulation of Outdoor Advertising Do Not Conform to Commonly Applied Licensing Practices .....	71
<b>Commission Decision (page 78-g)</b>	
<b>Legislative Action (page 78-g)</b>	



	<b>PAGE</b>
<b>ACROSS-THE-BOARD RECOMMENDATIONS (ATBs)</b>	
.....	79
<b>AGENCY INFORMATION</b>	
.....	81
<b>APPENDICES</b>	
Appendix A Examples of Other State Transportation Evaluation and Reporting Systems.....	109
Appendix B Equal Employment Opportunity Statistics.....	117
Appendix C TxDOT Expenditures by Goal and Strategy.....	121
Appendix D Historically Underutilized Businesses Statistics.....	123
Appendix E 2009 – 2019 Unified Transportation Program.....	127
Appendix F Regional Mobility Authorities in Texas .....	129
Appendix G TxDOT-Awarded Comprehensive Development Agreements .....	131
Appendix H Potential Toll Projects Identified by TxDOT.....	133
Appendix I Pass-Through Financing Agreements Authorized by TxDOT.....	139
Appendix J Construction and Maintenance Contract Awards by TxDOT District.....	141
Appendix K Road Condition Assessment Systems .....	143
Appendix L Staff Review Activities .....	145
<b>NEW ISSUES</b>	
.....	147
<b>Commission Decision (page 166)</b>	
<b>Legislative Action (page 168)</b>	
<b>PROVISIONS ADDED BY LEGISLATURE</b>	
.....	175



# SUMMARY



# Summary

---

The Sunset review of the Texas Department of Transportation (TxDOT) occurred against a backdrop of distrust and frustration with the Department and the demand for more transparency, accountability, and responsiveness. Many expressed concerns that TxDOT was “out of control,” advancing its own agenda against objections of both the Legislature and the public.

Sunset staff found that this atmosphere of distrust permeated most of TxDOT’s actions and determined that it could not be an effective state transportation agency if trust and confidence were not restored. Significant changes are needed to begin this restoration; tweaking the status quo is simply not enough.

This report proposes decisive action to address TxDOT’s problems by establishing what is in effect a four-year “legislative conservatorship” to return control over transportation policy to the Legislature, where it belongs.

The recommendations in this report would strengthen the Legislature’s position in overseeing the Department and help to restore trust and confidence in TxDOT by requiring the following changes in statute:


- ◆ achieve greater accountability under the oversight of a single Commissioner of Transportation;
- ◆ enhance the Legislature’s role through a Transportation Legislative Oversight Committee;
- ◆ provide better access to independent transportation information and research;
- ◆ increase transparency of TxDOT’s transportation planning and project development process;
- ◆ improve TxDOT’s public involvement efforts; and
- ◆ make the Department’s contracting functions more accountable, particularly its development of comprehensive development agreements.

The short four-year Sunset date would allow the Legislature to consider whether these changes have resulted in a more responsive, accountable, and transparent TxDOT and, if not, what additional changes might be required.

These recommendations present an opportunity for more comprehensive discussions and valuable deliberations by the Sunset Commission and the Legislature about the governance, organization, funding, and operations of TxDOT. These discussions should also include information from the other examinations being conducted by the State Auditor, several interim committees, and the Legislative Study Committee on Private Participation in Toll Projects.

A summary of Sunset staff recommendations on TxDOT follows as a starting point for these discussions.

---



*Control over transportation policy needs to return to the Legislature, where it belongs.*

---

# Issues and Recommendations

## Issue 1

***Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.***

### Key Recommendations

- ◆ Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.
- ◆ Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the state's transportation system.
- ◆ Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities.
- ◆ The Sunset Commission should recommend that the Legislature directly fund the Texas Transportation Institute to conduct transportation research previously contracted through TxDOT.
- ◆ Continue TxDOT for four years.

## Issue 2

***The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made.***

### Key Recommendations

- ◆ Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.
- ◆ Establish a transparent, well-defined, and understandable system of project programming within TxDOT that integrates project milestones, forecasts, and priorities.
- ◆ Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects.
- ◆ Require TxDOT, with input from transportation partners and policymakers, to develop a system to measure and report on progress in meeting transportation goals and milestones.
- ◆ Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state.

### Issue 3

#### ***TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Meaningful Public Involvement.***

##### **Key Recommendations**

- ◆ Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agency-wide.
- ◆ Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.
- ◆ TxDOT should provide a formal process for staff with similar responsibilities to share best practices information.
- ◆ TxDOT should provide central coordination of the Department's major marketing campaigns.
- ◆ TxDOT should make its website easier to use.

### Issue 4

#### ***Elements of TxDOT's Contracting Functions Lack Efficiency and Could Expose the State to Unacceptable Levels of Risk.***

##### **Key Recommendations**

- ◆ Relax restrictions on TxDOT's contracting practices by authorizing the use of design-build contracts for traditionally funded highway projects and removing requirements to advertise contract notifications and solicitations in newspapers.
- ◆ TxDOT should improve the consistency and efficiency of its professional services contracting by setting timeframes for key stages in its contracting process.
- ◆ Reduce contract risk and improve TxDOT's contract management by increasing staff overseeing professional services contracts; strengthening oversight and training for professional services contracts; and establishing an external process for reviewing comprehensive development agreements.

### Issue 5

#### ***Key Elements of TxDOT's Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices.***

##### **Key Recommendations**

- ◆ TxDOT needs to provide necessary resources to enforce its statutory provisions regarding salvage vehicle dealers.
- ◆ Standardize licensing provisions by requiring a surety bond for certain franchise dealers and establishing a process for informing the public whether household goods carriers conduct criminal history checks on their employees.

- ◆ Update enforcement practices to enable regulation of motor vehicle advertisements and to provide new tools for taking action against motor vehicle dealers and household goods carriers.

## Issue 6

### ***Key Elements of TxDOT's Regulation of Outdoor Advertising Do Not Conform to Commonly Applied Licensing Practices.***

#### **Key Recommendations**

- ◆ Standardize administration of outdoor advertising regulation by requiring an outdoor advertising license for rural roads and depositing all fees to the General Revenue-Dedicated Texas Highway Beautification Account.
- ◆ Authorize the Department to deny license renewal if a licensee's permits are in poor standing.
- ◆ Update enforcement practices by requiring the Department to develop complaints procedures, authorizing the use of standard administrative penalties, and depositing all program fines into the General Revenue-Dedicated Texas Highway Beautification Account.
- ◆ TxDOT should centralize the program, better track total program costs and raise fees to recover costs, and scale enforcement actions to the seriousness of the offense.

## Fiscal Implication Summary

Three recommendations in this report would have a fiscal impact. Several other recommendations may have a fiscal impact, although that impact will depend on how the recommendations are implemented and therefore could not be estimated for this report.

- ◆ **Issue 1** – Eliminating the five Texas Transportation Commission members would result in an annual savings of about \$79,570 for the part-time salary. Eliminating the five commissioner assistant positions would result in a savings of \$380,234 for these salaries. An additional savings of \$108,622 would result from elimination of the travel and operating expenses of both the Commission members and their assistants. With a full-time Commissioner, the Department would not need both an Executive Director and a Deputy Executive Director. The savings from eliminating one of these positions, and reorganizing staffing and salaries accordingly, would provide the necessary funding for the Commissioner's salary as determined by the Legislature.

Creating the Legislative Oversight Committee would not have a fiscal impact to the State. The Committee would be staffed and funded by transferring the six full-time equivalent positions and approximately \$1.2 million from TxDOT's Government and Public Affairs Research Section to the Committee.

The recommendation to directly fund TTI through the appropriations process would not have a fiscal impact to the State. The Legislature could determine the specific amount of the appropriation based on historical amounts of contracts with TxDOT for transportation research and directly appropriate this amount to TTI.

- ◆ **Issue 2** – TxDOT would incur initial costs in redeveloping the Statewide Transportation Plan, restructuring the transportation planning document, reporting on performance, and supporting rural planning efforts. The Department should cover these associated costs through its existing

budget, or if necessary, seek additional funding through the appropriations process, particularly for any significant information technology needs.

The Department potentially could use federal Statewide Planning and Research funds for rural transportation planning. TxDOT could use a portion of its transportation development credits to meet the local match requirement for these funds.

- ◆ **Issue 3** – The recommendation to better coordinate marketing campaigns could produce savings by taking advantage of the Department’s purchasing power, but an exact amount could not be estimated.
- ◆ **Issue 4** – The recommendation to implement a CDA review process could result in a cost to the state for additional consulting or staff resources, but the specific cost could not be estimated.

Directing TxDOT to increase central office professional staff for oversight of professional services contracts and professional services contract management training would have a cost. TxDOT could reassign staff or request additional staff and funding through the appropriations process once it determines the necessary staffing level.

The recommendation to eliminate required newspaper advertising for upcoming construction and maintenance contracts, at TxDOT’s discretion, would result in savings to the State Highway Fund. TxDOT could reduce annual expenditures from the State Highway Fund by an estimated \$950,000, assuming that TxDOT would eliminate newspaper notice for contracts valued at \$300,000 or more.

- ◆ **Issue 5** – The recommendation directing TxDOT to request appropriations to hire staff to enforce its salvage vehicle dealer regulations could increase costs. The cost would depend on the Department’s determination of staffing needed to enforce the regulations, but should be offset by increased fees on licensees.
- ◆ **Issue 6** – The management actions directing TxDOT to centralize its outdoor advertising regulatory program, better track program costs, and raise fees could result in an annual revenue gain to the Department of up to \$490,000 to cover the full cost of regulations.

The statutory recommendations to deposit all program fees and fines into the General Revenue-Dedicated Texas Highway Beautification Account would result in an approximate \$115,000 annual gain to this account, and a loss of the same amount to the State Highway Fund. These recommendations would require that regulation along both federal-aid and rural roads be supported through the legislative appropriations process. Costs associated with requiring a license to operate outdoor advertising signs along rural roads and better tracking and reporting complaints information should be offset by increased fees on licensees.

The table shows the overall fiscal impact resulting from these recommendations.

<i>Fiscal Year</i>	<i>Gain to the General Revenue-Dedicated Texas Highway Beautification Account</i>	<i>Loss to the State Highway Fund</i>	<i>Savings to the State Highway Fund</i>
2010	\$115,000	\$115,000	\$1,518,426
2011	\$115,000	\$115,000	\$1,518,426
2012	\$115,000	\$115,000	\$1,518,426
2013	\$115,000	\$115,000	\$1,518,426
2014	\$115,000	\$115,000	\$1,518,426



*Summary of Legislative Action*  
*H.B. 300 Isett (Hegar)*

---



House Bill 300 contained the Sunset Commission's recommendations on the Texas Department of Transportation (TxDOT), as well as additional statutory modifications made by the Legislature. However, the Legislature did not pass H.B. 300. TxDOT was continued in separate legislation in the 1st Called Session, 81st Legislature. Senate Bill 2 continues the agency until 2011, and requires the Sunset Commission to focus its next review of TxDOT on the appropriateness of its previous recommendations to the 81st Legislature. Continuing the agency for two years will allow the Sunset Commission to re-examine TxDOT and make recommendations to the 82nd Legislature.





# ISSUES



# Issue 1

---

## *Until Trust in the Texas Department of Transportation Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.*

---

### Summary

#### Key Recommendations

- ◆ Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.
- ◆ Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the state's transportation system.
- ◆ Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities.
- ◆ The Sunset Commission should recommend that the Legislature directly fund the Texas Transportation Institute to conduct transportation research previously contracted through TxDOT.
- ◆ Continue TxDOT for four years.

#### Key Findings

- ◆ An obvious distrust characterizes the Legislature's and the public's recent relations with the Department.
- ◆ Lack of timely appointments to the Texas Transportation Commission has weakened TxDOT's accountability to the Legislature.
- ◆ Availability of independent, objective, and reliable information about the state transportation system is limited.
- ◆ Texas has a continuing need for the Texas Department of Transportation, but with its trust restored.

#### Conclusion

As TxDOT moved to implement the innovative funding and development mechanisms first enacted in 2001, the Legislature began to question its own actions and TxDOT's response to the new authority. Early concerns about the Department's approach to toll roads and its interest in public-private partnerships have become a deep-seated distrust of TxDOT's motives and direction, as reflected in the Legislature's insistent drive to recapture policy ground lost to the Department.

Sunset staff concluded that the intensity and high level of concern about the Department demanded decisive action to rebuild trust and confidence in TxDOT. The recommendations in this issue offer strong measures to accomplish this.

## Support

### **An obvious distrust characterizes the Legislature's and the public's recent relations with the Department.**

The Sunset staff review of the Department occurred in an atmosphere of extreme legislative and public distrust about the Department and the way it operates. While Department staff cooperated and gave time generously to assist in the review, the concern about the Department and the direction of State transportation policy is deep and undeniable. This suspicion casts doubt on virtually every transportation-related decision the Department makes, preventing it from most effectively meeting the state's transportation needs.

---

*The Legislature  
has tried  
repeatedly to  
make TxDOT  
more responsive,  
transparent, and  
accountable.*

---

- ◆ The Legislature's repeated attempts to make TxDOT more responsive, transparent, and accountable reflect its growing distrust of the Department. These attempts, which began as basic reporting requirements, have escalated to strict limits on the Department's authority. Several examples of these attempts are discussed in the material below.

***Extensive reporting requirements.*** The Legislature has added numerous riders in TxDOT's appropriation bill pattern in an effort to get needed information the Department has not provided on its own. The chart beginning on the following page, *TxDOT Reporting Riders*, discusses the key riders that have reporting requirements.

In 2007, the 80th Legislature created Rider 20, consolidating many other reporting requirements from riders dating from 1999 to 2007. Rider 20 requires 12 reports and notifications, ranging from a monthly report on funds received in the State Highway Fund, to reports on highway construction, airport projects, the Trans-Texas Corridor, rail projects, and various toll projects and entities.

Showing further distrust, the Legislature also added Rider 38, which requires TxDOT to submit a status report to the Legislative Budget Board on its actions to comply with Rider 20. Rider 38 authorizes withholding certain funds upon TxDOT's noncompliance with rider directives.

In 2007, the 80th Legislature also statutorily required TxDOT to annually publish on its website a statistical comparison of counties and TxDOT's 25 districts based on key information such as the number of square miles; number of vehicles registered; population; construction, maintenance, and contracted routine and preventative maintenance expenditures; and grant, performance, and funding information.

The Department has collected the basic elements of this required statistical information, also known as District and County Statistics Information (DISCOS), since the mid 1980s. However, TxDOT staff testified in April 2008, that the information probably would not be available on the Department's website for at least another two to four weeks.<sup>1</sup>


### **TxDOT Reporting Riders**

<p><b>Rider 20 Added in 2007</b></p>	<p><b>Reporting Requirements.</b> Compiles reporting requirements imposed on TxDOT in riders added to the General Appropriations Act over the years, as summarized below.</p> <ol style="list-style-type: none"> <li>a. Report to border district legislators and the respective metropolitan planning organizations on TxDOT's trade transportation activities in these border districts during the 2008-2009 biennium. (1999)</li> <li>b. Submit to the Legislative Budget Board (LBB) and the Governor a monthly revenue report on state and federal funds received in State Highway Fund No. 006. The report must include detailed explanations of the causes and effects of current and anticipated fluctuations in the cash balance. The Department must immediately notify LBB and the Governor of any variance to estimated amounts, specifying the affected funds and the reason for the anticipated change. (2001)</li> <li>c. Provide to each member of the House and Senate a status report on all highway construction projects and all other transportation projects under the Department's purview currently under contract or awaiting funding. (1997)</li> <li>d. Report as specified to each affected member of the Legislature and place on the Department's website detailing the reasons for the immediate and future needs as well as the reasonableness and necessity for each mode of transportation in each segment of a Trans-Texas Corridor project. In addition, the Department must provide each member of the Legislature notification of:             <ol style="list-style-type: none"> <li>1. all Trans-Texas Corridor projects included in the Unified Transportation Plan located in each member's district;</li> <li>2. all eminent domain proceedings within each member's district related to Trans-Texas Corridor projects;</li> <li>3. all rail, toll road, and turnpike projects included in the Unified Transportation Plan in each member's district;</li> <li>4. the establishment of regional mobility and toll authorities located within each member's district; and,</li> <li>5. any toll or regional mobility authority board member that owns or participates in any holding included in a proposed project. (2005)</li> </ol> </li> <li>e. Report annually to the Legislature on public transportation activities in Texas, including monthly data on industry-used standards to reflect ridership, mileage, revenue by source, and percent consumed of available capacity. To meet its mandate regarding the coordination of public transportation, the Department must also conduct an inventory of all public transportation providers in the state to determine the types and levels of services being provided by each and the extent to which those providers can assist the state in meeting the mandates of the statute. (2003)</li> <li>f. Report annually to LBB and Governor on progress of the Congestion Mitigation and Air Quality (CMAQ) Improvement Program at achieving credit in the State Implementation Plan for federal air quality standards. The report must include a listing of each CMAQ project, the amount of CMAQ funds designated, and the amount of quantifiable credit received under the SIP. (2005)</li> <li>g. Provide an annual report with results statewide by district, on the percentage of projects listed in the State Transportation Improvement Program (STIP) that were let on or before the letting date provided in the STIP. (2005)</li> </ol>
<p><b>Rider 25 Added in 2005</b></p>	<p><b>Additional Funds.</b> Prohibits TxDOT from spending an appropriation of additional State Highway Funds unless it first submits a report to LBB and the Governor outlining any additional funds available above amounts estimated for the 2008-2009 biennium, and their anticipated uses and projected impacts, and unless LBB and the Governor issue written approval or specify an alternate use for the additional funds.</p>

**TxDOT Reporting Riders (continued)**

<b>Rider 37 Added in 2007</b>	<p><b>Federal Funds Reporting Requirement.</b></p> <p>a. Requires TxDOT to notify LBB and the Governor regarding any increases or decreases in federal funds estimated to be available to the Department for the 2008-2009 biennium. The Department must also notify LBB and the Governor regarding the use and projected impacts of any additional federal funds available above the estimated amounts, and regarding the Department's plan for addressing any reductions in federal funds, including federally mandated funding rescissions.</p> <p>b. Requires TxDOT to provide LBB and the Governor documentation required by the U.S. Department of Transportation regarding TxDOT's proposed use of additional federal funds and/or proposed actions to address federal funds reductions, including federally mandated funding rescissions.</p>
<b>Rider 38 Added in 2007</b>	<p><b>Appropriations Contingent upon Reporting Requirements.</b> Requires TxDOT to report annually to LBB on the status of actions taken to fulfill the reporting requirements in Rider 20, and provides that if any reporting requirements are not fulfilled, LBB may direct the Comptroller to withhold appropriations except as specifically provided.</p>
<b>Rider 39 Added in 2007</b>	<p><b>Budget Reconciliation Report.</b> Requires TxDOT to report annually to LBB to reconcile the Department's expenditures and encumbrances of appropriations to the 12 categories included in the Department's Statewide Preservation Program and Statewide Mobility Program.</p>
<b>Rider 40 Added in 2007</b>	<p><b>Comprehensive Development Agreements (CDAs).</b> Prohibits TxDOT from spending any funds to enter into a CDA unless it first submits a report to LBB providing the location, project costs, and projected benefits to the State for each project proposed under a CDA, and unless LBB issues written approval.</p>
<b>Rider 41 Added in 2007</b>	<p><b>Appropriation of Concession Fees and Payments Received under a CDA.</b> Prohibits TxDOT from spending any funds from payments received under a CDA, including concession fees, unless it submits a report to LBB providing the amount of funds available from the payment, anticipated uses of the funds, and their projected impacts.</p>
<b>Rider 42 Added in 2007</b>	<p><b>Toll Project Revenue and Funds Report.</b> Requires TxDOT to report annually to LBB on all state toll project revenues received and any other related funds that are deposited outside the state treasury, including the purpose and use of such funds by the Department.</p>

---



*Senate Bill 792  
placed a two-year  
moratorium on  
most of TxDOT's  
toll projects.*

---

**Toll road moratorium.** The 80th Legislature enacted Senate Bill 792, placing a two-year moratorium on most of TxDOT's toll projects. One of the moratorium's purposes was to allow time to reflect and get more information on TxDOT's rapid movement to build toll roads in close partnership with private sector firms. According to the House Research Organization, supporters of S.B. 792 said it "would continue the Legislature's efforts to press TxDOT into being more forthcoming with the public about toll projects."<sup>2</sup> The bill also clearly affirmed the primacy of local transportation authorities, not TxDOT, to take the lead in building toll roads in their regions, giving them the right of first refusal to develop a toll road project.

**Probing interim charges.** Continuing concerns regarding TxDOT's operations and lack of responsiveness led to a total of 23 interim charges spread among two Senate and four House committees. The chart, *Interim Charges Regarding TxDOT*, summarizes several of the key charges which range from studying whether the Department is using its bonding authority to build new roads to analyzing the current financial condition of the Department.

## **Interim Charges Regarding TxDOT**

<b>Senate Interim Charges</b>	
<b>Transportation and Homeland Security</b>	<ul style="list-style-type: none"> <li>◆ Study state and local regulation of billboards, including evaluating objective criteria for locations where billboards can be permitted or prohibited.</li> <li>◆ Study ways to improve management and oversight of Metropolitan Planning Organizations, including evaluation of MPO decision-making ability in relation to TxDOT.</li> <li>◆ Study comprehensive development agreements and make recommendations to ensure maximum benefit to taxpayers.</li> <li>◆ Review status of structurally deficient bridges and provide increased oversight of TxDOT's bridge repair activities.</li> <li>◆ Study status of current and planned toll road projects, the use of public-private partnerships to build new roads or transit services, and the market valuation process.</li> <li>◆ Study effectiveness of Trans-Texas Corridor and make recommendations for its future role in providing additional roads in Texas.</li> <li>◆ Study state agency expenditures on media activities and legal authority for such expenditures and develop guidelines for appropriate use of state funds to provide legitimate public education.</li> <li>◆ Review state and local options for expanding transportation funding and explore options to reduce diversions of Fund 6 revenue.</li> <li>◆ Assess whether TxDOT is using funding sources provided by the Legislature, including general obligation, Fund 6, and Mobility Fund bonds, to build new roads. (Joint charge with Senate Finance)</li> </ul>
<b>Finance</b>	<ul style="list-style-type: none"> <li>◆ Provide budget oversight of TxDOT to ensure that monies appropriated are spent wisely.</li> <li>◆ Assess whether TxDOT is using funding sources provided by the Legislature, including general obligation, Fund 6, and Mobility Funds bonds, to build new roads. (Joint charge with Transportation and Homeland Security)</li> </ul>
<b>House Interim Charges</b>	
<b>Appropriations</b>	<ul style="list-style-type: none"> <li>◆ Analyze the current financial condition of TxDOT, including cash in the bank, encumbered funds, use of bond capacity, and projected needs for various funds allocated to TxDOT and their appropriation for major projects over the last five years.</li> </ul>
<b>Culture, Recreation, and Tourism</b>	<ul style="list-style-type: none"> <li>◆ Examine process and procedures for directional signs as they relate to tourism.</li> <li>◆ Research ways to promote economic development and related tourism in the state.</li> </ul>
<b>State Affairs</b>	<ul style="list-style-type: none"> <li>◆ Study use of state funds to advertise government programs and services to discern if taxpayer dollars are being spent appropriately, and consider legislation to ensure that these dollars are not spent to coerce, but to benefit the public through honest educative efforts.</li> </ul>
<b>Transportation</b>	<ul style="list-style-type: none"> <li>◆ Study use of corridor planning organizations to provide a mechanism for local involvement in the Trans-Texas Corridor.</li> <li>◆ Study funding mechanisms for the Rail Relocation Fund.</li> <li>◆ Examine role of metropolitan planning authorities in state law and creation of rural planning authorities to address planning needs outside of metropolitan planning organizations, but within council of government boundaries.</li> </ul>



---

*TxDOT's admission of a \$1.1 billion accounting error led to a complete financial audit of the agency.*

---

---

*TxDOT's appropriation does not clearly or directly coincide with how the funding is actually spent.*

---

***Distrust in TxDOT's financial operations.*** In February 2008, the Lieutenant Governor and Speaker of the House of Representatives requested a comprehensive review of TxDOT's entire financial process by the State Auditor, stating "that significant weakness and questionable accounting procedures exist in the financial forecasting and reporting of the agency [TxDOT]." <sup>3</sup> This request came after the discovery of a \$1.1 billion error in TxDOT's accounting.

The events leading up to this request fueled distrust of the Department. In November 2007, TxDOT announced a projected \$3.6 billion agency budget shortfall by the year 2015, claiming that the Department was running out of money to pay for new construction. This shortfall ultimately led to TxDOT reducing its fiscal year 2008 construction letting target by \$1.1 billion and cutting the Department's right-of-way acquisition, engineering services, and administrative costs.

The reasons TxDOT regularly cited publicly and in discussion points provided to its staff, media, and others as the cause of the cash flow problem were, primarily, the uncertainty of federal funds; diversions from the State Highway Fund; effects of unprecedented inflation; restrictions on access to private sector investment; and the need for more emphasis on highway maintenance.

The main problem underlying the immediate shortfall, however, was the \$1.1 billion accounting error. TxDOT staff knew about the error as early as September 2007 but TxDOT did not publicly acknowledge it until February 5, 2008 at a joint hearing of the Senate Finance Committee and the Senate Committee on Transportation and Homeland Security. Only after this hearing and at the direction of the committees did TxDOT revise its discussion points to include an explanation of the error as a factor contributing to the shortfall. <sup>4</sup> However, significant damage had been done. The reaction of several key members of the Legislature indicated serious concerns regarding TxDOT's financial operations. <sup>5</sup>

***Questionable financial information.*** The Legislature and others do not have clear insight into the Department's finances. <sup>6</sup> Although the Legislature appropriates funding to TxDOT based on key goals and strategies such as planning, construction, and maintenance and preservation, the appropriation does not coincide with how TxDOT spends this funding. The appropriation does not specify the distribution of transportation funds to the 25 districts, nor does it specify how much should be spent on particular types of transportation projects such as construction of new roads, maintenance of existing roads, bridge repair and replacement, and traffic operations. Without this direct link between what the Legislature appropriates the funding for and what TxDOT ends up spending the money on, the Legislature cannot know whether or not the Department is spending its funds as intended.



Several State Auditor's Office (SAO) reports have cited TxDOT for not providing reliable information, particularly financial information. An SAO report, published in 2007, questioned a TxDOT-identified \$86 billion funding gap between state transportation needs and available state funding in the next 25 years.<sup>7</sup> The Governor's Business Council also disputed the shortfall, as described in the textbox, *Questions Regarding the \$86 Billion Shortfall*. TxDOT repeatedly used this information to help substantiate the continuing need to use new financing tools and invite the private sector to participate in financing transportation projects in the state.

**Questions Regarding the \$86 Billion Shortfall**

In November 2006, the Governor's Business Council Transportation Task Force reported the state portion of TxDOT's estimated \$86 billion shortfall to be \$56 billion. The amount differed from TxDOT's calculation in three areas: TxDOT did not account for an increase in gas tax revenues from increased driving over the next 25 years; overestimated unfunded needs for state roads; and included costs for local roads that the state does not have responsibility for. An April 2007 State Auditor's report concluded that the methodology TxDOT used to calculate the funding gap may not be reliable for making policy or funding decisions, further questioning TxDOT's claims.

Sources: Governor's Business Council Transportation Task Force, *Shaping the Competitive Advantage of Texas Metropolitan Regions* (Austin, Texas, 2006); and State Auditor's Office, *The Department of Transportation's Reported Funding Gap and Tax Gap Information*, report no. 07-031 (Austin, Texas, April 2007).

As the 80th Legislative Session began, another SAO report raised concerns about the Trans-Texas Corridor. The report stated that weaknesses in Department accounting created risks that the public would not know the State's cost for TTC-35 or whether these costs were appropriate.<sup>8</sup> The report further said that the state lacked reliable information on projected toll road construction costs, operating expenses, revenue, and developer income.<sup>9</sup>

- ◆ The public is distrustful of TxDOT's toll road efforts and, in particular, the Trans-Texas Corridor. Most recently, TxDOT held 12 town hall meetings to give the public the opportunity to ask questions and get answers about I-69/TTC. About 4,550 people attended these town hall meetings voicing their overwhelming opposition to the project.

Also, more than 1,000 individuals submitted comments to Sunset staff as part of the TxDOT Sunset review. The majority of the comments, about 76 percent, suggested eliminating the Texas Transportation Commission and replacing it with a single, elected Transportation Commissioner. In addition, about 26 percent specifically stated that TxDOT needs to be more accountable.

---



*About 76 percent of comments to Sunset staff suggested replacing the Transportation Commission with an elected Commissioner.*

---

**Lack of timely appointments to the Texas Transportation Commission has weakened TxDOT's accountability to the Legislature.**

- ◆ Although the Governor appoints the five members of the Texas Transportation Commission, state law requires Senate confirmation for these members. Commission members' terms expire in odd-numbered years when the Legislature is in Session, making possible timely Senate discussions with, and confirmation of, new appointees. This arrangement

creates a link of accountability between the Department and the Legislature and a check and balance between the legislative and executive branches of government.

---

*The Senate will not have the opportunity to confirm the new Transportation Commissioners until 2009.*

---

- ◆ The normal nominations process did not play out for two Commission members, including the Chair, whose terms expired on February 1, 2007 and whose vacancies were not filled until April 30, 2008, more than a year later. Also, because of the timing of the appointments, the Senate will not have the opportunity to confirm the newly appointed Commission members until sometime in 2009. These members will govern the agency for at least nine months before their confirmation hearings, weakening the Legislature's timely exercise of the confirmation check and balance that state law affords.
- ◆ Of the 50 state departments of transportation, 40 have governor-appointed agency heads, and 17 of these also have governor-appointed transportation boards or commissions as well. Nine states have boards or commissions that oversee their transportation departments, including Mississippi which has a three-member elected Commission. South Carolina has both an elected Commission and a governor-appointed executive director.

**Availability of independent, objective, and reliable information about the state transportation system is limited.**

---

*Legislators need objective, independent, and reliable information to make informed decisions.*

---

- ◆ The Legislature, public, and others need access to objective and reliable information regarding the state's transportation system. This information is necessary to show how the transportation system is operating and what changes might be needed to improve it. Without reliable information, lawmakers cannot make informed decisions on transportation policies and effectively plan for the future of the state's transportation system.
- ◆ The Legislature and the public do not trust TxDOT to provide objective and reliable information, as discussed previously. Some have also suggested that TxDOT has used information to persuade rather than to inform. For example, in 2007, TxDOT designed and implemented the *Keep Texas Moving* campaign as a tolling and Trans-Texas Corridor outreach campaign. The campaign includes a website; a newsletter; and radio, television, print, billboard, and Internet advertising. Several members of the Legislature and the public questioned the use of state funding for such a campaign.
- ◆ TxDOT controls most of the transportation information that Legislators and the public use. TxDOT contracts out most of its transportation research to state universities, including the Texas Transportation Institute (TTI) at Texas A&M University which receives the majority of TxDOT's transportation research funding. However, TxDOT determines the research topics and controls the funding for this research.

Historically, development of TxDOT's research program had been the responsibility of the Department's Research and Technology Information Office. In 2005, TxDOT created a separate policy research section within its Government and Public Affairs (GPA) Division to conduct policy research activities and tasks as directed by the Transportation Commission and TxDOT administration. Specific research topics carved out for GPA include statewide and regional transportation financing options and economic benefit analyses that influence transportation policy. Information from this source may be viewed skeptically, given the Department's high-level focus on toll financing and the Legislature's distrust of the Department's financing objectives.

---

*Information from TxDOT may be viewed skeptically given the current environment of distrust in the agency.*

---

### **Texas has a continuing need for the Texas Department of Transportation, but with its trust restored.**

- ◆ The use and need for the state transportation system has been growing for the past 25 years and will continue to grow in the future. The state's population, vehicle miles traveled, congestion, and road use are all increasing, but road capacity is not keeping pace. As a result, the State needs to improve and expand its transportation system for both economic and social reasons.
- ◆ The Legislature has supported improving and expanding the transportation system by establishing and allowing the use of additional financial tools for road construction. Texas citizens have also voted on several occasions to give both the state and their local governments' additional bonding authority to address growing transportation needs.
- ◆ To meet these needs, the State needs a transportation agency, but one that is transparent, accountable, and responsive in order to be effective. Currently, TxDOT is none of these. The State needs an entity to provide ongoing oversight of TxDOT as it begins to implement the changes needed to address the concerns not only in this report, but the ongoing concerns of the Legislature and the public as well. In the current environment, the Legislature is unlikely to expand the Department's authority even in ways that may be necessary and warranted. Only after a greater level of trust has been restored in the Department can it move towards solving the state's transportation needs.

---

*Only after a greater level of trust has been restored can TxDOT move towards solving the state's transportation needs.*

---

## **Recommendations**

### **Change in Statute**

#### **1.1 Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.**

This recommendation would abolish the five-member Texas Transportation Commission and replace it with a single Commissioner of Transportation. The Commissioner would be appointed by the Governor with the check and balance of Senate confirmation every two years. The Commissioner's

two-year term would expire February 1 of each odd-numbered year. If the Governor does not reappoint the Commissioner or make a new appointment by February 28 of odd-numbered years, then the authority to appoint the Commissioner would, by statute, transfer to the Lieutenant Governor. Although the appointment by the Governor would be subject to Senate confirmation, the appointment by the Lieutenant Governor would not.

A new Commissioner would help restore accountability, trust, and responsiveness of TxDOT. Senate confirmation every two years would forge a strong link of accountability to the Legislature and frequent affirmation of acceptable Commissioner performance by a Senate vote of confidence. With the appointment of a full-time Commissioner, the executive director's position and the statutory requirement for engineering and transportation planning, development, and construction and maintenance experience would no longer be necessary. Instead of an executive director, the Commissioner could choose to hire staff with whatever engineering, business, and management experience the Commissioner feels necessary to oversee the operations of the agency. For example, engineering expertise could be provided through the recently created Assistant Executive Director for Engineering Operations position.

### **1.2 Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the state's transportation system.**

This recommendation would create a Transportation Legislative Oversight Committee. The Committee would consist of six members as follows:

- ◆ the Chair of the Senate Committee on Transportation and Homeland Security;
- ◆ the Chair of the House Transportation Committee;
- ◆ two members of the Senate appointed by the Lieutenant Governor; and
- ◆ two members of the House of Representatives appointed by the Speaker of the House.

The Lieutenant Governor and the Speaker would appoint the presiding officer of the Committee on an alternating basis. The presiding officer would serve a two-year term, expiring February 1 of each odd-numbered year.

The Committee would be charged with:

- ◆ monitoring TxDOT's planning, programming, and funding of the state's transportation system;
- ◆ conducting an in-depth analysis of the state's transportation system;
- ◆ assessing the cost-effectiveness of the use of state, local, and private funds in the transportation system;
- ◆ identifying critical problems in the transportation system, including funding constraints and recommending strategies to solve those problems;
- ◆ determining long-range needs of the transportation system and recommending policy priorities for the system; and
- ◆ advising and assisting the Legislature in developing plans, programs, and proposed legislation for improving the effectiveness of the transportation system.

The Committee would be focused on providing more direct oversight of the state's transportation system, evaluating it to identify whether or not the system is working and making recommendations for improvements. The Committee's purpose would be to research, analyze, and report on the operation and needs of the system.

The six staff and \$1.2 million budget from TxDOT's Government and Public Affairs research section would be transferred to the Committee to help carry out its research and evaluation responsibilities. The Committee would also be authorized to hire additional staff as needed and to contract with universities or other entities to carry out its duties. Allowing the Committee to contract for these services would ensure that it would not have to develop the expertise necessary to perform all of its functions.

### **1.3 Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities.**

This recommendation would require TxDOT to present its entire research program to the Transportation Legislative Oversight Committee for review and comment before its adoption and implementation. The Committee would review each of the proposed research projects, including the purpose, projected start and ending dates, and cost of each project, providing any comments or direction to TxDOT regarding these projects. TxDOT would provide quarterly updates on the progress of these projects as well as an annual summary to the Committee. The Committee would be authorized to request the results of any of the projects, including review of draft reports from either TxDOT or the contracted entities performing the research. This recommendation is intended to restore trust in the research being used to set transportation policy.

## **Change in Appropriations**

### **1.4 The Sunset Commission should recommend that the Legislature directly fund the Texas Transportation Institute to conduct transportation research previously contracted through TxDOT.**

This recommendation would express the will of the Sunset Commission that the Legislature appropriate funding for state transportation research directly to TTI at Texas A&M University. The specific amount of the appropriation would be determined through the appropriations process, based on historical amounts of contracts with TxDOT for transportation research.

TTI would continue to conduct transportation research as specified by TxDOT's research program. Instead of this research being contracted to TTI through interagency agreements, TTI would receive a specific amount of funding directly through the appropriations process to fund this research. As specified in Recommendation 1.3, TxDOT's research program would be reviewed by the Transportation Legislative Oversight Committee, which could help ensure TTI's ability to conduct the research under the direct appropriation. This recommendation would not affect TTI's other sources of revenue and would not affect TTI's ability to continue contracting with other entities in addition to the work performed as part of TxDOT's research program. This recommendation is intended to establish the independence necessary to restore trust in the transportation research being used to set transportation policy in the state.



## Change in Statute

### 1.5 Continue TxDOT for four years.

This recommendation would continue TxDOT for a four-year period to ensure that needed changes have occurred to re-establish the Legislature's and the public's trust and confidence in the Department. This shorter Sunset review timeframe will give the Legislature the opportunity to evaluate these changes, including the accountability of a single Transportation Commissioner, the usefulness of a Transportation Legislative Oversight Committee, and the independence and workability of a directly funded transportation research program. The Legislature could make any changes it deems necessary in the Department's next Sunset review in 2013.

## Fiscal Implication

These recommendations would result in an estimated \$568,426 savings to the State Highway Fund. Eliminating the five Texas Transportation Commission members would result in an annual savings of about \$79,570 for the part-time salary. Eliminating the five commissioner assistant positions would result in a savings of \$380,234 for these salaries. An additional savings of \$108,622 would result from elimination of the travel and operating expenses of both the Commission members and their assistants. With a full-time Commissioner, the Department would not need both an Executive Director and a Deputy Executive Director. The savings from eliminating one of these positions, and reorganizing staffing and salaries accordingly, would provide the necessary funding for the Commissioner's salary as determined by the Legislature.

Creating the Legislative Oversight Committee would not have a fiscal impact to the State. The Committee would be staffed and funded by transferring the six full-time equivalent positions and approximately \$1.2 million from TxDOT's Government and Public Affairs research section to the Committee.

The recommendation to directly fund TTI through the appropriations process would not have a fiscal impact to the State. The Legislature could determine the specific amount of the appropriation based on historical amounts of contracts with TxDOT for transportation research and directly appropriate this amount to TTI.

If the Legislature continues TxDOT using the current organizational structure, the Department's annual appropriation of \$8.7 billion would continue to be required for its operations; \$3,301,346,587 of that appropriation is from federal funds.

<i>Fiscal Year</i>	<i>Savings to the State Highway Fund</i>
2010	\$568,426
2011	\$568,426
2012	\$568,426
2013	\$568,426
2014	\$568,426

- .....
- <sup>1</sup> James Bass, Chief Financial Officer, Texas Department of Transportation, testimony to the Senate Committee on Transportation and Homeland Security (Austin, Texas, April 23, 2008).
  - <sup>2</sup> House Research Organization, *Major Issues of the 80th Legislature, Regular Session*, number 80-7 (Austin, Texas, July 17, 2007).
  - <sup>3</sup> Letter from Lieutenant Governor David Dewhurst and Speaker of the House Tom Craddick to State Auditor John Keel, February 19, 2008.
  - <sup>4</sup> Letter from TxDOT Executive Director Amadeo Saenz to Senator John Carona, March 3, 2008; and Texas Department of Transportation, *Point Paper Confronting New Challenges: TxDOT's Cash Flow* (Austin, Texas, March 3, 2008).
  - <sup>5</sup> Joint Senate Finance Committee and Senate Committee on Transportation and Homeland Security, invited testimony regarding the Texas Department of Transportation's 2008-2009 appropriation, public hearing (Austin, Texas, February 5, 2008).
  - <sup>6</sup> Texas Senate News, *Committee Considers Transportation Funding*, [www.senate.state.tx.us/75r/Senate/Archives/Arch08/p020508a.htm](http://www.senate.state.tx.us/75r/Senate/Archives/Arch08/p020508a.htm). Accessed: May 4, 2008.
  - <sup>7</sup> State Auditor's Office, *An Audit Report on the Department of Transportation's Reported Funding Gap and Tax Gap Information*, report no. 07-031 (Austin, Texas, April 2007).
  - <sup>8</sup> State Auditor's Office, *An Audit Report on the Department of Transportation and the Trans-Texas Corridor*, report no. 07-015 (Austin, Texas, February 2007).
  - <sup>9</sup> State Auditor's Office, *A Report on the Audit of the Department of Transportation's Central Texas Turnpike System Financial Statements for the Fiscal Year Ended August 31, 2007*, report no. 08-017 (Austin, Texas, December 2007) and *An Audit Report on the Department of Transportation's Reported Funding Gap and Tax Gap Information*, report no. 07-031 (Austin, Texas, April 2007).





## *Responses to Issue 1*

---

### **Recommendation 1.1**

***Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.***

#### **Agency Response to 1.1**

The Department has no comment. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 1.1**

Noble J. Campbell and the citizens of Trinity County

Margaret Canty, Manor

K. Collins

David Crossley, President – Gulf Coast Institute, Houston

Don P. Dixon, San Antonio

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

#### **Against 1.1**

Alan Clark, MPO Director – Houston-Galveston Area Council, Houston

Woody Curd – Texans Uniting for Reform and Freedom (TURF), San Antonio

#### **Modifications to 1.1**

1. Maintain the current Texas Transportation Commission, but change the terms of the Transportation Commission members from six to two years, with terms expiring on January 31 of each odd-numbered year. Require Senate confirmation of all Transportation Commission members every two years. (Senator Glenn Hegar, Vice Chair – Sunset Advisory Commission)
2. Maintain the current Texas Transportation Commission, but require the rural member of the Transportation Commission, as defined by Transportation Code, sec. 201.051 (b), be a registered voter in a county in Texas with a population of less than 200,000. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
3. Remove the statutory requirement that the Executive Director of TxDOT must be a Registered Professional Engineer in Texas, but specify that the Executive Director must be experienced and skilled in transportation planning, development, financing, construction, and maintenance, or have appropriate finance or management experience. (Senator Glenn Hegar, Vice Chair – Sunset Advisory Commission)

4. Eliminate the statutory requirement that the Executive Director of TxDOT be a Registered Professional Engineer in Texas. (Representative Linda Harper-Brown, Member – Sunset Advisory Commission; Charles McMahan, Member – Sunset Advisory Commission; Dennis J. Micak, P.E., Sealy)
5. Maintain the requirement that the Executive Director position be filled by a Registered Professional Engineer. (Gerhardt Schulle, Jr., Legislative & Governmental Affairs Director – Texas Society of Professional Engineers, Austin)
6. Abolish the five-member Texas Transportation Commission and replace it with a single, elected Commissioner of Transportation. The Commissioner would be elected for a four-year term. (Representative Ruth Jones McClendon, Member – Sunset Advisory Commission)
7. Abolish the five-member Texas Transportation Commission and replace it with a single, elected Commissioner of Transportation. The Commissioner would be elected for a four-year term. This elected official should be restricted to the same conflict of interest and campaign finance regulations as all other elected positions at the state level. The Commissioner would oversee all the daily operations of TxDOT. (Representative Linda Harper-Brown, Member – Sunset Advisory Commission)
8. Establish a nine-member Board to advise the Commissioner of Transportation and TxDOT on all fiscal and administrative operations. The members of the Board would be appointed by the Governor and confirmed by the Senate for two-year terms. If the Governor does not appoint the Board members or reappoint a member by February 28 of odd-numbered years, then the authority to appoint the members would, by statute, transfer to the Lieutenant Governor. Although the appointments by the Governor would be subject to Senate confirmation, the appointments by the Lieutenant Governor would not.

The Board members would be required to equitably represent all geographic areas of the state and have private sector business managerial experience. Also, the members must not have a substantial interest, as defined by Government Code, sec. 572.005, in a business entity directly related to or affected by the Board's policy decisions, or a direct or indirect interest in any contract or other benefit granted or awarded by TxDOT. The Board would function independently of the control and direction of TxDOT. The Board may not be involved in the day-to-day operations of the agency. The Board shall not be allowed to earmark any projects.

The Board would have the following responsibilities:

- ◆ serve as an oversight body for the agency by reviewing its performance, business plan, budget requests, and long range plans (i.e., Unified Transportation Program and Statewide Transportation Improvement Program); and monitoring the agency's financial status and highway safety;
- ◆ streamline the agency while focusing on multi-modal solutions;
- ◆ review all major policy initiatives submitted by the agency;
- ◆ recommend major policy changes to the Governor, Legislature, and Commissioner of Transportation;

- ◆ serve as an oversight body for all transportation entities within the state and monitor and report on the efficiency, transparency, productivity, and management of those entities; and
- ◆ establish advisory committees, overseen by the Board, to ensure multi-modal solutions for the state (i.e., advisory committee on high-speed/regional rail; advisory committee on roads/highways, advisory committee on ports/freight, advisory committee on transit/congestion mitigation).

(Representative Linda Harper-Brown, Member – Sunset Advisory Commission)

9. Replace the Transportation Commission with a single Transportation Commissioner. (Group A – see page 169)
10. Require the Commissioner of Transportation to have a term limit of four or six years and be confirmed by the Senate. (Erik Fossum, Cedar Park)
11. Require the Commissioner of Transportation be re-confirmed every two years. (Oscar “Erik” Slotboom, Dallas)
12. Ensure that the Commissioner of Transportation does not have a conflict of interest with regard to any past support for particular transportation projects or construction of transportation projects. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
13. Make the Commissioner of Transportation an elected position. (William A. Allen, Adkins; Patricia Baker; Joan and David Black, Houston; Daniel Boone, Canyon Lake Ranch; George Braun, San Antonio; Rosie Busa, Houston; Jack Campbell, Dallas; Cathy Catlett, Elgin; Edgar Chew – Edgar Chew & Associates, San Antonio; Blythe Christopher de Orne, Austin; Alan Cutting – TURF, San Antonio; Theresa Gage Dieringer, Georgetown; Frank H. Dietz, New Braunfels; Patrick Dossey – TURF, San Antonio; Joan Stutts Escamilla, Bedias; Jack M. Finger – San Antonio Toll Party, San Antonio; Rance Frazier, Huntsville; Susan Garry, Coupland; Nancy Goettman; Edward Hagan, San Antonio; Jennifer Hale, Austin; Terri Hall, Founder – TURF, San Antonio; Karen Hammel; John B. Kelly, Bulverde; Benedict D. LaRosa, San Antonio; James C. Loomis, San Antonio; Tony Manasseri, McKinney; Anne Markham, Austin; Barry Maxwell, Austin; Ed McGann, San Antonio; Carol Muir; Chuck Nagel, Huntsville; Richard and Cathy Osborn; Tom Paben, State Director – Texas Farm Bureau, Austin; Bob Perkins, San Antonio; Cynthia Randall, Austin; Daniel Randall, Huntsville; Darrell Randall, Austin; Joan Randall, Austin; Kay Randall, Austin; Mary Randall, Huntsville; John D. Ray; Anthony Rezendes, Austin; Melissa Roberts, Austin; Kristie Robles, Austin; Joe Robles, Austin; Yvette Scott, Pflugerville; Deborah Seguin – TURF, San Antonio; Brady Severns, Austin; Carol Shaw, San Antonio; Judith Shields, Spring; Margaret Short, Katy; John Shull, San Antonio; Michael Siekkinen, Austin; David Smith, Denton; Peter Stern, Driftwood; Nancy Strack, San Antonio; JoBeth Stutts, Huntsville; Rob Thorpe; James Turner, Assistant Controller – ASD Healthcare, Inc.; Christina Velasquez, Austin; Chris Wojtewicz, Austin; Sharon Yeisley, Elgin)

14. Make the single Commissioner an elected position and if the first term of the Commissioner needs to be appointed, have the Legislature make the appointment. (Chris Hammel, Holland)
15. Make the Commissioner of Transportation an elected position with a six-year term limit. (Tom and Penny Bagby, Blanco)
16. Require the Commissioner of Transportation be elected. Apply term limits to this position. (Dennis J. Micak, P.E., Sealy)
17. Make the Commissioner of Transportation an elected position with term limits and the opportunity for recall. (Sam Cunningham – TURF, San Antonio)
18. Require the Commissioner(s) of Transportation be elected. (Ken Foulke; Daniel J. Jasinski, Austin; Mynda Holman McGuire, San Antonio; Deborah L. Parrish, San Antonio)
19. Require the TxDOT board be elected. (Judy Bruton, Waller; Kenneth Coggin, Killeen; David A. Durham, San Antonio; Glen Henry, Boerne; William A. Herrmann, Waller; John Hutson – TURF, San Antonio; Mike Mills – Terrapin Creek Ranch, Martinsville)
20. Establish an elected Transportation Commission made up of one to three elected commissioners. (Hank Gilbert, President – Pineywoods Sub-Regional Planning Commission)
21. Replace the Transportation Commission with commissioners that are regionally elected. (John Bingham, Nacogdoches; Claud Bramblett, Austin; Margaret Hardy, Martinsville; Leslie Moyer, College Station; Herman and Annette Stoddard, Thornton; Teresa Stoddard, Pflugerville; Steve and Jan Tracy, Nacogdoches)
22. Replace the Transportation Commission with five elected regional commissioners responsible for overseeing the interests of constituents in their respective areas of the state. (Craig Whealy, Lovelady)
23. Replace the Transportation Commission with six elected regional representatives. (Linda Curtis, State Director – Independent Texans, Austin)
24. Abolish the current five-member Transportation Commission and replace it with a seven-member State Transportation Board comprising a Commissioner of Transportation and six elected State Transportation Board members. The Commissioner would be appointed by the Governor with the check and balance of Senate confirmation every four years. The Commissioner's term would begin on February 1 of each Governor's term. The full-time Commissioner would serve as Chairman of the State Transportation Board and replace the current position of Executive Director. The members of the State Transportation Board would be elected regionally, one from each of six regional districts drawn along TxDOT district lines and grouped by similar geographical features and transportation facilities, without regard to population. The six regional districts would be Central Texas, North Texas, Texas Gulf Coast, Rio Grande Valley, West Texas, and Panhandle. Board members would be directly elected to serve four-year terms, staggered to start on even-numbered years. (Members of CorridorWatch.org, Fayetteville; Martha Estes, Hempstead; James R. Lee, Alvin; David K. Stall, Fayetteville; Agnes Voges, Rogers)

25. Establish a Transportation Commission made up of a Governor-appointed Chair who serves four years, and six additional members elected from geographically distinct districts which are reasonably balanced in population and whose boundaries are re-apportioned following every decennial census. The suggested districts are Houston/Southeast Texas, Dallas/Fort Worth, Central Texas, South Texas, Far West Texas, and Northwest Texas. The elected terms would be six years and would be staggered so that two Commissioners are on the ballot every two years, with terms for the first group based on “drawing straws” that ascertain their region’s initial term length. The Commission size could be increased from seven to nine by adding a group for East/Northeast Texas and splitting Central Texas into a North and South region. (Jim Vance, P.E., Taylor)
26. Require the Legislature to appoint the Commissioner of Transportation and review the appointment every time the Legislature convenes. Also, create a Board of Transportation with individuals elected by the public. (Gene Stanush and Melvin Krahn, Adkins)
27. Abolish the Texas Transportation Commission and replace it with a Commissioner of Transportation appointed by and directly reportable to the Transportation Legislative Oversight Committee. (Ed Campbell, Brookshire)
28. Require the Texas Legislature to elect the leaders of TxDOT (and all other state-appointed department leaders). (C. Marie Day – Shell Global Solutions (US) Inc., HSE Consultancy, Houston; Judy Martens, Somerville)
29. Abolish the current five-member Transportation Commission and replace it with three officials appointed by the Governor with legislative approval. One of these three officials would run TxDOT. Eliminate the executive director and deputy director. Eliminate 25 district engineers and replace them with six regional engineers. (Larry G. Jirkovsky, Sweet Home)
30. Establish a three-member Transportation Commission. The Governor would appoint the Chair, the Senate would appoint one Commissioner and the House would appoint one Commissioner. (John Shackett, Austin)
31. Abolish the current five-member Transportation Commission and replace it with a three-member commission that hires an executive director. (Tracy Schieffer, President – Associated General Contractors of Texas, Austin)
32. In addition to the Governor-appointed Commissioner of Transportation, continue the Transportation Commission with an advisory and performance measurement focus. (Steve Stagner – Texas Council of Engineering Companies, Austin)
33. Create an environmental policy advisory position and an urban public transportation advisor position to provide the Commissioner of Transportation with a more comprehensive outlook regarding all facets of transportation policy and decision making. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
34. Require the Commissioner of Transportation to have four lieutenants and to develop a two year budget plan. (Daniel Boone, Canyon Lake Ranch)

35. Make the Director of TxDOT an elected position. (Edgar Chew – Edgar Chew & Associates, San Antonio; Marilyn Knapp Litt, San Antonio)
36. Elect the Chairman and Directors of TxDOT. (Rosemary Gambino, Brookshire)

### **Recommendation 1.2**

***Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the state's transportation system.***

#### **Agency Response to 1.2**

The Department has no comment. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 1.2**

William A. Allen, Adkins

Brent Wesley Amos, Acting Director – Bluebonnet Neighborhood Association, Elgin

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Judy Martens, Somerville

Members of CorridorWatch.org, Fayetteville

Jere Thompson, Co-Chair – Dallas Citizens Council Transportation Committee

Lisa Kay Tuck, Galveston County

Loretta Van Coppenolle, San Antonio

Mayor Jayo Washington, City of Shoreacres

#### **Against 1.2**

None received.

#### **Modifications to 1.2**

37. Provide the Legislative Oversight Committee with an Auditor General and/or authority to contract with outside audit firm(s) to review TxDOT's financial condition and business practices; evaluate the effectiveness of the agency's transportation planning and programming processes; and coordinate with the Legislative Budget Board, State Auditor's Office, and the agency's internal efforts to minimize the duplication of efforts while increasing overall transparency, efficiency, accountability, and productivity.



The primary functions of the Auditor General and/or the contracted audit firms will include:

- ◆ auditing TxDOT's financial condition and business practices;
- ◆ evaluating TxDOT's administrative practices and performance, including statewide transportation planning, the agency's relationship with Metropolitan Planning Organizations (MPOs), how the agency's district and central offices perform their functions, and the need for standardization of the agency's operations across the state;
- ◆ evaluating the current guidelines of MPOs and all other transportation entities within in the state involved with project delivery and/or transportation policy by identifying duplicative practices and providing recommendations for better efficiency and transparency;
- ◆ identifying the need for a reduction of staffing and/or the need for a better skilled workforce at the agency;
- ◆ identifying the process for implementing a commitment-based budget (i.e., business plan) measured on productive outcomes rather than process-oriented performance measures;
- ◆ identifying ways to streamline all processes/procedures of policy implementation of the agency, most notably the environmental process;
- ◆ emphasizing multi-modal solutions;
- ◆ ensuring that the Board created in Modification 8 and the Transportation Legislative Oversight Committee are not allowed to earmark projects;
- ◆ ensuring compliance with applicable laws and legislative intent; and
- ◆ ensuring the efficient use of TxDOT's available funding, personnel, equipment, and office space.

(Representative Linda Harper-Brown, Member – Sunset Advisory Commission)

38. Add one public member with transportation experience appointed by the Lieutenant Governor and one public member with corporate restructuring experience appointed by the Speaker of the House of Representatives to the Transportation Legislative Oversight Committee. (Charles McMahan, Member – Sunset Advisory Commission)
39. Require the Transportation Legislative Oversight Committee to hire a respected, professional organizational consulting firm to evaluate and propose a reorganization of TxDOT. The Committee would oversee the implementation of the consultant recommendations. Prohibit TxDOT from receiving any new funding above and beyond the Department's regular appropriation until the Committee certifies to the Legislative Budget Board that the reorganization has been fully implemented. (Charles McMahan, Member – Sunset Advisory Commission)

40. Clarify that the Transportation Legislative Oversight Committee would provide ongoing policy direction, not operational or project oversight. (Steve Stagner – Texas Council of Engineering Companies)
41. Establish a Transportation Legislative Oversight Committee as proposed, but dissolve the Committee at the end of the fourth year and transfer their charge to a State Transportation Board. (Members of CorridorWatch.org, Fayetteville)
42. During the existence of a Transportation Legislative Oversight Committee, suspend or abolish TxDOT’s authority to report to the Legislature on potential statutory changes as authorized by Transportation Code, Section 201.0545. (Members of CorridorWatch.org, Fayetteville)

### **Recommendation 1.3**

**Require the Transportation Legislative Oversight Committee to review and comment on TxDOT’s research program, including individual research projects and activities.**

#### **Agency Response to 1.3**

This recommendation states the Transportation Legislative Oversight Committee will “review and comment” on TxDOT’s research program, but later states in the explanation it shall provide “comments or direction” to TxDOT on research projects. This seems inconsistent and may require further clarification. It should be noted that TxDOT’s Research and Technology Implementation Office currently provides annual updates on published reports to the Texas State Library and Archives Commission. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation).

**Staff Comment:** Recommendation 1.3 is intended to give the Transportation Legislative Oversight Committee input into and oversight of TxDOT’s entire research program, encompassing both technical and policy research. While TxDOT must submit its research program to the Oversight Committee for its review and comment, the Department could determine how best to incorporate any comments and direction.

#### **For 1.3**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Don P. Dixon, San Antonio

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

#### **Against 1.3**

None received.



### **Modification to 1.3**

43. Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities, but at the end of the fourth year, transfer these requirements to a State Transportation Board. (Members of CorridorWatch.org, Fayetteville)

### **Recommendation 1.4**

***The Sunset Commission should recommend that the Legislature directly fund the Texas Transportation Institute to conduct transportation research previously contracted through TxDOT.***

### **Agency Response to 1.4**

This recommendation states that TxDOT is to present its entire research program to the Transportation Legislative Oversight Committee, but later references research used for transportation policy. It seems unclear as to whether this recommendation applies to technical research as well. In addition, research performed by the Texas Transportation Institute (TTI) is generally technical in nature and not policy-driven. Also, TTI currently receives some direct appropriations out of the State Highway Fund to fund TTI operations with \$14.3 million for the current biennium.

A direct allocation for research funding to TTI for all research could unintentionally restrict other state universities from participating in our research program. For contracted research, TTI typically competes for the contract with other state-funded universities in Texas by submitting a proposal, and this could eliminate competition. With several Texas universities currently participating in our agency's research program, such funding assists them with attracting quality graduate students. With a lack of TxDOT funding for research, graduate students could possibly be discouraged from attending other universities. Including multiple universities in the program brings immense talent, diversity and different ideas to solving our transportation challenges.

**Staff Comment:** Recommendation 1.4 is intended to work with Recommendation 1.3 to provide for the Legislature to directly fund both the Department's technical and policy research conducted by TTI. The increased legislative involvement in overseeing TxDOT's research effort and in funding TTI as the largest provider of transportation research for TxDOT is intended to ensure independence of TTI's research activities without restricting other state universities from participating in TxDOT's research program.

### **Agency Modification to 1.4**

44. Consider a percentage-based awarding of research funding to ensure smaller and historically underutilized universities still receive valuable funding. Coordination with the Federal Highway Administration (FHWA) would also be necessary as 80 percent of the State Planning and Research funding for TxDOT's technical research program is currently federally funded.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

## **Affected Agency Response to 1.4**

The Texas Transportation Institute believes the research program administered by the Research, Technology and Implementation Office should continue to be performed under the direction of TxDOT.

### Texas Transportation Institute Modification to 1.4

45. Create an objective, broader, future-oriented transportation research program at TTI dedicated to analyzing and addressing statewide, “big picture” transportation issues that affect the long-term viability and sustainability of the Texas transportation system and economy. Direct and fund TTI to administer this program. New funding is required for this broader research program, as existing research is funded at less than desirable levels for the work already being undertaken.

Establish an independent, external advisory committee for this program composed of distinguished transportation experts and stakeholders to provide guidance and ensure transparency and program relevance to the needs of state, regional and local officials. Make the program results, research reports and transportation strategies available to the Legislature, the Governor’s office, state and local transportation officials, and other interested parties.

(Dennis L. Christiansen, P.E., Agency Director – Texas Transportation Institute, Texas A&M University)

The University of Texas at Austin wholeheartedly agrees with the central premise that it is important for the transportation research process to be transparent and independent. It is also important that the research results be open to the public and widely disseminated. The University of Texas found that the most common reading of this recommendation was a proposed substitution of the current competitive multi-institutional research program with a non-competitive alternative. The practical impact of this recommendation, if implemented, would be a state earmark of more than \$20 million per year that would go exclusively to a single institution (TTI). The University of Texas believes that this action would imperil the transportation research programs and academic standing of the other institutions that currently compete for and regularly receive research funding from TxDOT.

The University of Texas, therefore, strongly urges the Sunset Advisory Commission to reconsider this recommendation and consult with the research universities to gain a better understanding of the current University Research Program that provides objective, impartial research that can be disseminated and used by TxDOT or any other interested party. (William Powers, Jr., President – University of Texas at Austin; Ben G. Streetman, Ph.D., P.E., Dean – Cockrell School of Engineering, University of Texas at Austin)

**Staff Comment:** Recommendation 1.4 is not intended to alter the competitive approach by which other universities participate in TxDOT’s research program. Instead, this recommendation seeks to ensure the independence of research provided by TTI by insulating it from potential pressure from the entity that largely funds it. Recommendation 1.4 would build on the Legislature’s existing approach of making a direct appropriation from the State Highway Fund to TTI for transportation research by adding to this appropriation an amount for research historically contracted to TTI from

TxDOT. With Recommendations 1.2 and 1.3 enhancing legislative oversight of how TxDOT provides transportation research, the recommendation to directly fund TTI would help ensure greater objectivity of its research.

The Department would continue to select research projects on a competitive basis without the perception of undue influence. If the TTI appropriation is not used in its entirety because of fewer or lower budgeted awards for TTI than its historical record, TTI could be directed to return unused research funds to the State Highway Fund at the end of the biennium. Sunset staff acknowledges that this recommendation could be seen as an additional guaranteed source of funding to TTI not available to other universities.

#### **For 1.4**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

#### **Against 1.4**

Gretchen M. Bataille, President – University of North Texas, Denton

Kathleen Garza Hornaday, P.E., PTOE

Rashed Islam, P.E., PTOE

Karan Khosla, P.E., Deputy Project Manager

C. Taylor Mansfield, E.I.T., Engineering Associate

Alejandro Reyna, Jr., P.E.

Nick Warrenchuk, E.I.T.

Heidi Westerfield Ross, P.E., PTOE

#### **Modifications to 1.4**

46. Authorize any Texas university transportation research program to initiate and propose its own research projects to, or take on any transportation research projects directly requested by the Transportation Legislative Oversight Committee. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
47. Authorize the Transportation Legislative Oversight Committee to solicit data from any Texas university transportation research program to not only conduct needed transportation research, but to also help review, evaluate, and compare elements of Texas' transportation system to other states to set needed benchmarks. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)

48. If the Transportation Commission is modified to make it an elected body, transportation research funding should be passed through the Commission rather than either the operating agency or the Legislature. (Jim Vance, P.E., Taylor)
49. Require all transportation research procurements to use a competitive process. (Randy Machemehl, Center For Transportation Research – University of Texas, Austin)
50. Require TTI be funded with General Revenue. (Don P. Dixon, San Antonio)

### **Recommendation 1.5**

#### **Continue TxDOT for four years.**

#### **Agency Response to 1.5**

The Department has no comment. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 1.5**

Edward B. Campbell, Brookshire

Noble J. Campbell and the citizens of Trinity County

Alan Clark, MPO Director – Houston-Galveston Area Council, Houston

David Crossley, President – Gulf Coast Institute, Houston

Don P. Dixon, San Antonio

Martha Estes, Hempstead

Susan Garry, Coupland

James R. Lee, Alvin

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

#### **Against 1.5**

Larry Boyd, Weatherford

Jason King

David Smith, Denton

Martin Theiss, Houston

#### **Modifications to 1.5**

51. Continue TxDOT for two years, until 2011. (Charles McMahan, Member – Sunset Advisory Commission; Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)

52. Develop an enhanced Sunset review every four years for TxDOT exclusively. (Brent Wesley Amos, Acting Director – Bluebonnet Neighborhood Association, Elgin)
53. Sunset TxDOT and rebuild a new Department of Transportation around an elected Commissioner. The new Department would coordinate between local MPOs, the Legislature, and the federal government, but all design responsibilities would be left to local MPOs and local engineering firms. The State would be informed of all projects involving state and federal money and would serve as a rubber stamp for approval and payments, but significant powers would no longer reside with the State Department of Transportation. (David Smith, Denton)
54. Provide that TxDOT's mission is to become a transportation management organization, with significantly expanded utilization of the private sector for the planning, design, and delivery of projects and a commitment to excellence in project and program management. (Steve Stagner – Texas Council of Engineering Companies, Austin)
55. Return TxDOT to its original function of a highway department that is dedicated to the construction and maintenance of our free highway system, and prohibit TxDOT from taxing the public through toll roads or turning over our infrastructure to corporations for short-term income. (Susan Garry, Coupland)
56. Restructure TxDOT by establishing seven independent regions and allowing each region to decide on their transportation needs and raise their own funding. (Jose Torres, Pharr)
57. Abolish TxDOT. (Larry Boyd, Weatherford; Jason King; T. Logan; Elizabeth Theiss, Houston; Martin Theiss, Houston)
58. Abolish TxDOT and replace it with an organization that can be held accountable. (Grant F. Amy, Austin; Joann Hendrick, Houston; John Hutson – TURF, San Antonio; T. Logan; Kathy Painchaud)
59. Abolish TxDOT and create a new Transportation Department with all people who oversee it elected to their positions and re-elected every two years. (George Braun, San Antonio)
60. Abolish TxDOT, dissolve all previously appointed positions, and fire all upper management who failed to report the illegal activities of TxDOT, its Commissioners, and its staff, relating to the Trans-Texas Corridor and mismanagement of funds, illegally hiring lobbyists, and wasting millions of taxpayer dollars on an illegal campaign. Develop a new highway organization for Texas that answers directly to the voting public. (Joan Stutts Escamilla, Bédias)
61. Eliminate TxDOT and give the money that goes to TxDOT to the people that drive the roads and highways and let them decide how to spend it on roads through the election system. Have the public elect their own TxDOT for their area who would plan, design, and hire private road construction crews to prepare and maintain the roads and highways according to what the group decides they need and can afford. (Martha Moore, Spicewood)
62. Dismantle TxDOT and reconstruct it with new personnel. (Loretta Van Coppenolle, San Antonio)

63. Develop a scorecard to measure TxDOT's progress in making changes in the Sunset continuation period, with provisions to enforce its intent. (Nolan Sagebiel, San Antonio)

### *Commission Decision*

Adopted Recommendation 1.1 to abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation, with the following modification. The Commissioner of Transportation must be experienced and skilled in transportation planning, development, financing, construction, and maintenance, or have appropriate finance or management experience. A person is not eligible to be appointed or serve as the Commissioner if the person has served in the Texas Legislature in the previous 10 years.

Adopted Recommendation 1.2 to establish a Transportation Legislative Oversight Committee, with the following modification. Authorize the Transportation Legislative Oversight Committee to contract with an outside management consulting firm independent of TxDOT to recommend an effective and efficient organization structure and appropriate staffing levels based upon work loads; review TxDOT's financial condition and business practices; evaluate the effectiveness of the agency's transportation planning and programming processes; and coordinate with the Legislative Budget Board, State Auditor's Office, and the agency's internal efforts to minimize the duplication of efforts, and to plan, contract and build in the most cost effective and timely manner. The implementation of these recommendations will be overseen by the Legislative Oversight Committee, with the goal of reducing staff, streamlining processes, and transitioning the agency into an entity with greater efficiency, transparency, and accountability. The primary functions of the management consulting firm would include, but not be limited to:

- ◆ Evaluating TxDOT's financial condition and business practices;
- ◆ Evaluating TxDOT's administrative practices and performance, including statewide transportation planning, the agency's relationship with Metropolitan Planning Organizations (MPOs), how the agency's district and central offices perform their functions, and the need for standardization of the agency's operations across the state;
- ◆ Evaluating the current guidelines of MPOs and all other transportation entities within the state involved with project delivery and/or transportation policy by identifying duplicative practices and providing recommendations for better efficiency and transparency;
- ◆ Identifying ways to streamline all processes/procedures of policy implementations of the agency, most notably the environmental process;
- ◆ Examining and evaluating the use and benefits of performance-based maintenance contracting at TxDOT;
- ◆ Examining and presenting recommendations on how to maximize TxDOT's use of multi-modal solutions;

- ◆ Analyzing TxDOT's compliance with applicable laws and legislative intent;
- ◆ Examining the efficient use of TxDOT's available funding, personnel, equipment, and office space;
- ◆ Recommending appropriate performance measurements for each major function including comparisons to best practices;
- ◆ Evaluating establishing in statute the state pavement quality goal as having 85 percent of state roads being in good or better condition; and
- ◆ Considering significantly expanding utilization of the private sector for planning, design, and delivery of projects and a commitment to excellence in project and program management.

Require the Transportation Legislative Oversight Committee to assess TxDOT's progress in implementing the management consultant recommendations and to report the status of TxDOT's implementation efforts to the Senate Finance Committee and House Appropriations Committee to be considered when establishing TxDOT's budget as part of the appropriations process.

Adopted Recommendations 1.3 and 1.5. Adopted Modifications 46 and 47 to clarify that the Transportation Legislative Oversight Committee could work with all Texas university transportation research programs to obtain transportation research independent of TxDOT.

### *Legislative Action*

Senate Bill 2, 1st Called Session, 81st Legislature, continues TxDOT until 2011 and requires the Sunset Commission to focus its next review of the agency on the appropriateness of its previous recommendations to the 81st Legislature.





# Issue 2

---

## *The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made.*

---

### Summary

#### Key Recommendations

- ◆ Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.
- ◆ Establish a transparent, well-defined, and understandable system of project programming within TxDOT that integrates project milestones, forecasts, and priorities.
- ◆ Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects.
- ◆ Require TxDOT, with input from transportation partners and policymakers, to develop a system to measure and report on progress in meeting transportation goals and milestones.
- ◆ Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state.

#### Key Findings

- ◆ TxDOT's long-range planning efforts are disjointed and do not result in a comprehensive and understandable view of the state's transportation needs compared to available resources.
- ◆ TxDOT's project selection and implementation system is not understandable or transparent.

#### Conclusion

Available federal and state transportation funding is projected to decrease in the near future, placing TxDOT's difficult-to-understand system of transportation planning and project development in the spotlight. This system has recently frustrated legislators and the public, who feel cut off from meaningful participation in the state's long-term transportation goals, and from reliable information about progress towards those goals.

Sunset staff reviewed the Department's current planning and project implementation system and identified several components causing confusion and dissatisfaction. The recommendations contained in this issue address these concerns by refocusing state and local transportation planning efforts into a meaningful long-range Statewide Transportation Plan; bringing more clarity into the State's main project selection and implementation instrument, the Unified Transportation Program; establishing a system for measuring and reporting on progress; and including rural areas of the state in formal planning efforts. Together, these recommendations aim to bring more consistency to statewide transportation planning, transparency to project selection and implementation, and accountability to measurement and reporting of progress toward transportation goals.

## Support

**TxDOT plans, programs, and implements transportation projects through a complex partnership with the federal government and metropolitan planning organizations.**

- ◆ Federal requirements play a central role in guiding transportation planning in Texas. The Federal Highway Administration (FHWA) administers the federal surface transportation program, currently enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This and other federal transportation programs provide significant funding to Texas, totaling about \$2 billion in reimbursements in fiscal year 2007. TxDOT must adhere to federal transportation planning, environmental, and other regulations to remain eligible for these funds.

Federal law creates a partnership between TxDOT and locally created metropolitan planning organizations (MPOs). Since 1973, the federal government has required each urban region with a population of more than 50,000 to create an MPO as a condition of receiving federal transportation funds. Texas' 25 MPOs determine how to spend certain federal and state funds allocated to their regions. In the large rural areas of the state outside of MPO boundaries, TxDOT staff in the Department's districts work more informally with local officials to define local needs and select projects.

- ◆ A complicated array of state and local-level documents, several required by federal law, guides transportation project development through four phases: planning, programming, implementation, and construction. The textbox, *Transportation Project Phases*, defines these terms. Planning and programming documents define statewide transportation goals, identify local priorities, and allocate federal and state transportation funding throughout the state.

Federally required plans include MPOs' regional plans and the Department's statewide plans. Each MPO must develop a 20-year Metropolitan

Transportation Plan (MTP) describing regional transportation goals, forecasting available funding, and listing specific projects to implement with available funding. MPOs must update these plans every five years, or four years in areas not meeting federal air quality standards. Every two years, the MPOs must also update separate Transportation Improvement Programs (TIPs), which are shorter four-year lists of near-term projects taken from the MTPs. Staff in TxDOT's districts develop a separate TIP for the rural areas of the state outside of MPO boundaries.

---

*Texas' 25 MPOs determine how to spend certain transportation funds in their regions.*

---

### **Transportation Project Phases**

**Planning** refers to identification of transportation needs and development of long-term solutions.

**Programming** occurs when projects envisioned in long-term plans receive funding, and development work such as environmental review begins.

**Implementation** occurs as a project's environmental, right-of-way, and design work is completed, and the project is placed on shorter-term schedules.

**Construction** of the project occurs after implementation is complete and a contract is awarded.

For its part, TxDOT must develop a 20-year Statewide Transportation Plan, called the Texas Transportation Plan, outlining broad policy goals. The Department also must combine each MPO's TIP into a Statewide Transportation Improvement Program (STIP) that lists all projects receiving federal funds over the next four years. Projects must be included in the STIP and approved by FHWA before they can receive federal funding.

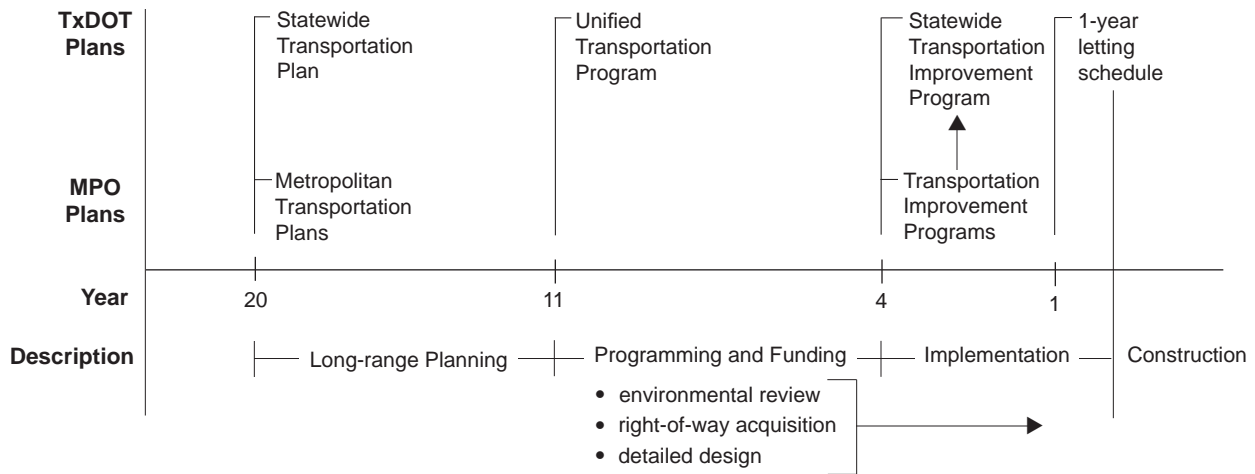
Although not required by federal or state law, TxDOT prepares a key, internal work program, the Unified Transportation Program (UTP), in addition to the federally required plans. Through this 11-year financial and project implementation plan, TxDOT projects how much federal and state transportation funding will be available in 12 project categories such as maintenance, safety, and mobility, and how much will be allocated to each MPO and district. MPOs and TxDOT's district offices use the funding levels established annually in the UTP to develop projects and prepare annual contract letting schedules. The *Transportation Planning Timeline* depicts the relationships between the UTP and the various federally required plans.

---

*TxDOT districts and MPOs use the UTP to develop projects and prepare letting schedules.*

---

### **Transportation Planning Timeline**



**TxDOT's long-range planning efforts are disjointed and do not result in a comprehensive and understandable view of the state's transportation needs compared to available resources.**

- ◆ **Outdated statewide plan.** The Department has not updated the long-range statewide policy plan, the Texas Transportation Plan, currently known as the Statewide Transportation Plan, since 1994. Federal and state laws intend for this plan to provide an overarching, 20-year guide for transportation planning efforts. In the past, the plan provided an opportunity for extensive public, legislative, and other stakeholder

---

*TxDOT has not updated the Statewide Transportation Plan since 1994.*

---

input into the state's transportation goals. Other states' departments of transportation have recently updated their statewide transportation plans. For example, Florida last updated its plan in 2005, New York in 2006, and California in 2007.<sup>1</sup>

---

*Different funding forecasts create an inconsistent and sometimes unrealistic picture of available transportation funding.*

---

- ◆ **Disconnected goals.** The Transportation Commission has set important statewide transportation goals outside of its traditional transportation planning process. In August 2001, the Commission adopted a work group report containing six measurable goals for the state's transportation system. One of these goals, to develop a state highway system in which 90 percent of roads are in good or better condition by 2012, has significantly affected the Commission's road maintenance funding decisions in recent years.<sup>2</sup> TxDOT has not developed a clear process to update, provide links to other statewide planning efforts, or regularly report on the progress of the goals.
- ◆ **Inconsistent forecasting.** TxDOT and each MPO develop long-range funding forecasts independently of each other, resulting in inconsistencies among different regions of the state. Each MPO develops an independent funding forecast to select projects for and prepare its 20-year plan. By federal requirement, the plans must be "financially constrained" so the costs of the selected projects cannot exceed projected revenues. Each MPO policy board, not FHWA or TxDOT, approves the assumptions underlying the estimated future amount of federal and state revenues guiding these long-range planning decisions. Examples of assumptions that vary between MPOs include optimistic predictions of state or federal gas tax increases, construction cost inflation factors, and anticipated awards of Commission discretionary funds.

Some MPOs use a conservative estimate of future state funding, while others use more aggressive predictions. Overly optimistic estimates can enable MPOs to include more or larger projects in their long-range plans. Since projects in long-range plans feed directly into shorter-term MPO and TxDOT programs, different forecasts create an inconsistent and sometimes unrealistic picture of resources available to meet regional transportation needs.

---

*TxDOT has not set clear, measurable, long-term transportation goals and does not track project implementation.*

---

- ◆ **Unclear, disconnected needs analysis.** TxDOT has not linked key information gathered through needs-based MPO plans to statewide transportation goals. In 2003, the Governor directed TxDOT and the eight largest MPOs to identify unmet transportation needs in their areas. This effort, called the Texas Metropolitan Mobility Plan, helped MPOs prioritize projects to include in TIPs, their financially constrained four-year programs.

In 2006, TxDOT used the plan to announce an \$86 billion shortfall between identified transportation needs and available funding, a figure based on a TxDOT methodology later questioned as unrealistically

high by the State Auditor's Office and the Governor's Business Council Transportation Task Force.<sup>3</sup> The plan, in any form, has not been integrated into an overall long-range transportation plan for the state, and the future use of the plan in the state's long-range planning framework is unclear.

Properly developed needs data envisioned in the plan could help frame the state's overall transportation problems and progress towards their solution in a coordinated, structured planning process.

**TxDOT's project selection and implementation system is not understandable or transparent.**

- ◆ *Undefined and uninformative UTP.* TxDOT internally develops the UTP, the key document for programming and financing state transportation projects, with no detailed guidance from state law or rule. Lack of written guidelines complicates the public's and Legislature's ability to understand TxDOT's processes and decisions underlying the UTP. For example, TxDOT staff develop the UTP's 11-year funding forecast without distinct procedures outlining how the forecast should be presented or regularly updated. TxDOT also develops formulas for allocating the UTP's 12 funding categories to MPOs and districts without procedures established in statute or rule.

The UTP's 600-page list of projects does not provide any information about which projects are most important to the state's overarching transportation goals. All projects listed within the same year of the document bear equal importance to TxDOT's central office staff, who are responsible for approving each stage of district implementation activities, such as environmental and right-of-way work. This approach results in the approval of projects on a first-come, first-served basis. Although the need for projects in line for construction has already been established, the relative importance of one project compared to another is not, weakening the focus of time and resources on identified statewide goals.

Neither the UTP nor any other document shows the status of projects through their critical developmental stages, such as preliminary design, environmental clearance, or right-of-way acquisition. The Department does not have a statewide system for measuring and reporting on progress toward these milestones in a project's development. TxDOT evaluates the success of district offices largely on maintaining contract letting volume, not on completing project phases or accomplishing high-priority projects.

Some TxDOT districts have developed internal project development tracking systems, and the Department has set up a working group to expand this concept statewide. This effort could be a starting point for a tracking system that informs the Department, the Legislature, and the public on projects' progress.

---

*TxDOT's key transportation project planning document is not in state law or rule.*

---

---

*TxDOT does not have a statewide system for reporting on transportation projects' progress.*

---



The chart, *Reporting on Transportation System Performance*, provides examples of how goals, measures, targets, and milestones could be used to report on the status of the state's transportation system.

**Reporting on  
Transportation System Performance**

Terms used to report on the performance of a transportation system vary among users. Several key monitoring terms, as used in this report, are defined below.	
Term	Examples
<b>Goal:</b> A long-term outcome at which all transportation projects are aimed.	<ul style="list-style-type: none"> <li>◆ Reducing congestion</li> <li>◆ Enhancing safety</li> </ul>
<b>Measure:</b> A yardstick to evaluate attainment of goals, milestones, or other aspects of a transportation system.	<ul style="list-style-type: none"> <li>◆ State congestion index</li> <li>◆ Pavement condition score</li> <li>◆ Bridge sufficiency rating</li> </ul>
<b>Target:</b> A specific point set for attainment of a measure, typically by a certain time. Movement toward the target defines the level of performance in attaining milestones and goals.	<ul style="list-style-type: none"> <li>◆ Attain a statewide congestion index of 1.10 by 2010</li> <li>◆ Have 90 percent of pavement mileage in good or better condition by 2012</li> </ul>
<b>Milestone:</b> A major phase of project development. Milestones are used to mark observable progress toward completing specific projects. These, in turn, are designed to achieve targets, measures, and goals.	<ul style="list-style-type: none"> <li>◆ Obtaining final environmental clearance for a project</li> <li>◆ Completing right-of-way acquisition</li> <li>◆ Awarding a contract to begin construction</li> </ul>

---

*TxDOT districts do not provide regular status updates on the progress of local transportation projects.*

---

- ◆ **Undefined work programs.** TxDOT districts do not develop publicly available work programs that identify the progress of transportation projects at the local level. Across the state, districts organize their work according to internally developed procedures that vary considerably. Neither state law nor TxDOT policy requires district offices to develop a clear, publicly available list of local projects. Districts do not consistently track or provide regular status updates on local progress towards project implementation milestones such as environmental clearance, right-of-way acquisition, or final designs.


Florida is one example of a state with a well-defined process for developing district work programs that feed directly into a statewide list of projects similar to the UTP. Districts develop tentative work programs with MPO input, and these programs are reviewed by central office staff and other transportation officials, the Governor's Office, and the Legislature before final adoption.<sup>4</sup> This system gives Florida policymakers and the public an opportunity for input and provides transparent information about the progress of transportation projects at the local level.

- ◆ **Uninformative reporting.** TxDOT does not provide consistent or meaningful reporting on the status of transportation planning and development to the public or the Legislature.

Although state law and General Appropriations Act riders require TxDOT to develop a variety of reports, these efforts are disconnected and do not provide comprehensive information about the condition of the state's transportation system. Since the Department has not set clear, measurable long-term goals and does not track project implementation milestones, neither the public nor the Legislature can assess how well the transportation system is performing, or what changes might be needed to improve it.

State models create many transparent, comprehensive transportation evaluation and reporting systems. Other states' departments of transportation, including Virginia and North Carolina, clearly display progress towards statewide goals on a "dashboard" interface on their websites.<sup>5</sup> The Florida Department of Transportation provides an annual report on the attainment of long- and short-range transportation goals, including specific measures.<sup>6</sup> The Washington State Department of Transportation provides biennial transportation attainment reports to its legislature detailing how the agency has progressed towards five legislatively adopted transportation goals.<sup>7</sup> Appendix A provides specific examples of how other states monitor and report on transportation performance.

---

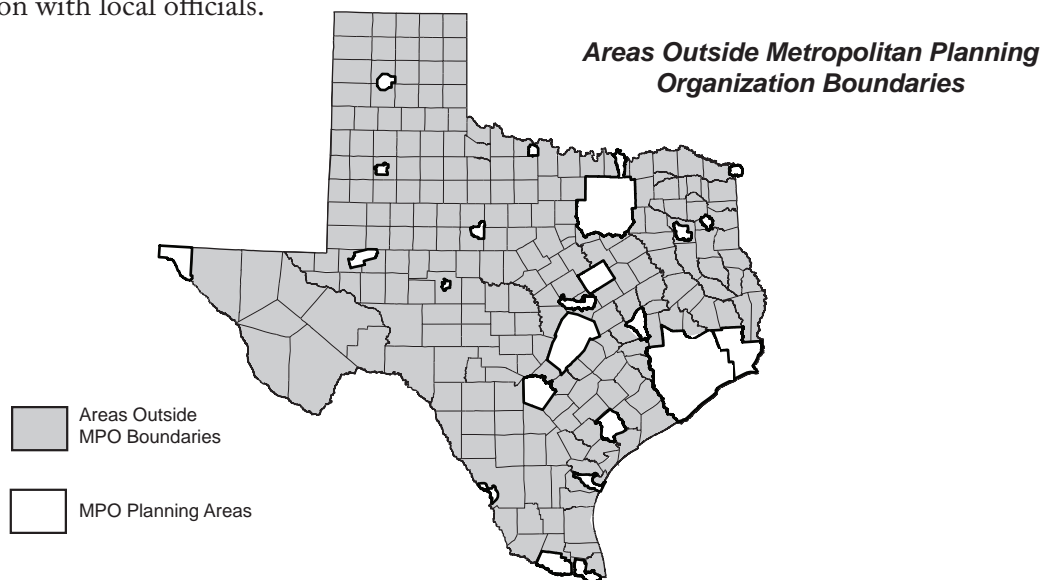


*Other states have comprehensive transportation evaluation and reporting systems.*

---

### **Rural areas of the state do not have a consistent role in long- or short-range transportation planning.**

- ◆ TxDOT's transportation planning does not give rural areas outside MPO boundaries the same opportunities available to MPOs for long-range planning or consistent input from local officials or the public. An estimated 3 million Texans currently live outside metropolitan areas.<sup>8</sup> The map, *Areas Outside Metropolitan Planning Organization Boundaries*, displays the large areas of Texas not included in formal MPO planning. In these areas, federal law does not require a long-range plan or a formal local planning structure, but it does require TxDOT to document its interaction with local officials.



---

*Other states have a more structured approach for rural transportation planning.*

---

- ◆ TxDOT delegates responsibility for rural project selection outside MPO boundaries to its district engineers, who interact with rural stakeholders on a project-by-project basis as the Department updates the STIP, the four-year list of projects receiving federal funding. The Department's minimum requirements for public participation in each district include a published notice of the proposed rural project list in a local newspaper, a 10-day public comment period, and one public hearing.<sup>9</sup> TxDOT encourages, but does not require, districts to go beyond these minimum standards. Many districts hold more than one public hearing and conduct meetings with local officials, but generally do not engage in longer-term planning beyond selecting the STIP's four-year list of projects.
- ◆ Although not required, more formal rural planning processes have developed in a few locations. The Wichita Falls district facilitated creation of the Cross Plains Rural Transportation Council to provide structured input into rural project selection. The Capital Area Regional Transportation Planning Organization, organized by the Capital Area Council of Governments, provides a forum for planning and evaluating transportation projects for 10 counties in Central Texas.

Other states have a more structured approach for rural transportation planning than Texas. In many states, such as California, Colorado, Florida, New York, and South Carolina, councils of governments or regional planning commissions are involved in rural transportation planning, with varying degrees of formality and funding from their state departments of transportation. New Mexico, North Carolina, Oregon, and Washington fund transportation planning organizations outside MPO boundaries.<sup>10</sup>

## Recommendations

### Change in Statute

#### **2.1 Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.**

This recommendation would significantly alter TxDOT's current long-range planning process by integrating its various planning efforts into a single, measurable plan. This new plan should present a focused, meaningful vision to guide all of TxDOT's and MPOs' other short-range planning and programming efforts.

The new plan would re-engineer the Statewide Transportation Plan, already required by both federal and state law. The current state statute governing the Statewide Transportation Plan requires the Department to include all modes of transportation in long-range planning; seek opinions and assistance from other state agencies and political subdivisions that have responsibility for transportation; include a component that is not financially constrained and that identifies improvements designed to relieve congestion; and to annually report on progress using measures such as travel time improvements.<sup>11</sup>



This recommendation would add to existing provisions by requiring the following elements.

- ◆ **Measurable goals.** TxDOT would develop specific, long-term transportation goals for the state, and measurable targets for each goal. For example, a goal could be reduction in traffic congestion, with a set target to achieve a specific reduction in the traffic congestion index within a certain timeframe. The Department would report annually to the Legislature on its progress toward these goals, as already required in state law. This information also would be easily accessible from TxDOT's website.
- ◆ **Statewide priorities.** The Department would identify priority corridors, projects, or areas of the state of particular concern in meeting statewide goals.
- ◆ **Participation plan.** TxDOT would develop a participation plan specifying methods for obtaining formal input on statewide goals and priorities from other relevant state agencies, political subdivisions, local planning organizations, and the general public.
- ◆ **Regular updates.** The plan would span 20 years, as do the long-range plans of MPOs, and would be updated every five years when most MPOs update their long-range plans.
- ◆ **Forecast assumptions.** TxDOT and MPOs would collaborate to develop mutually acceptable assumptions for long-range federal and state funding forecasts. These assumptions would guide TxDOT's and MPOs' long-range planning in the Statewide Transportation Plan and Metropolitan Transportation Plans.
- ◆ **Integration with other long-range plans.** All other long-range transportation planning and policy efforts would support the specific goals outlined in the Statewide Transportation Plan, including the Department's publicly distributed strategic plan, the Texas Metropolitan Mobility Plan, and plans guiding other modes of transportation such as the rail and airport system plans. TxDOT should clearly reference how these plans fit together with and support the Statewide Transportation Plan. For example, TxDOT could use the Texas Metropolitan Mobility Plan to partially satisfy the statutory requirement to provide a needs-based element to the Statewide Transportation Plan by clearly linking it to the Statewide Transportation Plan.

Establishing this long-range plan would give a high-level prioritized focus from which all other transportation planning and measurement programs would flow.

## **2.2 Establish a transparent, well-defined, and understandable system of project programming within TxDOT that integrates project milestones, forecasts, and priorities.**

This recommendation would place the framework for TxDOT's transportation programming process in statute to provide greater visibility about its overall purpose and greater control to the Legislature regarding the way TxDOT makes transportation decisions. Specific elements of the programming process would be left to the Department through rulemaking. Under the recommendation, TxDOT would be required to establish a project development plan and statewide work program that largely reflects its current internal programming document, the Unified Transportation Program (UTP). In doing so, TxDOT would be required to annually set target funding levels and list all projects it plans to develop and begin constructing over an 11-year time period. The recommendation would not, however, require the specific list of projects to be established in statute or rule to maintain the Department's flexibility to make adjustments during project implementation.

TxDOT would collaborate with its local transportation partners to update the actual programming document each year. The annual updates would include funding scenarios, a list of major projects and milestones, and project priority groups, as guided by agency rules, discussed in more detail below. The Department would be required to work with MPOs and other local planning entities to develop scenarios for the annual funding forecast based on a range of underlying assumptions. TxDOT, however, would be responsible for determining the forecast to be used for statewide planning purposes by MPOs and TxDOT. The Department would also develop publicly available summary documents highlighting project milestones, priorities, and forecasts in a way that is understandable to the public.

The recommendation would require TxDOT to define, in rule, program funding categories, such as safety, maintenance, and mobility. These rules would also describe how the Department selects projects for inclusion in the program in cooperation with MPOs and local partners. In implementing the recommendation, TxDOT must ensure that rules do not conflict with federal transportation planning requirements. TxDOT would also be required to adopt rules, as discussed below, to provide tools that are not in its current programming process, to better manage and monitor the Department's performance.

- ◆ **Project milestones.** Through a process clearly defined in rule, TxDOT and its local partners would be required to develop milestones for implementation of major transportation projects in the programming document. Milestones would need to be set for both implementation and construction phases. These partners would define a “major project” so that creating and tracking milestones would not be unreasonably difficult to implement. The list of major projects would be updated annually, and projects could not enter the four-year implementation phase of the programming document unless critical milestones were met. Milestones should include, at a minimum, target timeframes for each major stage of project development, such as preliminary engineering, advance planning and environmental review, right-of-way acquisition, and production of final plans, specifications, and estimates.
- ◆ **Project priority groups.** Through a process clearly defined in rule, TxDOT and local partners would assign all projects in the programming document to broad priority groups. The highest priority group would reflect the list of major projects identified for milestone tracking. Other projects would be grouped into categories of lesser priorities. Grouping projects in this manner would establish prioritized categories instead of prioritized projects, a difficult task to accomplish when many projects carry similar importance in different regions of the state. TxDOT's central office staff could use project priority groups as one indicator to help allocate staff time and resources to the most important statewide projects. Prioritization also would make the programming document more useful in explaining how TxDOT's work program is meeting statewide goals.
- ◆ **Funding allocations.** The Department would be required to establish and regularly update formulas for allocating funds in each program category at least every five years through a clearly defined rulemaking process.

This recommendation would require TxDOT to annually produce a programming document that shows the progress of transportation projects through development, promotes the allocation of resources systematically among competing priorities, provides reasonable projections of future funding to help planning and avoid surprises, and increases the overall transparency of project programming.

### **2.3 Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects.**

This recommendation would require each TxDOT district to develop a consistent, publicly available work program based on projects in the programming document described in Recommendation 2.2. These work programs would cover a four-year period and include all projects that districts will implement during that time. The work programs would track major projects in the same way as the overall programming document, according to project implementation milestones developed in cooperation with local transportation partners. Information on lower priority projects would also be available in summary form. For example, road maintenance goals could be described broadly, such as percent of district roads in good or better condition.

District work programs would provide valuable information describing the status of local projects to transportation partners and the public. TxDOT should use information in the work programs to monitor performance of the district and key district personnel.

### **2.4 Require TxDOT, with input from transportation partners and policymakers, to develop a system to measure and report on progress in meeting transportation goals and milestones.**

This recommendation would require TxDOT to develop a comprehensive reporting system, with input from the Legislature, local planning organizations, and the public. The system would provide analyzed information on progress towards statewide long-range transportation goals described in Recommendation 2.1, and specific statewide and district project milestones as described in Recommendations 2.2 and 2.3.

TxDOT would provide at least three types of reports that would be available on TxDOT's and districts' websites in a searchable and easily accessible format.

- ◆ **Statewide report.** The Department would prepare the "State of Texas Transportation" report, providing a high-level summary of annual progress in meeting transportation goals. The report would include information about attainment of statewide goals as described in the Statewide Transportation Plan, progress in attaining major priorities, a summary of success in meeting statewide project implementation milestones, and information about the accuracy of past financial forecasts. The report would be formally presented to legislative committees with oversight of transportation issues each year, and be easily accessible on the Department's website.
- ◆ **Legislative district report.** Each year, TxDOT would develop "report card" information similar to that contained in the State of Texas Transportation report, but specific to each state legislative district. TxDOT would provide members of the Legislature with this specific report and meet with them at their request to explain it.
- ◆ **TxDOT district report.** TxDOT would provide this same type of report for each of its districts, forwarding it to local planning entities, cities, county commissioners courts, regional planning councils, and other appropriate local entities in the TxDOT district.

This recommendation would allow the public and the Legislature to track the status of the state's transportation system and the progress of local transportation projects through easily accessible, meaningful information. As part of this recommendation, the Legislature should consider eliminating

many of the reports it requires TxDOT to produce by rider in the General Appropriations Act, since information they contain would be available through the newly created reporting system.

## **2.5 Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state.**

This recommendation would require TxDOT to facilitate the creation of transportation planning groups in rural areas, in cooperation with councils of governments, city and county governments, MPOs, and other local transportation partners. The structure and membership of rural planning groups could vary depending on the local situation. The Cross Plains Rural Transportation Council, created in TxDOT's Wichita Falls district, could serve as one model for membership in its inclusiveness of counties, cities, rural transit providers, chambers of commerce, TxDOT and MPO officials, interested citizens, and elected officials.

This recommendation would help rural planning groups participate in a formal, organized way in all aspects of transportation planning, including contributing to long-range statewide planning, selecting projects for development, and establishing project implementation milestones in cooperation with TxDOT. Rural planning groups also would be responsible for selecting projects for inclusion in the four-year Statewide Transportation Improvement Program, instead of leaving this task to district engineers as is currently the case. As part of this recommendation, TxDOT should consider whether changing some district boundaries to align more closely with those of councils of governments would better facilitate rural planning.

TxDOT would help fund and staff these rural planning efforts. The Department could use a portion of existing Statewide Planning and Research funds, provided by the federal government for statewide long-range planning, to support rural planning efforts. Because these funds require a local match, TxDOT should work with rural planning groups to determine match needs and any available funds. The Department should consider using some of its transportation development credits to cover a portion of the local match. The Federal Highway Administration approves these credits when TxDOT, a toll authority, or a private entity funds a capital transportation investment with toll revenues earned on existing toll facilities. The credits do not provide additional funding, but TxDOT may use them in place of the local matching dollars.

This recommendation would provide an organized, predictable planning process for rural areas of the state similar to that of metropolitan areas. Under this recommendation, rural planning groups would have clear authority, similar to MPOs, to set local priorities and approve transportation projects within their planning boundaries. TxDOT should retain authority to plan, select, and approve statewide connectivity projects in rural areas, with input from these rural planning groups.

### **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the State. TxDOT would incur initial costs in redeveloping the Statewide Transportation Plan, restructuring the transportation planning document known as the Unified Transportation Program, reporting on performance, and supporting rural planning efforts. The Department should cover these associated costs through its existing budget, or if necessary, seek additional funding through the appropriations process, particularly for any significant information technology needs.

The Department potentially could use federal Statewide Planning and Research funds for rural transportation planning, as indicated by TxDOT and the Federal Highway Administration. TxDOT

could use a portion of its transportation development credits to meet the local match requirement for these funds, much like it did in March 2008 when the Transportation Commission approved the use of \$8 million in credits to match federal planning funds allocated to metropolitan planning organizations.<sup>12</sup> Currently, TxDOT has a balance of more than \$695 million available in these credits.

TxDOT already provides staff support to assist local officials outside MPOs in their planning efforts. TxDOT also has begun development of an internal project tracking system, and these or other staff resources could be allocated to the development of a comprehensive tracking system as recommended.

.....

<sup>1</sup> Florida Department of Transportation, Florida Transportation Plan, [www.dot.state.fl.us/planning/ftp/default.htm](http://www.dot.state.fl.us/planning/ftp/default.htm); New York State Department of Transportation, New York State's Transportation Plan, [www.nysdot.gov/portal/page/portal/main/transportation-plan/transportation-plan](http://www.nysdot.gov/portal/page/portal/main/transportation-plan/transportation-plan); and California Department of Transportation, California Transportation Plan, [www.dot.ca.gov/hq/tpp/offices/osp/ctp.html](http://www.dot.ca.gov/hq/tpp/offices/osp/ctp.html). Accessed: May 4, 2008.

<sup>2</sup> Texas Transportation Commission Minute Order 108608, August 30, 2001.

<sup>3</sup> State Auditor's Office, *The Department of Transportation's Reported Funding Gap and Tax Gap Information*, report no. 07-031 (Austin, Texas, April 2007); and Governor's Business Council Transportation Task Force, *Shaping the Competitive Advantage of Texas Metropolitan Regions* (Austin, Texas, November 2006). Online. Available: [www.texasgbc.org/Trans%20Report%20Docs/Shaping%20the%20Competitive%20Advantage.pdf](http://www.texasgbc.org/Trans%20Report%20Docs/Shaping%20the%20Competitive%20Advantage.pdf). Accessed: May 8, 2008.

<sup>4</sup> Florida Department of Transportation, *Process for Developing the Work Program* (July 2002). Online. Available: [www.dot.state.fl.us/programdevelopmentoffice/Development/orchidbook.PDF](http://www.dot.state.fl.us/programdevelopmentoffice/Development/orchidbook.PDF). Accessed: May 6, 2008.

<sup>5</sup> Virginia Department of Transportation, Dashboard Performance Rating System for Projects and Programs, [dashboard.virginiadot.org/default.aspx](http://dashboard.virginiadot.org/default.aspx); and North Carolina Department of Transportation, Organizational Performance Dashboard, [www.ncdot.org/programs/dashboard/](http://www.ncdot.org/programs/dashboard/). Accessed: May 4, 2008.

<sup>6</sup> Florida Department of Transportation, *2006 Short Range Component of the 2025 Florida Transportation Plan and Annual Performance Report* (February 2007). Online. Available: [www.dot.state.fl.us/planning/policy/pdfs/src.pdf](http://www.dot.state.fl.us/planning/policy/pdfs/src.pdf). Accessed: May 4, 2008.

<sup>7</sup> Washington State Department of Transportation, WSDOT Accountability and Performance Information, [www.wsdot.wa.gov/accountability](http://www.wsdot.wa.gov/accountability). Accessed: May 4, 2008.

<sup>8</sup> State Data Center and Office of the State Demographer, *2006 Total Population Estimates for Texas Metropolitan Statistical Areas*. Online. Available: [txsdc.utsa.edu/tpepp/2006\\_txpopest\\_msa.php](http://txsdc.utsa.edu/tpepp/2006_txpopest_msa.php). Accessed: April 29, 2008.

<sup>9</sup> Texas Administrative Code, Title 43, part 1, rule 15.7(m)(2).

<sup>10</sup> National Academy of Public Administration, *Rural Transportation Consultation Processes: State by State Summaries of the Processes Used and Local Views on Them* (Washington, D.C., 2001). Online. Available: [www.napawash.org/pc\\_management\\_studies/Rural\\_Trans\\_State\\_April\\_2001.pdf](http://www.napawash.org/pc_management_studies/Rural_Trans_State_April_2001.pdf). Accessed: April 29, 2008.

<sup>11</sup> Texas Transportation Code sec. 201.601.

<sup>12</sup> Texas Transportation Commission Minute Order 111291, March 27, 2008.





## *Responses to Issue 2*

---

### **Recommendation 2.1**

**Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.**

### **Agency Response to 2.1**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

### **For 2.1**

Noble J. Campbell and the citizens of Trinity County

Alan Clark, MPO Director – Houston-Galveston Area Council, Houston

David Crossley, President – Gulf Coast Institute, Houston

Terry Henley, Second Vice President – Texas Association of Regional Councils and Alderman – City of Meadows Place

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Melvin Krahn, Adkins

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Gene Stanush, Adkins

### **Against 2.1**

None received.

### **Modifications to 2.1**

1. Include in the Statewide Transportation Plan:
  - ◆ goals and performance measures that have been developed in cooperation with the general public, and urban and rural stakeholders;
  - ◆ an assessment of current congestion levels across the state (by geographic area) and short- and long-term strategies to mitigate congestion; and
  - ◆ demonstrated relationship between transportation decisions and the improvement of performance measures.

(Alan Clark, MPO Director – Houston-Galveston Area Council, Houston)

2. Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan using formal input from state agencies, political subdivisions, local planning organizations, and the general public to reach mutually acceptable descriptions of total system needs, statewide transportation goals, and the measurement of progress toward those goals. (Members of CorridorWatch.org, Fayetteville; Martha Estes, Hempstead; James R. Lee, Alvin)
3. Require development of the plan to adhere to modern American planning principles, so that the plan begins with citizen values and is arrived at through an inclusive, open public process. TxDOT needs to have citizens help set the agenda, invite citizens to comment and consider these comments before the plans move too far along. (David Crossley, President – Gulf Coast Institute, Houston)
4. Require TxDOT to use certified land use planners when developing long-range transportation plans to ensure transportation planning is linked to land use. (David Crossley, President – Gulf Coast Institute, Houston)
5. Require TxDOT to recruit and retain professional planners, and provide every TxDOT engineer extensive training in land use planning and transportation alternatives to highways. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
6. Require that TxDOT fulfill its mandate to work with local/county officials by soliciting input from local residents and voters rather than allowing the Department to become the instrument or tool for special interests and poorly informed planning. (Frank H. Dietz, New Braunfels)
7. Require TxDOT to provide clear, understandable expense information in the Statewide Transportation Implementation Plan. (Sharon Levett – Citizens Alliance for Smart Expansion, New Braunfels)
8. Require written authorization for major deviations from the project goals after ample study by management. (Gene Stanush and Melvin Krahn, Adkins)
9. Require TxDOT to simplify planning processes by studying and using other states’ successful operational formats and reducing processes to the minimal necessary steps. (Edward B. Campbell, Brookshire)

### **Recommendation 2.2**

***Establish a transparent, well-defined, and understandable system of project programming within TxDOT that integrates project milestones, forecasts, and priorities.***

#### **Agency Response to 2.2**

The Department concurs that formalizing the Project Selection Process through rulemaking, including the development of funding formulas, program funding categories and the Unified Transportation Program (UTP), is appropriate. It should be noted that this will be a significant undertaking with substantial costs and require a large amount of staff resources to complete.



### **Agency Response to 2.2** (continued)

However the process would become more uniform and understandable for future use. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

### **For 2.2**

Noble J. Campbell and the citizens of Trinity County

Alan Clark, MPO Director – Houston-Galveston Area Council, Houston

David Crossley, President – Gulf Coast Institute, Houston

Terry Henley, Second Vice President – Texas Association of Regional Councils and Alderman – City of Meadows Place

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

### **Against 2.2**

None received.

### **Modifications to 2.2**

10. Require the Legislative Budget Board and TxDOT to work together to develop a commitment-based budgeting process for TxDOT. The process would include the following elements.

- ◆ Require TxDOT to submit to the Legislature a transportation plan that includes specific projects to be funded in the biennial appropriations cycle. The plan would establish timelines for completion of each major phase of the project such as project planning and design, right-of-way acquisition, environmental studies, projected construction start date, and projected project completion date. The plan would include alternate projects available for funding if any of the originally recommended projects were stalled.
- ◆ Require TxDOT to develop the plan with the assistance of its legislative oversight committees.
- ◆ Prohibit special earmarks for transportation projects.

(Representative Linda Harper-Brown, Member – Sunset Advisory Commission)

11. Require TxDOT to incorporate the following requirements into the transportation project planning, programming, selection and reporting process.

- a. Set aside and not just program the funds necessary to fund TxDOT's obligations when TxDOT enters into an agreement with a local government to jointly develop and fund a project.

- b. Implement a process at the district level to report on all local government and private sector funding and project implementation for improvements to the State Highway System, as a mechanism to measure and report on meeting transportation goals and milestones.
- c. Consider criteria in the project selection process that would allow the State to leverage their dollars with local governments, in an effort to establish a more transparent system for project programming.
- d. Incorporate the Pass-Through Financing Program into the criteria to meet statewide transportation goals, project programming, and project selection.
- e. Establish a separate funding category (not the current Category 12 – Commission Strategic Priority) for the Pass-Through Financing Program.
- f. Establish new project selection criteria for selecting and funding Pass-Through Financing projects, including but not limited to local leverage; how the project meets State and local long range transportation goals; and where the project is in the process related to major district initiatives and milestones.
- g. Consider an annual call for projects from local governments based on revised project selection criteria and State long-range transportation goals and programs.

(Dan A. Gattis, County Judge – Williamson County)

- 12. Require TxDOT to prioritize projects for which local governments are willing to take responsibility to deliver through innovative programs such as the Pass Through Finance Program. Give TxDOT the legislative mandate and resources to meet the demand of these programs. Dedicate secure, stable funding to these programs to ensure they remain available for local government participation. (Ed Chance, Montgomery County Commissioner – Precinct 3, Spring)
- 13. Require TxDOT to streamline standard intergovernmental agreements to expedite project delivery. (Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas)
- 14. Require the Legislature to establish a project programming framework that provides a funding control structure without impeding the State Transportation Board’s ability to plan and pursue project goals. (Members of CorridorWatch.org, Fayetteville)
- 15. With regards to the project programming process, require TxDOT to adhere more closely to adopted Metropolitan Transportation Plans, and require these plans to include full and complete integration of land-use and transportation interaction over the nominal 20-year future planning horizon. (Jim Vance, P.E., Taylor)
- 16. Require TxDOT to provide an on-going public account of key performance metrics for major transportation projects, including mitigating air quality impacts, improving safety, and mitigating traffic congestion. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)

17. Require that funds be allocated to TxDOT districts by a formula established by the Legislature and remove all funding authority from the Texas Transportation Commission. Move funding allocation decision-making authority on how to allocate the funds distributed by legislative formula to the local level through regional councils of government. (Oscar “Erik” Slotboom, Dallas)
18. Require TxDOT to provide clear, descriptive, and accurate project descriptions in regional planning documents. Require TxDOT to include page references to Mapsco, KeyMap, or equivalent local standard map in these project descriptions. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
19. Require TxDOT to use objective criteria for deciding which road projects get implemented. (James A. Kass, Austin)

### **Recommendation 2.3**

***Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects.***

#### **Agency Response to 2.3**

TxDOT currently provides project status reports to the Texas Congressional Delegation and state legislators as part of the General Appropriations Act, Rider 20 from the 80th Legislative Session. This information is updated quarterly and available on [www.txdot.gov/apps/rider14/](http://www.txdot.gov/apps/rider14/). In addition, the Department is currently updating a program to include an online map to inform legislators which projects are within their legislative district.

The Department also has an internal task force to assist with identifying areas for monitoring and reporting project development. We can incorporate the aspects discussed in this recommendation into the process. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 2.3**

Noble J. Campbell and the citizens of Trinity County

Cathy Catlett, Elgin

Blythe Christopher de Orne, Austin

David Crossley, President – Gulf Coast Institute, Houston

Theresa Gage Dieringer, Georgetown

Joan Stutts Escamilla, Bedias

Rance Frazier, Huntsville

B. Galle, Huntsville

Carrie Galle, Huntsville

**For 2.3** (continued)

Jennifer Hale, Austin

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Barry Maxwell, Austin

Cynthia Randall, Austin

Daniel Randall, Huntsville

Darrell Randall, Austin

Kay Randall, Austin

Joan Randall, Austin

Mary Randall, Huntsville

Anthony Rezendes, Austin

Melissa Roberts, Austin

Kristie Robles, Austin

Joe Robles, Austin

Yvette Scott, Pflugerville

Brady Severns, Austin

JoBeth Stutts, Huntsville

Christina Velasquez, Austin

Members of CorridorWatch.org, Fayetteville

Group A – see page 169

**Against 2.3**

None received.

### **Recommendation 2.4**

**Require TxDOT, with input from transportation partners and policymakers, to develop a system to measure and report on progress in meeting transportation goals and milestones.**

#### **Agency Response to 2.4**

The Department concurs with this recommendation and will continue to seek input from our transportation partners and policymakers on the planning process and progress reporting. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 2.4**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

Jere Thompson, Co-Chair, Dallas Citizens Council Transportation Committee

Geri Wells, Sugar Land

#### **Against 2.4**

None received.

#### **Modifications to 2.4**

20. Require TxDOT to develop an online, downloadable, and constantly updated “dashboard report” to provide useful and easy-to-understand information to the public, TxDOT managers, and others about how transportation funds are being used and the effectiveness of the agency’s construction and maintenance programs. The dashboard report would combine information from all of TxDOT’s plans into one master list that would be presented in an easy-to-navigate and searchable format. TxDOT would be required to implement the dashboard immediately, using information such as letting schedules that are currently available. TxDOT would use this system not only to report to the public, but to improve the daily operations of the agency by automating information gathering, and using the information as a management tool.

TxDOT would be required to include the following specific elements in the dashboard report.

- ◆ Details on funding sources for projects, including information linking specific sources of funding to specific projects.

- ◆ Project benchmarks and timelines, current progress towards goals for meeting specific benchmarks, and a list of project managers assigned to projects and their contact information.
- ◆ An annual review of project benchmarks and timelines to determine their completion rates and show whether the projects were on time.
- ◆ For projects scheduled to last more than one month or costing more than \$5 million, work zone information detailing the number of lanes open or closed; time of closure; and expected and measured delay when closed.
- ◆ Clearly defined criteria for projects classified as maintenance, and disclosure of the condition of a road prior to maintenance expenditures.
- ◆ Information about the sources of funding and expenditures by TxDOT district, spending category, and type of revenue, including private sources such as CDAs or toll revenue.
- ◆ Options to download statistical information in various formats, including html, pdf, excel, or other database programs.
- ◆ Information on “system needs and system wants,” and the effects of transportation spending to address problem areas, as described in Modification 21.

(Representative Lois Kolkhorst, Member – Sunset Advisory Commission)

**Staff Comment:** This Modification goes further than Recommendation 2.4 by requiring TxDOT to measure and report more specific detail on all projects on the system that is constantly updated rather than reported annually.

21. Require TxDOT to develop a process to clearly identify both the State’s transportation needs and the State’s transportation wants, and a system to report on the effects of spending on specific transportation problems. The “needs-and-wants” system would report locally-entered information about local transportation projects listed in priority order by district, as part of the online “dashboard report” described in Modification 20. A user would be able to easily compare projects in this system with projects actually in TxDOT planning or construction phases using the dashboard report.

Also require TxDOT to prepare a list of the most significant transportation problem areas in each TxDOT district, and report on the effectiveness of transportation spending in addressing these problems. Problem factors would include data on crashes, congestion, pavement quality, bridge quality, and other information to justify why each project is a priority. TxDOT would be required to analyze the effects of transportation spending on projects internally or through a university’s transportation research program. TxDOT would prepare “before and after” studies on the effect of all TxDOT spending programs. Performance measures would include the following indicators, many of which would be collected automatically in traffic management centers or are already collected in TxDOT reporting programs. The following indicators would be searchable on the dashboard report by county, road numbers, and functional road class:

- ◆ pavement condition indicators such as the International Roughness Index used by FHWA, and the percentage of pavement in good or better condition;
- ◆ bridge condition indicators such as structurally deficient, functionally obsolete, and bridge deterioration scores;
- ◆ congestion and traffic delay indicators, including the locations of the worst delays and variable travel times on major streets and highways, and the effects on both person and truck freight travel;
- ◆ crash, injury and fatality indicators including a list of the worst sections of road in the state by TxDOT district.

(Representative Lois Kolkhorst, Member – Sunset Advisory Commission)

**Staff Comment:** This Modification would complement Recommendations 2.2 and 2.4 by requiring TxDOT to report specific information linking state and local transportation priorities with outcomes of associated spending.

22. Remove the requirement for TxDOT to provide an annual Legislative district report. (Charles McMahan, Member – Sunset Advisory Commission)
23. Require TxDOT, for each transportation project costing more than \$15 million dollars, to have a report card at the completion of each project. The report card would show, at a minimum:
  - ◆ the type of project (repair, rehabilitation, new construction, etc.);
  - ◆ the original timeline to completion as compared to actual completion time;
  - ◆ original cost as budgeted compared to actual cost, with detailed explanations for variances; and
  - ◆ an aggregated statewide total of cost overruns.

Require this information to be on TxDOT's dashboard and available to the public via the Internet.

(Charles McMahan, Member – Sunset Advisory Commission)

**Staff Comment:** This Modification would complement Recommendation 2.4 and Modification 20 by requiring TxDOT to measure and report more specific detail about certain transportation projects on both the system and the dashboard.

24. Require TxDOT to develop timelines and budgets for all transportation projects, including maintenance, rehabilitation, and new construction projects. Require TxDOT to continuously monitor the projects to assure timely completion, lessen congestion related to the projects, and assure the budgets are being met. Require TxDOT to make this information transparent and available to the public so that they can track the projects that affect them. (Charles McMahan, Member – Sunset Advisory Commission)



25. Require TxDOT to establish a semi-annual reporting system to demonstrate funds available to each region of the state, the amount expended, the amount appropriated to particular projects, and the timeframe in which the appropriated projects are to begin. This report should be regularly reviewed by the Transportation Legislative Oversight Committee and published on the TxDOT website. (Jere Thompson, Co-Chair – Dallas Citizens Council Transportation Committee)
26. Require TxDOT to produce a report for the Legislature and the general public every other year that details the funding it has made in projects. The report should be developed on a geographical basis. (Alan Clark, MPO Director – Houston-Galveston Area Council, Houston)
27. Require TxDOT to produce a report for the Legislature and the general public every other year that details the costs to construct, operate, and maintain the statewide multi-modal transportation system. The report should carefully explain any significant changes in costs and make cost projections for no more than 10 years in the future. (Alan Clark, MPO Director – Houston-Galveston Area Council, Houston)
28. Require each TxDOT district to produce an asset inventory that details the initial construction date, dates of major rehabilitations, and expected useful life of roadways and bridges at a minimum. The report should also document TxDOT-owned rights of way. Ultimately, the district asset inventories would be consolidated to produce a statewide transportation asset inventory. (Alan Clark, MPO Director – Houston-Galveston Area Council, Houston)
29. In addition to the statewide report, legislative district report, and TxDOT district report, require TxDOT to provide a report for each region represented by a State Transportation Board member under a newly constituted Board proposed as a Modification to Recommendation 1.1. TxDOT would forward the report to Board members, regional planning councils, and other appropriate local entities in the Board district. The report would be formally presented to State Transportation Board members. (Members of CorridorWatch.org, Fayetteville)
30. Require TxDOT to make all of these reports searchable and easily accessible on the Department's website. (Members of CorridorWatch.org, Fayetteville)
31. Require TxDOT to also include input from the general public when developing a system to measure and report on progress in meeting transportation milestones. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
32. Require TxDOT to actively seek input from individuals and groups representing the public interest, not just policymakers and transportation partners. Require TxDOT to provide an opportunity much earlier in the process to determine what values and vision such plans should be adhering to and how the results will be measured. (Geri Wells, Sugar Land)



### **Recommendation 2.5**

**Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state.**

#### **Agency Response to 2.5**

A statutory requirement for coordination of transportation planning would formalize a process established by TxDOT through transportation planning rules. The current rules include provisions for rural Transportation Improvement Programs (TIPs) developed by TxDOT in consultation with local officials, and must be consistent with the statewide transportation plan developed under federal and state law. The rules require the development of a public involvement process for the development of rural TIPs, including public meetings and hearings for the purpose of obtaining comments on the proposed rural TIP. Projects must be selected in accordance with prescribed project selection procedures and in consultation with affected local officials. The Department would like to see rulemaking related to any statutory requirements carefully considered so as not to have the project selection process affected by parochial views. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 2.5**

Noble J. Campbell and the citizens of Trinity County

Alan Clark, MPO Director – Houston-Galveston Area Council, Houston

David Crossley, President – Gulf Coast Institute, Houston

Terry Henley, Second Vice President – Texas Association of Regional Councils and Alderman – City of Meadows Place

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

#### **Against 2.5**

Don P. Dixon, San Antonio

#### **Modifications to 2.5**

33. Establish Regional Planning Organizations through coordination with existing councils of governments and/or metropolitan planning organizations where applicable. (Alan Clark, MPO Director – Houston-Galveston Area Council, Houston)
34. If transportation development credits are used for the local match for rural planning groups, the credits should come from the 25 percent Commission discretionary pool, following TxDOT's current policy to utilize 25 percent of the credits as Commission discretionary and the remaining 75 percent allocated based on a competitive call for projects with Metropolitan Planning Organization input. (Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas)

35. Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state. However, do not realign TxDOT district boundaries to match councils of government. Instead, provide for and facilitate the creation of three to five Rural Planning Organizations (RPOs) comprised of counties within each State Transportation Board region that are not within an MPO. RPOs would have clear authority, similar to MPOs, to set priorities and approve transportation projects within their planning boundaries. (Members of CorridorWatch.org, Fayetteville)

### *Commission Decision*

Adopted Recommendations 2.1, 2.3, and 2.4 with Modifications 20 and 21 which require TxDOT to provide specific elements for the projects in its “dashboard report” on a constantly updated basis and to report specific information regarding the effects of spending on transportation problems. Adopted Recommendation 2.5.

Also adopted Recommendation 2.2 regarding transportation project programming, with a modification to require the Commissioner of Transportation to adopt, by rule, a funds allocation process and a project approval process with timelines for deliverables of the projects. TxDOT must produce and publish an official 10-year cash forecast no later than January 31 of odd-numbered years. The Commissioner must allocate the funds of the Department to the TxDOT districts based on the adopted formula and shall not exceed the cash flow projection.

### *Legislative Action*

The statutory recommendations were not adopted, as H.B. 300 failed to pass.

# Issue 3

---

## *TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Meaningful Public Involvement.*

---

### Summary

#### Key Recommendations

- ◆ Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agency-wide.
- ◆ Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.
- ◆ TxDOT should provide a formal process for staff with similar responsibilities to share best practices information.
- ◆ TxDOT should provide central coordination of the Department's major marketing campaigns.
- ◆ TxDOT should make its website easier to use.

#### Key Findings

- ◆ TxDOT does not provide consistent or sufficient agency-wide guidance on its public involvement efforts.
- ◆ TxDOT does not have an effective system to track and manage complaints.
- ◆ TxDOT does not coordinate its various marketing campaigns agency-wide.
- ◆ TxDOT's website does not provide easily accessible and organized information crucial to informed public involvement.

#### Conclusion

Federal and state law recognize the need for public access to and input into state agency decision making, requiring agencies to meet minimum standards. Sunset staff has also identified standard practices that are applied to most agencies during the Sunset process, such as effective complaints procedures and use of technology.

The importance of transportation to the state's economy and Texans' daily life, and the level of public interest in TxDOT and its functions place high expectations on the Department to ensure adequate public involvement. The recommendations in this issue require TxDOT to develop an agency-wide public involvement policy to strengthen its approach to public participation, including encouraging all of its divisions and districts to conduct more meaningful public input and to use this input in decision making. These recommendations also aim to improve the Department's public involvement efforts by requiring TxDOT to track and analyze complaint information, better coordinate its marketing campaigns, share agency best practices information, and improve its website.

## Support

**Federal and state law recognize the importance of open, responsive government by requiring agencies to meet basic standards for public information and public input.**

- ◆ Texas statutes require all state agencies to follow basic guidelines ensuring minimum standards for public involvement and public information. The Legislature enacted the Texas Public Information Act to help keep citizens of Texas informed of the actions and operations of state agencies, and to provide a process for the public to request important records relating to agency decision making and operations.<sup>1</sup> The Texas Open Meetings Act ensures that agencies conduct business in the open, notify the public about meetings where key decisions will be made, and make these meetings easily accessible.<sup>2</sup> Also, standard provisions applied to most agencies' statutes through the Sunset process require basic systems for tracking and analyzing complaints and using technology to effectively provide information to the public.
- ◆ Federal laws also provide for public involvement, particularly with regard to state transportation planning and project development. The National Environmental Policy Act requires varying levels of public involvement such as meetings with affected property owners and formal public hearings on a project-by-project basis, depending on size and complexity. Federal regulations also require that state departments of transportation and metropolitan planning organizations document how they involve the public in transportation planning as a condition of receiving federal funds. TxDOT's central office ensures that staff located in decentralized district offices adhere to these minimum federal requirements for public participation.

**TxDOT does not provide consistent or sufficient agency-wide guidance on its public involvement efforts.**

- ◆ Many of TxDOT's public involvement efforts are limited to a particular project or a single division or district office. TxDOT's central divisions and 25 district offices carry out their own public involvement efforts. While some of these divisions and district offices encourage and promote public involvement beyond what is minimally required by state and federal law, others do not.

For example, some district offices buy advertising to inform the public about major initiatives such as the Houston district's Katy Freeway project. Also, some divisions, like Environmental Affairs, encourage TxDOT district staff to provide additional public participation opportunities beyond the minimum federal standards, but district staff does not report directly to these divisions and is not required to go beyond the minimum standards or document any of its additional efforts.

---

*Both federal and state law require minimum public involvement efforts.*

---

---

*Some district offices make extra effort to involve the public, others do not.*

---

- ◆ Although the Department has begun to initiate new types of public involvement efforts, the result of these efforts is unclear. Recently, TxDOT held a series of town hall meetings along the route of the proposed I-69/TTC project.

Designed to spark public interest and allow the public to get answers to questions about the corridor, these meetings provided an unprecedented opportunity for public interaction with Commission members and TxDOT administration. These meetings were well attended and resulted in more than 28,000 comments. How the Department will use this input and whether it will impact the I-69/TTC project is unclear at this time, however.

---

*The impact of the town hall meetings on the I-69/TTC project remain unclear.*

---

- ◆ TxDOT does not have an agency-wide system enabling and encouraging division and district staff to share best practices information about public involvement or other efforts. Although staff shares information informally at various meetings and conferences, the Department does not have policies or practices in place to formally guide this process or to archive useful information in a central location accessible to staff, such as on its internal intranet site.

Other state agencies such as the Texas Education Agency provide a clearinghouse for information sharing between staff with similar responsibilities.<sup>3</sup> By better sharing best practices information, each of the Department's divisions and district offices could reduce duplication of time and effort, while producing more effective public information and public involvement efforts.

- ◆ Unlike TxDOT, the United States Department of Transportation emphasizes public involvement in transportation decision making, and provides information about how state departments of transportation can improve their efforts in this area. The textbox, *Guidelines for Transportation Public Involvement Programs*, provides an example of this information. These guidelines encourage states to go beyond passive public involvement by conducting active outreach and providing clear links between public input and decision making.

**Guidelines for Transportation Public Involvement Programs**

According to information provided by the United States Department of Transportation, public involvement should include the following elements.

- ◆ Should be more than simply following legislation and regulations.
- ◆ Should include continuous contact between agency and non-agency people throughout transportation decision making, from when needs are identified to implementation of a particular solution.
- ◆ Should use a variety of public involvement techniques that target different groups and individuals.
- ◆ Should include active outreach to the public.
- ◆ Should be focused on decisions rather than on conducting participation activities because they are required.

Source: United States Department of Transportation/ Federal Transit Administration, *Public Involvement Techniques for Transportation Decision-Making* (August 2002), p. iii-iv. Online. Available: [www.planning.dot.gov/Pitool/pdf/entire.pdf](http://www.planning.dot.gov/Pitool/pdf/entire.pdf). Accessed: May 10, 2008.

**TxDOT does not have an effective system to track and manage complaints.**

- ◆ TxDOT does not currently track or manage its complaints agency-wide even though it is statutorily required to keep an information file about each written complaint received.<sup>4</sup> As an agency responsible for providing

---

*TxDOT does not maintain information on the nature or final disposition of all complaints it receives.*

---

vital transportation services relied upon by almost every Texan on a daily basis, TxDOT receives numerous complaints about its own operations and conduct in addition to receiving consumer complaints about the businesses it regulates. Individuals may submit complaints to any of the Department's divisions or 25 districts, but the Department does not have any set policies or procedures that require staff to formally collect and report these complaints. In fiscal year 2007, TxDOT reported receiving an estimated 101,595 complaints. However, the Department cannot ensure that all of the complaints it receives are documented, tracked, and resolved.

For example, TxDOT does not maintain information on the nature of all the complaints it receives or the final dispositions of those complaints. While a few divisions and districts collect this information, such as consumer complaints against motor vehicle dealers, the majority do not.

- ◆ TxDOT provides information about its complaint resolution process on its website, but does not accept complaints through the Internet. Although the website states in several places that this prohibition is in accordance with state law, the prohibition is set in TxDOT rule, not state law.<sup>5</sup> Nothing in general law prevents an agency from accepting complaints over the Internet.

Also, the Department has not developed a standard complaint form that the public can use in making a complaint. Instead, the Department directs a person to submit their complaint either orally or in writing and to include their contact information, a statement and the underlying facts of the complaint, and the specific action or measure being requested of TxDOT. Without a standard form that is readily available to the public, the agency may not receive all information necessary to adequately investigate a complaint, thus requiring the agency to follow up with the complainant at a later time. Finally, the website does not clearly provide an address of where the complaint should be mailed.

- ◆ TxDOT does not maintain complete information regarding the nature of the complaints it receives, the final dispositions of those complaints, or the areas that produce the most complaints. Without this information, TxDOT cannot use the complaints it receives to analyze trends that may indicate larger problems. The Department has indicated that it is in the process of identifying a program which would provide for more accurate agency-wide data collection and hopes to implement the new system soon.

### **TxDOT does not coordinate its various marketing campaigns agency-wide.**

- ◆ TxDOT's divisions and district offices carry out various marketing campaigns. The Department's Traffic Operations, Travel, Vehicle Titles and Registration, Environmental Affairs, Government and Public Affairs, and other divisions conduct independent marketing campaigns



costing several million dollars each. The chart, *Selected TxDOT Marketing Campaigns*, describes some of these campaigns.

**Selected TxDOT Marketing Campaigns**

<b>Name (Division)</b>	<b>Purpose</b>	<b>FY 2007 Expenditures</b>
Driver safety initiatives such as Click It or Ticket (Traffic Operations)	seatbelt and child passenger seat safety, don't drink and drive, and others	\$9.9 million
Don't Mess With Texas (Travel)	litter prevention	\$2.1 million
Drive Clean Across Texas (Environmental Affairs)	vehicle emissions reduction	\$2.0 million
Keep Texas Moving (Government and Public Affairs)	toll roads and Trans-Texas Corridor information	\$1.6 million
Put Texas in Your Corner (Vehicle Titles and Registration)	vehicle registration renewal	\$1.0 million
You Hold the Key (Automobile Burglary and Theft Prevention Authority)	car burglary and theft prevention	\$1.0 million

- ◆ The Department does not coordinate these campaigns, particularly the media buys such as billboards associated with them. In one case, several different divisions purchased signs during the same time period along a single stretch of I-35. This lack of coordination misses an opportunity for efficiency through group purchasing.

**TxDOT's website does not provide easily accessible and organized information crucial to informed public involvement.**

- ◆ TxDOT does not provide consistent, easily accessible information on its main website, [www.dot.state.tx.us](http://www.dot.state.tx.us). Information about local transportation projects, provided on a separate page for each district office, does not consistently highlight key local projects, their status, and how the public can provide input during the local planning process. The website's homepage does not include a clear link to general information describing how the public can take part in transportation policy making at the statewide level. The website also does not provide an easily searchable database of Transportation Commission minute orders, the official policy of the Department. As discussed in Issue 2, comprehensive and well-organized information about transportation policy, the status of projects, and how the public can provide input is critical to the Department's transparency and accountability.
- ◆ Searching for and accessing information on TxDOT's website is difficult for a user not familiar with the Department's organizational structure. With the rise of the Internet search engine, the public has grown accustomed to obtaining information through simple word searches without having in-depth knowledge about a subject or even knowing

---

*Navigating  
TxDOT's website  
is confusing  
and difficult.*

---

how to spell the search terms. TxDOT's website's search function is not intuitive, and does not easily lead to complete information about topics searched.

For example, a search for "toll roads" from TxDOT's home page returns one document, "Benefits of Toll Roads." Switching the default search from keyword to free form, however, provides 57 results. Given the large amount of data provided on the Department's website, an effective search function is critical so that users can find the most important and current information quickly.

The Department maintains several other, independent websites for different projects and campaigns. For example, for toll road information, the Department maintains [www.keeptexasmoving.com](http://www.keeptexasmoving.com) to describe mobility projects, primarily the Trans-Texas Corridor; [www.ttc.keeptexasmoving.com](http://www.ttc.keeptexasmoving.com) a dedicated Trans-Texas Corridor website; [www.txtag.org](http://www.txtag.org) to provide information about electronic toll tags; and [www.texasollways.com](http://www.texasollways.com) to provide information about the Department's toll roads. Knowing where to go to get complete information about toll roads is confusing and difficult with all of these separate websites, each providing different information. These multiple websites further complicate the public's understanding of the state's transportation policymaking process and TxDOT's organization, responsibilities, and activities.

## Recommendations

### Change in Statute

#### **3.1 Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agency-wide.**

This recommendation would require TxDOT to develop an official policy that provides guidance outlining additional public involvement strategies such as those suggested by the U.S. Department of Transportation, and consider requiring district and division staff to document these activities.

TxDOT should also work to clearly tie public involvement to decision making and provide clear information to the public about the specific outcomes of their input. This recommendation should apply to all public input with TxDOT, including into statewide transportation policy making as discussed in Issue 2, specific projects through the environmental process, and all of the Department's rulemaking procedures. This recommendation would help shift the agency away from focusing on meeting statutory mandates, and towards actively using meaningful public involvement to help it make quality transportation system decisions.

#### **3.2 Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.**

This recommendation would require TxDOT to develop policies and procedures to formally document and effectively manage the complaints it receives agency-wide according to the following provisions.



- ◆ Adopt rules that clearly define TxDOT's complaint process from receipt to disposition, and specify that these rules apply to each of its divisions and districts.
- ◆ Develop a standard form for the public to make a complaint to the Department. The complaint form should be available to the public on the Department's website and complaints should be accepted through the Internet.
- ◆ Compile detailed statistics and analyze complaint information trends to get a clearer picture of the problems the public has with TxDOT's functions and responsibilities. This complaint data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. The Department should track this information on a district basis, as well as by each division. TxDOT should report this information monthly to administration and quarterly to the agency head.

These provisions, combined with recommendations in Issues 5 and 6, would strengthen TxDOT's complaint process and ensure the Department, the public, and the Legislature are aware of complaint trends that could indicate concerns with TxDOT's operations.

## **Management Action**

### **3.3 TxDOT should provide a formal process for staff with similar responsibilities to share best practices information.**

TxDOT should establish an internal program to capture, disseminate, and archive useful examples of division and district staff best practices. This effort should initially focus on collecting examples of successful approaches to public involvement, but could eventually include information about other responsibilities common to many Department staff. As part of this recommendation, TxDOT should consider establishing a page on its internal website, Crossroads, to centrally locate and highlight this information. This recommendation would provide helpful examples to staff responsible for public involvement, limit duplication of effort between staff with similar responsibilities, and improve communication between the Department's many offices.

### **3.4 TxDOT should provide central coordination of the Department's major marketing campaigns.**

TxDOT's central office should provide statewide coordination for all major marketing campaigns. Under this recommendation, the Department should establish guidelines defining major marketing campaigns and establish a procedure for coordinating activities such as purchasing advertising space, entering into consultant contracts, and timing press releases between divisions and districts. This recommendation would ensure that the Department maximizes its significant purchasing power.

### **3.5 TxDOT should make its website easier to use.**

TxDOT should provide clear, easily accessible information on its website's homepage about the status of the state's transportation system, including information about how the public can get involved. In particular, the Department should improve the consistency of local information by ensuring that each district's webpage presents similar information highlighting key local projects, their status, and how the public can provide input at the local level. In combination with the recommendations in Issue 2, these changes would improve the accountability and transparency of TxDOT's operations.

TxDOT should work to make its website more user-friendly by upgrading its search engine and providing access to a searchable database of Transportation Commission minute orders. The Department should

also consider integrating all of its transportation information onto one website, to the extent possible, or at a minimum ensuring that the Department's main web page related to a particular topic provides links to any of its other websites or web pages related to that topic. These changes would make it easier to find information critical to informed public participation.

## **Fiscal Implication**

The recommendations in this issue would not have a significant fiscal impact. TxDOT could use existing staff and resources to better track complaints, develop statewide guidance encouraging better public involvement, institute a best practices program, and improve its website. The recommendation to better coordinate marketing campaigns could produce savings by taking advantage of the Department's purchasing power, but an exact amount could not be estimated.

.....  
1 Texas Government Code, Chapter 552.

2 Texas Government Code, Chapter 551.

3 Texas Education Agency, *Best Practices Clearinghouse*. Online. Available: [www.tea.state.tx.us/bestprac/](http://www.tea.state.tx.us/bestprac/). Accessed May 11, 2008.

4 Texas Transportation Code, sec. 201.801.

5 Texas Administrative Code, Title 43, part 1, rule 3.23(d).

## *Responses to Issue 3*

---

### **Recommendation 3.1**

**Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agency-wide.**

### **Agency Response to 3.1**

The Department concurs with this recommendation and we are currently working on ways to be sure public involvement opportunities are apparent through the Department's website. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

### **For 3.1**

Noble J. Campbell and the citizens of Trinity County

Alan Clark, MPO Director – Houston-Galveston Area Council, Houston

David Crossley, President – Gulf Coast Institute, Houston

Martha Estes, Hempstead

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

Geri Wells, Sugar Land

### **Against 3.1**

None received.

### **Modifications to 3.1**

1. Require TxDOT to provide the ratio of positive/supportive public input to negative public input relating to all environmental impact statements. Making this information available will provide the documentation necessary to assure the public that the information provided to the Federal Highway Administration accurately represents the views expressed by the public through TxDOT's public involvement process. Require TxDOT to present this information to the Transportation Commission in an open meeting, and to report this information on its website in a timely manner. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)

2. Require TxDOT to not only involve the public, but to also use the results of that public feedback to guide its plans. (Cathy Catlett, Elgin; Blythe Christopher de Orne, Austin; Theresa Gage Dieringer, Georgetown; Jennifer Hale, Austin; Barry Maxwell, Austin; Cynthia Randall, Austin; Daniel Randall, Huntsville; Darrell Randall, Austin; Joan Randall, Austin; Kay Randall, Austin; Mary Randall, Huntsville; Anthony Rezendes, Austin; Melissa Roberts, Austin; Kristie Robles, Austin; Joe Robles, Austin; Yvette Scott, Pflugerville; Brady Severns, Austin; Christina Velasquez, Austin)
3. Require TxDOT to adopt policies that actively encourage and facilitate greater public participation as a formal component of planning, maintenance and operation, beginning at the lowest level of the organization. (Members of CorridorWatch.org, Fayetteville; James R. Lee, Alvin)
4. Require TxDOT to formally adopt policies that ensure more public involvement opportunities occur at the district and regional level and that the input provided is documented and considered in the decision-making process. Such reports and documentation should be made public and provided to the appropriate regional member of the State Transportation Board. (Members of CorridorWatch.org, Fayetteville)
5. Require TxDOT to provide clear and meaningful feedback to the public about the specific outcomes of their input. (Members of CorridorWatch.org, Fayetteville)
6. Require TxDOT to formally adopt policies that ensure public involvement opportunities are not used for marketing and public relations efforts aimed at swaying public opinion or directing the outcome of public participation. (Members of CorridorWatch.org, Fayetteville)
7. Require TxDOT to participate with and solicit input provided through citizen and community-based organizations. (Members of CorridorWatch.org, Fayetteville)
8. Direct TxDOT to avoid direct involvement in the selection of public participants from whom they will seek advice. (Members of CorridorWatch.org, Fayetteville)
9. Require TxDOT to have a more ethical, transparent, and formal process for receiving and evaluating public comments on road projects. (Joan and David Black, Houston)
10. Require TxDOT to conduct active outreach (beyond advertising) to invite people in all dimensions of community life to participate in the process of thinking about the future transportation needs in our communities and throughout Texas and in planning and supporting those efforts. (Geri Wells, Sugar Land)
11. Require TxDOT to get local citizens involved in planning transportation projects early in the process, instead of TxDOT making decisions and citizens having to fight to make changes later. (Hal Suter, Chairman – Beach Access Coalition, Corpus Christi)
12. Require TxDOT to work constructively with adversely affected communities, transportation partners, and policymakers. (Brent Wesley Amos, Acting Director – Bluebonnet Neighborhood Association, Elgin)

13. Require TxDOT to meaningfully consult within those communities that will be impacted by TxDOT projects. (Jayo Washington, Mayor – City of Shoreacres)
14. Require TxDOT to properly coordinate with all local governmental entities in the proposed pathways of their future projects, not just the elected officials TxDOT deems important. (Hank Gilbert, President – Pineywoods Sub-Regional Planning Commission)
15. Create a public “idea group” to interface with the Transportation Commission and give substantive input at the beginning of transportation projects. Authorize stipends for ideas. Require the group to bring the newest and best practices to Texas. (Beki Halpin – Fix 290 Coalition, Austin)
16. Require TxDOT and the Houston-Galveston Area Council (HGAC) to develop a fair, reliable, and comprehensive public outreach, education, participation, and input program to truly determine the desires of the public. This program should include: a Transportation Policy Council, Transportation Advisory Committee, and Regional Air Quality Planning Advisory Committee that mirror and represent the diverse populations and constituencies that exist in the eight-county HGAC region; publicized meetings of these committees and other important events in the press, on the radio, on TV, via the website, and by mailings; meetings held at times when the majority of the public can easily attend; meetings held in different counties and locations where these diverse populations and constituencies exist; availability of materials in hard copy and on the Internet several weeks before public meetings/hearings; comment deadlines that close several weeks after public meetings/hearings; development and maintenance of a notification list for those who want to receive updates and public meeting notifications; and a public outreach, education, participation, and input program based on subdivisions, neighborhoods, wards, precincts, and other small land area organizing units. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
17. Require TxDOT to insure complete transparency of all its proceedings, particularly as TxDOT considers a Comprehensive Development Agreement for I-69/TTC. (Judy Martens, Somerville)
18. Require all options for new major roads of any kind be with the input and approval of Texas citizens. When the public gives input, require TxDOT to acknowledge that input and make changes according to what the public wants. (Tom and Penny Bagby, Blanco)
19. Allow transportation public private agreements to be brought before the public by creating a framework for public discussion. Mandate that findings at public hearings have direct influence on decisions and outcomes on transportation projects and their financing. (Frances Carnot, San Antonio)
20. Give taxpayers the final say on the best alternative for road projects for their community, including how the project is financed, by requiring TxDOT to implement the alternative chosen by the public, not the one that makes the State the most tax revenue. (Terri Hall, Founder – TURF, San Antonio)

21. Give taxpayers the final say on the best alternative for road projects for their community by authorizing the public to overrule an MPO plan that may designate a project as a toll road. (Terri Hall, Founder – TURF, San Antonio)
22. Require TxDOT to conduct public hearings on public private partnerships with the express purpose of making these agreements subject to intense public scrutiny. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
23. Require TxDOT to use community service broadcasting for eliciting public discussion prior to meetings designed to seek public feedback regarding project options. Prohibit TxDOT from using public air time to promote projects. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
24. Require TxDOT districts to compile and maintain a permanent contact list including anyone who has requested project information or appeared at a public meeting within the district, and e-mail information on new projects or district events to everyone on the list. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
25. Restrict TxDOT’s use of the “expectation of litigation” loophole with respect to project information only to attorney work products and litigation or settlement strategies. Require TxDOT to disclose all scientific and numeric information sought by citizens, such as population forecasts, job locations, water availability, and other data required to model air quality, noise, habitat, and food supply impacts. Clarify that disclosure requirements include data produced or provided to TxDOT by third parties. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
26. Require TxDOT to make all draft and planning documents available in a timely manner and at a reasonable expense, at a point in the process when public input can still make a meaningful difference in the project outcome. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
27. Require TxDOT to supply hard copies or CDs of TxDOT transportation project documents for no cost to those who ask for them. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)

### ***Recommendation 3.2***

***Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.***

#### ***Agency Response to 3.2***

The Department is currently developing a more formalized complaint resolution process to implement a statewide system for tracking and resolving complaints. A new computer database to manage complaints will allow TxDOT to process and track written, oral and e-mail complaints as well as generate regular reports to identify the types of complaints, trends and key issues. In addition, we have developed and implemented a one-page internet form for written complaints as recommended which is available on the Department’s website at [http://www.txdot.gov/contact\\_us/complaints.htm](http://www.txdot.gov/contact_us/complaints.htm).



### **Agency Response to 3.2** (continued)

It should be noted, however, that due to the varied aspects of complaints the Department receives, such a form may be too generic to accommodate each and every situation and may not adequately guide the complaint to provide vital information necessary to investigate the complaint. As this recommendation is further implemented, the Department will continue to monitor complaints and make changes to the form as needed to accommodate all needs. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 3.2**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Glen Henry, Boerne

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

#### **Against 3.2**

None received.

#### **Modifications to 3.2**

28. Require TxDOT to provide full and unfiltered reporting of regional complaints to members of the State Transportation Board, including statistics compiled by each of the six newly established regions proposed as a Modification to Recommendation 1.1. (Members of CorridorWatch.org, Fayetteville)
29. Require TxDOT to improve handling of complaints and dissemination of information to the public. (Sharon Levett – Citizens Alliance for Smart Expansion, New Braunfels)

### **Recommendation 3.3**

***TxDOT should provide a formal process for staff with similar responsibilities to share best practices information.***

#### **Agency Response to 3.3**

The Department concurs with this recommendation and is working to implement a best practices solution through our intranet site, Crossroads. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 3.3**

Noble J. Campbell and the citizens of Trinity County

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

**For 3.3** (continued)

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

**Against 3.3**

None received.

**Recommendation 3.4**

***TxDOT should provide central coordination of the Department's major marketing campaigns.***

**Agency Response to 3.4**

TxDOT concurs with this recommendation and has begun looking into opportunities for the centralization of marketing campaigns statewide to implement such a program. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 3.4**

Edward B. Campbell, Brookshire

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

**Against 3.4**

None received.

**Modifications to 3.4**

30. TxDOT should not be allowed to spend millions to market itself, its mission, or its preferred transportation policies, especially when it claims to have chronic budget issues. (Cathy Catlett, Elgin; Blythe Christopher de Orne, Austin; Joan Stutts Escamilla, Bedias; Theresa Gage Dieringer, Georgetown; Rance Frazier, Huntsville; B. Galle, Huntsville; Carrie Galle, Huntsville; Jennifer Hale, Austin; Barry Maxwell, Austin; Cynthia Randall, Austin; Daniel Randall, Huntsville; Darrell Randall, Austin; Joan Randall, Austin; Kay Randall, Austin; Mary Randall, Huntsville; Anthony Rezendes, Austin; Melissa Roberts, Austin; Kristie Robles, Austin; Joe Robles, Austin; Yvette Scott, Pflugerville; Brady Severns, Austin; JoBeth Stutts, Huntsville; Christina Velasquez, Austin; Group A – see page 169)
31. Prohibit TxDOT from having any marketing campaigns. (Tom and Penny Bagby, Blanco)



32. Require all marketing campaigns to be approved by the Transportation Legislative Oversight Committee before implementation. (Edward B. Campbell, Brookshire)
33. Establish in statute what marketing activities TxDOT is authorized to conduct. The statute would restrict advertising toll roads to only advertising toll tag information and toll projects already built and open to traffic; and restrict advocating one policy over another through its websites, public information resources, staff time, and resources. The law would clearly prohibit not only advocacy of certain policies over another (versus truly educational campaigns like “Click It or Ticket”), but also enforce the prohibition against state agencies lobbying using taxpayer money. (Terri Hall, Founder – Texans Uniting for Reform and Freedom, San Antonio)
34. Require TxDOT to develop and implement a marketing policy that guides marketing efforts and provides central coordination of campaigns. The policy would ensure marketing campaigns inform and communicate without attempting to drive public policy or shape public opinion. The marketing campaigns should exclusively serve to educate the public on topics such as transportation related safety, conservation, and litter prevention. (Members of CorridorWatch.org, Fayetteville)
35. Require TxDOT to integrate statewide marketing efforts with regional efforts. (Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas)
36. Eliminate TxDOT’s marketing budget. (Donna Pimon, Huntsville)
37. Require any and/or all ad campaigns of TxDOT be submitted to the elected Transportation Commissioner(s), with final approval coming from the Legislature and/or both chambers’ transportation committees. (Hank Gilbert, President – Pineywoods Sub-Regional Planning Commission)
38. Cap the amount that TxDOT may spend on advertising campaigns. Also, require TxDOT to match its advertising budget with contributions to be given to PACS, activist groups, or individuals wishing to produce advertising in opposition to the proposed project. (Michael Siekkinen, Austin)
39. Stop wasting tax dollars and prohibit ad campaigns to promote TxDOT issues. (Dennis J. Micak, P.E., Sealy)

### ***Recommendation 3.5***

***TxDOT should make its website easier to use.***

#### **Agency Response to 3.5**

The Department concurs with this recommendation and has been discussing methods to improve navigation within TxDOT’s website. Efforts are ongoing to move the web pages to a template for a more consistent look and feel. We are also looking into options for placing a searchable database for previous minute orders considered by the Transportation Commission as suggested. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 3.5**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

**Against 3.5**

None received.

**Modifications to 3.5**

40. Make the TxDOT website easier to use and include information such as public hearings and meetings; budget and expense information; and progress updates on planned and ongoing projects. Long-term plans must be updated and made available to the public and taxpayers for review. (Cathy Catlett, Elgin; Blythe Christopher de Orne, Austin; Theresa Gage Dieringer, Georgetown; Joan Stutts Escamilla, Bedias; Rance Frazier, Huntsville; B. Galle, Huntsville; Carrie Galle, Huntsville; Jennifer Hale, Austin; Barry Maxwell, Austin; Cynthia Randall, Austin; Daniel Randall, Huntsville; Darrell Randall, Austin; Joan Randall, Austin; Kay Randall, Austin; Mary Randall, Huntsville; Anthony Rezendes, Austin; Melissa Roberts, Austin; Kristie Robles, Austin; Joe Robles, Austin; Yvette Scott, Pflugerville; Brady Severns, Austin; JoBeth Stutts, Huntsville; Christina Velasquez, Austin; Group A – see page 169)
41. Require TxDOT to review what information should be readily available to the public and expand the content of their websites. (Members of CorridorWatch.org, Fayetteville)
42. Require TxDOT to designate a single website domain as the Department's primary website to which all other TxDOT website domains are secondary or subordinate. Require TxDOT to place on each of those websites a prominent link to the Department's primary website. (Members of CorridorWatch.org, Fayetteville)
43. Require TxDOT's entire collection of websites and Internet databases to be searchable to industry search-engine standards from the primary website's homepage. (Members of CorridorWatch.org, Fayetteville)
44. Require TxDOT to implement an automatic search and email alert service which would monitor changes to the Department's website for key words selected by online users. In the event that a page is modified or added containing that selection, an email notification would be sent to the user with an excerpt showing the key word(s) and a direct link to the appropriate page. (Members of CorridorWatch.org, Fayetteville)
45. Require TxDOT to expand the opportunity for the public to use the website to provide feedback, complaints and to report highway safety maintenance issues. (Members of CorridorWatch.org, Fayetteville)

46. Require TxDOT to use RSS newsfeed technology on its website for meeting notices and other information. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
47. Require TxDOT to make all text documents available in a text-searchable electronic format, instead of scanning text documents into image files. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)

### **Modifications to Issue 3**

48. Strengthen the State's general legislative lobbying prohibitions (Government Code, Chapter 556) for TxDOT by statutorily prohibiting members of the Transportation Commission or Commissioner of Transportation, and employees of TxDOT from using any money under the agency's control or engaging in activities to attempt to influence the passage or defeat of a legislative measure. Make advocacy or activity of this nature grounds for dismissal of an employee. This recommendation does not prohibit the members of the Transportation Commission, Commissioner of Transportation, or employees of TxDOT from using state resources to provide public information or to provide information responsive to a request. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
49. Repeal Transportation Code, Section 201.0545 that requires TxDOT to consider ways in which the Department's operations may be improved and allows the Department to periodically report to the Legislature concerning potential statutory changes that would improve the operation of the Department. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
50. Investigate TxDOT officials for illegal activities including hiring lobbyists and using taxpayers' money to pay for these lobbyists. (John Bingham, Nacogdoches; Leslie Moyer, College Station; Herman and Annette Stoddard, Thornton; Teresa Stoddard, Pflugerville; Anita M. Wise, Nacogdoches)
51. Prohibit TxDOT from using state money or personnel to bargain, coerce, or leverage civic leaders, county commissioners, or county judges into supporting toll roads, CDAs, Trans Texas Corridors, and Regional Mobility Authorities. (Don P. Dixon, San Antonio)

### *Commission Decision*

Adopted Recommendations 3.1 with Modification 1, 3.2, 3.3, 3.4, and 3.5.

Amended and adopted Modification 48 to strengthen the State's general legislative lobbying prohibitions (Government Code, Chapter 556) for TxDOT by statutorily prohibiting the Commissioner of Transportation and employees of TxDOT from using any money under

the agency's control or engaging in activities to attempt to influence the passage or defeat of a legislative measure. Advocacy or activity of this nature would be grounds for dismissal of an employee. This recommendation does not prohibit the Commissioner of Transportation or employees of TxDOT from using state resources to provide public information or to provide information responsive to a request. This recommendation also does not prohibit TxDOT from lobbying for federal appropriations.

Implicit in the adoption of Modification 48 is the repeal in Modification 49 of the statutory provision (Transportation Code, sec. 201.0545) for TxDOT to consider ways to improve its operations and to periodically report on potential statutory changes to the Legislature. Strengthening lobbying prohibitions for TxDOT officials and employees would effectively render this provision meaningless, and it would need to be repealed.

### *Legislative Action*

The statutory recommendations were not adopted, as H.B. 300 failed to pass.

# Issue 4

---

## *Elements of TxDOT's Contracting Functions Lack Efficiency and Could Expose the State to Unacceptable Levels of Risk.*

---

### Summary

#### Key Recommendations

- ◆ Relax restrictions on TxDOT's contracting practices by authorizing the use of design-build contracts for traditionally funded highway projects and removing requirements to advertise contract notifications and solicitations in newspapers.
- ◆ TxDOT should improve the consistency and efficiency of its professional services contracting by setting timeframes for key stages in its contracting process.
- ◆ Reduce contract risk and improve TxDOT's contract management by increasing staff overseeing professional services contracts; strengthening oversight and training for professional services contracts; and establishing an external process for reviewing comprehensive development agreements.

#### Key Findings

- ◆ State statute unnecessarily restricts contracting practices available to TxDOT.
- ◆ Inconsistent procedures and indeterminate timeframes may affect the effectiveness and predictability of TxDOT's contracting process.
- ◆ Limited professional services contract staffing, training, and oversight could expose the Department, and ultimately the State, to significant risk.

#### Conclusion

TxDOT is the State's largest user of contract services, spending about \$6 billion on construction, maintenance, and professional services contracts in fiscal year 2007. Against this backdrop, Sunset staff conducted its first high-level review of an agency's contracting practices using published state guidelines, documented contracting concepts, and other reviewing standards.

The recommendations focus on providing additional contracting tools, faster and more efficient processing of professional services contracts, and reduction of risk. Allowing TxDOT to contract for design-build project delivery in traditional highway projects would give the Department an additional project delivery option. Establishing time frames for developing professional services contracts and standardizing other procedures would help speed up and make more consistent and efficient the development of professional services contracts. Finally, strengthening central office staff oversight in professional services contracts, improving contract oversight and coordination in district offices, and adding the check and balance of Contract Advisory Team oversight for comprehensive development agreements would help reduce risk associated with millions of dollars of TxDOT's contract expenditures.

## Support

**The scope of TxDOT's contracting activities makes it an excellent test case for the State's evolving contract standards.**

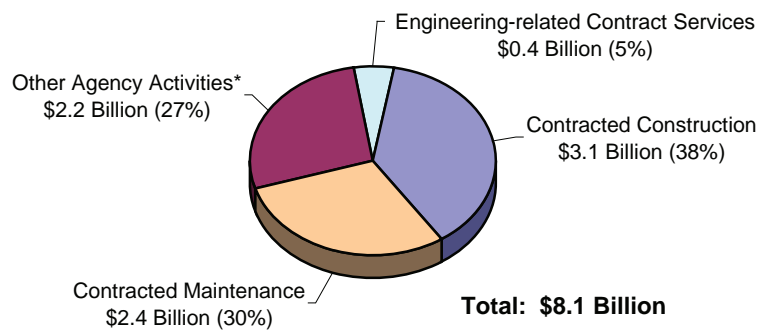
- ◆ TxDOT is the State's largest user of contract services. In fiscal year 2007, the Department spent about three-fourths, or approximately \$6 billion, of its \$8.1 billion in expenditures on construction, maintenance, and engineering-related services contracts, as shown in the pie chart, *Construction, Maintenance, and Engineering-related Contracts*.

---

*TxDOT is the State's largest user of contract services.*

---

**Construction, Maintenance, and Engineering-related Contracts  
FY 2007**



\* Includes in-house maintenance, medical and public transportation, vehicle registration and licensing, and other services.

Most of these contract expenditures were for highway construction and maintenance. State statute requires TxDOT to competitively award these contracts to the lowest bidder. For toll facilities, state statute also authorizes TxDOT to combine design, construction, and other features into a single contract called a comprehensive development agreement (CDA). TxDOT competitively awards CDAs to the firm offering the "best value" of price, qualifications, experience, and other factors.

---

*TxDOT spent about \$420 million on professional services contracts in fiscal year 2007.*

---

- ◆ Professional services contracts, which totaled about \$420 million in fiscal year 2007, cover several disciplines, with TxDOT's largest expenditures being for engineering, surveying, and architecture. State or federal statutes require that these three professional services be procured based on qualifications, not low bid.<sup>1</sup>

When selecting these contractors, TxDOT goes through two basic steps. First, the Department short lists the firms it judges to be most qualified, further evaluates these firms' qualifications, and makes an award to the best qualified among them. Next, TxDOT begins negotiations on price and scope of work with the awarded firm. If negotiations fall through with this firm, TxDOT begins negotiations with the second-ranked firm, continuing in this way until a firm is selected, or the contract is cancelled or re-advertised.



- ◆ TxDOT's construction and professional services contracting activities are decentralized. Typically, the division or district office that needs one of these services initiates a contract and oversees its administration. Central office divisions oversee and advise district offices on their contracting duties. The Contract Services Section within TxDOT's General Services Division houses 14 staff that provide central oversight of a wide range of contract types, primarily negotiated contracts, and also develops standard contract forms. The Consultant Contract Office within the Design Division (DES-CCO) focuses specifically on engineering, architectural, and survey contracts. DES-CCO provides oversight and support for the districts in the selection of contractors, development of contracts, and contract management.
- ◆ The State's approach to contracting has evolved in recent years. As the State began to outsource more of its functions and in response to significant contracting problems at a few agencies, the Legislature established some basic, statutory contracting standards and provisions for state agencies to follow.<sup>2</sup> The Legislature also required the development of the *State of Texas Contract Management Guide*, which includes model contract provisions, solicitation procedures, and information about contract managers' duties, for use by state agencies.

Using the State's statutory contracting requirements, including the *Guide*, as well as other documented contracting concepts, Sunset staff has compiled high-level contracting guidelines to help evaluate an agency's contracting practices. Although these guidelines, used for the first time in the TxDOT Sunset review, help evaluate an agency's contracting practices, they are not intended for blanket application. Sunset staff also looks beyond the guidelines for other opportunities to improve contracting practices. The guidelines will expand and continue to evolve as Sunset staff gain experience applying them and as the Legislature, other oversight entities, and state agencies identify additional contracting best practices for inclusion.


Although TxDOT is specifically exempted from many of the State's contracting standards, the following material describes areas where the Department's contracting practices could benefit from the guidelines and other contracting practices.

**State statute unnecessarily restricts contracting practices available to TxDOT.**

- ◆ **Project delivery methods.** State agencies should be allowed to use an appropriate range of project delivery methods when contracting for services. This flexibility helps an agency address its specific needs with the most appropriate tools.

Statute requires TxDOT to contract for road construction on non-tolled facilities based on the traditional design-bid-build method of project delivery. This method requires that contract design work be performed

---



*TxDOT is exempt from many of the State's contracting standards.*

---



---



*TxDOT can only use design-build contracts for tolled facilities.*

---

by one entity, and when complete, TxDOT must separately bid out the project for construction. However, for tolled facilities, TxDOT has the flexibility under state law to use the design-build method. Design-build allows TxDOT to contract with one entity for both the design and construction of a project, and elements of each phase can occur at the same time.

Design-bid-build and design-build both have their appropriate uses. Used successfully for decades, design-bid-build is straightforward and helps ensure that the loyalties of both the designing engineering firm and the construction firm lie clearly with their employer, the contracting entity, and not to each other. However, since design of the entire project must be completed before construction, project delivery may take longer than design-build.

Design-build offers the potential to complete projects faster since design and construction elements can occur simultaneously. This method is most appropriate for complicated projects that take a long time to complete, a costly situation in a period of rapidly escalating project costs. However, because the agency contracts with only one entity for both design and construction, all contractors working on the job answer directly to the main contracting firm, not the contracting agency. Thus, the natural check and balance that exists between design and construction firms in design-bid-build is weakened.

Since 2001, state law has allowed local governments, including cities, counties, and river authorities, to use design-build contracts to develop facilities. In 2007, the Legislature passed House Bill 1886, to broaden local governments' use of design-build contracts for civil projects, including roadways. The bill phased in the new design-build provisions, giving the expanded authority first to larger metropolitan areas and to smaller governmental entities starting in September 2009. The bill also limited the number of design-build projects that an entity of a certain size may perform in a year. Nationally, 33 states, not including Texas, use design-build contracts for transportation projects.<sup>3</sup>

Authorizing TxDOT to use design-build contracts for non-tolled highway projects would give the Department another project delivery tool that could provide more efficiency, particularly for large, complicated projects that need to be completed within a strict timeframe.

- ◆ **Advertising solicitations.** An agency's statute and rules should allow for cost-effective bid and contract notifications. TxDOT's statute requires the Department to advertise in newspapers the time and place its construction and maintenance contract bids will be opened and awarded.<sup>4</sup> By rule, TxDOT must also advertise its solicitations for professional services in newspapers.<sup>5</sup> Neither of these outdated requirements is an effective expenditure of state transportation dollars in all contracting situations.

---

*Design-build contracts offer the potential to complete projects faster.*

---

---

*Local governments, including cities and counties, can use design-build contracts for roadways.*

---



In fiscal year 2007, TxDOT spent almost \$1.6 million for 3,341 construction and maintenance contract notifications in 247 newspapers. Another 116 notifications were published for professional services contract opportunities. The State already requires opportunities for contracts totaling more than \$25,000 to be published on the Electronic State Business Daily website.<sup>6</sup> TxDOT also posts these bid opportunities on its website and maintains a mailing list for notifying potential construction or maintenance contractors of bid opportunities.

The statutory requirement for TxDOT to advertise the time and place of contract bid openings dates back to 1925, and the Department, by rule, required newspaper solicitations for professional services in 1998. Since this time, Internet and web-based notifications have become common practice and readily available to those with Internet connections. Newspaper notices are no longer thought to be the way that most contractors find out about bid opportunities or contract awards. Those most likely to find newspaper notifications useful are smaller companies that have not done business with TxDOT before, and they can still be reached through a more targeted advertising approach for the smaller projects of interest to them.

Making newspaper notifications permissive, rather than mandatory, would allow TxDOT to use them when appropriate, and would save time and money without sacrificing effectiveness.

### **Inconsistent procedures and indeterminate timeframes may affect the effectiveness and predictability of TxDOT's professional services contracting process.**

- ◆ *Communications policies.* Agency personnel evaluating responses to professional services solicitations and preparing other evaluation material should sign non-disclosure agreements about the contents of those documents. State agencies also should have written policies specifying the personnel who are authorized to answer questions from interested proposers about its contract solicitation and evaluation process.

A disclosure agreement heightens employees' awareness about the sensitivity of bid materials, the disclosure of which could undermine the Department's evaluation process or give respondents unfair insights into competitors' methodologies. Clear channels of communication help avoid passing along inconsistent or incorrect information to potential respondents.

The Department recently drafted a non-disclosure agreement for its professional services contracts, but it is not yet in use. TxDOT also indicated that it intends to draft policies to specify persons authorized to answer inquiries for these contracts, but these policies have not yet been developed.

---

*Newspaper notices are not the way most contractors find out about TxDOT bid opportunities.*

---

---


*Only specified personnel should be authorized to answer questions about contract solicitations and evaluations.*

---

Implementing the draft disclosure form along with establishing clear channels of communication between TxDOT staff and potential respondents would promote consistency and fairness in treatment of respondents.

- ◆ **Negotiation of overhead rates.** Agencies with decentralized contracting functions, such as TxDOT, should ensure that district offices and divisions have good information to support contracting activities, and that this information is used and understood. This practice helps ensure that decisions are reasonable, consistent, and fair. TxDOT should provide more information to support district offices in their negotiation of overhead rates, and should ensure that this information is used and understood.

---



*TxDOT districts could benefit from more data about overhead rates to improve negotiations.*

---

By industry practice, an overhead rate is identified separately in many engineering contracts. Overhead rates allow a firm to recover indirect costs not directly attributable to a project, such as management and administrative support salaries not billable to a specific project, fringe benefits, rent, utilities, and other general administrative costs.

To be eligible for contracts totaling \$250,000 or more, TxDOT requires engineering firms to submit an indirect cost audit performed by a certified public accountant. An overhead rate can be calculated in a standard fashion from information in this audit.

TxDOT is not required to use an engineering firm's audited rate when developing a contract, but can negotiate that rate along with other price terms. Negotiated rates have been, on average, about two percent less than the audited rate, indicating the value of the negotiation.

In fiscal year 2007, more than 50 firms had different negotiated overhead rates in their separate contracts with TxDOT. The table, *Comparison of TxDOT Negotiated Rates to Audited Overhead Rates, FY 2007 Contracts*, provides additional information on the results of overhead rate negotiations in fiscal year 2007.

**Comparison of TxDOT Negotiated Rates to Audited Overhead Rates  
FY 2007 Contracts**

Change From Audited Rate	Number of Prime Providers and Subproviders	Percent of Contracts
No change	233	48.3%
Decrease of 1 percent or less	49	10.2%
Decrease of greater than 1 percent	151	31.3%
Increase of less than 0.5 percent	16	3.3%
Increase of 0.5 percent or more	33	6.9%
<b>Total</b>	<b>482</b>	<b>100.0%</b>

DES-CCO provides districts with data showing the audited overhead rates it has on file for engineering firms in a specific size category. This information indicates the range of overhead costs typical of these firms. However, districts also could benefit from more extensive data that goes beyond audited rates to show TxDOT's previously negotiated rates for each firm. Ideally, negotiators should be able to tie these rates to other information such as type of contract, dollar size of the contract, and district managing the contract. This data would establish the bounds of previous negotiations with a firm and would give TxDOT personnel in any district a well-informed starting point for negotiating a new contract.

While not specific to historical negotiated rate data, issues that can arise from insufficient information are demonstrated in the table, in which TxDOT negotiations resulted in 49 cases where negotiated rates were actually higher than audited rates. This situation occurred primarily because TxDOT's audit division was not sending districts the audited rates for firms seeking smaller contracts, a problem that has now been corrected.

Further, TxDOT does not ensure that districts use the negotiating information already available to them. Districts have wide latitude to conduct negotiations as they see fit, and oversight personnel say that districts vary greatly in their understanding and application of resource materials.

Providing additional, firm-specific overhead data and requiring districts to use this and other available information would promote well-informed and consistent negotiations across the Department. Variations from audited rates, such as those seen in the table, would likely be better justified, benefiting both TxDOT and engineering firms.

- ◆ **Established timeframes.** Agencies should set reasonable timeframes for completion of key stages in the contracting process, including a projected contract execution date. Agencies also should have incentives for achieving these timeframes. Establishing these timeframes would help ensure the timely execution of contracts and provide some predictability to contractors in determining how and when to allocate their resources.

TxDOT takes about eight months to advertise and execute a professional services contract. Key contracting stages include advertising a notice of intent to contract and closing date for receiving letters of interest from professional services providers; shortlisting the best qualified contractors and choosing one for contract award; negotiating contract terms; and executing the final contract.

TxDOT has established some timeframes for steps in its professional services contracting process, but unlimited extensions and a lack of organizational incentives can still prevent timely movement through the stages of contract award and negotiation. The Department also does not set a projected contract execution date.

The average time from the Department's closing date for receipt of respondents' letters of interest through its choice of firms to negotiate with took about 12 weeks in fiscal year 2007. TxDOT extended negotiations for about 26 percent of its 338 contracts ongoing in fiscal year 2007, with 9 percent receiving two or more extensions. Each extension adds a minimum of 30 days to the negotiation due date.

The result is a perception among some professional services contractors that TxDOT's contract processing time varies widely, takes too long, and is unpredictable in final contract award date.

---

*TxDOT extended negotiations for about 26 percent of its 338 professional services contracts in FY 2007.*

---

---

*Unlimited extensions can delay contract negotiation and award.*

---

---

*Professional services contracting is a high-dollar, high-risk area for TxDOT.*

---

---

*Professional services contracts should have reasonable timeframes and approximate execution dates.*

---

Establishing reasonable timeframes for each major contracting phase and giving contractors an approximate date for the execution of a final contract would help add predictability and increase the efficiency of TxDOT's professional services contracting process.

**Limited professional services contract management staffing, training, and oversight could expose the Department, and ultimately the State, to significant risk.**

- ◆ **Staffing levels and training.** Contract oversight is a crucial element in reducing contracting risk, and oversight staff should be sufficient in number and training to meet strong oversight needs. TxDOT's central oversight staff for professional services contracts, DES-CCO described earlier, oversees and manages professional services contracts whose large dollar volume and complexity represent significant contracting risk for TxDOT. Professional services contracts active in fiscal year 2007 totaled about \$3 billion, although TxDOT staff stated that much of that amount had already been paid out through the end of fiscal year 2007.

A staff of eight, including two professional engineers, must review and process contract documents, provide support and other resources to districts and divisions, and offer contract management training. These activities are discussed in more detail below. Additional professional-level staff for DES-CCO could better support the Department's professional services contracting and reduce contracting risk in this high-dollar contracting area.

Review and processing. Reviewing and processing the many contract-related forms received from TxDOT's district offices and divisions is one of DES-CCO's most critical functions. This function must be carried out, without fail, or DES-CCO slows down the movement of essential contracting documents and the work they support.

This office appears to handle its part of contract processing in a timely fashion, but DES-CCO staff reports that these demands historically take a large portion of the staff's time. The table on the following page, DES-CCO Staffing and Professional Services Contracts, suggests why so much staff time continues to be dedicated to this function.

The table shows that DES-CCO's staff has increased 60 percent from fiscal year 2003 to fiscal year 2007. Reflecting workload, contract documents executed have increased a substantial 70 percent, and their average value has jumped by 109 percent. While not always the case, higher dollar contracts often are more complex than those involving less money and require more time to review.

**DES-CCO Staffing and Professional Services Contracts**

<b>Fiscal Year</b>	<b>FTEs</b>	<b>Contract Documents Executed*</b>	<b>Dollar Amount of Executed Contracts</b>	<b>Dollars per Executed Contract</b>
2003	5	716	\$183,056,388	\$255,665
2004	6	994	\$478,402,823	\$481,291
2005	7	1,027	\$545,113,798	\$530,783
2006	7	1,102	\$523,563,324	\$475,103
2007	8	1,219	\$650,664,035	\$533,769
Percent Increase: FYs 03-07	60%	70%	255%	109%

\* Includes contracts and related supplemental agreements and work authorizations.

Resource and support functions. A strong central office oversight function in TxDOT's decentralized contracting environment should serve as a resource and offer timely and quality contracting support to agency staff. This support helps ensure consistency and quality in professional services contracting across districts and divisions, which in turn promotes fairness to contractors and more efficient agency operations. DES-CCO provides these support functions, but struggles to do so in a timely fashion, given the task of document processing and other office functions.

As one example, the Department's guide for professional services contracting, the Engineering, Architectural, and Surveying Services Manual, has not received a substantive update since 2001. Many policies and procedures have been developed or refined since this time and warrant inclusion and updating in this major policy manual.

While not in the manual, DES-CCO has placed new and refined policies and procedures on its internal website. However, the site itself has become hard to navigate and requires updating, a task given a much lower priority relative to other responsibilities and limited staff time.

Also, DES-CCO provides some standardized information to districts to assist in negotiations with professional services contractors. Information provided, such as industry labor rate ranges and overhead rate data mentioned previously, has not been fully developed and shared.

Training. Agencies should provide high-quality training for their professional services contracting staff. The Legislature has recognized the importance for contract manager training. Although TxDOT is exempted, state law requires most state agencies to ensure that their contract managers complete contract training.<sup>7</sup> In 2006, TxDOT's

---

*TxDOT's  
decentralized  
contracting  
environment  
requires strong  
central support  
and oversight.*

---



---

*The Legislature has recognized the importance of contract manager training, but TxDOT is exempt.*

---

---

*TxDOT districts do not have a consistent model for oversight and coordination of professional services contracts.*

---

internal auditor also recognized the importance of contract manager training, recommending that DES-CCO develop such a course.<sup>8</sup>

DES-CCO spearheaded development of the curriculum for this course and began offering it in fiscal year 2008 with the assistance of the General Service Division's Contract Services Section. The training has contributed to the workload of DES-CCO staff, whose two professional employees played major roles in developing the four-day curriculum, teaching the course, and keeping materials updated. The office is planning additional offerings of the course which, while promoting essential contract manager training, will continue to use staff time for training and administration.

TxDOT does not require contract manager training through these or other classes. The Department should follow the policy in general state law and make this training mandatory for all its contract managers.

Additional professional staffing resources would help ensure that DES-CCO's review and processing of contracting documents would continue in a timely fashion. Support and resource functions could be increased and made more timely, enhancing consistency and quality in contracting. Training for contracting managers, as well as other administrative contracting personnel, could be expanded to reach beyond the few that have gone through DES-CCO's intensive training to date. Mandatory contract manager training would ensure that all necessary staff eventually receive basic contract management coursework.

- ◆ **District office oversight and coordination.** A state agency's organizational structure should promote clear accountability and consistency in its contracting practices to reduce risk and increase contracting efficiency. TxDOT's professional services contracting process reflects the Department's decentralized organizational structure. Twenty-five district offices handle most of the day-to-day duties for management and administration of professional services contracts, but TxDOT does not have a consistent model for oversight and coordination of these contracts in district offices.

Contract administration varies widely among the districts. Only a few districts have a single person responsible for administering and coordinating all professional services contracts. Most commonly, contract administration occurs independently within each area of responsibility, such as engineering design, surveying, materials engineering, and transportation planning. The staff person responsible for contract coordination in these different areas can be either a professional-level staff engineer or a contract specialist, an administrative level employee without professional engineering background. This variation complicates central office oversight of district contracting and reduces consistency in contracting practices. The lack of a single professional lead person with day-to-day oversight of contracting weakens management accountability and oversight.

The recent and rapid increase in contracting workload, as shown in the table on page 51, and the lack of a mandatory training program for all contract managers and administrators, also support the need for appropriate oversight of a maturing contract staff.

More consistent and coordinated professional oversight in TxDOT's decentralized district office environment would help reduce risk and increase efficiency of the Department's contracting process. A 2007 independent audit of TxDOT's contracting functions also acknowledged this need for more consistency in the structure of consultant management and administration in TxDOT district offices.<sup>9</sup>

- ◆ ***Oversight of comprehensive development agreements.*** Multi-million dollar contracts should be subject to careful review, including evaluation and approval by oversight agencies when the contracts involve substantial state risk. This oversight would help ensure reviewing objectivity, bring additional expertise to the process, and add checks and balances to the process, ultimately reducing risk for the State.

TxDOT's CDAs merit a high level of external review because of their financial significance, long-term duration, and importance to the future of the state's transportation system. The Department awards these contracts, of which four are currently in effect, to a private firm for the development of toll facilities. CDAs can combine the design, construction, financing, operation, and maintenance of these toll facilities into a single contract, making them very complicated because of the range of elements they contain, the size of projects they cover, and the financial toll arrangements they may include.

The Legislature enacted various oversight provisions for CDAs in 2007. The Legislature prohibited TxDOT from entering into a CDA until the Office of the Attorney General determines the document to be legally sufficient.<sup>10</sup> The Department also was directed to present CDA-related information to the Legislative Budget Board (LBB) and the State Auditor's Office (SAO) before entering into such an agreement.<sup>11</sup> Finally, a rider in the General Appropriations Act for the 2008-2009 biennium prohibits TxDOT from spending appropriated funds to enter into a CDA without having first reported project details to LBB and receiving written approval to proceed.<sup>12</sup> However, none of these oversight tools offer extended review and comment on the range of CDA provisions with an established statutory means for stopping a CDA solicitation.

In 2001, the Legislature created a mechanism for general state agency contract management oversight, the Contract Advisory Team (CAT), although TxDOT is exempted from this process. One of CAT's duties is to review agencies' contract solicitations of at least \$1 million, but the team has no authority to require them to address identified concerns.<sup>13</sup>

---

*TxDOT does not have a mandatory contract management training program.*

---

---

*CDAs merit a high level of review and oversight because of their size and duration.*

---

---

*TxDOT is exempt  
from the State's  
Contract Advisory  
Team's Oversight.*

---

This team functions with four staff-level employees appointed from each of the following: the Comptroller's Office, which is also the lead agency on the team; the Attorney General's Office; the Department of Information Resources; and the Governor's Office.<sup>14</sup> The LBB and SAO also provide technical assistance to CAT, while the member agencies provide additional staff support at the request of the team.<sup>15, 16</sup>

The Legislature almost enacted stronger contract oversight mechanisms in 2007. Acting on a recommendation from LBB, Senate legislation placed on the House calendar in the waning days of the legislative session, but not brought up for consideration, would have created a State Office of Contract Management. In its latest version, this office and the Attorney General's Office would have had the authority to review and assist agencies in high-risk, high-dollar contracts and give their approval for an agency to proceed at three points: before public release of a solicitation, before executing a final contract, and before making payments equal to half of the contract's value.<sup>17, 18</sup>

External oversight of high-dollar or high-risk state transactions is not unprecedented. For example, the Texas Bond Review Board, created in 1987, reviews and approves state agencies' and universities' bonds, installment sales, and lease-purchases with a principal of greater than \$250,000 or a term longer than five years.<sup>19, 20</sup>

Additional CDA oversight, such as the CAT review and the check and balance of external approval for high-risk contracts as proposed in 2007, would promote confidence in the quality of the solicitation and reduce state risk.

## Recommendations

### Contracting Framework – Change in Statute

#### 4.1 Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.

TxDOT's statute currently restricts use of the design-build model of project delivery, in which design and construction phases of a project occur under one contract, to toll roads. This recommendation would allow the Department to use design-build for traditionally financed highway projects.

TxDOT would develop rules specifying the conditions under which a design-build contract could be considered. Factors that should be addressed in rule include the size and complexity of the project, the speed in which the project is needed, the level and training of agency staff managing the project, and any other elements determined to be important in the proper use of this project delivery model.

This recommendation would not require TxDOT to use design-build, but would simply authorize its use, providing an additional tool for the Department to use to help meet the state's transportation needs more efficiently.



## **Contracting Framework – Change in Statute and Management Action**

### **4.2 Remove provisions in statute and rule requiring TxDOT to advertise its contract solicitations in local or statewide newspapers.**

This recommendation would remove statutory advertising requirements for construction and maintenance contract notifications, and would direct TxDOT as a management action to remove its rule requiring such advertising for professional services bid opportunities. TxDOT would still have the authority to use newspaper notifications in situations where their use is necessary and cost effective. For example, this type of notification may be useful for smaller projects that might interest contractors who have not worked with TxDOT before.

Implementing the recommendation would save newspaper advertising costs and staff time while still allowing for effective notification of contracting opportunities.

## **Contracting Procedures – Management Action**

### **4.3 TxDOT should develop clear communication policies regarding contract solicitations for its professional services contracts.**

This recommendation would direct TxDOT to develop, for its professional services contracts, a written policy identifying who on its staff can communicate with a potential respondent to a solicitation and a non-disclosure form for members of an evaluation team to sign before starting the evaluation of a proposal.

The written communications policy should clearly establish which agency personnel may answer potential respondents' inquiries, and should be distributed and explained to staff. The non-disclosure agreement should explain the sensitivity of bid documents and evaluation materials and address the consequences of the policy's violation. It should also be signed by all members of a consultant selection team. These documents would help ensure fair and consistent treatment of respondents.

### **4.4 TxDOT should provide additional information on overhead rates to districts and ensure that they use it.**

In addition to audited overhead rates, TxDOT should provide districts with data on TxDOT-negotiated overhead rates specific to individual engineering firms. Districts should be able to tie this data to other information, such as type of contract, dollar value of contract, and managing district. TxDOT should also institute procedures requiring districts to use this and other information provided related to overhead rates. This data and the requirement that it be used would ensure that districts negotiate from a more informed basis, promoting reasonableness and fairness in negotiation outcomes.

### **4.5 TxDOT should set timeframes for each major step in the development of professional services contracts.**

TxDOT should set timeframes for key stages in its contract process in policy or rule. The timeframes should include some flexibility to deal with unforeseen circumstances, and establish meaningful procedures that take effect if timelines slip beyond reasonable limits. For example, the contract manager could be required to explain in writing events leading to the missed deadline, and provide the explanation to appropriate levels of management. In advertising for professional services, TxDOT should give an estimated date by which the contract would be executed.

This recommendation would facilitate the timely and accountable development of contracts in a way that benefits both the Department and consultants.

## **Staffing and Oversight – Management Action**

### **4.6. TxDOT should consider providing additional professional staff to support its Consultant Contract Office.**

Because of the complexity and large dollar value of the contracts DES-CCO oversees, the Department should carefully evaluate its staffing relative to responsibility and risk and make staffing adjustments as necessary.

Providing additional professional staff would promote timely processing of contract documents, development of up-to-date resource materials, standardization of processes, and training that reaches TxDOT's contracting personnel faster.

### **4.7 TxDOT should strengthen oversight and accountability of professional services contracts in its district offices.**

TxDOT should improve coordination and oversight of professional services contracts by establishing a single point of accountability and contact for a district or region. This responsibility should reside with a professional level employee with a good understanding of contract management and engineering-related experience. This contact point would improve consistency and quality of contracting practices throughout an area.

### **4.8 TxDOT should require contract management training for its professional services project managers and other employees involved in professional services contract administration.**

TxDOT should plan for and implement mandatory training, building on the current contract management course developed by DES-CCO in consultation with the Contract Services Office. Mandatory training would help ensure that TxDOT's contract managers and contract administrative personnel receive the fundamentals of good contracting practices.

## **Staffing and Oversight – Change in Statute**

### **4.9 Require the Contract Advisory Team to review, with the authority to stop solicitation of, TxDOT's development of comprehensive development agreements.**

This recommendation would require the Contract Advisory Team (CAT) to review TxDOT's CDAs to provide an additional and independent level of oversight for these complex contracts. CDAs pose a significant level of risk to the State, justifying this additional review. CAT would have the authority to stop TxDOT from publicly releasing solicitation documents.

CAT is composed of four staff-level employees appointed from each of the following: the Comptroller's Office, which is also the lead agency on the team; the Attorney General's Office; the Department of Information Resources; and the Governor's Office. The LBB and SAO also provide technical assistance to CAT. The CAT review process would include the following elements.

### ***Before publicly releasing solicitation documents***

- ◆ Together, CAT and TxDOT would develop a schedule for submission of draft and final CDA solicitation documents, or other documentation that CAT requires. Submitted documents would be subject to the same non-disclosure requirements that TxDOT now follows.
- ◆ CAT would comment on, and make recommendations to, TxDOT on draft solicitation documents. Together, CAT and TxDOT would develop a schedule indicating when CAT's comments and recommendations must be delivered to TxDOT. At CAT's option, these reports would be sent to the Comptroller, the Governor, the Attorney General, the Speaker, and the Lieutenant Governor. Comments would include ways to lessen contracting risk or cost, ways to improve the competitiveness of the solicitation, potential conflicts that may exist in the solicitation, or other issues identified by the team.
- ◆ TxDOT would be required to respond to CAT recommendations in writing.
- ◆ If CAT determined that the solicitation should not be released publicly, CAT would be required to give TxDOT a written notification explaining the reasons for the decision and actions that TxDOT might take to correct deficiencies. This notification should be delivered to TxDOT at least 30 days before the date specified for public release of solicitation documents. CAT's decision should be based on final versions of draft solicitation documents that TxDOT would provide. A solicitation should be stopped only for substantive reasons resulting in unacceptable risk to the State, potentially unacceptable levels of competition, or other substantive factors.
- ◆ TxDOT could request a review of CAT's decision to stop a solicitation by a committee composed of the Attorney General, Governor, and Comptroller, all of whom have appointed staff on the Contract Advisory Team. This review committee would approve or disapprove CAT's denial of the CDA solicitation and inform TxDOT in writing of its decision, along with any recommendations for correcting deficiencies. If the review committee agrees with CAT's decision, TxDOT could not proceed with the solicitation until objections were addressed to the satisfaction of CAT.

### ***After the public release of solicitation documents but before CDA execution***

- ◆ CAT's role in reviewing and making recommendations on draft CDA documents, and TxDOT's role in responding to CAT recommendations, would be the same as set out for the solicitation phase of the procurement. Consistent with this earlier phase, schedules for CAT review and TxDOT response would be worked out between CAT and TxDOT, and CAT would be required to submit to TxDOT any final comments on draft CDA documents 30 days before the date targeted for CDA execution.
- ◆ Neither CAT nor the review committee comprising the Attorney General, Comptroller, or Governor could stop execution of the CDA, although recommendations to that effect could still be made to TxDOT.

### ***After CDA execution***

- ◆ CAT involvement would end, with the exception that its reviewing activities would be reinitiated if TxDOT were to consider any major modification in CDA terms or operations. Before CDA execution, TxDOT and CAT would define the meaning of "major modification." TxDOT would notify CAT if the Department were considering such a modification.

The Comptroller's Office could, at its option, designate a member of CAT to attend and observe TxDOT's negotiations with proposers. This person could attend only on prior arrangement with TxDOT, could only observe, and would be subject to all non-disclosure requirements of TxDOT employees. As already provided in statute, CAT could request staff support from its member agencies.<sup>21</sup> This provision should be broadened to authorize CAT to request consulting or other support it deems necessary.

This process would be contingent on the enactment of legislation extending the Department's authority to enter into CDAs, which expires on August 31, 2009 for most toll projects. This recommendation would add the safeguards of additional external review and checks and balances to improve the development of CDAs.

### **Fiscal Implication**

These recommendations could have a fiscal impact to the State, although the impact could not be estimated at this time.

The recommendation to eliminate required newspaper advertising for upcoming construction and maintenance contracts, at TxDOT's discretion, would result in savings to the State Highway Fund. TxDOT could reduce annual expenditures from the State Highway Fund by an estimated \$950,000, assuming that TxDOT would eliminate newspaper notice for contracts valued at \$300,000 or more.

Directing TxDOT to increase central office professional staff for oversight of professional services contracts and professional services contract management training would have a cost. TxDOT could reassign staff or request additional staff and funding through the appropriations process once it determines the necessary staffing level.

The recommendation to implement a CDA review process could result in a cost to the State for additional consulting or staff resources, but the specific cost could not be estimated. These costs would be borne by TxDOT.

<i><b>Fiscal Year</b></i>	<i><b>Savings to the State Highway Fund</b></i>
2010	\$950,000
2011	\$950,000
2012	\$950,000
2013	\$950,000
2014	\$950,000

.....

- 1 Texas Government Code, Chapter 2254; and 40 USC, secs. 1101-1104.
- 2 Texas Government Code, Chapter 2261 and Chapter 2262.
- 3 National Conference of State Legislatures, *Surface Transportation Funding: Options for States* (Denver, Colo., May 2006), Appendix D, p. 83.
- 4 Texas Transportation Code, sec. 223.002.
- 5 Texas Administrative Code, Title 43, part 1, chapter 9, rule 9.33.
- 6 Texas Government Code, sec. 2155.083.
- 7 Texas Government Code, sec. 2262.053(c).
- 8 Texas Department of Transportation, *TxDOT Internal Audit, Consultant Engineering Contract Function - Department-wide* (August 29, 2006), p. 6.
- 9 Deloitte Financial Advisory Services LLP, *Independent Assessment of Auditable Unit B - Contracting and Project Delivery for the Texas Department of Transportation* (August 24, 2007), p. 66. Online. Available: [ftp.dot.state.tx.us/pub/txdot-info/aud/contract\\_proj\\_dely\\_final.pdf](ftp.dot.state.tx.us/pub/txdot-info/aud/contract_proj_dely_final.pdf). Accessed: April 29, 2008.
- 10 Texas Senate Bill 792, 80th Legislature (2007).
- 11 Ibid.
- 12 Texas House Bill 1, *General Appropriations Act, 80th Legislature* (2007).
- 13 Texas Government Code, subchapter C.
- 14 The Contract Advisory Team functioned with a fifth member from the Texas Building and Procurement Commission (TBPC) until the Legislature's 2007 enactment of House Bill 3560, which renamed the agency and moved its contracting functions to the Comptroller's Office. Removal of contracting functions from TBPC also eliminated the need for the agency's representation on the Contract Advisory Team, although the statute does not yet reflect this change.
- 15 Texas Government Code, sec. 2262.102.
- 16 Texas Government Code, sec. 2262.103.
- 17 Legislative Budget Board, *Texas State Government Effectiveness and Efficiency* (Austin, Tx., January 2007), pp. 35-38. Online. Available: [www.lbb.state.tx.us/Performance%20Reporting/TX\\_Govt\\_Effective\\_Efficiency\\_Report\\_80th\\_0107.pdf](http://www.lbb.state.tx.us/Performance%20Reporting/TX_Govt_Effective_Efficiency_Report_80th_0107.pdf). Accessed: May 4, 2008.
- 18 Texas Senate Bill 769, 80th Legislature (2007).
- 19 Texas Bond Review Board, General Information, [www.brb.state.tx.us/agency/overview.aspx](http://www.brb.state.tx.us/agency/overview.aspx). Accessed: May 24, 2008.
- 20 Texas Government Code, sec. 1231.021(d).
- 21 Texas Government Code, sec. 2262.103.



## *Responses to Issue 4*

---

### **Recommendation 4.1**

**Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.**

### **Agency Response to 4.1**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

### **For 4.1**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

Gerhardt Schulle, Jr., Legislative & Governmental Affairs Director – Texas Society of Professional Engineers, Austin

### **Against 4.1**

Patrick Dossey – TURF, San Antonio

Tracy Schieffer, President – Associated General Contractors of Texas, Austin

### **Modifications to 4.1**

1. Stipulate that expanded design-build authority be tied to procedures passed by the Legislature last session in House Bill 1886. These procedures apply to how governmental entities select a design-builder and enter into the contract, along with protections for such things as intellectual property. (Steve Stagner – Texas Council of Engineering Companies, Austin)
2. Require that, before a contract is issued for engineering services, a value engineering profile be developed for the project covering time, quality, and cost issues. (Don P. Dixon, San Antonio)

### ***Recommendation 4.2***

***Remove provisions in statute and rule requiring TxDOT to advertise its contract solicitations in local or statewide newspapers.***

#### **Agency Response to 4.2**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 4.2**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

#### **Against 4.2**

None received.

#### **Modifications to 4.2**

3. Authorize TxDOT in statute and rule to use the Internet as an alternative to advertising its contract solicitations in local or statewide newspapers. (Members of CorridorWatch.org, Fayetteville)
4. Require TxDOT to post all contract solicitations on the Department's website in a form that is easily searchable. Interested persons should be able to subscribe to online notification of contract solicitations (via the Internet and e-mail). Subscribers should be able to select from a range of request filters to limit unwanted notifications. (Members of CorridorWatch.org, Fayetteville)

### ***Recommendation 4.3***

***TxDOT should develop clear communication policies regarding contract solicitations for its professional services contracts.***

#### **Agency Response to 4.3**

The contracting sections of the Department have been developing a non-disclosure form which will be ready for implementation after these sections complete the development of procedures governing communications.

The Sunset Staff Report focuses almost exclusively on engineering contracts, which is understandable given the volume of funds involved in such contracts. However, other negotiated contracts face similar issues and if new contracting policies are adopted, it would be helpful to have those policies applied to all relevant contracts. Inconsistencies in treatment among negotiated contracts may cause confusion. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)



**Agency Response to 4.3** (continued)

*Staff comment:* As management actions, Recommendations 4.3 through 4.8 do not require a change in statute, but direct TxDOT to make changes on its own in its professional services contracting. TxDOT can implement these provisions as it determines necessary to achieve consistency with its other contracting activities.

**For 4.3**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

**Against 4.3**

None received.

**Recommendation 4.4**

***TxDOT should provide additional information on overhead rates to districts and ensure that they use it.***

**Agency Response to 4.4**

TxDOT's contracting sections have been working to create and offer training on engineering contracts which include negotiating overhead rates. If such training is applied to engineering contracts, similar training should also be offered for other types of negotiated contracts. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 4.4**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

**Against 4.4**

None received.

**Recommendation 4.5**

***TxDOT should set timeframes for each major step in the development of professional services contracts.***

**Agency Response to 4.5**

If timeframes are adopted for engineering contracts, such timeframes should also apply to other negotiated contracts. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 4.5**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Gerhardt Schulle, Jr., Legislative & Governmental Affairs Director – Texas Society of Professional Engineers, Austin

**Against 4.5**

None received.

**Recommendation 4.6**

***TxDOT should consider providing additional professional staff to support its Consultant Contract Office.***

**Agency Response to 4.6**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 4.6**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

Gerhardt Schulle, Jr., Legislative & Governmental Affairs Director – Texas Society of Professional Engineers, Austin

### **Against 4.6**

None received.

### **Modification to 4.6**

5. Provide additional funding to TxDOT to hire more experienced persons who can scrutinize and critique the work done by outside contractors. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)

### **Recommendation 4.7**

***TxDOT should strengthen oversight and accountability of professional services contracts in its district offices.***

### **Agency Response to 4.7**

The Department not only concurs with this recommendation but has also started to implement such oversight and accountability measures in some of our districts. If TxDOT were to implement this recommendation statewide and establish offices to handle engineering contracts, those offices should also process other negotiated contracts for uniformity. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

### **For 4.7**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Members of CorridorWatch.org, Fayetteville

Gerhardt Schulle, Jr., Legislative & Governmental Affairs Director – Texas Society of Professional Engineers, Austin

### **Against 4.7**

None received.

### **Modification to 4.7**

6. Require TxDOT to establish oversight and accountability of professional services contracts in its regional offices instead of district offices, and establish a single point of accountability within each State Transportation Board region proposed by a Modification to Recommendation 1.1. (Members of CorridorWatch.org, Fayetteville)

#### **Recommendation 4.8**

***TxDOT should require contract management training for its professional services project managers and other employees involved in professional services contract administration.***

#### **Agency Response to 4.8**

TxDOT concurs with this recommendation and currently has contract management training in place for employees. We are also working towards improved professional service management and negotiations through regionalization of Department operations and functions. The Department is creating more standardized software to manage consultant contracts which will lead to greater efficiency and productivity. This software will allow for the transfer of lessons learned and facilitate training among staff, as well as aid managers with the management of contracts in a more timely and consistent manner. As with previous recommendations, if such a process is adopted for engineering contracts, it should also apply to other negotiated contracts by the Department as well. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 4.8**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

#### **Against 4.8**

None received.

#### **Recommendation 4.9**

***Require the Contract Advisory Team to review, with the authority to stop solicitation of, TxDOT's development of comprehensive development agreements.***

#### **Agency Response to 4.9**

The Department is aware of the risks associated with Comprehensive Development Agreements (CDAs) and has taken management actions to address such issues. Also, current statutory requirements related to CDAs through the Office of the Attorney General, the Legislative Budget Board and the State Auditor's Office provide for extensive review of such agreements. Department staff is unsure how the experience and expertise of the Contract Advisory Team will be able to assist with the review and solicitation of CDAs. In particular, any type of concession related to a CDA requires very specialized training and experience with similar agreements to identify any potential issues with the solicitation and/or procurement of such an agreement. In addition, potential developers could be discouraged by the possible volatility in the process, leading TxDOT to take on increased risks associated with certain projects. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

## **Affected Agency Response to 4.9**

The Department of Information Resources' CAT Member indicates that an independent review of the comprehensive development agreement process would add to the transparency and accountability of such agreements. If this recommendation is adopted, it may be the case that full-time employees dedicated to fulfilling this new mission would be necessary to successfully achieve the staff report's vision for the Contract Advisory Team review and comment process of the TxDOT CDA program.

**Staff Comment:** The staff report indicates that CAT could request additional staff support from its member agencies, as already provided in statute. The staff report also recommends broadening this statutory provision to authorize CAT to request consulting or other support it deems necessary. Additional support in the form of staff loaned from CAT's member agencies, consultants, or full-time employees dedicated to CAT as mentioned above would likely be necessary.

## **Department of Information Resources' CAT Member Modifications to 4.9**

7. Set out in statute the minimum standards by which CAT is to judge CDAs. This change would help all involved better understand the goals of the review and comment process.
8. Establish minimum timelines for the CDA review and comments process between the Contract Advisory Team and TxDOT. This modification would help shape the expectations of CAT and TxDOT.
9. Add additional competencies to the current membership of CAT to include expertise in highway construction or engineering and sophisticated financial analysis. Current membership does not include these competencies, and their addition would enhance the CAT's ability to add value in the review and comment process.
10. Provide additional staff resources to CAT should a member's attendance at negotiations of CDAs become a possibility, as suggested in the staff report. Staff members presently involved in the CAT are senior level attorneys for their client agencies. A CAT member's active participation in these complex, lengthy negotiations could become a tremendous burden on that member's ability to perform his or her regular duties.

(Cynthia J. Kreider, Attorney – Contracting and Procurement Services Division, Department of Information Resources, CAT member)

## **For 4.9**

Noble J. Campbell and the citizens of Trinity County

David Crossley, President – Gulf Coast Institute, Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

## **Against 4.9**

None received.

## Modifications to 4.9

11. In the event that a Comprehensive Development Agreement (CDA) or underlying facility agreement, or any other private agreement is allowed to be entered into between TxDOT and a private participant to allow the private participant to design, operate, or collect payment for a toll road, require the agreement to be “certified” by the Comptroller and “approved” by the Attorney General, including requiring both of their signatures on the final agreement to ensure the provisions meet the State’s fiduciary responsibility. Each member of the Texas Transportation Commission or the Commissioner of Transportation would be required to sign the agreement as well. This requirement would only apply to agreements for privately operated toll roads. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
12. In the event that a Comprehensive Development Agreement (CDA) or underlying facility agreement, or any other private agreement is allowed to be entered into between TxDOT and a private participant, require TxDOT to provide a study of the expected effects of private investments, and traffic volume and speed on the main alternative routes to the route in the agreement. The study would show whether public roads would be adversely affected by the privatized route. The study would include the effects during peak time periods, including morning rush hour (6 a.m. to 9 a.m.), and evening rush hour (4 p.m. to 7 p.m.), as well as midday and weekends. The original estimates should be compared to subsequent new estimates made for the first and fifth years, and every 10 years after the opening of the route in the agreement, through the term of the agreement. TxDOT would be required to make this information public at all times. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
13. Establish a Department of Contract and Procurement as a separate state agency. The Department would be required to perform the following functions for state agencies:
  - ◆ provide assistance, upon agency request, in the process of developing large contracts;
  - ◆ review proposed solicitations and contracts over an established dollar threshold or identified as high risk;
  - ◆ assist in contract negotiations; and
  - ◆ approve solicitations and final award of contracts.(Representative Linda Harper-Brown, Member – Sunset Advisory Commission)
14. Ensure that this additional review process does not significantly delay projects going through the comprehensive development agreement process. (Linda Koop, Chair – Regional Transportation Council and Councilmember – City of Dallas)
15. Extend oversight and review to facility agreements and/or other agreements that derive their authority from a CDA. (Members of CorridorWatch.org, Fayetteville)
16. Require CAT reports be sent to the Governor, Attorney General, Comptroller, Lieutenant Governor, and Speaker. (Members of CorridorWatch.org, Fayetteville)

17. Grant the Governor, Attorney General, and Comptroller to independently stop the execution of a draft CDA, or other subordinate CDA agreement, upon such recommendation from the CAT. (Members of CorridorWatch.org, Fayetteville; Martha Estes, Hempstead; James R. Lee, Alvin)
18. Grant the Governor, Lieutenant Governor, Speaker of the House of Representatives, Comptroller, and Attorney General authority to veto transportation projects. (Linda Curtis, State Director – Independent Texans, Austin)
19. Eliminate market valuation. (Charles McMahan, Member – Sunset Advisory Commission)
20. Require CDAs to be negotiated on the basis of well-defined objectives and clearly-enunciated policy regarding financial responsibilities and environmental mandates; subject to independent review by a broad-based group of experts whose authority is linked to a Legislative Oversight Committee; and confirmed by a reconstituted Transportation Commission following public review of the complete agreement over a sufficient period of time prior to a formal public hearing that precedes adoption and execution. (Jim Vance, P.E., Taylor)
21. Rescind TxDOT's powers to use CDAs. (Don P. Dixon, San Antonio; Margaret Green, Buckholts)
22. Discontinue CDAs and long-term funding commitments. Voter and/or legislative approval must be in place prior to proceeding with these commitments. (Dennis J. Micak, P.E., Sealy)

#### **Modifications to Issue 4**

23. Require TxDOT to review contracting procedures and relax restrictions in its contracting practices. Require TxDOT to review the contract and construction management practices of local toll authorities and local governments to identify “best practices” that could reduce both TxDOT overhead costs and project construction costs. (Dan A. Gattis, County Judge – Williamson County)
24. Require TxDOT to build into its contracts oversight mechanisms that allow TxDOT to receive direct feedback from affected parties when a contractor is not performing. (Brian Schaeffer, Executive Director and CEO – Texas Association of Campground Owners, Arlington)
25. Direct the Comptroller to audit TxDOT contracts to ensure that work is being performed cheaper than the state can do it. (Margaret Canty, Manor)
26. Require TxDOT to perform an accurate cost estimate on the total expense of hiring consultants, including all overhead costs, and prohibit TxDOT from hiring a consultant that costs more than using a state employee. (Margaret Canty, Manor)

### *Commission Decision*



Adopted Recommendations 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, and Modification 11.

### *Legislative Action*



The statutory recommendations were not adopted, as H.B. 300 failed to pass.



# Issue 5

---

## *Key Elements of TxDOT's Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices.*

---

### Summary

#### Key Recommendations

- ◆ TxDOT needs to provide necessary resources to enforce its statutory provisions regarding salvage vehicle dealers.
- ◆ Standardize licensing provisions by requiring a surety bond for certain franchise dealers and establishing a process for informing the public whether household goods carriers conduct criminal history checks on their employees.
- ◆ Update enforcement practices to enable regulation of motor vehicle advertisements and to provide new tools for taking action against motor vehicle dealers and household goods carriers.

#### Key Findings

- ◆ By not allocating sufficient resources to enforce the regulation of salvage vehicle dealers, TxDOT has not taken advantage of administrative processes to control this activity.
- ◆ Licensing provisions in the Department's statute do not follow model licensing practices and could potentially affect consumer protection.
- ◆ Nonstandard statutory enforcement provisions could reduce the Department's effectiveness of regulations in protecting consumers and providing fair treatment to licensees and carriers.

#### Conclusion

Various administrative, licensing, and enforcement processes in the statutes and rules governing motor vehicle dealers, salvage vehicle dealers, and household goods carriers do not match model standards developed by Sunset staff based on experience gained through more than 93 licensing reviews during the last 31 years. Sunset staff compared the Department's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, Sunset staff identified recommendations needed to bring certain programs and processes in line with the model standards.

## Support

**Regulating motor vehicle dealers, vehicle salvage dealers, and household goods carriers requires common activities that the Sunset Commission has observed and documented during more than 30 years of reviews.**

- ◆ TxDOT regulates motor vehicle dealers, salvage vehicle dealers, and household goods carriers to ensure public safety and consumer protection, defined in the textbox, *Licensed Vehicle Dealers and Household Goods Carriers*.

### ***Licensed Vehicle Dealers and Household Goods Carriers***

**Motor vehicle dealer:**

A person or company that sells and leases cars, motorcycles, mopeds, all-terrain vehicles, and recreational vehicles.

**Salvage vehicle dealer:**

A person or company that buys and sells salvage vehicles and auto parts, also referred to as a “junkyard dealer.”

**Household goods carrier:**

A business that is hired to move household good (i.e. furniture, appliances, etc.), also referred to as “movers.”

TxDOT administers these regulations in three divisions. Motor vehicle dealers licensing is in the Motor Vehicle Division, which largely reflects the organizational structure of the Motor Vehicle Commission that was merged into the Department when TxDOT was formed in 1991.

Salvage vehicle dealers licensing is in the Vehicle Titles and Registration Division, which oversees vehicle registrations and title transfers with counties. Household goods carriers licensing is in the Motor Carrier Division, which regulates common carriers since the function was transferred from the Railroad Commission in 1995. In fiscal year 2007, the Department licensed 19,358 motor vehicle dealers, 2,178 salvage vehicle dealers, and more than 800 household goods carriers.

- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 93 licensing agency reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies.

While these standards provide a guide for evaluating a licensing program’s structure, they are not intended for blanket application. The following material highlights areas where TxDOT’s statute and rules differ from these model standards, and describes the potential benefits of conforming with standard practices.

**By not allocating sufficient resources to enforce the regulations on salvage vehicle dealers, TxDOT has not taken advantage of administrative processes to control this activity.**

- ◆ ***Resources to administer regulations.*** Licensing agencies should have sufficient resources to adequately implement the provisions of their statutes for the protection of the public. The ability to take enforcement action is especially important to ensure that agencies properly deal with violations of state laws and agency rules to encourage compliance with

---

*In FY 2007,  
TxDOT licensed  
19,358 motor  
vehicle dealers.*

---

desired standards of conduct and practice, and to prevent some people from licensed practice, if necessary.

TxDOT's regulation of salvage vehicle dealers is located in the Vehicle Titles and Registration Division, which licenses these dealers as a small part of its responsibility for overseeing the State's vehicle titling and registration programs. Statute provides for licensing salvage vehicle dealers after an assessment of an applicant's basic business and tax information and their previous regulatory and criminal history. The statute contains basic enforcement provisions for revoking or suspending licenses, but instead of using these administrative tools at its disposal, the Department relies on law enforcement to take action against persons suspected of criminal wrongdoing. The Department does not follow up with these law enforcement agencies to take action against licensees based on criminal investigations.

The Department also does not take advantage of administrative processes designed to provide a streamlined approach for controlling activities under its own authority without having to resort to the courts for civil or criminal action. While delegation to law enforcement may be appropriate, especially in egregious cases, it is not a substitute for the Department's own action in this area. The potential harm that can result from illegal activities of salvage vehicle dealers, including automobile theft and dealing in stolen parts, requires a more concerted effort by the State to control salvage vehicle dealers. A fully supported, comprehensive regulatory effort, whether within the Vehicle Titles and Registration Division or within the Motor Vehicle Division, which already has regulatory processes in place, would provide an additional avenue for controlling this activity.

**Licensing provisions in the Department's statute do not follow model licensing practices and could potentially affect consumer protection.**

- ◆ ***Surety bond requirements.*** Licensees who perform the same basic activity under the same regulations should be held to the same standard for licensing. State law requires used car dealers to meet financial responsibility standards through a \$25,000 surety bond, typically to cover transactions in which a dealer does not provide a proper title to a purchased vehicle. The same requirement does not apply to new car dealers because they have generally been assumed to meet financial responsibility standards by virtue of a rigorous franchising process. While this may be true for franchisees for large, established motor vehicle manufacturers, the sale of specialty vehicles, such as mopeds and all-terrain vehicles sold by dealers without the financial backing of the large franchises, has increased risk to consumers. Extending the same financial responsibility requirements to franchise dealers, while providing an exemption for those judged to have adequate financial backing, would improve protection to all consumers.


---



*TxDOT's Vehicle  
Titles and  
Registration  
Division regulates  
salvage vehicle  
dealers.*

---

---



*State law requires  
used car dealers  
to have a \$25,000  
surety bond.*

---

- ◆ **Criminal history checks.** Being granted a state license gives regulated businesses and practitioners some measure of legitimacy which has provided the basis for assessing the criminal history information of these regulated persons. This assessment helps protect the public from possible criminal acts by people licensed by the State. The concern is heightened when the licensed activity involves entering people’s homes as part of the regulated activity.

TxDOT does not currently conduct criminal history background checks for household goods carriers or their employees, who enter peoples’ homes to help them move. While TxDOT does not license these employees, it does have authority to impose some controls over them as long as they work for companies engaged in intrastate activities.<sup>1</sup> A 2003 amendment to the Civil Practice and Remedies Code sought to relieve liability for damages because of negligent hiring for certain companies, including household goods carriers, that conduct criminal history background checks on their employees.<sup>2</sup> Providing information about these criminal history background checks of employees of household goods carriers would help protect the public in selecting a moving company.

**Nonstandard statutory enforcement provisions could reduce the Department’s effectiveness of regulations in protecting consumers and providing fair treatment to licensees and carriers.**

- ◆ **Enforcement statistics.** Licensing agencies should keep and report statistical information detailing the number, source, and types of complaints received and the disposition of complaints resolved. Tracking and reporting complaint information helps agencies and policymakers know how well regulations are working to protect the public and helps identify emerging issues that may affect these regulations.

TxDOT keeps some information on complaints regarding household goods carriers, but it does not compile or summarize the information to provide an overall picture of its enforcement effort. Providing comprehensive information about complaints received and complaint outcomes would enable TxDOT to more clearly identify the issues affecting these regulations and enable it to judge performance and ultimately to improve management of the program.

- ◆ **Enforcement authority.** A licensing agency should have clear authority to enforce its rules and statutes by taking action that fits the nature and seriousness of the violation. TxDOT’s statute currently prohibits the Department from pursuing a complaint against motor vehicle dealers suspected of violating regulations to prevent false or misleading advertisement until they have had the chance to cure the violation. The Department must notify alleged violators of the need to cure the situation. TxDOT sends notifications on a rotating basis regarding violations of

---

*TxDOT does not provide the public with comprehensive complaint information on household goods carriers.*

---


any of the 30 parts that make up the total advertising regulations, but is never able to take enforcement action on one of these violations.

While the process allows for licensees to cure violations when notified, they may simply violate another regulation until notified once again by TxDOT. The result is that enforcement of advertising regulations is non-existent. A phased enforcement process would enable the Department to tailor an approach to protect the public from false advertising claims while allowing some flexibility for licensees to reach consumers.

- ◆ ***Conformity with the APA.*** Licensing agencies' hearings should be governed by the Administrative Procedure Act (APA) for minimum standards of uniform practice and procedure for state agencies. TxDOT's motor vehicle statute provides for it to prevail over the APA to the extent of any conflict. For example, the Department's statute allows for a licensee who disagrees with a Department ruling to appeal either to the Travis County district court or directly to the Third Court of Appeals District; while the APA standards allow only for an appeal to Travis County district court.<sup>3</sup> Allowing the motor vehicle statute to prevail over the APA risks applying different standards to motor vehicle dealers from those applied to other practitioners regulated by the State.
- ◆ ***Specialized training.*** An agency should have enough enforcement options to enable it to address the specific needs of a particular case. TxDOT's regulation of motor vehicle dealers has the enforcement options generally available to regulatory agencies, including the authority to place a licensee on probation and to report on matters related to the probation. The Department cannot, however, order a licensee to receive specialized training as a condition of probation or continued licensing. Providing this authority to TxDOT would help improve enforcement of motor vehicle regulations and help ensure needed information gets to licensees.
- ◆ ***Administrative penalties.*** The Legislature has come to accept administrative penalties as an intermediate tool for regulatory agencies to discipline persons they regulate without having to revoke a license, affecting a licensee's ability to continue working. Regulatory agencies may assess these penalties under their own authority without having to do so through the court system.

In addition, agencies should have a matrix for determining that penalty levels relate to the nature and seriousness of the violation. The Department has the authority to assess penalties against motor vehicle dealers and household goods carriers, but not against salvage vehicle dealers. It also does not have a matrix for determining appropriate penalty levels against motor vehicle dealers. Having administrative penalty authority in its regulation of salvage vehicle dealers would give the Department a necessary tool to encourage compliance by these dealers without having to revoke their license. Requiring a penalty matrix would ensure that penalties are determined in a systematic way.

---




*TxDOT has authority to assess penalties against motor vehicle dealers and household goods carriers, but not salvage vehicle dealers.*

---



---

  
*The household  
goods carriers  
statute does  
not authorize  
summary  
suspension to stop  
harmful activity.*

---

- ◆ **Penalty caps.** Administrative procedures have evolved to such a point that concerns about due process and agencies abusing this authority have been largely eliminated. An agency should have the flexibility to assess administrative fines at a level that relates to the nature and seriousness of the violation. Caps on administrative penalties prevent agencies from tailoring these penalties as necessary for the specifics of the case. TxDOT's household goods carriers statute caps the amount of total penalty for a knowing violation of statute or rules at \$30,000. The Department should have flexibility to establish penalty levels as it determines necessary without such a cap to deal with the violation and to deter future violations.
- ◆ **Summary suspension.** Consideration should be given to granting an agency authority to summarily suspend a license without an initial hearing to stop an activity that can result in substantial and immediate harm to the public. TxDOT's household goods carriers statute does not authorize summary suspension to provide quicker action in such instances. Giving TxDOT the authority to do so would protect the public while still ensuring the due process rights of licensees.
- ◆ **Refunds.** Refunds provide the opportunity for regulatory agencies to allow complainants to receive some or all of what was lost as a result of the action that prompted the complaint and resulted in violation of state laws or agency rules. Refunds may be granted when a member of the public has been defrauded or subjected to a loss that can be quantified. TxDOT has been providing refunds of money paid by consumers for motor vehicle dealers' and for household goods carriers' services as part of agreed orders, even though it does not have explicit authority to do so. Having this authority clearly laid out in statute would ensure that the Department will be able to continue to provide for refunds as an enforcement tool to help consumers harmed by licensees or carriers.
- ◆ **Cease-and-desist authority.** Licensing agencies should have enforcement authority not only over their licensees, but over those who engage in unlicensed activity. The standard range of sanctions against licensees, however, does not apply to such unlicensed activity. While injunctive authority allows agencies to take legal action to stop unlicensed activity, cease-and-desist orders provide an interim step that agencies may take on their own to stop unlicensed activity. TxDOT has cease-and-desist authority against unlicensed motor vehicle dealers, but has no similar authority to stop unlicensed activity by household goods carriers. These orders provide for faster action by regulatory agencies, especially when violators of the orders are subject to additional sanctions, such as administrative penalties. Also, violations of cease-and-desist orders may help the agency obtain injunctive relief more easily.

## Recommendations

### Administration – Management Action

#### **5.1 TxDOT needs to provide necessary resources to enforce its statutory provisions regarding salvage vehicle dealers.**

This recommendation would direct the Department to determine resource and staffing needs and request appropriations to implement enforcement provisions of the salvage vehicle dealers statute. Any consideration by the Department regarding reorganizing this regulatory effort to take advantage of licensing and enforcement functions elsewhere in the agency should still include a determination of the increased resources needed to adequately regulate salvage vehicle dealers. Fees assessed on these dealers should be increased to cover the additional costs.

### Licensing – Change in Statute

#### **5.2 Require new vehicle dealers to meet the same surety bond requirement as other dealers, subject to an assessment of financial condition.**

This recommendation would remove the exemption for franchise dealers to have a \$25,000 surety bond to be licensed as motor vehicle dealers, making them subject to the same consumer protection provision applied to used car dealers. However, because of the significant financial resources of many franchisees, the Department would be able to continue the exemption for some franchisees based on their financial condition. By establishing criteria for determining which franchisees would be exempt from the bond requirement, TxDOT would better target the requirement where it is needed.

#### **5.3 Establish a process for informing the public whether household goods carriers conduct criminal history checks on their employees.**

This recommendation would require household goods carriers to report to TxDOT whether or not they conduct criminal history background checks on their employees under the provisions of the Civil Practice and Remedies Code. TxDOT would be able to require documentation it deems necessary at the time of original motor carrier registration and registration renewal to satisfy the Department that appropriate criminal history background checks have occurred and are regularly updated. The documentation should satisfy TxDOT that a household goods carrier claiming to conduct criminal history background checks actually excludes from employment workers with serious criminal records, appropriately judged to put the public at risk.

TxDOT would also be required to find the most effective way to make this information available to the public for its use in selecting a household goods carrier. This notification process would provide a means of informing the public about these companies without expanding regulation and without requiring household goods carriers to conduct criminal history background checks.

### Enforcement – Management Action

#### **5.4 The Department should compile and report statistical information on complaints and enforcement actions in its household goods carriers registration program.**

This recommendation would direct TxDOT to compile complaint information regarding its household goods carriers including the number, source, subject matter, and disposition of complaints each year.

This information should be reported and made available to the public. Non-jurisdictional complaints should also be tracked to give the Department and the Legislature a more complete picture of this regulated area. Improved reporting of complaint and enforcement information would also serve as an important management tool to help the Department better understand what is happening in this area and to improve the program.

## **Enforcement – Change in Statute**

### **5.5 Remove the prohibition against TxDOT enforcing advertising regulations against motor vehicle dealers and instead provide for phasing in enforcement.**

This change would eliminate the existing language in statute that prohibits TxDOT from filing a complaint against a motor vehicle dealer regarding advertising regulations until the licensee has had a chance to correct the violation. Instead, the Department would establish a process that allows licensees one advertising violation in a 12-month period before it may take enforcement action. This change would enable the Department to control false and deceptive advertising while allowing time for motor vehicle dealers to come into compliance.

### **5.6 Specify that the regulation of motor vehicle dealers is subject to the Administrative Procedure Act.**

This recommendation would remove language that the motor vehicle dealer statute controls over the APA to the extent of any conflict. Instead, motor vehicle regulations would be required to follow the APA, as is the standard of almost all other regulatory agencies.

### **5.7 Authorize the Department’s Motor Vehicle Division to provide specialized training as an enforcement option for violations of motor vehicle dealer regulations.**

Allowing TxDOT to order violators of motor vehicle dealer laws and rules to obtain specialized training as a condition of probation would provide an additional tool for enforcing the Department’s regulations and would help ensure that the licensee receives information about motor vehicle dealer practice and regulation.

### **5.8 Authorize the Department to levy administrative penalties for salvage vehicle dealers and require an administrative penalty matrix for both salvage and motor vehicle dealers.**

This recommendation would give the Department authority to fine salvage vehicle dealers up to \$5,000 for violations of the statute or rules. In determining actual penalty amounts, the Department should consider factors including a licensee’s compliance history, seriousness of the violation, and the threat to public welfare. The Department should develop an administrative penalty matrix that appropriately relates fines to the specific violation by salvage and motor vehicle dealers. All administrative penalties collected would be deposited into General Revenue. This recommendation would give TxDOT the flexibility of an additional enforcement tool while ensuring that penalty amounts reflect the severity of the violation.



**5.9 Remove the cap on the amount of total penalty for a knowing violation of the regulation of household goods carriers.**

This recommendation would remove the total penalty cap of \$30,000 for a knowing violation of household goods carriers statutes or rules. This change would allow the Department to establish penalty levels as it determines necessary to deal with the violation and to deter future violations.

**5.10 Strengthen TxDOT’s household goods carriers enforcement authority by including summary suspension.**

This recommendation would grant TxDOT authority to temporarily suspend a household goods carrier’s registration without holding an initial hearing. Doing so would allow the Department to stop activity that could harm the public. Providing a subsequent opportunity for hearing and appeal of such an order would ensure the due process for the carrier and prevent abuse of this authority.

**5.11 Authorize TxDOT to order refunds as part of an agreed order of complaints involving motor vehicle dealers and household goods carriers.**

This recommendation would give TxDOT the authority to include refunds in agreed orders to resolve enforcement matters involving motor vehicle dealers and household goods carriers. The refund would be limited to the amount paid by the consumer and would not include an estimation of damages or harm. The refund may be in lieu of or in addition to other sanctions ordered against a licensee or carrier. This would allow TxDOT to take more effective action against persons who violate its statutes and rules and to do so in a way that benefits the aggrieved consumer.

**5.12 Authorize TxDOT to issue cease-and-desist orders against unlicensed household goods carriers.**

This authority would enable TxDOT to move more quickly to stop unlicensed activity that threatens the safety of the public. This recommendation would also authorize the Department to assess administrative penalties against individuals who violate cease-and-desist orders. The Department would still be able to refer unlicensed activity cases to local law enforcement or the Attorney General for prosecution.

**Fiscal Implication**

These recommendations will not have a fiscal impact. The recommendation directing TxDOT to request appropriations to hire staff to enforce its salvage vehicle dealer regulations could increase costs. The cost would depend on the Department’s determination of staffing needed to enforce the regulations, but should be offset by increased fees on licensees.

.....

<sup>1</sup> Op. Tex. Att’y Gen. GA-0183 (2004).  
<sup>2</sup> Texas House Bill 705, 78th Legislature (2003).  
<sup>3</sup> Texas Occupations Code, sec. 2301.751(a)(2); and Texas Government Code, sec. 2001.176.



## *Responses to Issue 5*

### **Recommendation 5.1**

***TxDOT needs to provide necessary resources to enforce its statutory provisions regarding salvage vehicle dealers.***

#### **Agency Response to 5.1**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 5.1**

Noble J. Campbell and the citizens of Trinity County

#### **Against 5.1**

None received.

#### **Modification to 5.1**

1. Transfer the responsibility for salvage vehicle dealer licensing and regulation from TxDOT to the Texas Department of Licensing and Regulation (TDLR), the State's occupational regulatory agency. Also, amend the salvage vehicle dealer statute to include the standard elements of licensing programs under TDLR to improve regulation of the industry, especially in the areas of enforcement and compliance. (Bruce Ormand, Legislative Director – Texas Automotive Recyclers Association, Pearland)

### **Recommendation 5.2**

***Require new vehicle dealers to meet the same surety bond requirement as other dealers, subject to an assessment of financial condition.***

#### **Agency Response to 5.2**

Requiring TxDOT to establish bonding criteria would put the Department in the position of determining financial condition based upon information submitted by the dealer. This would require dealers to undergo an additional licensing step that will increase workload and slow application processing. TxDOT will have no way of ascertaining financial condition without extensive investigation, further slowing the license process.

#### **Agency Modification to 5.2**

2. Increase the surety bond amount from \$25,000 to \$250,000 for both franchise and independent dealers. If the bond amount were increased, consumers and lenders would have the ability to obtain a meaningful recovery against a dealer. An increased bond amount for all dealers, both franchised and independent, along with the requirement for them to obtain a surety bond would provide similar benefits to the staff recommendation as presented.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.2**

Noble J. Campbell and the citizens of Trinity County

**Against 5.2**

Karen Phillips, Chief Counsel – Texas Automobile Dealers Association, Austin

Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin

**Modification to 5.2**

3. Require the State to conduct a diligent analysis of increasing the surety bond amount required of vehicle dealers, before increasing the surety bond amount required. (Jeff Martin, Executive Director – Texas Independent Auto Dealers Association, Round Rock)

**Recommendation 5.3**

***Establish a process for informing the public whether household goods carriers conduct criminal history checks on their employees.***

**Agency Response to 5.3**

TxDOT concurs with this recommendation.

**Agency Modification to 5.3**

4. Authorize the Department to conduct criminal history background checks at the time of original registration and registration renewal of all directors, owners, or general partners of household goods carriers. However, the implementation of such a system will incur significant costs to the Department; and many regulation and administrative fees for household goods carriers cannot be raised to offset such expenses without statutory changes.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.3**

Noble J. Campbell and the citizens of Trinity County

**Against 5.3**

None received.

**Modification to 5.3**

5. Authorize TxDOT to notify the public as to whether or not a household goods carrier's contractors have had criminal background checks conducted on them. (John D. Esparza, Executive Director – Southwest Movers Association, Austin)

**Recommendation 5.4**

***The Department should compile and report statistical information on complaints and enforcement actions in its household goods carriers registration program.***

**Agency Response to 5.4**

The Department concurs with this recommendation and initiated a project late in 2007 to develop and implement a “Complaint Management System” for the intake of consumer complaint information, tracking related investigation, enforcement and mediation processes, and storage of related documents. This web-based system allows for collections and reporting of applicable management statistics, as well as allowing for the public to not only file and track complaints but view prior complaints, investigations and enforcement histories of household goods carriers.

TxDOT is also in the process of developing and implementing a “Consumer Guide to Moving” (or similar product) to enhance education and communication efforts with the public regarding a variety of consumer protection and household goods carriers moving topics, such as how to choose a mover, what to expect during a move, risks associated with contracting a move over the internet and other associated subjects. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.4**

Noble J. Campbell and the citizens of Trinity County

John D. Esparza, Executive Director – Southwest Movers Association, Austin

**Against 5.4**

None received.

**Modification to 5.4**

6. Require TxDOT to include information submitted to TxDOT in the household goods carriers’ annual reports, such as number of moves performed, in the reporting of statistical information to the public to show the percentage of moves that result in enforcement action. (John D. Esparza, Executive Director – Southwest Movers Association, Austin)

**Recommendation 5.5**

***Remove the prohibition against TxDOT enforcing advertising regulations against motor vehicle dealers and instead provide for phasing in enforcement.***

**Agency Response to 5.5**

The Department concurs with the removal of the prohibition against TxDOT enforcing advertising regulations against motor vehicle dealers.

### Agency Modification to 5.5

7. Remove the prohibition against TxDOT enforcing advertising regulations against motor vehicle dealers, but do not allow licensees one advertising violation in a 12-month period before enforcement action can be taken. Instead, allow TxDOT to take enforcement action immediately as is done with other civil penalties through the Texas Occupations Code to better serve the interests of the public. First time infractions of lesser violations could be acknowledged through a warning letter, allowing for a proportional response to the degree of harm caused by any particular violation.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 5.5**

Noble J. Campbell and the citizens of Trinity County

#### **Against 5.5**

Karen Phillips, Chief Counsel – Texas Automobile Dealers Association, Austin

Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin

### **Recommendation 5.6**

***Specify that the regulation of motor vehicle dealers is subject to the Administrative Procedure Act.***

#### **Agency Response to 5.6**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 5.6**

Noble J. Campbell and the citizens of Trinity County

#### **Against 5.6**

Karen Phillips, Chief Counsel – Texas Automobile Dealers Association, Austin

Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin

### **Recommendation 5.7**

***Authorize the Department's Motor Vehicle Division to provide specialized training as an enforcement option for violations of motor vehicle dealer regulations.***

#### **Agency Response to 5.7**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.7**

Noble J. Campbell and the citizens of Trinity County

**Against 5.7**

Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin

**Recommendation 5.8**

***Authorize the Department to levy administrative penalties for salvage vehicle dealers and require an administrative penalty matrix for both salvage and motor vehicle dealers.***

**Agency Response to 5.8**

The Department concurs with this recommendation.

**Agency Modification to 5.8**

8. Deposit any salvage dealer administrative penalties into the State Highway Fund instead of General Revenue to allow TxDOT to better utilize such funds for the purpose of enforcement staffing and associated costs.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.8**

Noble J. Campbell and the citizens of Trinity County

Bruce Ormand, Legislative Director – Texas Automotive Recyclers Association, Pearland

**Against 5.8**

None received.

**Recommendation 5.9**

***Remove the cap on the amount of total penalty for a knowing violation of the regulation of household goods carriers.***

**Agency Response to 5.9**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.9**

Noble J. Campbell and the citizens of Trinity County

**Against 5.9**

John D. Esparza, Executive Director – Southwest Movers Association, Austin

**Recommendation 5.10**

**Strengthen TxDOT's household goods carriers enforcement authority by including summary suspension.**

**Agency Response to 5.10**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.10**

Noble J. Campbell and the citizens of Trinity County

**Against 5.10**

John D. Esparza, Executive Director – Southwest Movers Association, Austin

**Recommendation 5.11**

**Authorize TxDOT to order refunds as part of an agreed order of complaints involving motor vehicle dealers and household goods carriers.**

**Agency Response to 5.11**

TxDOT concurs with this recommendation.

**Agency Modification to 5.11**

9. Authorize refunds in a contested case setting, regardless of whether the case is closed by an agreed order, a final order, or an order or dismissal after a case is withdrawn. Refund authority applying only to cases closed by agreed order, as opposed to all cases, could lead to an inequitable enforcement process. By differentiating between cases, it could cause unanticipated maneuvering by respondents, increase the contested caseload, and possibly provide less relief to consumers. In addition, any statutory change could affect agreed orders that have been executed for relief of damages related to the economic harm associated with the case.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.11**

Noble J. Campbell and the citizens of Trinity County

**Against 5.11**

John D. Esparza, Executive Director – Southwest Movers Association, Austin

Karen Phillips, Chief Counsel – Texas Automobile Dealers Association, Austin



***Recommendation 5.12***

***Authorize TxDOT to issue cease-and-desist orders against unlicensed household goods carriers.***

**Agency Response to 5.12**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 5.12**

Noble J. Campbell and the citizens of Trinity County

John D. Esparza, Executive Director – Southwest Movers Association, Austin

**Against 5.12**

None received.

***Commission Decision***



Adopted Recommendations 5.1, 5.3, 5.4, 5.7, 5.8, 5.9, 5.10, 5.11, and 5.12.

***Legislative Action***



The statutory recommendations were not adopted, as H.B. 300 failed to pass.



# Issue 6

---

## *Key Elements of TxDOT's Regulation of Outdoor Advertising Do Not Conform to Commonly Applied Licensing Practices.*

---

### Summary

#### Key Recommendations

- ◆ Standardize administration of outdoor advertising regulation by requiring an outdoor advertising license for rural roads and depositing all fees to the General Revenue-Dedicated Texas Highway Beautification Account.
- ◆ Authorize the Department to deny license renewal if a licensee's permits are in poor standing.
- ◆ Update enforcement practices by requiring the Department to develop complaints procedures, authorizing the use of standard administrative penalties, and depositing all program fines into the General Revenue-Dedicated Texas Highway Beautification Account.
- ◆ TxDOT should centralize the program, better track total program costs and raise fees to recover costs, and scale enforcement actions to the seriousness of the offense.

#### Key Findings

- ◆ The structure and set up of the outdoor advertising program does not provide for the best regulation of the industry.
- ◆ Licensing provisions in the Department's statute do not follow model licensing practices and could reduce the effectiveness of regulation.
- ◆ Nonstandard enforcement provisions of TxDOT's statute could reduce the Department's effectiveness in regulating outdoor advertising and providing fair treatment to licensees.

#### Conclusion

Various structural, administrative, licensing, and enforcement processes in the statutes governing billboard regulation along federal-aid and rural roads do not match model standards developed by Sunset staff and experience gained through more than 93 licensing reviews during the last 31 years. Sunset staff compared the Department's statute, rules, and practices for the outdoor advertising regulatory program to the model standards to identify variations, and identified several changes to streamline and update the regulation of signs along both road systems.

The Department is currently considering changes to the outdoor advertising regulatory program, including a major revision of the program's rules. The recommendations contained in this issue would assist these upcoming efforts by bringing the Department in line with model standards.

## Support

### Regulating outdoor advertising requires common activities that the Sunset Commission has observed and documented during more than 30 years of reviews.

- ◆ The federal Highway Beautification Act requires TxDOT to “effectively control” outdoor advertising along federal-aid primary roads such as interstates and U.S. highways. The federal government does not provide funding, but it may withhold federal highway funding to ensure compliance. A separate state statute extends similar regulation to rural roads not on the federal-aid system. The Department’s Right-of-Way Division oversees the regulation of outdoor advertising on both road systems. TxDOT also certifies about 61 cities to issue billboard permits and conduct enforcement along federal-aid roads on behalf of the Department. The chart, *Outdoor Advertising Regulation*, provides more detail about the State’s regulatory efforts. The regulations require a license for certain outdoor advertisers and permits for each sign, but do not require the heavy regulatory effort of occupational licensing.

---

◆

*TxDOT permitted 12,984 outdoor advertising signs on federal-aid and rural roads in fiscal year 2007.*

---

#### **Outdoor Advertising Regulation FY 2007**

	Federal-Aid Roads	Rural Roads
<b>Requirements</b>	<ul style="list-style-type: none"> <li>◆ Outdoor advertising license (application, license fee, and surety bond)</li> <li>◆ Permit for each sign</li> </ul>	<ul style="list-style-type: none"> <li>◆ Permit for each sign (no license required)</li> </ul>
<b>Fees</b>	<ul style="list-style-type: none"> <li>◆ \$125 initial license fee \$60 annual renewal</li> <li>◆ \$96 initial permit fee for each sign \$40 annual renewal for each sign</li> </ul>	<ul style="list-style-type: none"> <li>◆ \$96 initial permit fee for each sign \$40 annual renewal for each sign</li> </ul>
<b>Number of Active Licenses/Permits, end of fiscal year</b>	<ul style="list-style-type: none"> <li>◆ 1,304 licenses</li> <li>◆ 12,250 individual sign permits</li> </ul>	<ul style="list-style-type: none"> <li>◆ 734 individual sign permits</li> </ul>
<b>Revenue</b>	\$602,116 Deposited into the GR-Dedicated Texas Highway Beautification Account	\$114,682 Deposited into the State Highway Fund

- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 93 licensing agency reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program’s structure, they are not intended for blanket application. The following material highlights areas where TxDOT’s statute and rules differ from these model standards, and describes the potential benefits of conforming with standard practices.

## The structure and set up of the outdoor advertising program does not provide for the best regulation of the industry.

- ◆ **Organizational structure.** A regulatory agency should be organized and structured in a way to provide fair, consistent regulation so that expectations on licensees are clear and that everyone is subject to the same rules. Currently, TxDOT's outdoor advertising regulatory program is decentralized among staff in each of the Department's 25 district offices. These staff report to 25 different district engineers, not the Department's Right-of-Way Division in Austin, which sets overall policy and direction for the program. This staff generally has other primary duties in the district and often works part time on the outdoor advertising program.

TxDOT is currently developing some changes to the regulation of outdoor advertising, including possible changes to its organizational approach to these regulations. Greater centralization of the program by having the Right-of-Way Division oversee outdoor advertising staff in the districts or in a regional structure would ensure greater consistency in the interpretation and enforcement of program rules statewide. It would also enable more uniform tracking and reporting of program costs and complaints than is currently done.

- ◆ **Standardization.** Similar regulatory efforts within the same organization should be administered through the same regulatory processes as much as feasible to provide needed control in the most simple and efficient way. Standardization promotes efficiency by reducing the number of administrative processes needed to arrive at the same outcome. It also promotes consistent treatment of licensees and applicants, resulting in processes that are more predictable and fair.

State law currently requires an outdoor advertising license for businesses operating signs along federal-aid roads, but not for those with signs on rural roads. This difference in regulation exists because the license has been used to identify large outdoor advertising companies with multiple sign permits that have usually operated only along major federal-aid roads. The license has not been necessary on rural roads where individuals have historically operated, usually with only one sign.

As many roads throughout the state classified as rural have become more developed and indistinguishable from federal-aid roads, sign locations in these areas have attracted companies that would otherwise be subject to the license requirement. Extending the license requirement to rural roads would make the overall regulation of outdoor advertising more consistent. The license would also provide standard enforcement tools for regulation of signs on rural roads currently available only on federal-aid roads.

TxDOT also uses two separate processes to hear appeals of a denied sign permit. For rural roads, a Transportation Commission-appointed Board of Variance, made up of members of TxDOT's administration, reviews permit denial appeals, and can authorize variances from rural

---

*TxDOT's outdoor advertising regulatory program is decentralized among staff in the Department's 25 districts.*

---

---

*Standardization promotes efficiency and consistent treatment of licensees and applicants.*

---

road permit standards. For federal-aid roads, the Executive Director reviews the appeals, but cannot authorize variances from the minimum federal standards. Eliminating the Board of Variance, and allowing the agency head to grant variances on rural roads, would standardize the administration of the two programs.

---

*The outdoor advertising regulatory program operated at a more than \$490,000 deficit in fiscal year 2007.*

---

- ◆ **Revenue-neutral operations.** Regulatory programs should pay their own way from revenues collected from the regulated community. According to the best estimate of revenues and costs associated with regulating outdoor advertising from a recent independent audit, the program operated at a more than \$490,000 deficit in fiscal year 2007.<sup>1</sup> TxDOT has not calculated total costs to compare with revenues because of the decentralized nature of the program. The Department sets license and permit fees in rule at \$100 each, and has not increased either fee since 1991. By tracking total program costs, the Department would be in a better position to know what fee levels are needed to adequately fund the program.
- ◆ **Funding.** Typically, licensing agencies deposit licensing fees to General Revenue and receive their appropriations from that fund. TxDOT deposits fees for signs along federal-aid roads into the General Revenue-Dedicated Texas Highway Beautification Account, and fees for rural roads into the State Highway Fund. Requiring that all fees be deposited into the General Revenue-Dedicated account would conform funding for rural roads to standard practice and streamline administration of outdoor advertising regulation.

**Licensing provisions in the Department’s statute do not follow model licensing practices and could reduce the effectiveness of regulation.**

- ◆ **Compliance history.** Before renewing a license, a licensing agency should be aware of any compliance issues that a licensee might have and the licensee’s efforts to resolve those problems. Existing compliance issues should be in the process of resolution in an appropriate manner before a license is renewed. Currently, statute does not provide specific authority for TxDOT to deny renewal of a license if the license holder’s permits are in poor standing. Providing this standard authority would give the Department a significant tool to ensure compliance with permit regulations.

**Nonstandard enforcement provisions of TxDOT’s statute could reduce the Department’s effectiveness in regulating outdoor advertising and providing fair treatment to licensees.**

- ◆ **Complaint procedures.** State agencies should develop a complaints process guided by clear rules or procedures, which help ensure appropriate and consistent action by the agency. Agencies should maintain adequate information about complaints, including detailed statistics about complaints received and resolved each year, and provide this information

---

*TxDOT does not have specific authority to deny renewal of a license if the license holder’s permits are in poor standing.*

---

in an annual report. Tracking complaints helps an agency promptly, consistently, and reliably address complaints, and analysis of complaint information is useful as a way to identify regulatory problem areas.

Agencies should also have processes in place to inform the public of complaint procedures, including on the agency's website. The public, the agency, or a licensee should be able to file a written complaint against a licensee on a simple form provided by the agency. Complaints should be put in priority order so that the most serious problems are handled first.

Currently, neither the Department's statute nor rules outline a clear complaints process for the outdoor advertising program. Complaints often originate at the district level, and are not tracked until a formal appeal process starts. A well-defined complaints process would improve tracking and analysis of all complaints, and ensure licensees and the public know how to file a complaint.

- ◆ **Range of penalties.** A licensing agency's statute should authorize a full range of penalties, which the agency should apply according to the seriousness of the violation. For almost all violations regardless of seriousness, TxDOT sends a permit cancellation notice, providing a 10-day opportunity for the license or permit holder to appeal. Violations that initiate the 10-day letter can range from a simple late permit renewal application, to a more serious, safety-related violation of maintaining a sign from the side of a road instead of from private property. TxDOT's statute does not authorize the use of administrative penalties for violations of outdoor advertising regulations along federal-aid roads.

While the Department does have administrative penalty authority for violations of its regulations on rural roads, the statute provides for these penalties only for intentional violations and for judicial review of penalty levels by trial de novo. These non-standard provisions greatly limit the effectiveness of this widely accepted administrative process as an enforcement tool. Authorizing administrative penalties for violating requirements on federal-aid roads would provide additional enforcement options to improve the agency's regulation. The Department should work to fully use these tools by scaling penalties to the seriousness of the offense.

- ◆ **Fines.** Fines should be deposited to General Revenue to prevent the appearance of self-enrichment through the enforcement process. Statute requires civil penalties for federal-aid and civil and administrative penalties for rural roads to be deposited in the State Highway Fund. TxDOT collects little to no fine revenue, since it generally does not use civil or administrative penalties to enforce outdoor advertising regulations. As the Department expands use of these tools, penalties should be deposited to the General Revenue-Dedicated Texas Highway Beautification Account to maintain the objectivity of the process and avoid the appearance of the Department using this revenue to supplement its funding.

---

*Tracking and analysis of complaint information would help identify regulatory problem areas.*

---

---

*Standard administrative penalty authority would help TxDOT scale penalties to the seriousness of the violation.*

---



## Recommendations

### Program Structure – Management Action

#### **6.1 TxDOT should centralize the outdoor advertising regulatory program, requiring staff to report to the Right-of-Way Division instead of district engineers.**

Centralizing the program would ensure statewide fairness and consistency in interpretation and enforcement of rules, and would help the Department track total program costs. As part of this recommendation, the Department should consider whether regionalizing some staff, and consolidating the effort of staff working part time on the program, could produce additional efficiencies. This recommendation would complement existing efforts by TxDOT to reorganize the regulation of outdoor advertising.

### Administration – Change in Statute

#### **6.2 Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads.**

This recommendation would require a license to operate outdoor advertising on rural roads, matching the license requirements that currently exist for outdoor advertisers only on federal-aid roads. Under this change, a single license would enable outdoor advertisers to operate on both road systems. They would still have to obtain permits for individual signs with different standards, such as height and spacing, for each type of road. The intent of this recommendation is to standardize the outdoor advertising regulatory program and ensure more consistent regulation on all roads.

The license for outdoor advertisers on rural roads would be subject to the same enforcement authority as currently governs the federal-aid road license. These provisions include the authority to revoke or suspend licenses, or place licensees on probation for a violation of statute or rules. In combination with Recommendation 6.6, clarifying the Department's authority to deny license renewal, these provisions would provide standard enforcement options for all outdoor advertisers operating along the state highway system.

#### **6.3 Standardize the appeals process for denied sign permits by eliminating the Board of Variance.**

This recommendation would eliminate TxDOT's Board of Variance for hearing appeals of rural road sign permit denials. TxDOT would use the same review process for rural road permit appeals as currently exists for federal-aid roads. Under this change, the agency head would have authority to grant variances from the rural road sign standards. This recommendation would standardize the administration of the outdoor advertising regulatory program.

#### **6.4 Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account.**

This change would require that the small amount of fees collected for signs along rural roads be deposited into the same Texas Highway Beautification Account in General Revenue as fees collected for federal-aid roads, instead of to the State Highway Fund. This change would streamline the collection and tracking of revenues for licenses and permits on both types of roads.



## **Administration – Management Action**

### **6.5 TxDOT should ensure that the cost of regulating outdoor advertising is covered by fee revenue generated by the program.**

The Department should document the total cost of the program, including direct and indirect expenses to both the Right-of-Way Division and district offices. The Department should use this information to adjust fees, which have not been raised since 1991, to recover the total cost of the program. The intent of this recommendation is to accurately document the cost of outdoor advertising regulation, and to address a recent independent audit finding that the program operated at a \$490,000 deficit in fiscal year 2007.<sup>2</sup>

## **Licensing – Change in Statute**

### **6.6 Authorize the Department to deny license renewal if a licensee's permits are in poor standing.**

This recommendation would clarify the Department's authority to deny the renewal of an existing license for outdoor advertisers on federal-aid roads. Providing this standard enforcement tool would ensure that the Department considers any compliance issues that a licensee might have before renewing a license.

## **Enforcement – Change in Statute**

### **6.7 Require the Department to develop a complaints process, track and report complaints, and provide information to the public about how to file a complaint.**

The entire complaints process should be guided by clear rules or procedures, and the Department should maintain adequate information about complaints, including detailed statistics about complaints received and resolved each year, and provide this information in an annual report. TxDOT should also have processes in place to inform the public of complaint procedures, including on the Department's website. Persons affected by the regulations should be able to file a written complaint against a licensee on a simple form provided by the Department. The Department should prioritize complaints so that the most serious problems are handled first. Requiring complaints procedures and improved tracking and analysis of all complaints would ensure better involvement by all stakeholders in the regulation of outdoor advertising and would help TxDOT better understand issues of concern to those stakeholders.

### **6.8 Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification account.**

This recommendation would clarify the existing administrative penalty authority as an enforcement tool for regulating outdoor advertising on rural roads. Specifically, this recommendation would eliminate language that a violation be intentional before the Department may assess an administrative penalty under its rural road regulations. It would also provide for an appeal of such a penalty by substantial evidence instead of by trial de novo. The recommendation would also extend this standard administrative penalty authority to violations of the Department's regulations on federal-aid roads.

Requiring these changes would provide an important enforcement tool, and make regulation along both types of roads more consistent. As part of this recommendation, all fines collected for both types of

roads should be deposited into the existing General Revenue-Dedicated Texas Highway Beautification Account, not to the State Highway Fund.

## Enforcement – Management Action

### 6.9 The Department should scale enforcement actions to the seriousness of offenses.

TxDOT should work to fully use all of its available enforcement tools by scaling penalties to the seriousness of the offense. The Department should use administrative penalties for less-serious offenses, instead of revoking permits. As part of this recommendation, the Department should include a matrix describing administrative penalty levels associated with various offenses in its planned rule revision.

## Fiscal Implication

The management actions directing TxDOT to centralize its outdoor advertising regulatory program, better track program costs, and raise fees could result in an annual revenue gain to the General Revenue-Dedicated Texas Highway Beautification Account of up to \$490,000 to cover the full cost of regulations, according to the best estimate of revenues and costs associated with regulating outdoor advertising from a recent independent audit.<sup>3</sup>

The statutory recommendations to deposit all program fees and fines into the General Revenue-Dedicated Texas Highway Beautification Account would result in an approximate \$115,000 annual gain to this account, and a loss of the same amount to the State Highway Fund. These recommendations would require that regulation along both federal-aid and rural roads be supported through the legislative appropriations process. For fiscal year 2008, the Legislature appropriated \$620,561 from the General Revenue-Dedicated account to support sign regulation along federal-aid roads, while the Department supported regulation along rural roads from its general budget.

Costs associated with other statutory recommendations in this issue, such as requiring a license to operate outdoor advertising signs along rural roads and better tracking and reporting complaints information, should be offset by increased fees on licensees.

<i>Fiscal Year</i>	<i>Gain to the General Revenue-Dedicated Texas Highway Beautification Account</i>	<i>Loss to the State Highway Fund</i>
2010	\$115,000	\$115,000
2011	\$115,000	\$115,000
2012	\$115,000	\$115,000
2013	\$115,000	\$115,000
2014	\$115,000	\$115,000

.....  
<sup>1</sup> Dye Management Group, Inc., *Texas Department of Transportation: Final Report of Findings and Recommendations, Consumer Services Auditable Unit* (Raleigh, North Carolina, 2007), p. 323. Online. Available: [ftp.dot.state.tx.us/pub/txdot-info/aud/00816r03\\_cons-svc\\_final.pdf](ftp.dot.state.tx.us/pub/txdot-info/aud/00816r03_cons-svc_final.pdf). Accessed: April 17, 2008.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

## *Responses to Issue 6*

---

### **Recommendation 6.1**

***TxDOT should centralize the outdoor advertising regulatory program, requiring staff to report to the Right-of-Way Division instead of district engineers.***

#### **Agency Response to 6.1**

The Department concurs with this recommendation and is currently working to implement such a structure through management actions. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 6.1**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

#### **Against 6.1**

None received.

### **Recommendation 6.2**

***Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads.***

#### **Agency Response to 6.2**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 6.2**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

Evangeline Whorton, Chairman – Scenic Galveston, Inc., Galveston

### **Against 6.2**

Joan Stutts Escamilla, Bédias

Rance Frazier, Huntsville

B. Galle, Huntsville

JoBeth Stutts, Huntsville

Group A – see page 169

### **Recommendation 6.3**

***Standardize the appeals process for denied sign permits by eliminating the Board of Variance.***

#### **Agency Response to 6.3**

The Department concurs with the elimination of the Board of Variance.

#### **Agency Modification to 6.3**

1. To achieve consistency with all permit programs, eliminate all authority to grant variances. Federal law does not authorize a variance program for the primary system and not allowing for variances on rural roads would allow for consistent implementation.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

### **For 6.3**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

### **Against 6.3**

None received.

### **Recommendation 6.4**

***Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account.***

#### **Agency Response to 6.4**

The Department concurs that all deposits related to outdoor advertising fees should be deposited into one account as opposed to multiple accounts.

#### Agency Modification to 6.4

2. Deposit all outdoor advertising fees to the State Highway Fund instead of General Revenue to allow TxDOT to better utilize the funds for the purpose of staffing and associated costs. The Department currently has mechanisms in place in the State Highway Fund to appropriately account for funds received and expended through outdoor advertising.

(Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 6.4**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

#### **Against 6.4**

None received.

#### ***Recommendation 6.5***

***TxDOT should ensure that the cost of regulating outdoor advertising is covered by fee revenue generated by the program.***

#### **Agency Response to 6.5**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

#### **For 6.5**

Noble J. Campbell and the citizens of Trinity County

Joan Stutts Escamilla, Bédias

Rance Frazier, Huntsville

B. Galle, Huntsville

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

JoBeth Stutts, Huntsville

Group A – see page 169

#### **Against 6.5**

None received.

**Recommendation 6.6**

**Authorize the Department to deny license renewal if a licensee's permits are in poor standing.**

**Agency Response to 6.6**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 6.6**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

**Against 6.6**

None received.

**Recommendation 6.7**

**Require the Department to develop a complaints process, track and report complaints, and provide information to the public about how to file a complaint.**

**Agency Response to 6.7**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 6.7**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

**Against 6.7**

None received.

**Recommendation 6.8**

***Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification account.***

**Agency Response to 6.8**

The Department concurs with this recommendation. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 6.8**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

**Against 6.8**

None received.

**Recommendation 6.9**

***The Department should scale enforcement actions to the seriousness of offenses.***

**Agency Response to 6.9**

While the Department concurs with scaling penalties to the seriousness of the offense, it should be noted that statutory authority is required for a majority of the penalties discussed in Issue 6 to be included in any department matrix. (Amadeo Saenz, Jr., P.E., Executive Director – Texas Department of Transportation)

**For 6.9**

Noble J. Campbell and the citizens of Trinity County

Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston

Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston

**Against 6.9**

None received.

### **Modifications to Issue 6**

3. When an outdoor advertising structure located in a municipal jurisdiction is affected by a state roadway relocation, location, or re-routing that requires removal or relocation, require the municipality to choose whether to allow relocation of the outdoor advertising structure that is agreed to by the outdoor advertising owner and the municipality or to pay the costs of condemnation. (Representative Carl Isett, Chair – Sunset Advisory Commission)
4. Establish a study group including staff from the Office of the Attorney General, the Comptroller's Office, TxDOT's Office of General Counsel, and local governmental attorneys who handle billboard condemnation cases to determine how, whether, and to what extent the cost of billboard condemnation due to highway widening can be reduced, and provide recommendations for legislative changes. (Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston)
5. Prohibit digital billboards on federal and Texas highways. (Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston)
6. Prohibit all new billboard construction outside of cities on Texas or federal highways. (Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston)
7. Give counties the authority to prohibit the construction of new billboards on roads outside city jurisdiction. (Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston)
8. Repeal the sales tax exemption on outdoor advertising income. (Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston)
9. In rural Texas, require design standards for on-premise signs; prohibit all changeable electronic variable message signs; and use TxDOT's specific information logo signs and tourist-oriented directional signs as fair, uniform, competitive, and effective programs that take into consideration the surrounding businesses, communities, and traveling public while remaining respectful of the Texas native landscapes. (Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston)
10. Direct TxDOT to adopt the following provisions in the regulations governing outdoor advertising. Require that rural areas where billboards may be located possess four, rather than two, commercial activities; that new billboards be erected only on a qualifying business premises; and that there be a minimum of 1,600 feet between billboards. Also require that new billboards in rural areas be smaller, limiting size to 300 square feet and 25 high above the ground; prohibit lighting of new billboards; and prohibiting double-stacking or side-by-side billboards. (Margaret Lloyd, Policy Director – Scenic Texas, Inc., Houston)



## *Commission Decision*

Adopted Recommendations 6.1 through 6.9 and Modification 3 regarding municipal authority to deal with outdoor advertising structures affected by a state roadway relocation or re-routing.

Also adopted the following two new modifications not previously listed.

- ◆ Request that the Legislature consider the process for valuation of outdoor advertising for condemnation and ad valorem tax purposes, with a goal towards resolving inequities.
- ◆ Request that the Chairman of the Senate Committee on Transportation and Homeland Security and the Chairman of the House Committee on Transportation establish a task force to study the costs associated with new outdoor advertising permits in Texas, including condemnation costs and all the new digital technologies in billboard construction and use. Members of the task force should include legal staff from both TxDOT and the Office of the Attorney General, and two local government attorneys who specialize in billboard condemnation cases.

## *Legislative Action*

The statutory recommendations were not adopted, as H.B. 300 failed to pass.



# ACROSS-THE-BOARD RECOMMENDATIONS



## Texas Department of Transportation

Recommendations	Across-the-Board Provisions
Not Applicable	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Modify	3. Require unbiased appointments to the agency's policymaking body.
Not Applicable	4. Provide that the Governor designate the presiding officer of the policymaking body.
Modify	5. Specify grounds for removal of a member of the policymaking body.
Modify	6. Require training for members of the policymaking body.
Modify	7. Require separation of policymaking and agency staff functions.
Modify	8. Provide for public testimony at meetings of the policymaking body.
Modify	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

### *Commission Decision*

Adopted staff recommendations.

### *Legislative Action*

The recommendations were not adopted, as H.B. 300 failed to pass.

**Texas Automobile Burglary and Theft Prevention Authority**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency’s policymaking body.
Already in Statute	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency’s policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Apply	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

***Commission Decision***

---

Adopted staff recommendations.

***Legislative Action***

---

The recommendations were not adopted, as H.B. 300 failed to pass.

# AGENCY INFORMATION

(JUNE 2008)



# Agency Information


---

## Agency at a Glance

The Texas Department of Transportation (TxDOT) began in 1917 as the State Highway Department. Since that time, the Department has evolved from its original responsibilities of granting financial aid and directing county road construction programs, to a much broader mission of delivering a 21st century transportation system to address the state's growing transportation needs, most recently through limited authority to use new financing options for road projects. To fulfill its mission of providing safe, efficient, and effective means for the movement of people and goods throughout the state, TxDOT:

- ◆ plans, constructs, maintains, and supports the state's transportation system, including roads, bridges, public transportation, railroads, airports, the Gulf Intracoastal Waterway, and ferry systems;
- ◆ develops and operates a system of toll roads using public and private-sector partners and financing options;
- ◆ manages operations on the state highway system, including improving traffic safety, issuing oversize/overweight permits, registering motor carriers, providing rest areas and travel information, and regulating outdoor advertising;
- ◆ regulates the motor vehicle industry in Texas, including licensing and investigating complaints against dealers, lessors, lease facilitators, manufacturers, distributors, and converters; and
- ◆ registers motor vehicles, issuing certificates of title and license plates.

---



*Since its inception in 1917 as the State Highway Department, TxDOT's mission has grown to include all aspects of the state's transportation system.*

---

## Key Facts

- ◆ **Funding.** In fiscal year 2007, TxDOT operated with a budget of more than \$8 billion, funded mostly from state taxes and fees, bond proceeds, and federal funding. The Department allocated about 76 percent of its funds that year on construction and maintenance of the state highway system.
- ◆ **Staffing.** The Department has about 14,500 staff, located in the Austin headquarters and in 25 district offices across the state. The smallest TxDOT district, Brownwood, employs 230 staff, while the largest, Houston, employs 1,468.
- ◆ **Highway Construction and Maintenance.** TxDOT maintains almost 80,000 centerline miles of federal interstates, U.S. and state highways, and farm- and ranch-to-market roads. In fiscal year 2007, the Department awarded 795 construction and major maintenance contracts totaling \$3.7 billion, and 1,464 routine maintenance contracts totaling \$342 million.

---

*TxDOT has issued \$5.1 billion in Texas Mobility Fund bonds and \$2.9 billion in State Highway Fund bonds since 2001.*

---

- ◆ **New Financing Tools.** Since 2001, TxDOT has issued \$5.1 billion in Texas Mobility Fund bonds and \$2.9 billion in State Highway Fund (Proposition 14) bonds. The Texas Transportation Commission has also approved the creation of eight regional mobility authorities (RMAs), entered into four comprehensive development agreements (CDAs), and authorized \$1.4 billion in pass-through financing to local governments.
- ◆ **Licensing and Regulation.** In fiscal year 2007, TxDOT licensed more than 19,000 motor vehicle dealers. That same year, the Department registered 20.8 million vehicles, generating \$1.4 billion in revenue; issued 500,000 oversized/overweight permits, generating \$51 million; and registered 50,977 motor carriers operating 366,663 vehicles, generating \$8.4 million. In fiscal year 2007, TxDOT also permitted 12,984 billboards along federal-aid and rural roads.

## Major Events in Agency History

- 1917 House Bill 2 creates the Texas Highway Department overseen by a three-member, Governor-appointed Commission.
- 1923 The Legislature passes Texas' first gasoline tax of one cent per gallon. The State Highway Fund receives 75 percent of the net revenue with the remainder deposited in the Available School Fund.
- 1975 The State Highway Department merges with the Texas Mass Transportation Commission to form the State Department of Highways and Public Transportation.
- 1991 The Legislature creates TxDOT by consolidating the State Department of Highways and Public Transportation with the Texas Department of Aviation and the Texas Motor Vehicle Commission.
- 1997 The Texas Turnpike Authority, previously an independent agency, becomes a division of TxDOT.
- 2001 Texas voters approve Proposition 15, a Constitutional amendment giving the State authority to finance and build transportation infrastructure in new ways. The amendment provides for the creation of the Texas Mobility Fund, granting bond authority and use of toll equity for roadway construction, and authorizes the Transportation Commission to create RMAs.
- 2002 Governor Rick Perry presents the concept of a multi-use transportation network for Texas, named the Trans-Texas Corridor, and asks TxDOT to develop an implementation plan.
- 2003 House Bill 3588 gives TxDOT new oversight authority, planning and development tools, and financing options, including CDAs. Voters approve Proposition 14, a constitutional amendment giving TxDOT State Highway Fund bonding authority.

---

*The Legislature created TxDOT in 1991 by consolidating three agencies.*

---



2007 The 80th Legislature approves an additional \$3 billion of State Highway Fund bonding authority for TxDOT, places a moratorium on CDAs, and sets expiration dates for both concession and design-build CDAs. The Legislature also provides more authority to counties that wish to regulate development around future transportation corridors.

## Organization

### Policy Body

The Texas Transportation Commission consists of five members appointed by the Governor, with the advice and consent of the Senate. The members must reflect the diverse geographic regions and population groups of the state, and one member must reside in a rural area. Commission members serve staggered, six-year terms and the Governor designates the Chair. The chart, *Texas Transportation Commission*, identifies current Commission members.

The Commission's primary role is to provide policy direction for the state's transportation needs. The Commission sets policies for the funding, construction, and maintenance of the state highway system; oversees the regulation of motor vehicles, including registration and titling of motor vehicles and regulation of motor vehicle dealers; selects general aviation and public transportation projects for funding; and elects the Department's executive director. The Commission meets at least 12 times per year.

***Texas Transportation Commission***


Member	Residence	Qualification	Term Expires
Deirdre Delisi, Chair	Austin	Public Member	2013
Ned S. Holmes	Houston	Public Member	2011
Ted Houghton	El Paso	Public Member	2009
William Meadows	Fort Worth	Public Member	2013
Fred Underwood	Lubbock	Represents rural areas of the state	2009

### Staff

TxDOT currently has about 14,500 staff. The *Texas Department of Transportation Organizational Chart*, on page 84, depicts the Department's structure. The Department maintains its headquarters in Austin where staff develop and implement policy, manage statewide programs, and provide administrative and technical support to the districts. TxDOT carries out most of its functions in 25 geographic districts throughout the state. Managed by a district engineer, each of the districts oversees the construction and maintenance of state highways within their boundaries. The map on page 85, *Texas Department of Transportation Districts*, shows each of TxDOT's 25 districts and the district offices.

Appendix B compares the Department's workforce composition to the minority civilian labor force for the last three fiscal years. For TxDOT's three largest job categories, the Department generally met the civilian workforce percentages for African-Americans and Hispanics, but fell below for females.

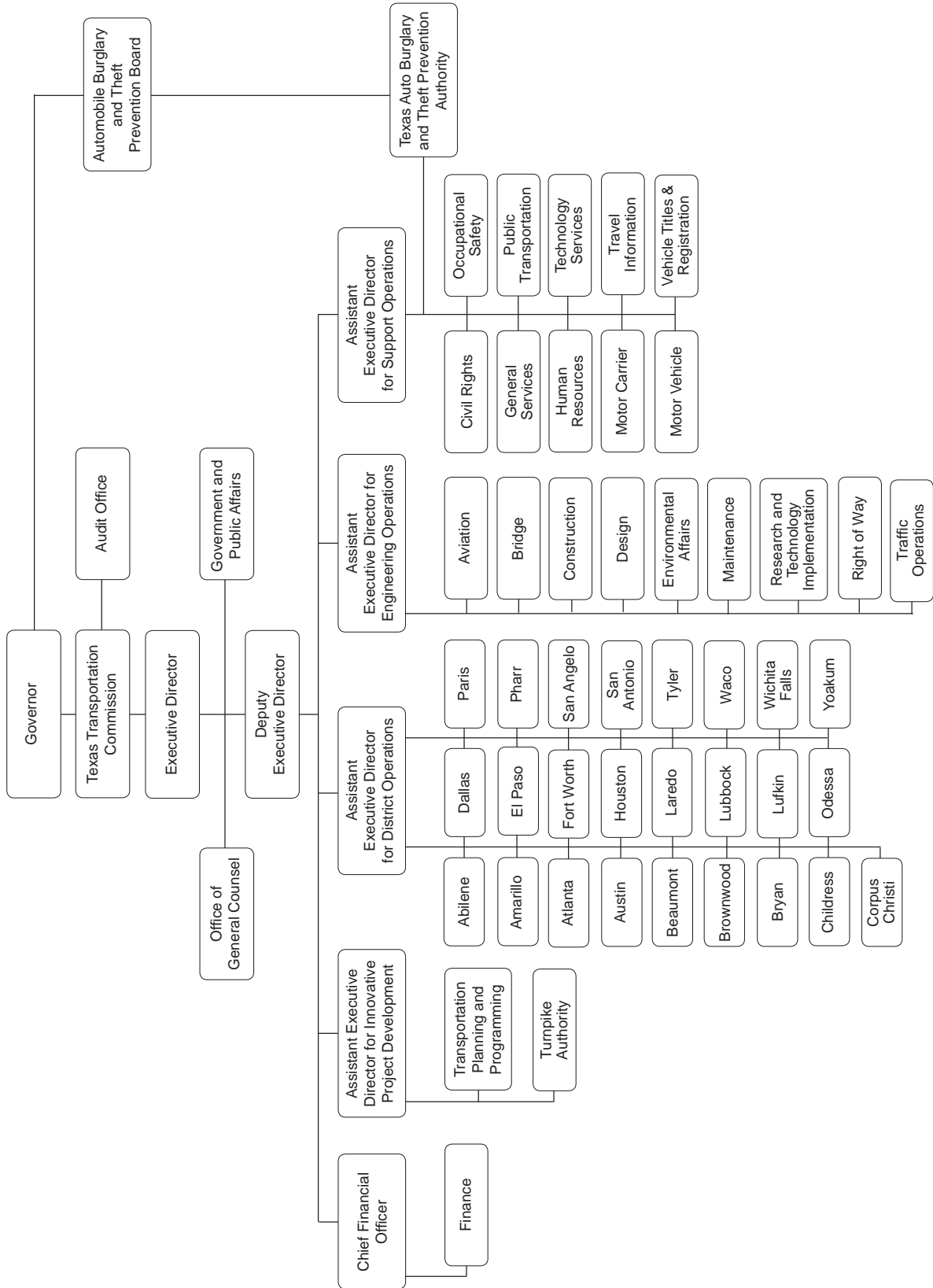
---



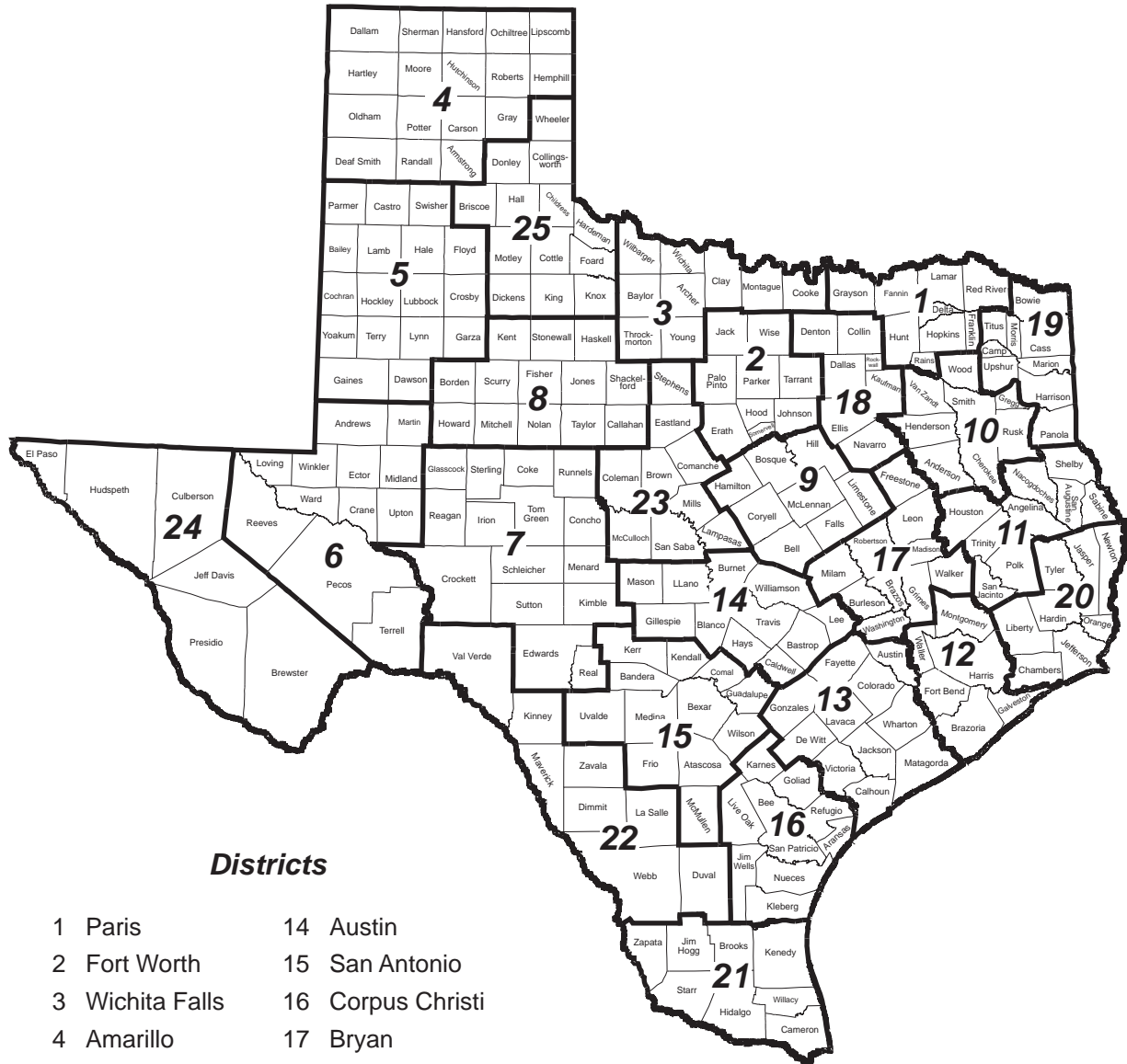
*TxDOT carries out most of its functions in 25 geographic districts throughout the state.*

---

# Texas Department of Transportation Organizational Chart



# Texas Department of Transportation Districts



## Districts

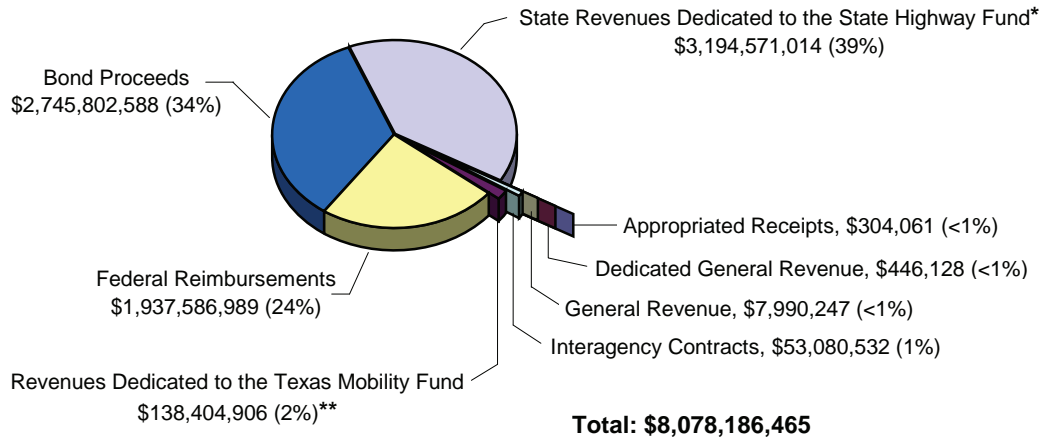
- |                 |                   |
|-----------------|-------------------|
| 1 Paris         | 14 Austin         |
| 2 Fort Worth    | 15 San Antonio    |
| 3 Wichita Falls | 16 Corpus Christi |
| 4 Amarillo      | 17 Bryan          |
| 5 Lubbock       | 18 Dallas         |
| 6 Odessa        | 19 Atlanta        |
| 7 San Angelo    | 20 Beaumont       |
| 8 Abilene       | 21 Pharr          |
| 9 Waco          | 22 Laredo         |
| 10 Tyler        | 23 Brownwood      |
| 11 Lufkin       | 24 El Paso        |
| 12 Houston      | 25 Childress      |
| 13 Yoakum       |                   |

# Funding

## Revenues

In fiscal year 2007, TxDOT received about \$8.08 billion in revenue, mostly from state taxes and fees deposited to the State Highway Fund, bond proceeds, and federal funding. The pie chart, *TxDOT Sources of Revenue*, provides more information.

**TxDOT Sources of Revenue  
FY 2007**



\* Includes revenues from the motor fuel tax, vehicle registration fees, and other smaller sources of revenue directed by state law to the State Highway Fund.

\*\* Allocated to debt service on Mobility Fund bonds.

State taxes and fees directed by state law to the State Highway Fund account for about 39 percent of the Department's fiscal year 2007 revenues. The constitutionally dedicated motor fuels tax, last set by the Legislature at 20 cents per gallon in 1991, is the primary source of tax revenue for the fund. Diesel fuel, also taxed at 20 cents per gallon, and liquefied gas, taxed at 15 cents per gallon, make up part of this revenue.

*In FY 2007, about \$2.2 billion in motor fuels tax revenue was deposited to the State Highway Fund.*

Various deductions are made to the motor fuels tax before a net amount is deposited to the State Highway Fund. The Texas Constitution requires that about 25 percent of the tax go to the Available School Fund. In fiscal year 2007, about \$2.2 billion in motor fuels tax revenue was deposited to the State Highway Fund, after deductions.

Two other state sources of funding for the State Highway Fund are the constitutionally dedicated motor vehicle registration fees and sales tax on lubricants. In fiscal year 2007, motor vehicle registration fees generated \$984.2 million, and the tax on lubricants produced \$36.8 million for the State Highway Fund. Apart from state taxes and fees, federal reimbursements and bond proceeds constitute large funding sources for TxDOT, together totaling 58 percent of fiscal year 2007 revenues.

The graphic *State Highway Fund Revenues and Allocations Fiscal Year 2007*, on pages 88 and 89, depicts the complicated movement of revenues into, and

allocations from, the State Highway Fund. The left side of the graphic shows revenues going to the State Highway Fund. Portions of these revenues, such as revenues constitutionally dedicated to the Available School Fund, are siphoned off for other purposes before reaching the State Highway Fund.

The right side of the graphic depicts allocations from the State Highway Fund to its various purposes. The graphic demonstrates that TxDOT does not receive all funds deposited to the State Highway Fund. In fiscal year 2007, the Texas Department of Public Safety (DPS) was allocated about \$580 million from the Fund, the largest single diversion. The allocation for employee benefits includes not only TxDOT employees and retirees, but also those of other agencies funded from the Fund, notably DPS and the State Office of Administrative Hearings. These benefits constitute another significant diversion. Not counting TxDOT's Texas Mobility Fund, which is also dedicated for transportation purposes, other state agencies or programs were allocated another \$159 million from the Fund.

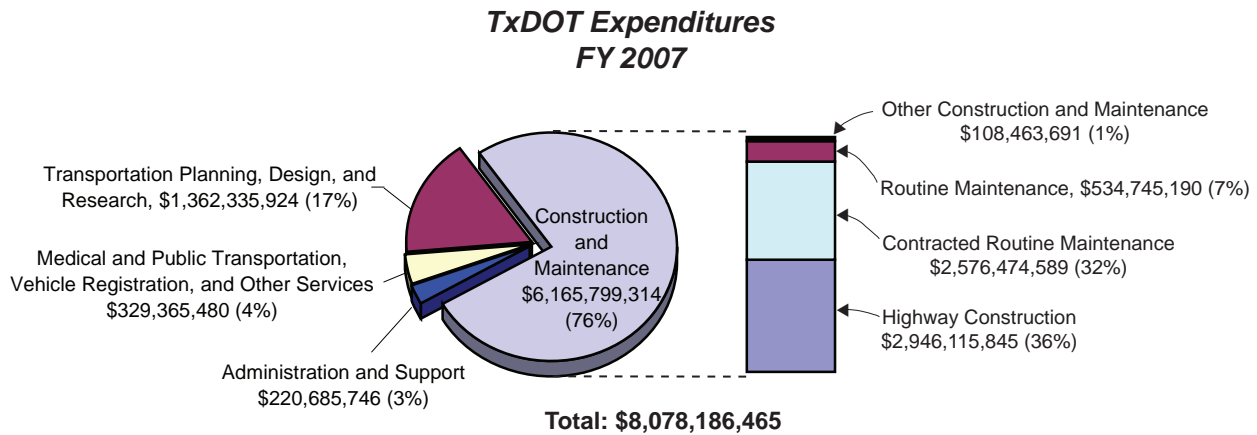
---

*TxDOT does not receive all funds deposited to the State Highway Fund.*

---

### Expenditures

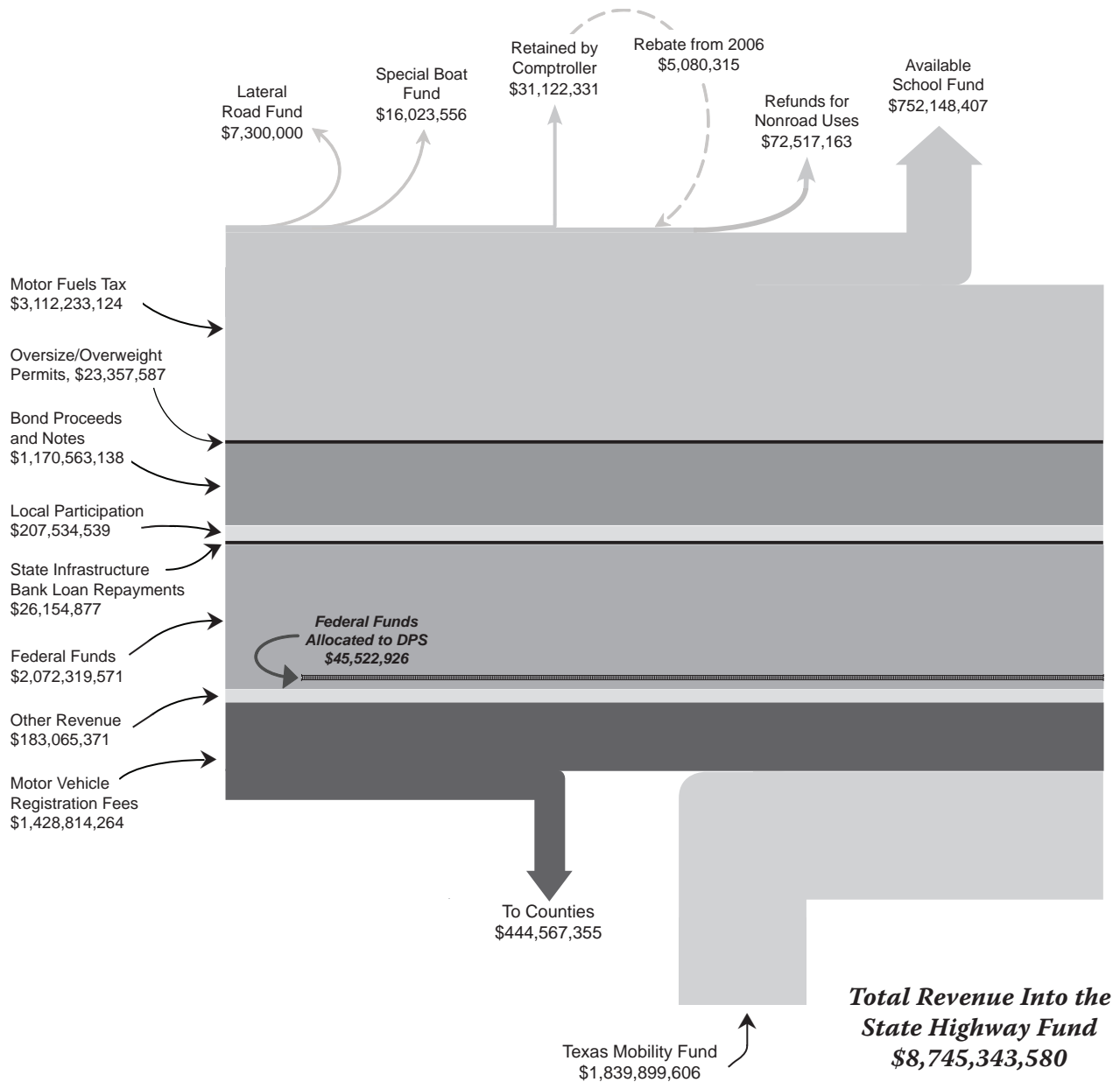
In fiscal year 2007, TxDOT's expenditures totaled about \$8.08 billion. The Department spent about \$6.2 billion, or 76 percent, on both road and other construction and maintenance. The pie chart, *TxDOT Expenditures*, provides more information.



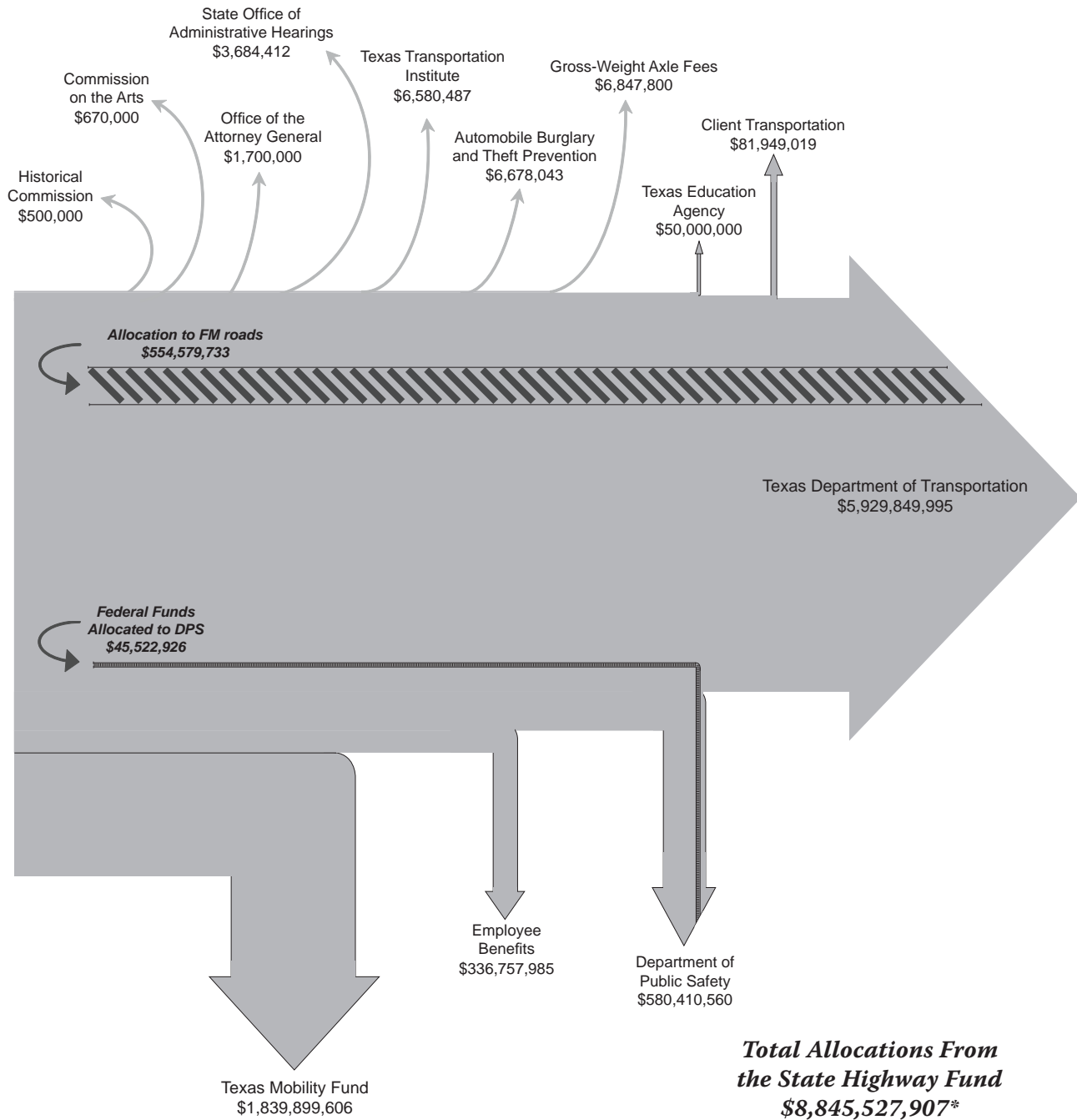
Appendix C, *TxDOT Expenditures by Goal and Strategy*, shows TxDOT's expenditures for each of its separate goals and strategies. TxDOT district offices accounted for about \$6.8 billion of these expenditures.

Appendix D describes the Department's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2004 to 2007. While TxDOT generally falls short of the State's HUB purchasing goals, it comes very close in its largest contracting category for heavy construction. The Department has a HUB plan in place to try to address the shortfalls. Federal law also requires TxDOT to establish Disadvantaged Business Enterprises (DBE) goals for use of minority, female, or socially and economically disadvantaged contractors. In fiscal year 2007, TxDOT used DBE-certified contractors for 11.56 percent of federally funded work, just short of its 12.12 percent goal.

# State Highway Fund Revenues



## and Allocations Fiscal Year 2007



\* The total allocations from the State Highway Fund exceed total revenues because of existing balances and encumbrances that are not reflected as revenue collected in fiscal year 2007.



## Agency Operations

The Texas transportation system includes roads, bridges, public transportation, rail, airports, and waterways that connect and provide mobility to rapidly growing urban population centers, expansive rural areas, and globally critical freight distribution networks. Many entities on the federal, state, and local levels participate in transportation planning and delivery. The chart on page 91, *Key Transportation Entities*, describes the responsibilities of these entities in more detail.

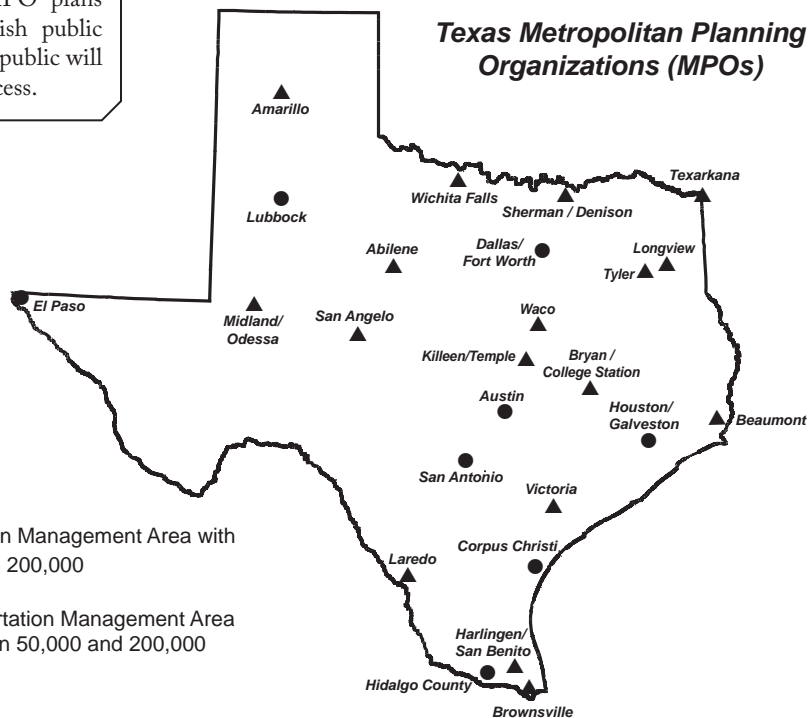
### Metropolitan Planning Organizations

Federal law requires as a condition of receiving federal funds that urban areas with a population more than 50,000 form MPOs to plan transportation projects. MPOs serving areas with a population more than 200,000 are called transportation management areas and are eligible for additional funding. MPOs in areas that do not meet federal air quality standards are also responsible for air quality attainment planning.

Federal rules allow flexibility in how local areas organize and draw boundaries of MPOs, which may include any area expected to reach a population of 50,000 within the next 25 years. The Transportation Commission, with delegated authority from the Governor, approves the creation or modification of MPOs in Texas. MPO policy boards vary in size and makeup, but often include city, county, and state elected officials; TxDOT district engineers; and representatives from other locally significant transportation entities such as toll authorities, transit agencies, and ports.

Under federal law, each MPO must regularly update a 20-year Metropolitan Transportation Plan, and four-year Transportation Improvement Program, listing all projects the MPO plans to build. MPOs must also establish public participation plans detailing how the public will be included in the local planning process.

The U.S. Department of Transportation provides funding and oversight of federal environmental and other regulations through the Federal Highway Administration and the Federal Transit Administration. Locally-created metropolitan planning organizations (MPOs), required by federal law, play a central role in selecting projects for funding in urban areas of the state. The textbox, *Metropolitan Planning Organizations*, and map, *Texas Metropolitan Planning Organizations (MPOs)*, provide more information about the 25 MPOs in Texas. Other regional and local entities, such as RMAs, councils of governments, and city and county governments also plan, build, and maintain aspects of the state's transportation infrastructure. As the primary recipient of state and federal transportation funding, TxDOT coordinates transportation planning and implementation from a statewide perspective, and regulates other aspects of the system to ensure public safety.





## Key Transportation Entities

### Federal

#### U.S. Department of Transportation

Umbrella agency overseeing 12 federal transportation agencies, including the following.

##### Federal Highway Administration

- ◆ funding and oversight of federal-aid highways and interstates
- ◆ oversight of federal highway planning, environmental, safety, and other regulations

##### Federal Transit Administration

- ◆ grants and safety oversight of public mass transportation

##### Federal Aviation Administration

- ◆ grants and safety oversight of public aviation facilities

##### Federal Railroad Administration

- ◆ rail safety programs
- ◆ freight and passenger rail planning

### State

#### Texas Department of Transportation

- ◆ statewide funding, planning, construction, and maintenance of federal and state roads
- ◆ compliance with federal regulations, including bridge safety and environmental reviews
- ◆ research and coordination of public transportation, airports, ports, and rail
- ◆ regulation of motor vehicle dealers, vehicle titles and registration, and motor carriers

### Regional

#### Metropolitan Planning Organizations

- ◆ federally required in regions with population more than 50,000
- ◆ 25 in Texas, do not cover rural areas of the state
- ◆ established by an agreement between local officials and the Governor
- ◆ create long- and short-term regional transportation and air quality plans
- ◆ select projects for federal transportation funding

#### Regional Mobility Authorities

- ◆ created by one or more counties, with Transportation Commission approval
- ◆ eight in Texas
- ◆ authority to develop toll projects and generate revenue streams for other transportation projects

#### Regional Toll Authority

- ◆ one in Texas – the North Texas Tollway Authority, created in 1997
- ◆ develops, finances, constructs, and operates toll roads in North Texas

#### Councils of Governments

- ◆ 24 in Texas covering the entire state
- ◆ role in transportation varies across state
- ◆ MPOs in Houston and Dallas-Ft. Worth regions located within a COG
- ◆ many provide rural transportation services and participate in rural planning

### Local

#### Local Governments

- ◆ Cities and counties build and maintain city and county roads not on the federal or state system
- ◆ County toll authorities develop and operate toll roads in Harris, Fort Bend, and other counties in the Houston region
- ◆ Transit agencies provide local public transportation such as buses and light rail
- ◆ Ports and airports are operated locally

## The Texas Transportation System

### Highways

---

*TxDOT improves and maintains almost 80,000 centerline miles of federal and state roads in Texas.*

---

TxDOT improves and maintains almost 80,000 centerline miles of federal and state roads in Texas, called on-system roads. These roads include federal interstates, U.S. and state highways, farm- and ranch-to-market roads, frontage roads, and park roads. City and county governments also construct and maintain many additional miles of off-system local roads such as city and residential streets and county roads.

TxDOT works closely with local entities to plan highway improvements, and delivers most projects through its traditional project implementation and low-bid contracting process described below. However, the Legislature has authorized TxDOT to use new project delivery methods such as CDAs that differ from the traditional approach. The section *Texas Department of Transportation's Changing Role*, on pages 94 and 95, provides more information on these newer methods.

#### Planning and Project Selection

State transportation planning involves multiple entities, including local governments, MPOs, the Transportation Commission, and TxDOT staff. Generally, the planning process begins when one of these entities identifies a needed transportation project, matches the project to available funding, and includes the project in a long-range plan. The textbox, *Key Transportation Plans*, summarizes regional and statewide plans guiding TxDOT's work.

#### **Key Transportation Plans**

##### **Regional Plans Prepared by Metropolitan Planning Organizations**

**Metropolitan Mobility Plans.** TxDOT requests each MPO to develop a needs-based transportation plan that describes specific congestion reduction, air quality improvement, and other goals, and to identify the projects needed to reach those goals. TxDOT has used these plans to compare MPO-identified needs to the actual amount of available funding.

**Metropolitan Transportation Plans (MTPs) and Transportation Improvement Programs (TIPs).** Federal law requires each MPO to develop a 20-year, long-range MTP, and a four-year, short-range TIP. These plans must contain a financially-constrained list of projects, meaning the total cost of the projects must fit a reasonable estimate of future funds available. MPOs develop this estimate using federal and state funds projections, and adding other locally available funding such as revenue from local transportation taxes or toll roads. The plans must also address air quality goals in non-attainment areas not meeting federal air quality standards.

##### **Statewide Plans Prepared by TxDOT**

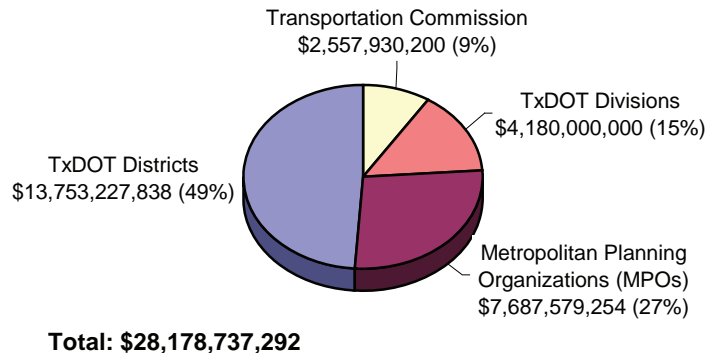
**Statewide Transportation Plan.** Long-range policy document, required by federal and state law, setting out the Department's broad transportation goals and objectives.

**Unified Transportation Program (UTP).** TxDOT's internal financial plan listing all projects the Department plans to implement during the next 11 years. The UTP is not required by federal or state law. The Department organizes the UTP according to 12 federal and state funding categories such as safety, congestion mitigation and air quality improvement, preventive maintenance, and rehabilitation. TxDOT splits the document into a maintenance plan, called the Statewide Preservation and Safety Program, and a new construction plan, called the Statewide Mobility and Supplemental Transportation Program. Generally, the federal government determines the amount of federal funding in five categories while the Transportation Commission determines how much state funding to distribute in the remaining seven state categories.

**Statewide Transportation Improvement Program (STIP).** To produce this plan, TxDOT compiles each MPO's four-year TIP, and adds projects in rural areas not covered by MPOs. TxDOT submits this statewide plan to the Federal Highway Administration for approval. Projects must be listed in this plan to be eligible for federal funding.

In recent years, federal law and TxDOT policy have shifted project-selection decision making from the Transportation Commission to MPOs and TxDOT district offices. To guide these local project-selection decisions, TxDOT annually updates an 11-year plan of projects matched to an estimate of future funding available, called the Unified Transportation Program (UTP). The current UTP target funding level, approved by the Transportation Commission in April 2008, estimates that a total \$28.18 billion will be available for new construction and maintenance projects from fiscal years 2009 to 2019. The pie chart, *Transportation Decision Making*, shows the percentage of this state and federal transportation funding that will be selected by each entity. Appendix E, *2009-2019 Unified Transportation Program*, describes the current UTP in more detail.

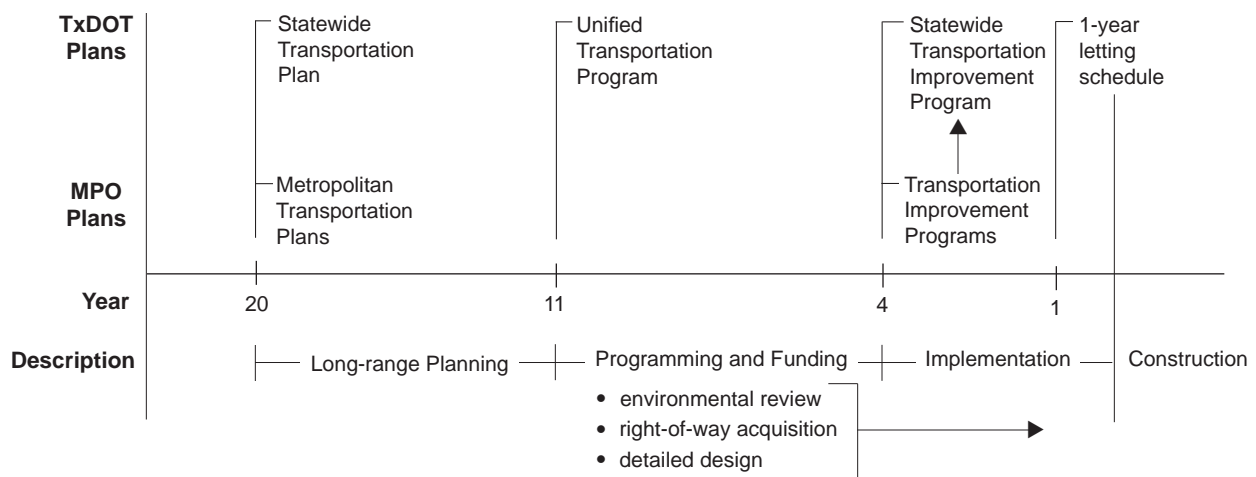
### Transportation Decision Making FYs 2009 – 2019



Once a project is selected by an MPO or TxDOT and included in the UTP, the project enters an implementation phase. TxDOT staff, often working with outside consultants, conduct most work at the district level, with policy oversight and approval from TxDOT’s central office.

Steps in project implementation, described below, include preliminary feasibility studies, environmental analysis, public involvement, detailed design, right-of-way acquisition, and finally, construction. This complex process involves overlapping layers of local, state, and federal authority and funding, and can take up to 10 years or more to complete. The chart, *Transportation Planning Timeline*, summarizes the process.

### Transportation Planning Timeline



# Texas Department of

For most of the last 100 years, TxDOT has developed highways on a pay-as-you-go basis, funding projects as tax funds became available from the federal government and the State Highway Fund. In 2001, the Texas Legislature began making fundamental changes to expand transportation project funding and development options beyond the pay-as-you-go approach. These options include bonding authority, public-private partnerships, expanded use of toll roads, and new types of multi-use transportation corridor projects such as the Trans-Texas Corridor. The *Reengineering State Highway Development Timeline* describes these changes.

## Regional Mobility Authorities

In 2001, the Legislature authorized the creation of regional mobility authorities (RMAs) as single or multi-county transportation development organizations. In 2003, RMAs received additional authority to acquire property through eminent domain and to issue revenue bonds. The Texas Transportation Commission must approve the creation of an RMA, and the Governor appoints each RMA's chair. To date, the Commission has approved eight RMAs across the state. The Central Texas Regional Mobility Authority, the first RMA, operates the only toll road yet developed by an RMA. Appendix F, *Regional Mobility Authorities in Texas*, provides additional information about RMAs.

## Trans-Texas Corridor

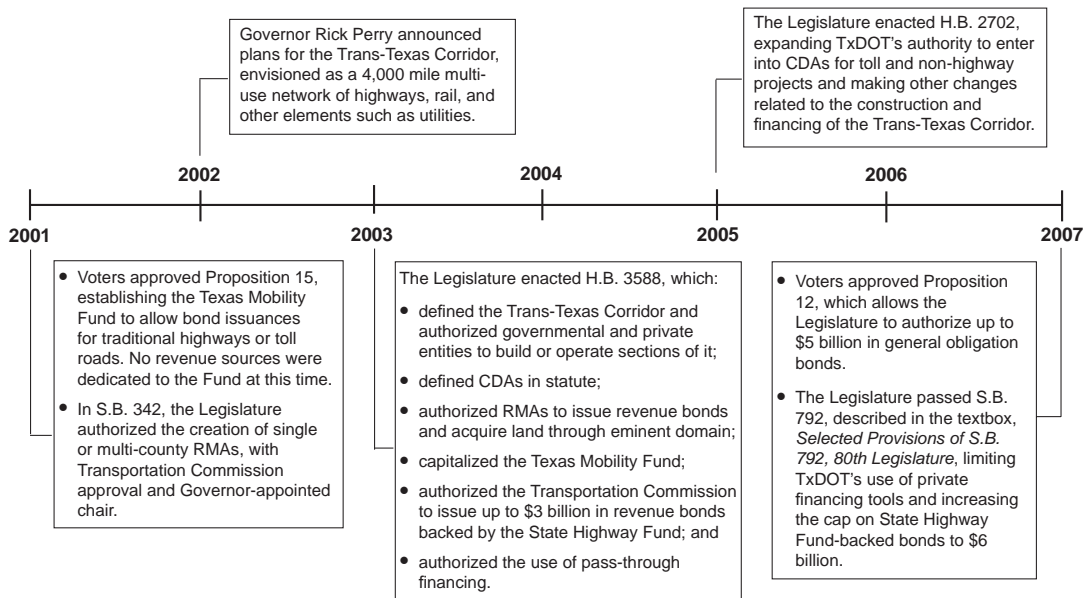
In January 2002, Governor Rick Perry proposed the Trans-Texas Corridor and directed TxDOT to develop a plan for its implementation. The long-term project envisions 4,000 miles of multi-use corridors linking major metropolitan areas and potentially containing toll roads, dedicated truck lanes, high-speed passenger and freight rail, regional freight and commuter rail, and utilities in the same right of way. In 2003, the Legislature authorized development of the Trans-Texas Corridor through public and private financing, construction, and operation.

At the time of this report, no part of the state highway system has been opened as part of the Trans-Texas Corridor, although TxDOT is evaluating the feasibility of two corridor routes. The proposed TTC-35 generally parallels I-35, and would extend about 600 miles from north of Dallas/Fort Worth to the Mexican border near Laredo. The second proposed corridor, I-69/TTC, would extend about 650 miles from Texarkana/Shreveport to the Rio Grande Valley or Laredo.

## Private Partnerships

Legislation enacted in 2003 enabled TxDOT to develop highways through contracts with the private sector called comprehensive development agreements

### Reengineering State Highway Development Timeline



# Transportation's Changing Role

(CDAs). Through CDAs, TxDOT, as well as other toll authorities, can use a single contract to plan, design, finance, construct, and operate highways, usually as toll roads. The textbox, *What are CDAs?*, and Appendix G, *TxDOT-Awarded Comprehensive Development Agreements*, provide more information about CDAs. TxDOT is assessing 87 potential toll projects with a total cost of about \$60 billion that could be developed using CDAs in the future, listed in Appendix H.

## Pass-through Financing

In 2003, the Legislature also authorized the use of pass-through financing, sometimes called pass-through tolling. Using this approach, a local government, RMA, or private entity may build a road using its own funds, and then receive partial reimbursements from TxDOT based on the number of vehicles traveling on the road over time. TxDOT may delegate responsibility for the road's design, bidding, and construction to the entity

developing the road. Using this arrangement, the local entity can usually develop and construct a project more quickly, and TxDOT's cost is spread over time.

As of April 2008, the Transportation Commission had approved 16 pass-through financing agreements, with TxDOT's portion of the agreements totaling \$1.4 billion. Appendix I, *Pass-Through Financing Agreements Authorized by TxDOT*, provides more information about this funding arrangement.

## Legislative Concerns

In 2007, the Legislature enacted Senate Bill 792, which included a two-year suspension on the use of CDAs for privately operated and funded toll roads, with some exceptions. The legislation established a study committee to evaluate the long-term implications of privatization, with a report due by December 1, 2008.\* The Legislature also addressed other concerns in the bill, detailed in the textbox, *Selected Provisions of S.B. 792*.

### What are CDAs?

Comprehensive development agreement (CDA) is a general term describing a type of contract used to create public-private partnerships to build transportation projects, usually toll roads. Under a CDA, a private firm can coordinate all aspects of project development in a single agreement, including elements such as design or maintenance traditionally handled by TxDOT. Roads constructed under CDAs must still comply with federal and state regulations, and remain part of the state highway system. However, using CDAs, TxDOT may select firms on a best value basis, allowing consideration of a firm's qualifications, financial stability, price, and experience. In contrast, state and federal laws require TxDOT to select traditional construction contracts strictly on a low-bid basis.

CDAs may take many forms, as described below.

- **Strategic Partnership or Pre-Development CDA.** Private sector firms partner together and prepare a master development plan for a toll road project, and may negotiate for developing some of the projects in the plan.
- **Design-build CDA.** A private firm designs and constructs a road under a single contract. The firm could also operate and maintain the road under the same contract. This method differs substantially from the traditional design-bid-build approach, which requires TxDOT to contract separately for the design and construction phases of a project. Under design-build, the single contracting firm can simultaneously design some parts of the project while building other parts.
- **Concession agreement.** A private entity pays TxDOT a fee for the right to finance, design, build, operate, and collect tolls on a road. State law limits concession agreements to 52 years.

### Selected Provisions of S.B. 792

Senate Bill 792, adopted by the 80th Legislature in 2007, includes the following provisions.

- Sets a two-year moratorium on TxDOT's authority to enter into CDAs with a private entity to operate or collect revenue from a toll project, with some exceptions.
- Sets a 2009 expiration date for TxDOT and RMA ability to enter into CDAs.
- Limits the term of a CDA to 52 years, instead of 70 years.
- Gives local toll entities the right of first refusal in the development of toll roads.
- Requires TxDOT and a toll entity, including an RMA, a regional toll authority, or a county toll authority, to agree on or waive a market valuation of a toll road before it can be constructed.
- Requires an entity constructing a toll road to reinvest the project's market value in the same region's transportation infrastructure.
- Creates a nine-member legislative committee to study the policy implications of private participation in toll projects, and to report its findings by December 1, 2008.
- Doubles the cap on State Highway Fund-backed bonds from \$3 billion to \$6 billion.

\* Texas Transportation Code, sec. 223.210 (m) – (p).



---

*TxDOT  
completed 696  
environmental  
reviews in  
FY 2007.*

---

---

*TxDOT contracts  
with private  
engineering  
consultants  
for much of its  
design work.*

---

### Environmental Compliance and Review

The first step in project implementation is the federally required environmental review process. TxDOT must consider many factors during an environmental review, including potential impacts on business, as well as archaeological or historical resources, water and air quality, endangered species, noise, and the overall community. Overall community impacts can include negative impacts such as increased noise and pollution, or positive impacts such as improved mobility, economic development, safety, and air quality.

The environmental process is strictly guided by the National Environmental Policy Act. TxDOT coordinates with various regulatory agencies charged with oversight of multiple federal and state environmental laws and regulations. The Federal Highway Administration must approve completed environmental documents prepared by TxDOT before federally funded transportation projects may move forward.

The chart, *Types of Environmental Reviews*, defines the three basic types of reviews and the levels of public involvement required for each. In fiscal year 2007, TxDOT completed 696 environmental reviews, the vast majority of which were categorical exclusions, the most basic type of review for projects known to have little to no environmental impact. Environmental impact statements are more typically reserved for major projects, and while small in number, take far more time, often several years to complete. For projects which result in impacts to the environment, the environmental issues must be addressed before and during construction.

### Design

After the environmental review is complete, TxDOT staff and outside consultants prepare highly detailed designs for the project, or plan, specifications, and estimates, commonly known as PS&Es. Contractors base their bids for construction and maintenance jobs on these plans, which include estimates of cost for each element.

TxDOT contracts with private engineering consultants for much of its design work. Consultants typically help relieve TxDOT staff when design demand is high, and TxDOT uses them for all types of projects. TxDOT maintains a core design staff in its central and district offices, particularly in specialty areas such as bridge design. TxDOT staff review every PS&E to ensure details comply with federal and state design specifications and other standards, such as curb ramps for pedestrian accessibility, before a project is released for letting.

### Right of Way

After the environmental review is complete and the design process defines a project's exact location, TxDOT begins to acquire needed right of way and provide assistance to people, businesses, or utilities that must relocate.

## Types of Environmental Reviews

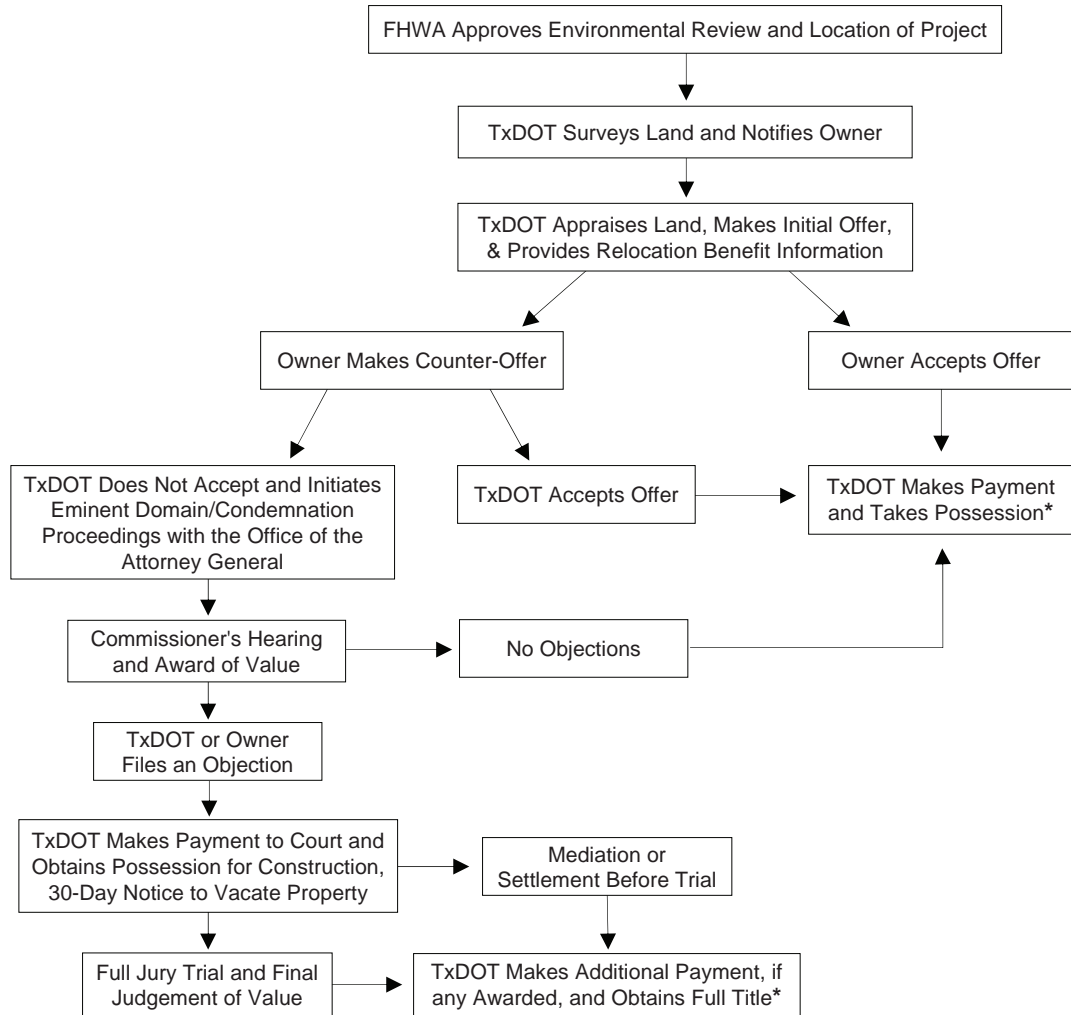
Type of Review / Description	Minimum Required Level of Public Involvement	Number Completed by TxDOT & Approved by FHWA*, FY 2007
<p><b>Categorical Exclusion</b></p> <p>Minor or routine projects previously demonstrated to have little to no environmental impact.</p> <p><i>Examples:</i> Safety improvements such as adding a turn lane or performing routine maintenance such as resurfacing.</p>	None required – determined on as-needed basis by TxDOT districts and approved by FHWA. Often includes a meeting with affected property owners.	657
<p><b>Environmental Assessment</b></p> <p>Projects whose total environmental impact is unknown. An assessment results in either a finding of no significant impact, or elevation to an Environmental Impact Statement.</p> <p><i>Examples:</i> Interchange project; widening a road.</p>	Each district must “afford an opportunity for a public hearing” by publishing at least two notices in local newspapers, and must conduct a public hearing if requested by one person.	36
<p><b>Environmental Impact Statement</b></p> <p>Projects known to have a major environmental impact.</p> <p><i>Examples:</i> New roads on previously undeveloped land; toll projects.</p>	<ol style="list-style-type: none"> <li>(1) Notice of Intent**</li> <li>(2) Coordination Plan describing public and agency participation, including scoping meetings</li> <li>(3) Informal public meeting(s)</li> <li>(4) Notice of availability of draft environmental impact statement (DEIS)**</li> <li>(5) Circulation of DEIS – copies available at public places, and upon request</li> <li>(6) Formal public hearing(s)</li> <li>(7) Notice of availability of Final Environmental Impact Statement (FEIS)**, public comment period, and Notice of final Record of Decision** made by Federal Highway Administration</li> </ol>	3

\* Includes re-evaluations

\*\* Published in the Federal Register, Texas Register, and local newspapers.

Similar to environmental reviews, the right-of-way acquisition and relocation assistance process is guided by federal law, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly known as the Uniform Act. This federal law, combined with Texas law and provisions in the U.S. and Texas Constitutions, ensure that both owners and tenants are compensated if their property is taken, damaged, or destroyed for a public use. The chart on page 98, *Right-of-Way Acquisition Process*, depicts the right-of-way process in more detail.

## Right-of-Way Acquisition Process



\* Owner / tenants paid separately for relocation benefits upon completion of move.

---

◆◆◆

*TxDOT executed  
164 utility  
adjustment  
agreements  
costing \$80  
million in  
FY 2007.*

---

Federal and state law require TxDOT to pay a differential purchase or rental amount, plus moving expenses, if an owner or tenant lives on an acquired residential parcel. In the case of businesses, farms, or nonprofit organizations operating on an acquired parcel, TxDOT must pay moving costs, plus up to \$10,000 for re-establishment costs. The table on the following page, *Right-of-Way Acquisition and Relocation Assistance*, provides details on the numbers and amount of parcels acquired and relocation payments made by TxDOT in fiscal year 2007.

TxDOT also works closely with utility companies that must relocate due to a new transportation project. Although utilities often operate in state-owned right of way or in easements along highways, the Department neither regulates the utility industry nor owns any utility infrastructure. Using federal and state reimbursement programs, TxDOT reimburses eligible utility companies for their relocation. In fiscal year 2007, TxDOT executed 164 utility adjustment agreements, with an estimated \$80 million cost to the Department.



**Right-of-Way Acquisition and Relocation Assistance  
FY 2007**

Total number of parcels acquired by TxDOT	2,406
Number acquired using eminent domain authority (%)	290 (12%)
Total amount of compensation paid to acquire right of way	\$325.6 million
Number of relocated households	Renters   68 Owners   83 <i>Total</i> 151
Total amount paid to compensate relocated households*	\$4.6 million
Number of relocated businesses, farms, or nonprofit organizations*	Renters   143 Owners   72 <i>Total</i> 215
Total amount paid to relocated businesses, farms, and nonprofit organizations*	\$10.1 million

\* Source: Federal Highway Administration

---

*TxDOT awarded  
795 construction  
contracts totaling  
\$3.7 billion  
in FY 2007.*

---

**Construction and Maintenance**

After TxDOT completes the environmental, design, and right-of-way work for a project, the Department solicits bids for construction, manages the construction contract, and maintains the finished product after the project is complete. In fiscal year 2007, TxDOT expended more than \$6 billion on highway construction and maintenance, or about 76 percent of its total expenditures.

Most of TxDOT's construction and maintenance expenditures occur through contracts paid out over several years. In fiscal year 2007, TxDOT awarded 795 construction contracts totaling \$3.7 billion, including major preventive maintenance and rehabilitation projects, and 1,464 routine maintenance contracts totaling \$342 million. The textbox, *Types of Maintenance*, describes the different levels of roadway maintenance. Appendix J, *Construction and Maintenance Contract Awards by TxDOT District*, lists district-specific information.

**Types of Maintenance**

- ◆ **Routine maintenance** includes items such as sealing small cracks in the road, repairing or replacing signs, mowing, and litter pickup.
- ◆ **Preventive maintenance** includes road resurfacing and resealing along short stretches of a road.
- ◆ **Rehabilitation** consists of more extensive repairs, such as rebuilding entire sections of a road.


TxDOT contracts for construction and routine maintenance work using procedures developed over many years. TxDOT advertises a job, sends interested contractors detailed PS&Es, and opens bids at a two-day contract letting held in Austin each month. District offices also carry out lettings, usually for maintenance contracts less than \$300,000. At a letting, TxDOT ensures that bids are complete, accurate, and have adequate competition. TxDOT awards contracts to the lowest bidder, as required by federal and state law. Contractors must be pre-qualified to bid by meeting minimum financial and other criteria. In fiscal year 2007, TxDOT maintained a list of 1,347 pre-qualified contractors. After award, TxDOT district offices

manage and oversee the construction and maintenance contracts, and follow procedures to ensure contractors use appropriate materials, as detailed in the textbox, *Quality Assurance*.

**Quality Assurance**

To ensure the quality of contracted work, TxDOT researches and creates detailed written specifications for materials used in construction and maintenance activities. Department personnel test materials at various times at the construction site to ensure that they meet specifications. Some construction items or materials such as pre-stressed beams and high-mast illumination systems are tested at the fabrication site as well. TxDOT staff also inspect work throughout the construction and maintenance period to determine whether contractors meet all detailed contract requirements.

---

  
*The Commission's goal is for 90 percent of state roads to be in good or better condition by 2012.*

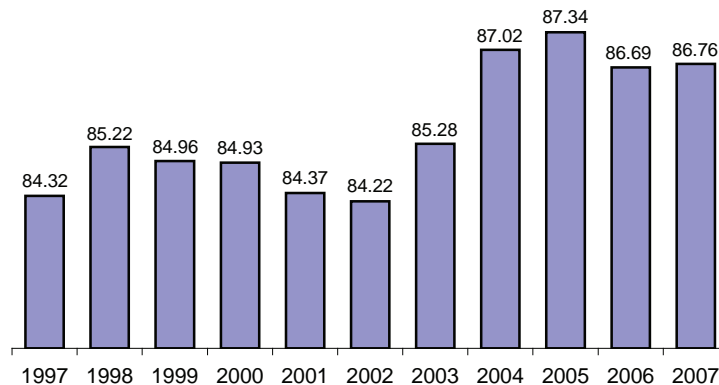
---

**Pavement Quality**

To assess the condition of the state's highways and determine where maintenance funding is most needed, TxDOT measures and reports road conditions through its Pavement Management Information System. Specially trained Department staff perform an inspection of the state's highways each year and assign a distress score of 1 through 100 to each road. TxDOT considers a road in good or better condition if it scores at least 70 points on this scale. In 2001, the Commission set a goal for 90 percent of state roads to be in good or better condition by 2012.<sup>1</sup> In fiscal year 2007, 86.8 percent of Texas roads met this goal. The graph, *Percent of State Roads in Good or Better Condition*, presents historical trends in pavement scores.

The Department has developed other systems to assess road conditions in addition to pavement scores. Appendix K, *Road Condition Assessment Systems*, describes these other systems, as well as the ranking of TxDOT districts for road condition.

**Percent of State Roads in Good or Better Condition\*  
FYs 1997 – 2007**



\* TxDOT defines good or better condition as a pavement score of 70 or more.

## **Bridges**

Texas has a total of 50,189 bridges, more than any other state. Bridges that are part of the designated state highway system, called on-system bridges, total 32,978, compared to 17,211 off-system bridges under the jurisdiction of local governments.

TxDOT administers the federal Highway Bridge Program, inspecting all on- and off-system bridges at least once every 24 months to determine their condition. Using federal funds, TxDOT repairs or replaces both on- and off-system bridges and must close any unsafe on-system bridges. Local governments, receiving advice and information on bridge condition from TxDOT, retain responsibility for closing unsafe off-system bridges.

Bridge projects qualify for funding according to a needs-based federal rating system. In fiscal year 2007, about 20 percent of Texas bridges qualified for funding. These bridges are safe, but need updating to meet current design standards or traffic volume. TxDOT awarded \$286.9 million in bridge projects in fiscal year 2007, \$232.8 million for on-system bridges and \$54.1 million off-system bridges. For on-system bridges, the State must contribute 20 percent of the total project amount. For off-system bridges, the State and local government must each contribute 10 percent.

The overall condition of Texas bridges is improving. For all bridges, those in good or better condition increased from about 70 percent in fiscal year 2001 to 78 percent in fiscal year 2007. On-system bridges are in better condition, scoring 86 percent in fiscal year 2007, while 61 percent of off-system bridges are in good or better condition.


## **Rail**

In Texas, 44 private companies own almost all of the more than 14,000 miles of rail, which is used primarily to move freight. Texas ranks fifth in the nation for number of tons moved by rail, with more than 335 million tons moved in 2003.<sup>2</sup> The State owns one 400-mile rail line, the South Orient, which runs from San Angelo to Presidio.

In the *Texas Rail System Plan*, TxDOT determines infrastructure and capacity needs on the Texas rail system, and identifies current and proposed rail projects to address those needs. The most recent plan, completed in 2005, identified approximately \$16 billion in needed improvements. Historically, state and federal funding for rail projects has been limited. In 2005, the Legislature created the Rail Relocation and Improvement Fund to support moving hazardous freight around major population centers, but the Fund has not been capitalized.

In 2005, the Legislature transferred the state rail safety inspections program from the Railroad Commission to TxDOT. The Department works with the Federal Railroad Administration to inspect rail lines and enforce federal and state safety standards.

---



*The overall  
condition of  
Texas bridges  
is improving.*

---

---




*The State owns  
one 400-mile  
rail line, the  
South Orient.*

---

## Waterways and Ports

Texas has 14 major ports and almost 1,000 smaller wharves, piers, and docks for handling waterborne freight. In 2005, Texas ports handled 11,549 deep-sea vessel calls, approximately 19 percent of the national total.<sup>3</sup> Historically, ports have been built and maintained through partnerships between the federal government, private companies, and local taxpayer-funded initiatives. In 2001, responding to a decrease in available federal funding, the Legislature created the Port Access Fund. Although the Fund has not been capitalized, TxDOT works with a Ports Advisory Committee to study and recommend port projects each year. In the most recent *Texas Ports 2008-2009 Capital Program*, TxDOT and Texas ports identified 67 needed projects totaling \$567.5 million, \$176.7 million of which would be the State's share.

---



*TxDOT operates  
ferry systems in  
Galveston and  
Port Aransas.*

---

The federal government, through the Army Corps of Engineers, provides primary support for nearly 1,000 miles of Texas deep and shallow-draft channels. In 1975, the Legislature designated TxDOT as the non-federal sponsor for 423 Texas miles of the 1,300 mile Gulf Intracoastal Waterway (GIWW). The Texas portion of the GIWW handles more than 58 percent of its total traffic. TxDOT works with the Army Corps of Engineers on GIWW projects, primarily to provide right of way for disposal of dredging materials.

TxDOT also operates two ferry systems connecting Galveston Island to the Bolivar Peninsula, and Port Aransas to the mainland. These ferries operate 24 hours a day, 365 days a year, and carry more than 4 million vehicles per year.

## Aviation

The Texas aviation system is the largest in the nation. TxDOT provides planning, capital improvement, and maintenance grant assistance to about 270 general aviation airports, including three privately owned and federally funded airports. The Federal Aviation Administration provides direct assistance to the state's 26 commercial airports, and regulates the overall aviation industry.

### Aviation Grants

**Aviation Capital Improvement Program** grants fund airport safety, maintenance, and capacity improvements, such as pavement and lighting projects. These grants require a 10 percent minimum local match. In fiscal year 2007, TxDOT awarded 97 grants totaling \$79 million in state and federal funds.

**Routine Airport Maintenance Program** grants fund routine maintenance or small improvement projects such as construction of entrance roads, installation of security fences, or replacement of rotating beacons. TxDOT will match up to \$50,000 in local funding each fiscal year. In fiscal year 2007, TxDOT awarded 179 of these grants totaling \$2.9 million in state funds.

Each year, TxDOT holds public meetings throughout the state to identify airport improvement and repair needs, and awards two types of aviation grants. TxDOT manages and provides oversight for projects receiving these funds, described in more detail in the textbox, *Aviation Grants*.

TxDOT also provides air charter and flight maintenance services for official state business. The Department operates six passenger planes with the ability to transport state employees to many areas of the state not accessible by regular commercial service, and can provide vital air

service during emergency situations. TxDOT maintains its own planes, and through maintenance contracts, the planes and helicopters of other state agencies such as DPS and the University of Texas System. These and other agencies paid TxDOT \$2 million for aviation maintenance services in fiscal year 2007.

### **Public Transportation**

TxDOT focuses its support of public transportation on providing planning and grant assistance to a variety of public transportation providers and planning organizations including those that provide transportation to the elderly and people with disabilities, as well as 39 rural and 30 small urban transit districts. Rural transit districts serve populations less than 50,000, while small urban districts serve populations of 50,000 to 199,999. In fiscal year 2007, TxDOT awarded \$84.5 million in grants to public transportation providers to establish, maintain, or expand their systems. Much of this funding, \$54.6 million, was provided through the Federal Transit Administration. TxDOT receives guidance from an eleven-member Public Transportation Advisory Committee appointed by the Transportation Commission. The committee advises on the needs and problems of the state's public transportation providers, including methods for allocating public transportation funds.

As required by state law, TxDOT also oversees a regional public transportation coordination initiative. Twenty-four regions of the state, following council of government boundaries, must designate a lead coordinating entity and develop a regional public transportation plan. These plans focus on reducing duplication and inefficiencies found among different transportation providers in the same region. An example of regional coordination is regional maintenance agreements, allowing rural systems to get fleet maintenance services from nearby urban systems.


On May 1, 2008, the Medical Transportation Program transferred from TxDOT to the Health and Human Services Commission. This program provides transportation services to Medicaid recipients and clients of the Children with Special Health Care Needs and Transportation for Indigent Cancer Patient programs.

### **Highway Operations & Safety**

#### **Traffic Safety Programs**

TxDOT works to prevent traffic crashes on Texas highways and at highway-rail intersections by funding the construction of road, signal, lighting, and pavement marking improvements. TxDOT also manages the Texas Traffic Safety Grant Program which seeks to reduce traffic crashes by modifying driver behavior. Preliminary crash data for 2007 indicates that more than 3,400 fatalities and 281,000 injuries occurred on Texas roads. The chart on page 104, *Key Traffic Safety Programs*, provides more information about TxDOT's efforts to reduce these figures.

---



*TxDOT  
awarded \$84.5  
million public  
transportation  
grants in FY 2007.*

---

---



*More than  
3,400 fatalities  
occurred on Texas  
roads in 2007.*

---



### **Key Traffic Safety Programs**

<b>Safety Program</b>	<b>Funding Sources and Amounts</b>	<b>Project Selection and Examples</b>
Texas Safety Bond Program	Proposition 14 (2003) requires 20 percent of total bond issuances to be used for safety programs. To date, \$605 million in additional funding for safety projects has been made available through this program.	TxDOT ranks projects according to the Safety Improvement Index and awards money according to need.  Projects include widening rural roads, adding left-turn lanes, installing cable barriers, and constructing grade separations.
Federal Highway Safety Improvement Program	Hazard Elimination (FY 07): \$63.0 million High Risk Rural Road (FY 07): \$7.6 million	Same as above.
Driver Safety Marketing Campaigns	\$7.9 million federal and \$2 million state expended in FY 07	Projects selected by TxDOT through the Highway Safety Performance Plan process.  Campaigns include impaired driving, child passenger safety, Click It or Ticket, and seasonal campaigns during winter holidays, spring break, and summer.
Safe Routes to School	The federal program was implemented in 2007. As of April 2008, the Commission has awarded \$24.7 million.	Projects selected by Transportation Commission.  Projects include sidewalk and bicycle lane improvements.
Highway-Rail Crossing Safety Programs	FY 2007 funded amounts: <ul style="list-style-type: none"> <li>• Federal Rail Signal Program: \$35 million</li> <li>• Federal Railroad Grade Separation Program: \$13 million</li> <li>• State Highway-Rail Grade Crossing Replanking Program: \$3.5 million</li> </ul>	TxDOT ranks projects according to the Priority Index and awards according to need and overall benefit.  Projects include installation of warning systems, building under- or over-passes to separate highways and rail lines, and improving surfaces at crossings.

In October 2007, responsibility for maintaining a database of all crashes resulting in injury or death, or causing \$1,000 or more in property damage, transferred from DPS to TxDOT. The Department is working with a private vendor to upgrade the system and has eliminated a large data-entry backlog. TxDOT uses the database, which contains more than 4.4 million records, to target safety projects to high-need locations and identify design problems that can cause crashes, such as narrow roads.

### **Automobile Burglary and Theft Prevention Authority**

The Automobile Burglary and Theft Prevention Authority (ABTPA), created in 1991, assesses the problems of automobile burglary and theft in Texas; analyzes various methods of combating these problems; provides financial support to local automobile burglary and theft task forces through an annual grant program; and provides public awareness and education programs. ABTPA also provides funding for a statewide vehicle registration program and oversees a uniform program to prevent stolen motor vehicles from entering Mexico. The textbox on the following page, *ABTPA Timeline*, shows the history of ABTPA. Since ABTPA's inception, vehicle theft rates in Texas have been reduced by 59 percent.<sup>4</sup>

**ABTPA Timeline**

- 1991** Established as the Automobile Theft Prevention Authority within the Criminal Justice Division of the Governor’s Office
- 1995** Removed from the Governor’s Office and administratively attached to TxDOT under the direction of a seven-member Board
- 2007** Renamed the Automobile Burglary and Theft Prevention Authority and amended its mission to include an emphasis on vehicle burglary in addition to theft

A seven-member board governs ABTPA. The Governor appoints six members, while the Director of DPS serves ex officio as the seventh member. The appointed members include two representatives each of consumers, law enforcement, and the insurance industry. The textbox, *Automobile Burglary and Theft Prevention Authority Members*, shows the current Board members and their terms.

**Automobile Burglary and Theft Prevention Authority Members**

Member	Represents	Term Expires
Carlos Garcia, Chair	Law Enforcement	2012
Jason Hartgraves	Law Enforcement	2009
Kenneth Ross	Insurance	2011
Richard L. Watson	Insurance	2013
Linda Kinney	Consumer	2013
Margaret Wright	Consumer	2009
Colonel Tommy Davis	Department of Public Safety	ex officio

ABTPA’s budget for fiscal year 2008 is \$13,774,920, of which about 92 percent was awarded in grants. State law provides for the Automobile Burglary and Theft Prevention Authority Assessment consisting of a \$1 annual fee for each vehicle per insurance policy. The fee is paid by individual policyholders, collected by insurance companies, and deposited to General Revenue. Although ABTPA was originally funded from General Revenue, subsequent legislative changes resulted in ABTPA being funded by the State Highway Fund.

ABTPA’s five staff distribute funds through an annual grant process to local law enforcement agencies and organizations. Projects eligible for funding include activities such as enforcement/apprehension, prosecution/adjudication, public education, prevention of stolen auto parts sales, and reduction of stolen vehicles moved across the Mexican border. ABTPA awarded \$11.8 million to 31 programs in fiscal year 2007 and \$12.8 million to 30 programs in fiscal year 2008.

**Oversize/Overweight Permits**

To protect the traveling public, the state’s roadway infrastructure, and certain loads, TxDOT issues permits for vehicles that exceed weight and size limits established by law. These permits help limit damage and preserve roads by designating a route that can safely accommodate the oversized or overweight vehicle. In fiscal year 2007, TxDOT issued about 554,000 oversize/overweight permits, a 6 percent increase over fiscal year 2006, generating more than \$51 million in revenue. More than 61 percent of the revenue, or \$36 million, was deposited to General Revenue, and the remainder deposited to the

  
*In FY 2007,  
 TxDOT issued  
 about 554,000  
 oversize/  
 overweight  
 permits.*

**Single Trip Permit Fees  
FY 2008**

Vehicle Weight in Pounds	Single Trip Permit Fee	Highway Maintenance Fee	Total Fee
80,000 – 120,000	\$60	\$150	\$210
120,001 – 160,000	\$60	\$225	\$285
160,001 – 200,000	\$60	\$300	\$360
200,001 and above	\$60	\$375 + \$35*	\$470
Manufactured Housing			\$40
Portable Building			\$15

\* Loads weighing more than 200,001 pounds also pay a \$35 vehicle supervision fee.

State Highway Fund. Of these permits, 821 were super heavy permits for loads exceeding 254,300 pounds gross weight, a 98 percent increase over fiscal year 2006.

In 2007, the Legislature increased the fees on certain oversize/overweight permits. The table, *Single Trip Permit Fees*, shows the current fees for oversize/overweight vehicles.

TxDOT registers commercial motor carriers, including household goods carriers, to ensure financial responsibility and consumer protection. A motor carrier

is someone who operates a commercial motor vehicle that transports persons or cargo on a Texas road. Commercial motor vehicles include vehicles with a gross weight of more than 26,000 pounds that transport commercial cargo; vehicles carrying more than 15 people; and vehicles that transport hazardous material. Certain vehicles, including government and farm vehicles, are not considered commercial motor vehicles. Registration ensures that each motor carrier maintains adequate liability insurance for each vehicle requiring registration. TxDOT also participates in the federal Unified Carrier Registration Program by registering Texas-based commercial motor carriers that operate in several states.


TxDOT also investigates complaints and takes enforcement action against motor carriers, including household goods movers and carriers that violate oversize/overweight laws. The registration fees for motor carriers, which include a \$100 application fee and a \$10 fee for each vehicle, generated more than \$8 million in revenue in fiscal year 2007 deposited to General Revenue.

**Travel Information & Safety**

TxDOT supports and promotes travel to and within Texas by providing information and services to highway users and the traveling public. TxDOT operates 86 rest areas and 12 travel information centers. At the travel information centers, travel counselors provide road condition information; issue oversize/overweight permits, temporary tags, and TxTags; and provide travel routing and guidance, to assist more than 3.5 million travelers annually. TxDOT also works with the Office of the Governor for Economic Development and Tourism, Texas Parks and Wildlife Department, Texas Historical Commission, and Texas Commission on the Arts to promote Texas as a premier travel destination.

The Department publishes *Texas Highways* magazine to encourage recreational travel to and within Texas. The magazine operates on a break-even basis and generated more than \$4.7 million in revenue in fiscal year 2007,

---

  
*TxDOT operates  
86 rest areas  
and 12 travel  
information  
centers along  
Texas roads.*

---



with an average circulation of about 240,000 copies per month. TxDOT also manages the “Don’t Mess with Texas” and Adopt-a-Highway programs to reduce litter on state highways, encourage citizen involvement in litter prevention programs through education and participation, and provide a more positive travel experience.

### **Outdoor Advertising Regulation**

To preserve the scenic beauty of highways, the federal Highway Beautification Act requires states to regulate billboards to remain eligible for federal transportation funding. State law also requires similar regulation of billboards along rural roads. These signs are located on private land adjacent to a highway, not on public right of way. In fiscal year 2007, TxDOT licensed 1,304 outdoor advertising operators and permitted 12,984 individual signs along federal-aid and rural roads. The Department has certified 61 cities to regulate billboards within their jurisdictions on behalf of TxDOT. These cities can make permitting standards more or less strict, as long as they comply with the minimum federal requirements.

---

*TxDOT permitted  
12,984 billboards  
in FY 2007.*

---

### **Motor Vehicle Industry Regulation**

TxDOT regulates the sale and distribution of new and used motor vehicles. The Department licenses new and used motor vehicle dealers, new motor vehicle manufacturers, distributors, representatives, lessors, and lease facilitators. TxDOT also licenses converters, businesses that take a regular vehicle and convert it into a limousine, tow truck, or other type of specialty vehicle. TxDOT’s licensing activity generally seeks to ensure that a licensee is a reputable, established business. It also requires a \$25,000 bond for used car dealers. In fiscal year 2007, TxDOT issued 19,358 licenses and received \$9,582,938 in revenue from license fees, penalties, and filing fees. The chart, *Motor Vehicle Dealer Licenses*, provides data about each license type.

**Motor Vehicle Dealer Licenses  
FY 2007**

License Type	Number Issued
Used (independent) Motor Vehicle Dealers	14,154
New (franchise) Motor Vehicle Dealers	2,767
Representatives	1,790
Manufacturers and Distributors	320
Converters	139
Lessors	132
Lease Facilitators	56
<b>Total</b>	<b>19,358</b>

TxDOT enforces administrative rules that pertain to the vehicle dealer industry, including prohibitions against false and deceptive advertising, fraudulent sales practices, odometer fraud, and failure to apply for vehicle titles. The State Office of Administrative Hearings (SOAH) conducts hearings on matters filed after September 1, 2007 involving new vehicle dealer license application disputes, and alleged violations of state law or rule. In fiscal year 2007, SOAH conducted 374 license hearings.

The Department also administers the Texas Lemon Law, which offers help to consumers who buy or lease new, defective motor vehicles. In fiscal year 2007, TxDOT received 659 Lemon Law complaints. These complaints take an average of 150 days to resolve. In 2007, 374 cases were resolved by consumers receiving a replacement vehicle, manufacturer repurchase of the vehicle, or some other remedy determined through a mediation process.

## Vehicle Titles, Registration, and License Plates

TxDOT partners with the 254 county Tax Assessor-Collectors in the state to issue vehicle license plates, register vehicles, and process vehicle title transactions. Some counties also subcontract vehicle titling and registration services to private vendors such as motor vehicle dealers or grocery stores.

A vehicle's title is proof of ownership. Whenever a vehicle is sold, state law requires the vehicle to be titled and registered within 20 working days. The state vehicle title application fee is \$28, or \$33 in counties designated as non-attainment areas not meeting federal air quality standards. In fiscal year 2007, TxDOT issued 6,013,144 vehicle titles, generating more than \$175 million of revenue. Approximately 9 percent of this amount was deposited to the State Highway Fund, 16 percent was retained by the counties, and the remaining 75 percent was deposited to General Revenue.

### Registration Fees for Passenger Vehicles Calendar Year 2008

Basic Fees	
2002 and Older	\$40.80
2003 – 2005	\$50.80
2006 and Newer	\$58.80
Optional County Fees	
Road and Bridge (All Counties)	up to \$10.00
Child Safety (All Counties)	up to \$1.50
Transportation Projects (Hidalgo and Cameron Counties)	up to \$10

State law requires Texas residents who own a vehicle to renew the vehicle's registration annually. A vehicle's registration fee is considered payment for using the state's transportation system. The chart, *Registration Fees for Passenger Vehicles*, shows the current basic and optional registration fees.

Each year, TxDOT mails vehicle registration renewal notices to vehicle owners, who may renew by mail, in person at a county office, or, in some counties, online. Currently, 155 counties offer vehicle registration renewal services online. In fiscal year 2007, TxDOT registered 20,864,318 vehicles and generated more than \$1.4 billion in revenue. Approximately 69 percent of this amount went to

the State Highway Fund, and the remaining 31 percent to counties. In 2006 and 2007, vehicle registrations increased by 800,000 per year.

TxDOT issues four types of license plates: general issue license plates; exempt license plates provided to governmental bodies and law enforcement; specialty license plates; and souvenir license plates. In fiscal year 2007, TxDOT issued more than 10 million general issue plates. That same year, the Department issued 339,000 specialty license plates, generating \$8.7 million in revenue for the State and nonprofit organizations.

<sup>1</sup> Texas Transportation Commission Minute Order 108608, August 30, 2001.

<sup>2</sup> Texas Department of Transportation, *Texas Rail System Plan* (Austin, Texas, October 2005), p. 2-1. Online. Available: [www.dot.state.tx.us/publications/transportation\\_planning/FinalRail.pdf](http://www.dot.state.tx.us/publications/transportation_planning/FinalRail.pdf). Accessed: April 23, 2008.

<sup>3</sup> Texas Department of Transportation, *Texas Ports 2008-2009 Capital Program* (Austin, Texas, 2007), p. 2. Online. Available: [www.dot.state.tx.us/publications/transportation\\_planning/tpa\\_report08.pdf](http://www.dot.state.tx.us/publications/transportation_planning/tpa_report08.pdf). Accessed: April 23, 2008.

<sup>4</sup> Texas Automobile Burglary and Theft Prevention Authority, *2008 Fact Sheet* (Austin, Texas, December 2007).

# APPENDICES

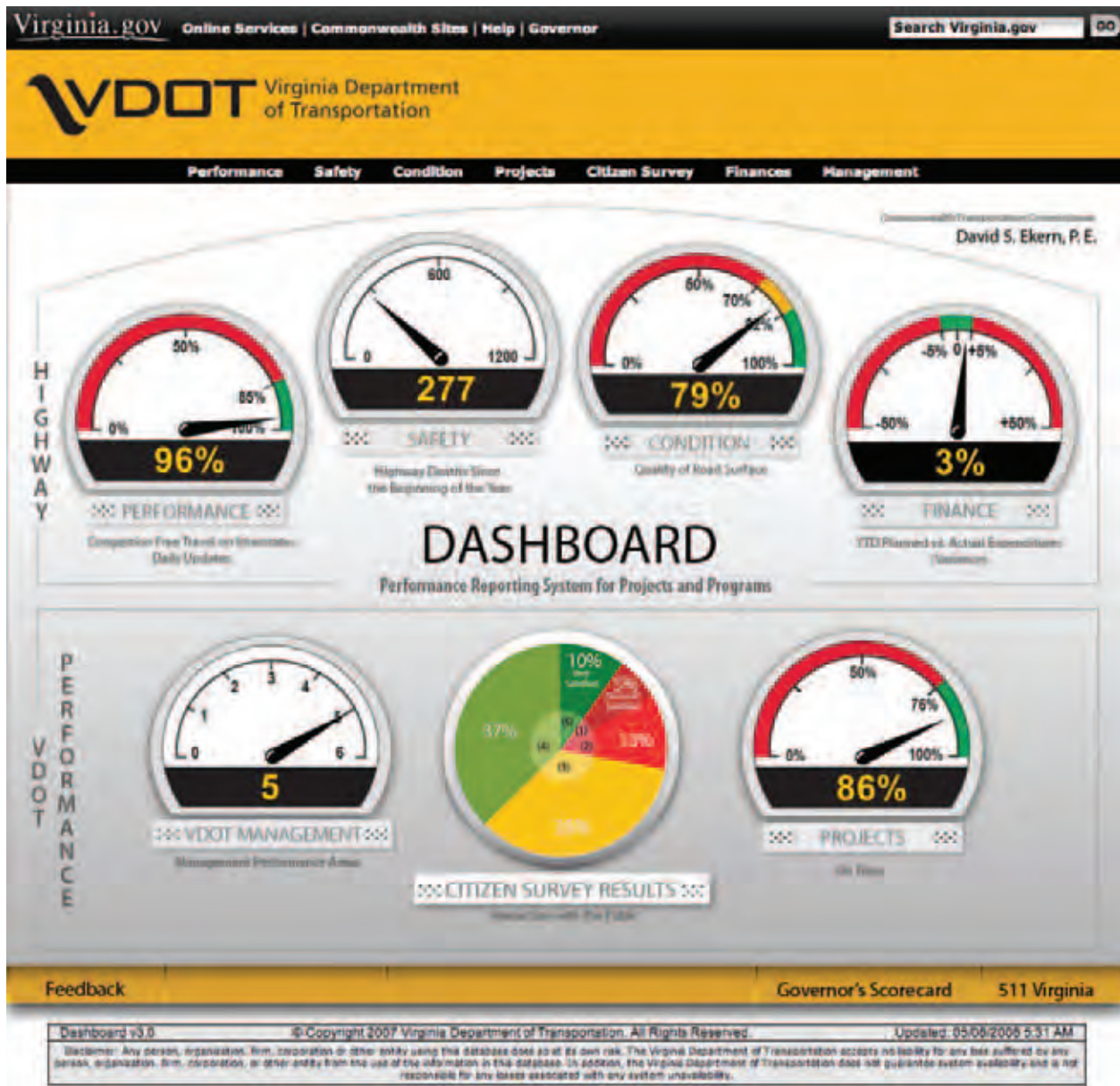


# Appendix A

## Examples of Other State Transportation Evaluation and Reporting Systems

### Virginia Department of Transportation's Dashboard

The Virginia Department of Transportation provides an interactive website called the Dashboard Performance Reporting System for Projects and Programs to depict the agency's progress towards mobility, safety, road condition, public satisfaction, and agency efficiency goals.



Source: Virginia Department of Transportation, Dashboard Performance Rating System for Projects and Programs, [dashboard.virginiadot.org/default.aspx](http://dashboard.virginiadot.org/default.aspx). Accessed: May 21, 2008.

# Appendix A

## Washington State Department of Transportation's Proposed Statewide Transportation Policy Goals

In 2007, the Washington State Legislature established five statewide transportation policy goals to guide the agency's programs. In January 2008, the Washington State Office of Financial Management drafted the following proposed performance measures and objectives for each goal, and will submit the first biennial progress report to the Legislature in November 2008.

### Proposed Initial Objectives and Performance Measures

<b>Goal 1. Safety:</b> To provide for and improve the safety and security of transportation customers and the transportation system.	
Objectives: <ul style="list-style-type: none"> <li>➤ Reduce fatalities and serious injury collisions</li> <li>➤ Reduce risks and ensure security</li> </ul>	
<b>Measure</b>	<b>Current Status</b>
<b>Measure 1.1 Traffic Fatalities</b> Number and rate of traffic fatalities per 100 million vehicle miles traveled	The number and rate of traffic fatalities are decreasing. In 2006, there were 633 traffic fatalities or 1.12 fatalities per 100 million vehicle miles traveled. Preliminary data for 2007 shows 547 traffic fatalities. The state is aggressively pursuing the goal of zero traffic deaths by the year 2030.
<b>Measure 1.2 Collision Reduction</b> Percent reduction in injury and damage before and after safety improvements	Investments in safety improvements yield results. For 60 construction projects with specific safety improvements, there was a 12%-16% reduction in collisions, and 30%-37% reduction in injuries, when measured for several years before and after the construction.
<b>Goal 2. Preservation:</b> To maintain, preserve and extend the life and utility of prior investments in transportation systems and services.	
Objective: <ul style="list-style-type: none"> <li>➤ Extend the useful life of existing facilities, systems and equipment</li> </ul>	
<b>Measure 2.1 State Highway Pavement</b> Percent of state highway pavement in fair or better condition	As of 2007, 93.5% of state highway lane miles were in fair or better condition, above the target of 90%. Both the state and local governments preserve pavement at the lowest life-cycle cost. However, the concrete pavement is deteriorating and will be costly to replace.
<b>Measure 2.2 Local Roadway Pavement</b> Percent of city and county roadway pavement in fair or better condition	As of 2007, a majority of city and county center line miles are in fair or better condition. Local agencies focus their resources on maintaining the pavement in good condition, which is more cost-effective than replacing pavement in failing condition.
<b>Measure 2.3 Bridges</b> Percent of state, city and county bridges in fair or better condition	In 2007, more than 90% of all state, city, and county bridges were in fair or better condition. In particular, state-maintained bridges met the target of 97%. However, a number of major bridges need to be replaced in the near future, including SR 520, the Alaskan Way Viaduct, the Columbia River Crossing and Deception Pass.
<b>Measure 2.4 State Highway Maintenance</b> Percent of targets met for state highway maintenance levels	The state's performance in meeting its targets for state highway maintenance is falling. In 2007, 52% of the targets were met, down from 85% in 2006. Cost increases and new facilities are stretching maintenance resources.
<b>Measure 2.5 Ferry Vessels and Terminals</b> Percent of state ferry terminals in fair or better condition	As of 2007, 87% of state ferry terminals were in fair or better condition. Future reports will include data on county terminals, and state and county vessels.
<b>Goal 3. Mobility (addressing congestion):</b> To improve the predictable movement of goods and people throughout the state.	
Objectives: <ul style="list-style-type: none"> <li>➤ Address congestion</li> <li>➤ Maximize operational performance and capacity of existing systems</li> <li>➤ Increase the reliability of travel for goods and people</li> <li>➤ Reduce bottlenecks and chokepoints</li> </ul>	
<b>Measure 3.1 Travel Times</b> Travel times on the most-congested state highways	Between 2004 and 2006, average travel times increased on 32 of the 38 most-congested commute routes around Puget Sound.
<b>Measure 3.2 Hours of Delay</b> Hours of delay on the most-congested state highways	Drivers on major Puget Sound corridors were delayed about 43,000 hours daily in 2006.



# Appendix A

## Washington State Department of Transportation's Proposed Statewide Transportation Policy Goals

### Proposed Initial Objectives and Performance Measures (cont.)

<b>Goal 3. Mobility</b> (addressing congestion) <i>continued</i>	
<b>Measure</b>	<b>Current Status</b>
<b>Measure 3.3 Trip Reliability</b> Reliable travel times on the most-congested highways around Puget Sound	Data is available for individual routes in the Puget Sound region. We are working on the best way to roll the data up to a higher level.
<b>Measure 3.4 Commute Modes</b> Percentage of commute trips taken while driving alone	In 2006, 75% of Washington commuters drove alone. Commute trip reduction and vanpool programs reduce the number of drive-alone trips that would otherwise have passed through the region's major traffic chokepoints during peak travel periods.
<b>Measure 3.5 Incident Response Times</b> Average length to clear major incidents lasting more than 90 minutes on key highway segments	Clearance times for major incidents, which are key contributors to traffic delays, are decreasing, in part due to work with counties and the towing industry. As of December 2007, average clearance time was 161 minutes, 7% below FY2006, and 2% below the Governor's target of 165 minutes.
<b>Measure 3.6 Freight</b> placeholder – still being developed	Mobility measures 3.1-3.4 can be used as baseline measures of freight mobility. However, we are also working to develop a specific measure to best assess how well freight is moving through the state's transportation system.
<b>Measure 3.7 Ferries</b> Percent of trips on time and ridership	On-time performance is excellent and ridership is making slight improvements. On average, more than 90 percent of state ferry trips were on time in 2007. Ridership on state ferries was 23.7 million in 2006 and is projected at 24 million for 2007.
<b>Measure 3.8 Passenger Rail</b> Percent of trips on time and ridership on state-supported Amtrak Cascades	On average, trips ran on time 60% of the time, below the target of 80%. In 2007, ridership on state-supported Amtrak Cascades was 457,000.
<b>Measure 3.9 Transportation-Efficient Land Use</b> placeholder – still being developed	We are still working to develop a measure to evaluate the effect that land use patterns have on transportation demand.
<b>Goal 4. Environment:</b> To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities and protect the environment.	
Objectives: >Protect habitat >Reduce degradation of air and water quality	
<b>Measure 4.1 Fish Passage</b> Number of culverts fixed and miles of stream habitat opened up	As of 2007, 217 high priority culverts have been fixed or removed, opening up 480 miles of stream habitat.
<b>Measure 4.2 Stormwater Quality</b> Number of WSDOT stormwater treatment facilities constructed	1,872 stormwater treatment facilities were constructed between 1996 and 2007. Future reports will also provide data on the effect the stormwater treatment facilities are having on water quality.
<b>Measure 4.3 Air Quality</b> Tons of greenhouse gases produced statewide	The level of greenhouse gases is decreasing. As of 2005, 94.8 million metric tons CO <sup>2</sup> equivalent were produced statewide, a decrease from 105 million metric tons CO <sup>2</sup> equivalent in 2000. The state is taking aggressive action to further reduce greenhouse gases to 1990 levels, and to reduce toxic diesel exhaust.
<b>Goal 5. Stewardship:</b> To continuously improve the quality, effectiveness and efficiency of the transportation system.	
Objective: >Improve program and project delivery	
<b>Measure 5.1 Capital Project Delivery</b> Percent of Nickel and Transportation Partnership Act capital projects completed on time and within budget	As of Dec. 31, 2007, the WSDOT successfully completed 128 of 392 planned Nickel and TPA highway projects. Of those, 78% were completed on-time and within budget. This was below the target of 90%, largely due to increases in material costs of more than 50% in recent years.

Source: Washington State Office of Financial Management, Proposed Transportation Progress Report: The State of Washington's Transportation System (January 2008), pp. 4-5. Online. Available: [www.ofm.wa.gov/performance/trans\\_progress\\_report\\_draft012908.pdf](http://www.ofm.wa.gov/performance/trans_progress_report_draft012908.pdf). Accessed: May 21, 2008.





## Appendix A

### Florida Transportation Commission’s Performance and Production Review of the Florida Department of Transportation

The Florida Transportation Commission monitors the performance of the state’s separate transportation agency, the Florida Department of Transportation. The monitoring system includes 38 performance measures, 21 of which are “primary” measures and 17 of which are “secondary measures.” Primary measures evaluate operations within the Department’s control, while secondary measures are more informational in nature.

The list below shows the Florida system’s primary measures, as excerpted from the Florida Transportation Commission’s 2006-2007 performance review of the Florida Department of Transportation.

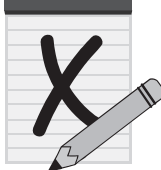
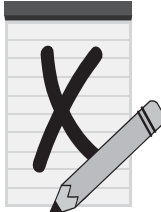
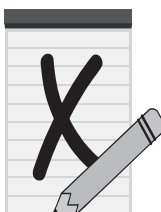


<b>Summary of Performance</b>
-------------------------------

Measure	Objective	FY 06/07 Results	Meets Objective
The number of consultant contracts actually executed compared against the number planned.	≥95%	97.1%	
The number of ROW projects certified compared to the number scheduled for certification.	≥90%	95.9%	
The number of construction contracts actually executed compared against the number planned.	≥95%	97.6%	
The number of Local Agency Program (LAP) consultant contracts actually executed compared against the number planned.	≥80%	82.2%	

## Appendix A

### Florida Transportation Commission's Performance and Production Review of the Florida Department of Transportation

<b>Summary of Performance (cont'd)</b>
--





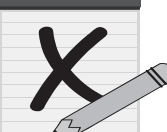


Measure	Objective	FY 06/07 Results	Meets Objective
The number of Local Agency Program (LAP) construction contracts actually executed compared against the number planned.	≥80%	68.8%	
For all construction contracts completed during the year, the percentage of those contracts that were completed within 20% above the original contract time.	≥80%	73.9%	
For all construction contracts completed during the year, the percentage of those contracts that were completed at a cost within 10% above the original contract amount.	≥90%	84.5%	
The percentage of bridge structures on the State Highway System having a condition rating of either excellent or good.	≥90%	94.3%	
The percentage of bridge structures on the State Highway System with posted weight restrictions.	<1%	.13%	



## Appendix A

### Florida Transportation Commission's Performance and Production Review of the Florida Department of Transportation






<b>Summary of Performance (cont'd)</b>
--

Measure	Objective	FY 06/07 Results	Meets Objective
The percentage of lane miles on the State Highway System having a Pavement Condition Rating of either excellent or good.	≥80%	83.5%	
Achieve a Maintenance Rating of at least 80 on the State Highway System.	80	83	
The percentage of flexible capacity funds <u>allocated</u> to the Strategic Intermodal System.	75% by FY 2014/15	75.0%	
The number of lane miles of capacity improvement projects on the State Highway System let compared against the number planned.	≥90%	86.2%	
The public transit ridership growth rate compared to the population growth rate.	≥4.81%	3.36%	
Of the federal funds subject to forfeiture at the end of the federal fiscal year, the percent that was committed by the Department.	100%	100%	<b>On-Track</b> 
The Department's dollar amount of administrative costs as a percent of the total program.	<2%	1%	

## Appendix A

### Florida Transportation Commission's Performance and Production Review of the Florida Department of Transportation

#### Summary of Performance (cont'd)

Measure	Objective	FY 06/07 Results	Meets Objective
Cash receipts and disbursements compared against forecasted receipts and disbursements.	+ or—5%	Receipts: -13% Disbrmts.: -6.4%	
The annual dollar amount of MBE utilization as a percent of total projects/commodities expended.	Annual Increase	Increased by \$16.6 M	
Average amount of each toll transaction dedicated to covering operational costs.	<16¢	16.6¢	
The revenue variance expressed as a percentage of indicated revenue.	≤5%	3.7%	
The number of SunPass transactions as a percentage of total transactions.	>75% by FY 07/08	61.9%	<b>On-Track</b> 

Source: Florida Transportation Commission, *Annual Performance and Production Review of the Florida Department of Transportation, Fiscal Year 2006/2007* (September 26, 2007), pp 12-14. Online. Available: [www.ftc.state.fl.us/Reports/06-07%20Report-Final.pdf](http://www.ftc.state.fl.us/Reports/06-07%20Report-Final.pdf). Accessed: May 21, 2008.

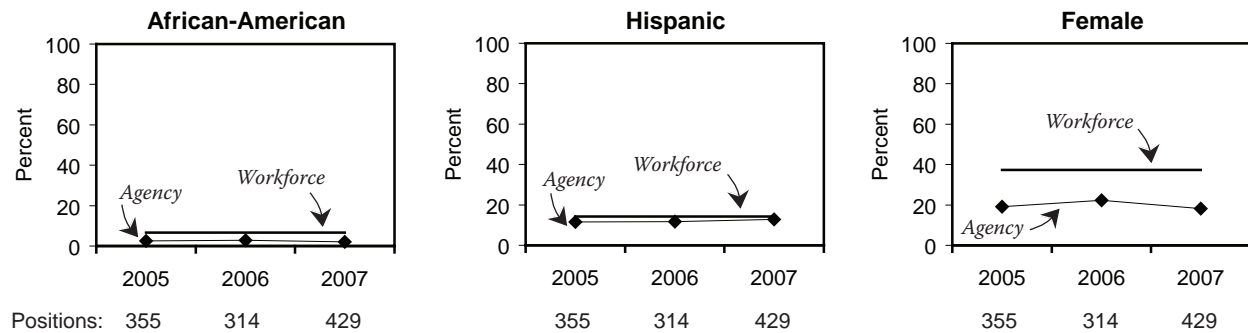


# Appendix B

## Equal Employment Opportunity Statistics 2005 to 2007

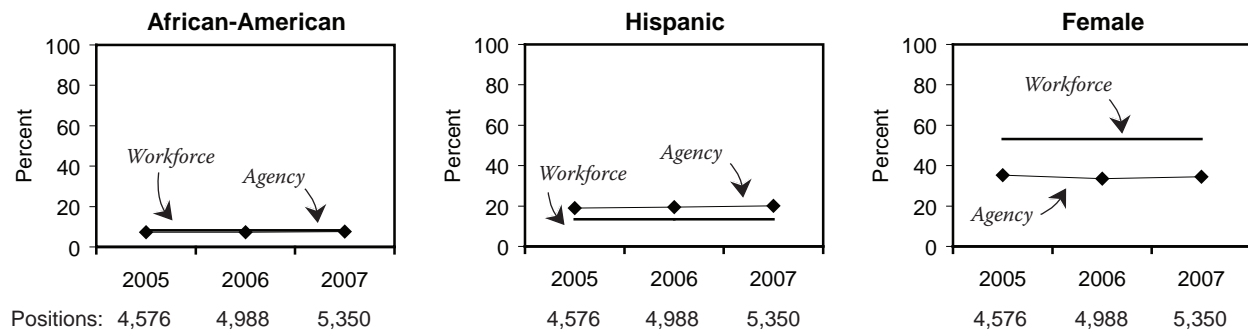
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Department of Transportation employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the Department's actual employment percentages in each job category from 2005 to 2007. For TxDOT's three largest job categories, professional, technical, and skilled craft, the Department generally met or came close to the civilian workforce percentages for African Americans and Hispanics, but fell below for females over the last three fiscal years.

### Administration



Generally, the Department fell below the civilian workforce percentages for African-Americans and females in all three years, but almost met the percentage for Hispanics.

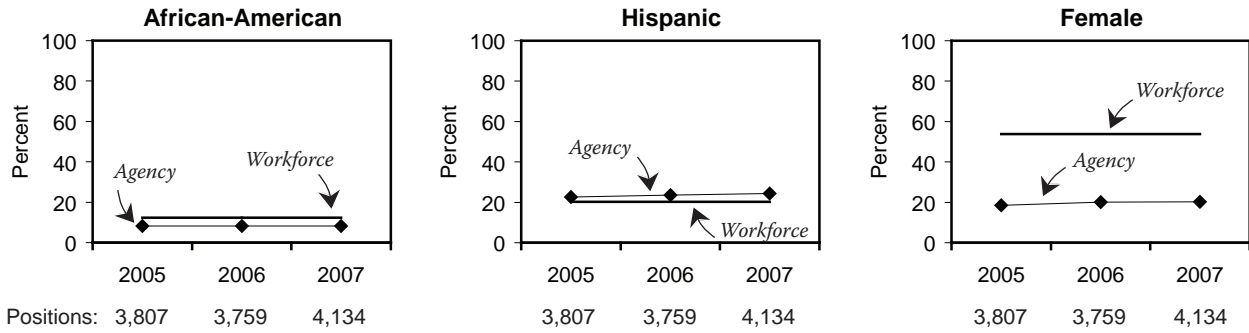
### Professional



Representing the largest category of staff, the Department met or exceeded the civilian workforce percentages for African-Americans and Hispanics in the last three fiscal years. The Department fell below the civilian workforce percentages for females in those same years.

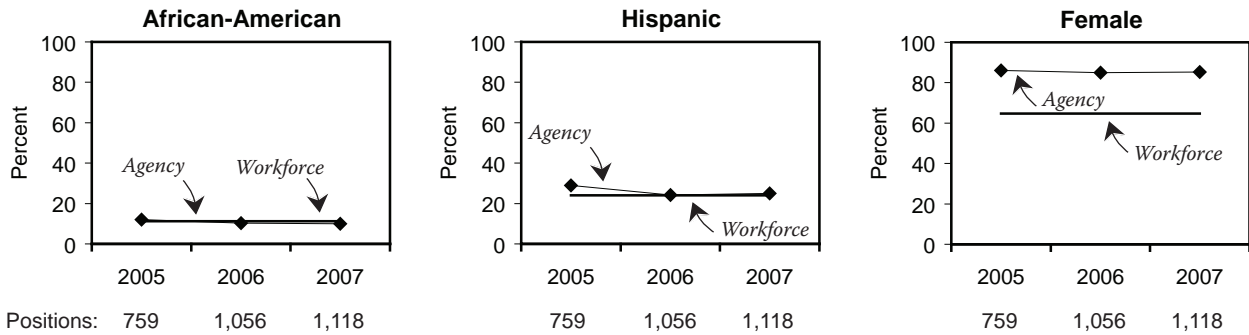
# Appendix B

## Technical



Representing the third largest category of staff, the Department exceeded the civilian workforce percentage for Hispanics, and fell just below the percentage for African-Americans in the last three fiscal years. The Department fell well below the civilian workforce percentages for females those same years.

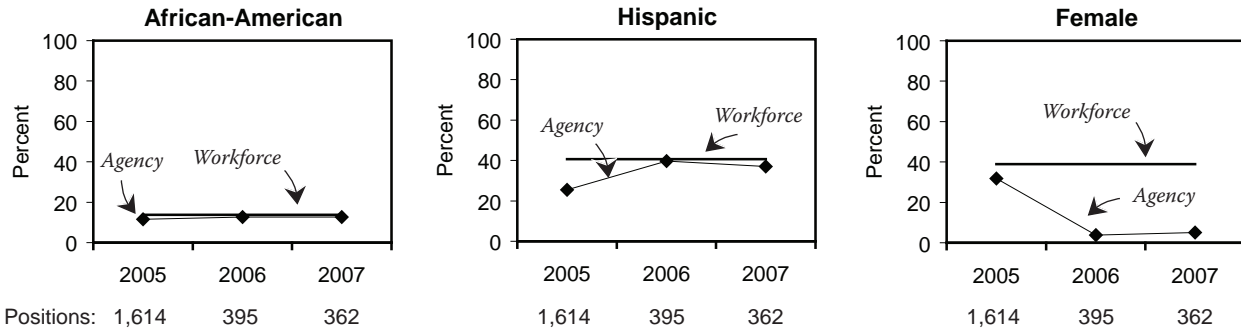
## Administrative Support



The Department met or exceeded the civilian workforce percentages for African-Americans, Hispanics, and females in the last three fiscal years.

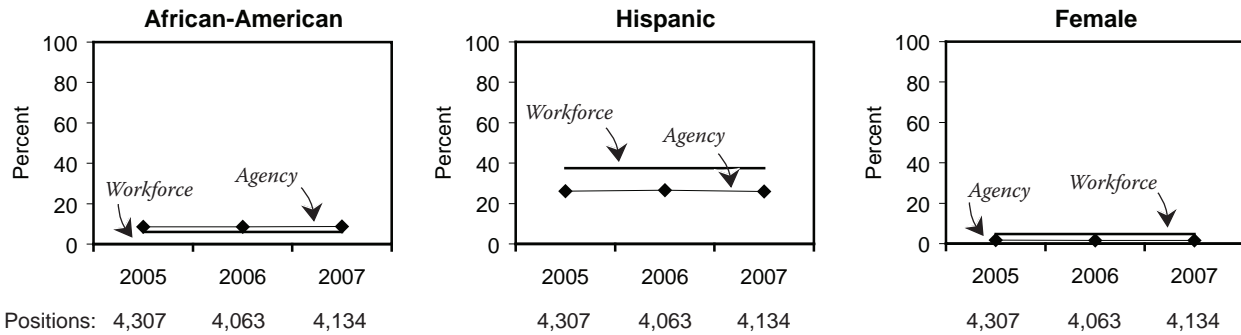
# Appendix B

## Service/Maintenance<sup>3</sup>



Generally, the Department met the civilian workforce percentages for African-Americans in the last three fiscal years, but fell below the percentages for Hispanics and females those same years. Responding to updated 2000 census data, the Department changed its classification of approximately 865 staff in fiscal year 2006, resulting in a significant reduction in service/maintenance staff positions. These positions were reclassified into other job categories.

## Skilled Craft



Representing the second largest category of staff, the Department slightly exceeded the civilian workforce percentages for African-Americans in the last three fiscal years, but fell slightly below the percentages for Hispanics and females those same years.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501.

<sup>3</sup> The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.



# Appendix C

## TxDOT Expenditures by Goal and Strategy FY 2007

Goal / Strategy	Expended*	Percent of Total*
<b>Transportation Planning</b>		
Plan/Design/Manage	\$351,795,778	4.35%
Plan/Design/Manage (Consultants)	\$419,243,137	5.19%
Right-Of-Way Acquisition	\$569,151,926	7.05%
Research	\$22,145,085	0.27%
<b>Subtotal, Transportation Planning</b>	<b>\$1,362,335,924</b>	<b>16.86%</b>
<b>Transportation Construction</b>		
Transportation Construction	\$2,946,115,845	36.47%
Aviation Services	\$70,772,207	0.88%
<b>Subtotal, Transportation Construction</b>	<b>\$3,016,888,051</b>	<b>37.35%</b>
<b>Maintenance and Preservation</b>		
Contracted Maintenance	\$2,576,474,589	31.89%
Routine Maintenance	\$534,745,190	6.62%
Gulf Waterway	\$149,528	0.00%
Ferry System	\$30,384,264	0.38%
Gross Weight/Axle Weight	\$7,157,692	0.09%
<b>Subtotal, Maintenance and Preservation</b>	<b>\$3,148,911,262</b>	<b>38.98%</b>
<b>Services and Systems</b>		
Public Transportation	\$57,896,669	0.72%
Medical Transportation**	\$128,969,208	1.60%
Registration & Titling	\$64,412,084	0.80%
Vehicle Dealer Regulation	\$5,428,749	0.07%
Traffic Safety	\$38,709,044	0.48%
Travel Information	\$17,897,885	0.22%
Automobile Burglary and Theft Prevention	\$15,334,445	0.19%
Rail Safety	\$717,395	0.01%
<b>Subtotal, Services and Systems</b>	<b>\$329,365,480</b>	<b>4.08%</b>
<b>Administration</b>		
Central Administration	\$45,850,017	0.57%
Information Resources	\$36,535,164	0.45%
Other Support Services	\$38,562,104	0.48%
Regional Administration	\$99,738,460	1.23%
<b>Subtotal, Administration</b>	<b>\$220,685,746</b>	<b>2.73%</b>
<b>TOTAL</b>	<b>\$8,078,186,465</b>	<b>100.00%</b>

\* Note: Numbers may not add to totals due to rounding.

\*\* The Medical Transportation Program transferred to the Health and Human Service Commission on May 1, 2008.





# Appendix D

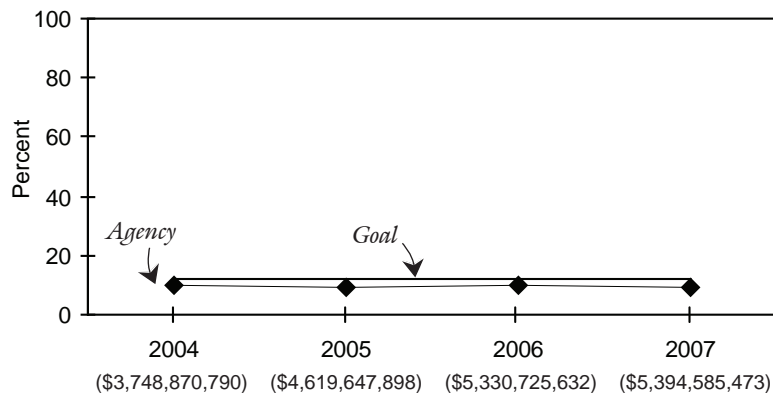
## Historically Underutilized Businesses Statistics

### 2004 to 2007

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup> The review of the Texas Department of Transportation (TxDOT) found that the agency's purchasing continues to fall below the State's HUB goals in several categories. However, the Department does have a HUB coordinator and HUB action plan to address performance shortfalls. Additionally, the agency has adopted a HUB subcontracting plan.

The following material shows trend information for TxDOT's use of HUBs in purchasing goods and services. The Department maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2004 to 2007. Finally, the number in parentheses under each year shows the total amount TxDOT spent in each purchasing category. The Department has not met State HUB purchasing goals for several categories during the past four years, including heavy construction, special trade, other services, and commodities. In the building construction and professional services categories, the Department exceeded the State HUB goals in the past, but has fallen below in recent years.

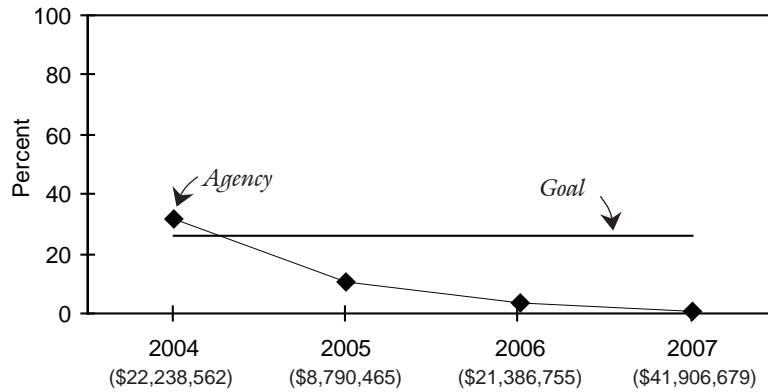
### Heavy Construction



The Department fell just below the State goal for HUB purchasing of heavy construction from 2004 to 2007.

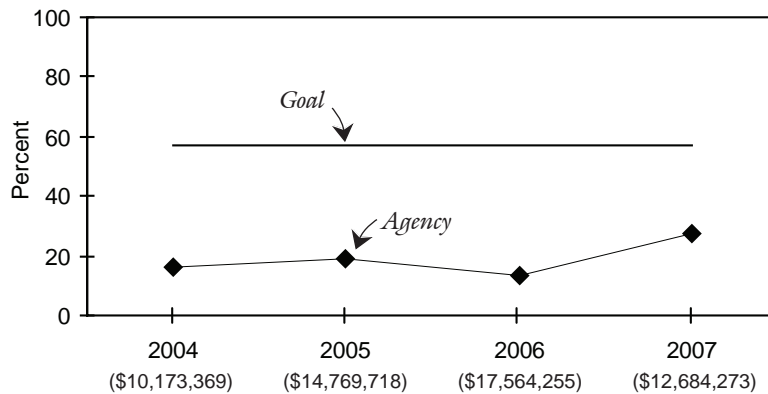
# Appendix D

## Building Construction



The Department exceeded the State goal for building construction in 2004, but failed to meet the goal for the past three years.

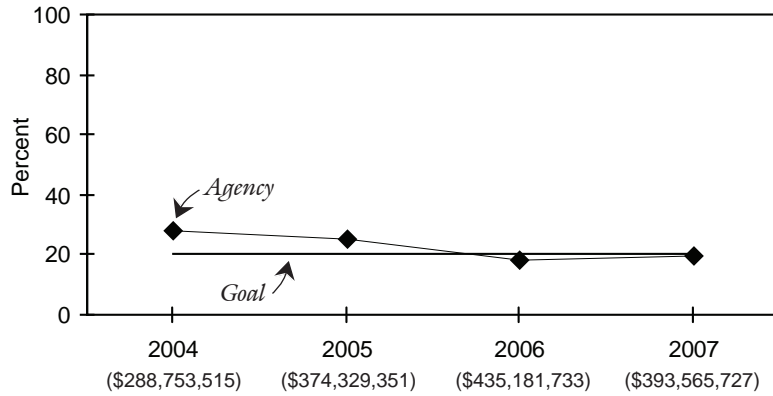
## Special Trade



The Department consistently fell below the State goal for HUB purchasing of special trades from 2004 to 2007.

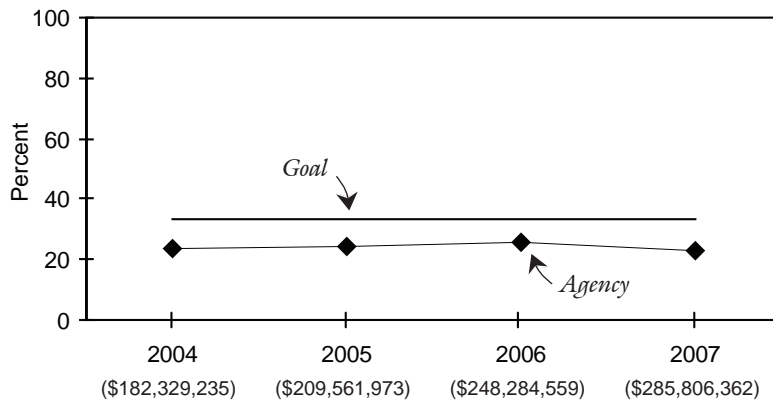
# Appendix D

## Professional Services



The Department met or exceeded the State goal for professional services in 2004, 2005, and 2007, and fell just short of the goal in 2006.

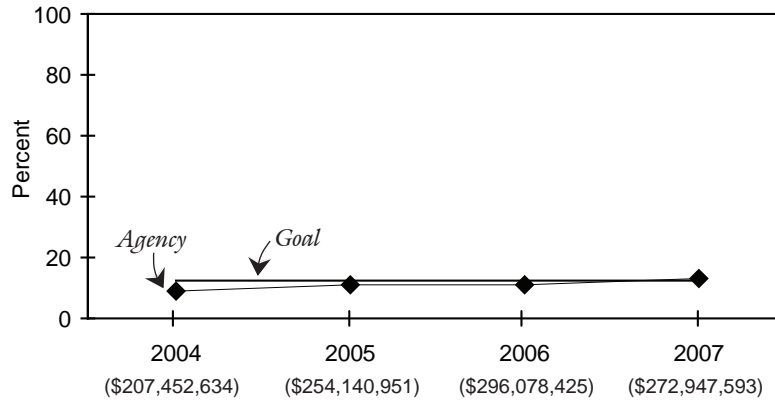
## Other Services



The Department consistently fell below the State goal for HUB purchasing of other types of services from 2004 to 2007.

# Appendix D

## Commodities



The Department met the State goal for HUB commodities in 2007 after falling just short of the goal from 2004 to 2006.

.....  
<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.

# Appendix E

## 2009 – 2019 Unified Transportation Program

FUNDING CATEGORY	PROJECT SELECTION	USUAL FUNDING PARTICIPATION	2009 – 2019 UTP TARGET FUNDING LEVELS*
<b>1 – Preventive Maintenance and Rehabilitation</b>	Projects selected by Districts. Commission allocates funds through Allocation Program.	Federal 90% State 10% or Federal 80% State 20% or State 100%	\$ 12,426,727,838
<b>6 – Structures**</b> Federal Highway Bridge Program (HBP); Federal Railroad Grade Separation Program (RGS)	Projects selected by the Bridge Division as a statewide program based on HBP and RGS program eligibility. Commission allocates funds through Allocation Program.	Federal 90% State 10% or Federal 80% State 20% or Federal 80% State 10% Local 10%	\$ 2,750,000,000
<b>8 – Safety**</b> Federal Highway Safety Improvement Program, Federal Federal Railway-Highway Crossing Program, Safety Bond Program, Federal Safe Routes to School Program, and Federal High Risk Rural Roads	Projects selected statewide by federally mandated safety indices and prioritized listing. Commission allocates funds through Statewide Allocation Program. Projects selected and approved by commission on a per-project basis for Federal Safe Routes to School Program.	Federal 90% State 10% or Federal 90% Local 10% or State 100% or Federal 100%	\$ 1,430,000,000
<b>2 – Metropolitan Area Corridor Projects</b>	Projects selected by MPOs in consultation with TxDOT. Commission allocates funds through Allocation Program.	Federal 80% State 20% or State 100%	\$ 3,269,000,000
<b>3 – Urban Area Corridor Projects</b>	Projects selected by MPOs in consultation with TxDOT. Commission allocates funds through Allocation Program.	Federal 80% State 20% or State 100%	\$ 433,000,000
<b>4 – Statewide Connectivity Corridor Projects</b>	Projects selected by commission based on corridor ranking. Project total costs cannot exceed Commission approved statewide allocation.	Federal 80% State 20% or State 100%	\$ 801,500,000
<b>5 – Congestion Mitigation and Air Quality Improvement**</b>	Projects selected by MPOs in consultation with TxDOT and funded by District's Allocation Program. Commission allocates money based on population percentages within areas falling to meet air quality standards.	Federal 80% State 20% or Federal 80% Local 20% or Federal 90% State 10%	\$ 1,634,579,254
<b>7 – Metropolitan Mobility/Rehabilitation**</b>	Projects selected by MPOs in consultation with TxDOT and funded by District's Allocation Program. Commission allocated money based on population.	Federal 80% State 20% or Federal 80% Local 20% or State 100%	\$ 2,351,000,000
<b>9 – Transportation Enhancements**</b>	Local entities make recommendations and a TxDOT committee reviews them. Projects selected and approved by commission on a per-project basis. Projects in the Safety Rest Area Program are selected by the Maintenance Division.	Federal 80% State 20% or Federal 80% Local 20%	\$ 660,000,000
<b>10 – Supplemental Transportation Projects</b> State Park Roads, Railroad Grade Crossing Replanking, Railroad Signal Maintenance, Construction Landscaping, Landscape Cost Sharing, Landscape Incentive Awards, Green Ribbon Landscape Improvement, Curb Ramp Program, Coordinated Border Infrastructure Program, Comprehensive Development Agreements and Congressional High Priority Projects	Projects selected statewide by Traffic Operations Division or Texas Parks and Wildlife Department, local projects selected by district. Commission allocated funds to districts or approves participation in federal programs with allocation formulas. Coordinated Border Infrastructure Program funds are allocated to districts according to the federal formula.	State 100% or Federal 80% State 20% or Federal 100%	\$ 639,000,000
<b>11 – District Discretionary</b>	Projects selected by districts. Commission allocates funds through Allocation Program.	Federal 80% State 20% or Federal 80% Local 20% or State 100%	\$ 687,500,000
<b>12 – Strategic Priority</b>	Commission selects projects which generally promote economic opportunity, increase efficiency on military deployment routes or to retain military assets in response to the federal military base realignment and closure report, or maintain the ability to respond to both man-made and natural emergencies. Also, the Commission approves pass-through financing projects in order to help local communities address their transportation needs.	Federal 80% State 20% or State 100%	\$ 1,096,430,200
<b>TOTAL UNIFIED TRANSPORTATION PROGRAM FUNDING</b>			<b>\$ 28,178,737,292</b>

\* Target funding levels for each category were adopted by the Transportation Commission in Minute Order 111335, April 24, 2008. As of May 2008, the Commission had not determined the amount of money that will be allocated from each category to TxDOT districts and MPOs.

\*\* The federal government largely determines the funding levels in these categories.



# Appendix F

## Regional Mobility Authorities in Texas

Regional Mobility Authority	Date of Creation	Counties Included in RMA	TxDOT Grants or Loans to RMA	Number of Toll Projects in Operation
Central Texas RMA	October 31, 2002	Travis Williamson	\$77.70 million	1
Alamo RMA	December 18, 2003	Bexar	\$8.5 million (additional \$19.8 million pending May 29, 2008 commission approval)	None
Grayson County RMA	April 29, 2004	Grayson	None	None
Cameron County RMA	September 30, 2004	Cameron	\$21.60 million	None
Northeast Texas RMA	October 28, 2004	Smith, Gregg, Cherokee, Harrison, Rusk, Upshur, Bowie, Cass, Panola, Titus, Van Zandt, Wood	\$12.25 million	None (TxDOT operates one toll road in the region)
Hidalgo County RMA	November 17, 2005	Hidalgo	None	None
Camino Real RMA	June 29, 2006	City of El Paso	\$330,000	None
Sulphur River RMA	June 28, 2007	Delta, Hopkins, Hunt, Lamar	None	None





# Appendix G

## TxDOT-Awarded Comprehensive Development Agreements as of March 2008

Date Signed	Project	Developer	Purpose
June 19, 2002	SH 130* (Segments 1 through 4)	Lone Star Infrastructure	To design and build parts of SH 130, with an option to maintain segments 1 through 4 of that road. The first five years of the Capital Maintenance agreement was executed in Fall 2007.
March 11, 2005	TTC-35	Cintra Zachry	To prepare a master development and financial plan for developing TTC-35, planned as a 600-mile part of the Trans-Texas Corridor stretching from Oklahoma to Mexico and the Gulf Coast.
January 27, 2006	Statewide toll integrator	Raytheon	To develop a statewide integrated system for collecting tolls on Texas toll roads.
March 22, 2007	SH 130** (Segments 5 and 6)	Cintra Zachry	To develop and operate segments 5 and 6 of SH 130 as a toll concession project.

\* TxDOT developed this project through an exclusive development agreement, a type of contract that preceded CDAs.

\*\* TxDOT developed this project agreement, technically called a facility agreement, under the TTC-35 master development plan CDA.



# Appendix H

## Potential Toll Projects Identified by TxDOT

<i>TxDOT District</i>	<i>Highway</i>	<i>County</i>	<i>Limits</i>	<i>Construction Scope</i>	<i>Total Cost of Project</i>
Atlanta	US 59 / US 71 IH 69 / IH 49	Bowie	Texarkana Outer Loop from Sulphur River South of Texarkana to US 71 North of Texarkana	Construct 4 lane tollway	\$340,460,000
Austin	SH 45 S & SW	Travis	IH 35 to Loop 1 South	Construct 6 lane toll parkway and Construct 4 lane tollway with one lane frontage roads	\$151,000,000
Austin	Loop 1	Travis	Slaughter Ln to FM 734	Reconstruct freeway/parkway to add managed lane and/or construct int. managed lanes	\$285,000,000
Austin	US 183	Travis / Williamson	Lakeline Blvd to Loop 1	Construct two managed lanes	\$340,000,000
Austin	US 290 W / SH 71 W	Travis	West of RM 1826 to East of Williamson Creek / US 290 to 1.1 mile North	Construct 6 lane tollway	\$256,000,000
Austin	US 183	Travis	South of IH 35 to South of SH 71	Construct 6 lane tollway	\$516,000,000
Austin	SH 71 E	Travis	IH 35 S to East of Thornberry Lane	Construct 6 lane tollway	\$541,000,000
Austin	US 290 E	Travis	East of US 183 to FM 973 (includes SH 130 interchange)	Construct 6 lane tollway	\$620,000,000
Austin	IH 35	Travis / Williamson	CR 111 to FM 1327	Reconstruct freeway to add managed lanes	\$1,085,000,000
Austin	SH 45 N	Travis	Anderson Mill Road to US 183	Construct 6 lane tollway	\$60,000,000
Austin	Loop 360	Travis	US 183 to US 290	Construct 4 lane tollway	\$476,000,000
Beaumont	US 69	Hardin	US 96 to SH 326	Construct 4 lane tollway	\$173,570,000
Bryan	SH 249	Grimes	Extend SH 249 from FM 1774 to SH 6	Construct 4 lane tollway	\$238,272,000
Bryan	SH 40 / FM 2818	Brazos	SH 6 to FM 1179	Construct 4 lane tollway	\$311,640,000
Corpus Christi	SH 286	Nueces	IH37 to south of SH 357 (Saratoga Blvd)	Construct managed lanes	\$243,000,000
Corpus Christi	US 181 (Harbor Bridge)	Nueces	North of Ship Channel to South of Ship Channel and Intersection of IH 37 with Waco Street	Construct new bridge and add managed lanes	\$695,000,000

# Appendix H

## Potential Toll Projects Identified by TxDOT (cont.)

<i><b>TxDOT District</b></i>	<i><b>Highway</b></i>	<i><b>County</b></i>	<i><b>Limits</b></i>	<i><b>Construction Scope</b></i>	<i><b>Total Cost of Project</b></i>
Corpus Christi	SH 358	Nueces	Ayers Street to Spur 3 (Ennis Joslin)	Construct managed lanes	\$139,000,000
Corpus Christi	Southside Mobility Corridor	Nueces	IH37 south to PR 22 (Padre Island)	Construct 4 lane tollway	\$765,000,000
Corpus Christi	US 77	Nueces	Driscoll Relief Route	Construct 4 lane tollway	\$60,000,000
Corpus Christi	US 77	Kleberg	Riviera Relief Route	Construct 4 lane tollway	\$55,000,000
Corpus Christi	US 281	Jim Wells	Premont Relief Route	Construct 4 lane tollway	\$70,000,000
Dallas	IH 35E	Dallas / Denton	US 380 to IH 635	Construct additional lanes with managed lanes	\$2,396,000,000
Dallas	IH 30	Dallas	East of Sylvan Ave to IH 35E	Construct additional lanes with managed lanes	\$727,000,000
Dallas	IH 635	Dallas	US 75 to East IH 30	Construct additional lanes with managed lanes	\$842,000,000
Dallas	IH 35E	Dallas	Loop 12 to IH 635	Construct additional lanes with managed lanes	\$220,000,000
Dallas	SH 161	Dallas	South of IH20 to North of SH183	Construct 6 lane tollway (CDA)	\$639,000,000
Dallas	SH 183	Dallas	SH 360 to Loop 12 / West of Loop 12 to IH 35E	Construct additional lanes with managed lanes	\$1,233,000,000
Dallas	Trinity Parkway	Dallas	SH 183 / IH 35E to US 175	Construct 4-6 lane tollway	\$678,000,000
Dallas	SH 190 (East Branch)	Dallas	IH 30 to IH 20	Construct 6 lane tollway	\$700,000,000
Dallas	IH 35E / IH 30 (Project Pegasus)	Dallas	US 183 / (Empire Central) to East of Downtown Dallas	Reconstruct and add managed lanes	\$1,534,000,000
Dallas	IH 35E / US 67 (Southern Gateway / Gateway Horizon)	Dallas	IH 30 to IH 20 to US 287	Construct additional lanes with managed lanes	\$2,037,000,000
Dallas	SH 114	Dallas	International Parkway to US 183	Construct additional lanes with managed lanes	\$616,000,000
Dallas	Loop 12	Dallas	(IH 20) Spur 408 to IH 35 East	Construct additional lanes with managed lanes	\$1,369,000,000

## Appendix H

### Potential Toll Projects Identified by TxDOT (cont.)

<i><b>TxDOT District</b></i>	<i><b>Highway</b></i>	<i><b>County</b></i>	<i><b>Limits</b></i>	<i><b>Construction Scope</b></i>	<i><b>Total Cost of Project</b></i>
Dallas	Loop 9	Dallas / Ellis	IH 20 to SH 360 (Bennett Lawson)	Construct 6 lane tollway	\$932,000,000
Dallas	IH 30 / US 80	Dallas	IH 35E Downtown Dallas to IH 635	Construct additional lanes with managed lanes	\$2,363,000,000
Dallas	IH 20	Dallas/Tarrant	SH 360 / SH 161 Connector	Construct tolled direct connectors	\$60,000,000
Dallas	Outer Loop / TTC-35	Denton / Collin / Rockwall Kaufman / Dallas	IH 35 to IH 20 / Loop 9	Construction 6 lane tollway	\$2,377,878,000
El Paso	Loop 375	El Paso	IH 10 to Zaragoza Port of Entry	Construct managed lanes	\$25,234,771
El Paso	Loop 375	El Paso	Zaragoza Port of Entry to US 54	Construct managed lanes	\$61,740,000
El Paso	Loop 375	El Paso	Park Steet to IH 10 at US 85 interchange	Construct 4 lane tollway	\$421,100,000
El Paso	IH 10	El Paso	US 85 interchange (at Sunland) to Loop 375	Construct managed lanes	\$135,890,000
El Paso	IH 10	El Paso	Loop 375 to New Mexico State line	Construct managed lanes	\$92,270,000
El Paso	US 62 / US 180	El Paso	Loop 375 to IH 10	Construct 6 lane tollway	\$366,900,000
El Paso	NE Parkway	El Paso	Loop 375 to FM 3255 (New Mexico State line)	Construct 4 lane tollway	\$244,810,000
El Paso	Loop 375	El Paso	IH 10 to Franklin State Park	Construct 4 lane tollway	\$144,410,000
El Paso	Loop 375	El Paso	Franklin State Park to US 54	Construct managed lanes	\$215,610,000
El Paso	Loop 375	El Paso	US 54 to NE Parkway Interchange	Construct additional lanes with managed lanes	\$155,790,000
El Paso	Loop 375	El Paso	NE Parkway Interchange to US 62 / US 180	Construct managed lanes	\$61,600,000
El Paso	Loop 375 / IH 10	El Paso	US 62 / US 180 to IH10	Construct managed lanes and Interchange	\$258,670,000
Fort Worth	SH 121	Tarrant / Johnson	Alta Mesa Blvd to US 67	Construct 4 lane tollway	\$295,000,000
Fort Worth	IH 30	Tarrant	Cooper Street to Dallas County Line	Construct managed lanes	\$10,559,000

# Appendix H

## Potential Toll Projects Identified by TxDOT (cont.)

<i>TxDOT District</i>	<i>Highway</i>	<i>County</i>	<i>Limits</i>	<i>Construction Scope</i>	<i>Total Cost of Project</i>
Fort Worth	IH 30	Tarrant	IH 820 to SH 161	Construct additional lanes with managed lanes	\$686,000,000
Fort Worth	IH 35W	Tarrant	Alta Mesa Blvd to Johnson County Line	Construct managed lanes	\$55,300,000
Fort Worth	SH 170	Tarrant	SH 114 to IH 35W	Construct 4 lane tollway	\$195,000,000
Fort Worth	SH 170	Tarrant / Parker	IH 35W to SH 199 – Interim Outer Loop	Construct 4 lane tollway	\$580,000,000
Fort Worth	SH 360	Tarrant / Johnson	IH 20, South to US 287	Construct 4 lane tollway	\$230,000,000
Fort Worth	Outer Loop / TTC-35	Tarrant / Johnson / Parker	IH 20 to Ellis County Line	Construct 6 lane tollway	\$1,325,000,000
Fort Worth	Outer Loop / TTC-35	Parker	IH 20 to SH 199	Construct 6 lane tollway	\$425,000,000
Fort Worth	IH 820 (SE)	Tarrant	Anglin Drive to Meadowbrook Drive	Construct additional lanes with managed lanes	\$122,668,000
Houston	IH 10	Harris / Waller	SH 6 to Brazos River	Construct managed lanes	\$542,000,000
Houston	SH 249	Harris	Brown Road (Phase II) to FM 1774	Construct 6 lane tollway	\$274,000,000
Houston	SH 35	Harris / Brazoria	IH 45 to South Business SH 35	Construct 4-6 lane tollway	\$2,167,000,000
Houston	SH 99	Montgomery / Harris Brazoria / Galveston Chambers / Liberty	Segments (A,B, C, D, E, F1, F2, G, H, 11, 12)	Construct 4 lane divided tollway	\$5,350,000,000
Houston	Various	Harris	Various	Convert existing Houston Metro HOV System to HOT system	\$50,000,000
Laredo	Loop 20	Webb	IH 35 to SH 359	Construct 6 lane tollway	\$264,000,000
Laredo	Cuatro Vientos	Webb	SH 359 to US 83 at Southgate, Sierra Vista, Cielito Lindo, and Unnamed Interchange	Construct 4 tolled interchanges	\$80,000,000
Laredo	Laredo Outer Loop	Webb	IH 35 to US 83 at Rio Bravo	Construct 4 lane tollway	\$220,600,000
Pharr	US 83 / La Joya Loop	Hidalgo	Starr County Line to FM 1427	Construct 4 lane tollway	\$138,000,000

## Appendix H

### Potential Toll Projects Identified by TxDOT (cont.)

<i><b>TxDOT District</b></i>	<i><b>Highway</b></i>	<i><b>County</b></i>	<i><b>Limits</b></i>	<i><b>Construction Scope</b></i>	<i><b>Total Cost of Project</b></i>
Pharr	West Loop	Cameron	US 77 / US 83 to Palm Blvd (Brownsville)	Construct 4 lane tollway	\$240,000,000
Pharr	US 281	Hidalgo	US 83 to SP 600 (Pharr Connector)	Construct 4 lane tollway	\$100,000,000
Pharr	Hidalgo County Loop (SW Segment)	Hidalgo	US 83 to US 281 at Spur 600	Construct 4 lane tollway	\$250,000,000
Pharr	Hidalgo County Loop (SE Seg.)	Hidalgo	US 281 North to US 83 (Mercedes)	Construct 4 lane tollway	\$250,000,000
Pharr	Hidalgo County Loop (NW segment)	Hidalgo	US 83 (Penitas) to US 281	Construct 4 lane tollway	\$350,000,000
Pharr	Hidalgo County Loop (NE seg.)	Hidalgo	US 281 to US 83 (Mercedes)	Construct 4 lane tollway	\$350,000,000
Pharr	East Loop	Cameron	US 77 / FM 511 (Brownsville-Los Tomates Bridge to US 77)	Construct 4 lane tollway	\$142,000,000
Pharr	US 83 Roma / Rio Grande City Bypass	Starr	US 83 at FM 650 to US 83 at FM 1430, around Roma and Rio Grande City	Construct 4 lane tollway	\$204,000,000
San Antonio	US 281	Bexar	North of Loop 1604 to Comal County Line	Construct 4 and 6 lane tollway	\$400,000,000
San Antonio	Wurzback Pkwy	Bexar	Wetmore to Blanco – toll connection to US 281	Construct 4 lane tollway and interchange	\$250,000,000
San Antonio	Loop 1604	Bexar	SH 151 to East IH 10	Construct 4 lane tollway	\$1,800,000,000
San Antonio	SH 16 (Bandera Road)	Bexar	IH 410 to Loop 1604	Construct 4 lane tollway	\$270,000,000
San Antonio	IH 35	Bexar	Cibolo Creek to CBD and Connection to IH 410 S	Construct additional lanes with managed lanes	\$2,200,000,000
San Antonio	IH 10	Bexar	SH 1604 to US 87 (Boerne)	Construct managed lanes	\$280,000,000
San Antonio	IH 10	Bexar	East IH 410 to SH 130 (Sequin)	Construct managed lanes	\$560,000,000
Tyler	Loop 49	Smith	US 69 North of IH 20 to SH 110	Construct 2 lane tollway	\$188,496,520
Tyler	East Loop 49	Smith	SH 110, North to SH 155 N / US 271	Construct new 2 lane tollway	\$100,000,000



## Appendix H

### Potential Toll Projects Identified by TxDOT (cont.)

<i>TxDOT District</i>	<i>Highway</i>	<i>County</i>	<i>Limits</i>	<i>Construction Scope</i>	<i>Total Cost of Project</i>
Yoakum	IH 10	Austin	Brazos River to FM 3538	Construct managed lanes	\$324,000,000
TTC	TTC-35	Various	Oklahoma State Line to Outer Loop	Construct TTC Corridor	\$3,836,000,000
TTC	TTC-35	Various	Outer Loop to Georgetown	Construct 4 lane tollway	\$2,920,000,000
TTC	TTC-35	Various	IH 10 to IH 35	Construct 4 lane tollway	\$947,000,000
TTC	TTC 69 Ports to Ports	Various	Laredo to Corpus Christi	Construct 4 lane tollway	\$1,668,000,000

**Total**      **\$58,968,468,291**

#### *Additional Potential Statewide Projects*

Statewide	TTC-35	Various	Oklahoma State Line to Mexico	Construct ultimate facility with 6 vehicular lanes and 4 dedicated truck lanes	\$12,000,000,000
Statewide	I-69/TTC	Various	Arkansas and Louisiana State Lines to Mexico	Construct ultimate facility with 6 vehicular lanes (tolled and non-tolled) and 4 dedicated truck lanes (tolled)	\$14,000,000,000

**Additional Projects Total**      **\$26,000,000,000**

# Appendix I

## Pass-Through Financing Agreements Authorized by TxDOT

Sponsoring Local Entity	Number of Pass-Through Agreements	Overall Budget for Project	Pass-Through Toll Amount to be Paid by TxDOT
Bexar County	1	\$64,469,900	\$37,527,600
Brenham, City of*	In process	\$44,400,000	\$15,000,000
Camino Real Regional Mobility Authority / JD Abrams	1	\$299,100,000	\$312,450,000
Comal County	2	\$79,000,000	\$32,000,000
Forney, City of*	In process	\$56,339,406	\$40,191,406
Galveston County	1	\$53,000,000	\$53,650,000
Grayson County	1	\$84,506,000	\$84,506,000
Hays County	1	\$152,866,520	\$133,170,000
Montgomery County	1	\$219,403,000	\$174,473,000
Port Arthur, City of*	In process	\$13,791,402	\$14,000,000
San Marcos, City of	1	\$73,747,367	\$60,600,000
Titus County	1	\$181,920,000	\$168,620,000
Val Verde County	1	\$128,000,000	\$75,000,000
Weatherford, City of	1	\$54,413,921	\$52,443,517
Williamson County	1	\$174,041,000	\$151,942,000
<b>TOTAL</b>	<b>16</b>	<b>\$1,678,998,516</b>	<b>\$1,405,573,523</b>

\* Agreements are not yet drafted or finalized. Amounts are estimated only.



# Appendix J

## Construction and Maintenance Contract Awards by TxDOT District FY 2007

District	Construction*	Construction Percent	Maintenance	Maintenance Percent	Total Construction and Maintenance	Total Percent
Abilene	\$105,788,230	2.9%	\$10,326,285	3.0%	\$116,114,515	2.9%
Amarillo	\$72,919,759	2.0%	\$7,890,159	2.3%	\$80,809,918	2.0%
Atlanta	\$53,748,082	1.5%	\$8,831,557	2.6%	\$62,579,639	1.6%
Austin	\$265,273,049	7.2%	\$24,964,571	7.3%	\$290,237,621	7.2%
Beaumont	\$172,365,116	4.7%	\$8,781,590	2.6%	\$181,146,706	4.5%
Brownwood	\$44,078,657	1.2%	\$3,037,658	0.9%	\$47,116,315	1.2%
Bryan	\$65,141,305	1.8%	\$15,043,542	4.4%	\$80,184,847	2.0%
Childress	\$41,467,643	1.1%	\$1,109,843	0.3%	\$42,577,486	1.1%
Corpus Christi	\$70,078,627	1.9%	\$10,473,048	3.1%	\$80,551,675	2.0%
Dallas	\$359,721,004	9.8%	\$37,629,380	11.0%	\$397,350,384	9.9%
EIPaso	\$50,287,986	1.4%	\$9,260,329	2.7%	\$59,548,315	1.5%
Fort Worth	\$335,084,145	9.1%	\$15,440,811	4.5%	\$350,524,956	8.7%
Houston	\$652,759,724	17.8%	\$41,388,235	12.1%	\$694,147,958	17.3%
Laredo	\$84,142,838	2.3%	\$8,680,607	2.5%	\$92,823,445	2.3%
Lubbock	\$121,103,950	3.3%	\$8,865,756	2.6%	\$129,969,706	3.2%
Lufkin	\$108,543,244	3.0%	\$9,878,548	2.9%	\$118,421,792	3.0%
Odessa	\$55,822,732	1.5%	\$4,681,190	1.4%	\$60,503,922	1.5%
Paris	\$106,636,572	2.9%	\$20,089,032	5.9%	\$126,725,604	3.2%
Pharr	\$159,653,003	4.4%	\$10,276,171	3.0%	\$169,929,174	4.2%
San Angelo	\$76,018,321	2.1%	\$12,717,465	3.7%	\$88,735,786	2.2%
San Antonio	\$341,624,730	9.3%	\$33,179,479	9.7%	\$374,804,209	9.3%
Tyler	\$94,661,328	2.6%	\$12,842,558	3.8%	\$107,503,886	2.7%
Waco	\$98,737,630	2.7%	\$11,730,526	3.4%	\$110,468,155	2.8%
Wichita Falls	\$64,629,449	1.8%	\$3,990,511	1.2%	\$68,619,960	1.7%
Yoakum	\$69,324,309	1.9%	\$11,015,665	3.2%	\$80,339,974	2.0%
<b>TOTAL**</b>	<b>\$3,669,611,432</b>	<b>100.0%</b>	<b>\$342,124,516</b>	<b>100.0%</b>	<b>\$4,011,735,948</b>	<b>100.0%</b>

\* Construction awards include preservation and preventive maintenance contracts as shown in expenditures under Contracted Maintenance in Appendix C.

\*\* Awards may not add to totals due to rounding.



# Appendix K

## Road Condition Assessment Systems

TxDOT has established four systems to measure road inventory conditions.

- ◆ The Pavement Management Information System (PMIS) scores the condition of pavement by measuring rutting, cracking, ride quality, and other pavement distress.
- ◆ The Texas Maintenance Assessment Program (TxMAP) evaluates many roadside conditions such as vegetation, litter, trees and brush, and drainage.
- ◆ The Texas Traffic Assessment Program (TxTAP) evaluates the condition of signs, work zones, railroad crossings, and other traffic elements.
- ◆ The Texas Condition Assessment Program (TxCAP) combines information from PMIS, TxMAP, and TxTAP to get an overall picture of state roads.

TxCAP data can be used to compare overall road inventory condition among TxDOT districts. In fiscal year 2007, the first year in which TxCAP data was compiled, the districts ranked as follows on the TxCAP scale, with 100 being the highest possible score.

Odessa..... 84.31	Childress..... 79.83	Corpus Christi ..... 78.12
Amarillo..... 81.83	El Paso ..... 79.77	Beaumont ..... 77.52
San Angelo..... 81.81	Waco..... 79.63	Wichita Falls ..... 77.27
Atlanta ..... 81.57	Brownwood..... 79.53	Laredo ..... 76.91
Pharr..... 81.29	Abilene..... 79.51	Paris ..... 76.75
Tyler..... 80.74	Houston..... 79.46	Fort Worth..... 76.53
Lubbock..... 80.73	Yoakum ..... 79.31	Dallas..... 75.61
Austin..... 80.69	Lufkin..... 79.23	
Bryan..... 80.11	San Antonio ..... 78.64	



# *Appendix L*

---

## **Staff Review Activities**

During the review of the Texas Department of Transportation, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended Commission meetings; met with staff from legislative agencies; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies and functions in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this review.

- ◆ Attended the 81st Annual Transportation Short Course.
- ◆ Visited and met with staff in TxDOT district and area offices in Austin, Dallas, Fort Worth, Houston, Victoria, and Yoakum.
- ◆ Attended the Team Texas Quarterly meeting in Tyler.
- ◆ Attended a Town Hall Meeting in Victoria and a Public Hearing in Rosenberg regarding I-69/TTC.
- ◆ Met with transportation planning professionals and toll road officials throughout the State.
- ◆ Attended TxDOT motor vehicle dealer training.
- ◆ Attended part of TxDOT's professional services contract training.
- ◆ Observed a TxDOT contract letting.
- ◆ Attended the third annual Texas Transportation Forum.





# NEW ISSUES



# New Issues

---

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

## **TxDOT Administration**

7. Require TxDOT's Chief Financial Officer to report directly to the Texas Transportation Commission. (Representative Carl Isett, Chair – Sunset Advisory Commission)
8. Require TxDOT to evaluate the performance of its administrative and decision making staff to determine whether employees should retain their positions within TxDOT. Fundamentally, require the Transportation Commission and the Executive Director to ensure that TxDOT employees are performing their duties with the citizens of Texas first and foremost in mind, which includes being professional, diligent, and responsive to directives and requests from Transportation Commission members and the Legislature. Require the Transportation Commission and Executive Director to seriously re-evaluate the employment of any employee not performing these objectives. (Senator Glenn Hegar, Vice Chair – Sunset Advisory Commission)
9. Require all members of the Texas Transportation Commission or the Commissioner of Transportation, and TxDOT's Executive Director and Chief Financial Officer to certify in writing that they:
  - ◆ are responsible for establishing and maintaining internal controls;
  - ◆ have evaluated the effectiveness of the agency's internal controls;
  - ◆ have presented their conclusions about the effectiveness of the internal controls and reporting requirements; and
  - ◆ have effectively complied with all legislative mandates.

Require the Transportation Legislative Oversight Committee to establish appropriate penalties for failure to report this information.

(Charles McMahan, Member – Sunset Advisory Commission and Representative Lois Kolkhorst, Member – Sunset Advisory Commission)

10. Require TxDOT and its employees to develop and adopt a Code of Ethics to promulgate a transparent culture and enhance public trust in the agency. Require all TxDOT employees to annually affirm their adherence to this Code of Ethics. Require TxDOT to establish an ethics hotline through which employees and others may report, anonymously or by name, violations of the Code of Ethics. (Charles McMahan, Member – Sunset Advisory Commission)
11. Require TxDOT and the Transportation Legislative Oversight Committee to establish the hotline proposed in New Issue 10 for reporting violations of the Code of Ethics as well as any other improper activities to an Inspector General. The Inspector General would be appointed by and report directly to the Transportation Legislative Oversight Committee.

When the Committee is disbanded or abolished, the Inspector General and related duties would transfer to and report to the Texas Transportation Commission or Commissioner of Transportation. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)

12. Require TxDOT to add to its code of conduct that its employees cannot be voting members of MPOs. (Patrick Dossey – TURF, San Antonio)

### **Advisory Boards**

13. Require that all actions of TxDOT advisory boards be subject to the Open Records Act. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
14. Require TxDOT to serve public notice for all meetings and work sessions of advisory boards, whether conducted by the board as a whole or in committee. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
15. Require all TxDOT advisory boards to provide a meaningful forum for public input during meetings. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
16. Restrict membership on TxDOT advisory boards to legal, environmental, or financial experts with no direct or personal financial stake in the outcome. Require TxDOT to disqualify any person whose relationships would conflict with the broader public interest. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)

### **TxDOT Funding**

17. To give the Transportation Commission members enough time to review, evaluate, and comment on TxDOT’s Legislative Appropriations Request (LAR), require TxDOT staff to present the agency’s LAR to the Transportation Commission in an open meeting at least 30 days prior to the Commission’s adoption of the LAR for submission to the Legislative Budget Board. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
18. Require TxDOT to develop and apply an across-the-board transportation funding formula that ensures each TxDOT district receives a minimum guaranteed amount/percentage of state transportation/highway-user taxes and fees to ensure a more predictable and equitable funding stream for the districts and accountability to taxpayers and voters. (Charles McMahan, Member – Sunset Advisory Commission)
19. Require bond funds to only be used for high priority, congestion reducing, new lane construction. Prohibit spending bond proceeds for maintenance. (Charles McMahan, Member – Sunset Advisory Commission)
20. Employ zero-based budgeting for TxDOT and have each budget line item support and align with the major goals of TxDOT. (Joan and David Black, Houston; Tony Manasseri, McKinney; Judith Shields, Spring)
21. Insure stricter accountability of funds used by TxDOT and form a separate committee to oversee all of TxDOT’s funding with regular auditing periods. (Steve and Jan Tracy, Nacogdoches)

22. Require TxDOT to report all monies and reconcile those monies with the State Comptroller's Office. (C. Marie Day – Shell Global Solutions (US) Inc., HSE Consultancy, Houston)
23. Require TxDOT to operate wholly within funds allocated by the Legislature. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
24. Require TxDOT to document federal funds both captured and foregone annually, including available funding for high-speed commuter rail, rail freight capacity studies, and non-motorized vehicles. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
25. Strengthen and clarify TxDOT's financial obligations under the Mobility Fund. Require other agencies to assist TxDOT in evaluating all financial plans, especially private toll financing. Require TxDOT to perform cost-benefit analyses regarding available transportation alternatives anytime the Texas Transportation Commission wants to access the Mobility Fund. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)

### **State Transportation Funding**

26. Recommend that the Legislature eliminate all diversions from the State Highway Fund. (Charles McMahan, Member – Sunset Advisory Commission)
27. Stop diversion of highway funds to other non-transportation purposes. (Howard Cowan, President – Texas Good Roads/Transportation Association, Austin; Frank H. Dietz, New Braunfels; Jere Thompson, Co-Chair – Dallas Citizens Council Transportation Committee)
28. Stop diversion of gas taxes to other purposes and consider other funding measures if funding provided by the Legislature is not enough to build and maintain necessary roads. (Susan Garry, Coupland)
29. Increase the state motor fuels tax and index it to keep up with inflation and rising prices. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston; Jere Thompson, Co-Chair – Dallas Citizens Council Transportation Committee)
30. Make the gas tax a percentage of the sale price, like a sales tax, rather than a fixed amount per gallon. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
31. Give local regions more funding options, such as fuel taxes and sales taxes, to provide an alternative to toll roads. (Oscar "Erik" Slotboom, Dallas)
32. Increase vehicle registration fees to strengthen TxDOT's funding and minimize the need for toll roads. (Oscar "Erik" Slotboom, Dallas)
33. Tier vehicle license fees so that vehicles that use more fuel pay a much higher license fee each year. (Anonymous, Dallas)
34. Prohibit TxDOT from selling off transportation infrastructure, "public commons," to private entities. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)

35. Require state leadership to provide a clear, long-term framework for financing state transportation needs. Involve local elected officials in developing future transportation funding strategies. (Terry Henley, Second Vice President – Texas Association of Regional Councils and Alderman – City of Meadows Place)
36. Eliminate the \$.009 pricing per gallon of gasoline and diesel fuel by imposing an extra mill (\$.001) in the tax level that would explicitly be returned to the county in which it was collected. Dedicate these financial resources to the establishment of a local transportation fund reserved solely for maintenance of and safety-related remedial enhancement in the existing local road network within all jurisdictions encompassed by the respective county boundaries. The specific methodology for annual allocation to a county's road network should be transparent and rational, and proposed by the relevant Commissioner's Court for approval by the Transportation Commission in accordance with guidelines established through a formal public hearing process that undergoes periodic review and adjustment. (Jim Vance, P.E., Taylor)
37. Provide for additional funding of TxDOT to meet growing highway infrastructure need. (Gerhardt Schulle, Jr., Legislative & Governmental Affairs Director – Texas Society of Professional Engineers, Austin)

#### **Transportation Planning, Design, and Environmental Review Process**

38. Require TxDOT to spend money and planning-time where the people are. Require TxDOT to prioritize maintenance, working to reduce or eliminate bottlenecks and addressing traffic conflicts in congested parts of the existing system. TxDOT must focus on providing connections between meaningful destinations instead of increasing capacity to relieve congestion. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
39. Require TxDOT to study, consider, and pursue sophisticated designs that are sensitive to the adjacent context and that minimize impacts on neighborhoods, including prioritizing design for depressed structures rather than elevated. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
40. Require TxDOT to integrate environmental planning with the project planning process, developing mitigation strategies earlier in the project planning process and enabling meaningful public engagement to shape mitigation measures. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
41. Require TxDOT to privatize more of its design work and reduce TxDOT's design FTEs. (Anonymous, Tennessee)
42. Require TxDOT to implement internal controls to set a maximum number of hours for which a project should be designed in and develop a system that tracks those hours. Also require TxDOT to give each designer a utilization goal to ensure that time is being charged accordingly. (Anonymous, Tennessee)
43. Require all future planning models to conduct environmental impact analysis early rather than "just before construction" for projects under serious consideration. (Frank H. Dietz, New Braunfels)

44. Require TxDOT to adopt clear regulations for exempting any project from environmental review under the delegated authority for categorical exclusions from the Federal Highway Administration. Require TxDOT to follow federal regulations as a model, and provide for meaningful public notice and public comment on proposed regulations. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
45. Require TxDOT to conduct an environmental assessment or full environmental impact statement for every TxDOT construction project that increases the pavement footprint. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
46. Require an environmental impact statement be used to make a decision on whether to go forward with a road project. (Lisa Kay Tuck, Galveston County)
47. Require Texas Commission on Environmental Quality to be the lead agency, responsible for any environmental impact statements on any TxDOT projects. (Lisa Kay Tuck, Galveston County)
48. Require TxDOT to prepare an environmental impact report for each proposed transportation project. Each report should be based on current information, not a rehash of old information prepared more than a decade ago. (Jayo Washington, Mayor – City of Shoreacres)
49. Require the following to enhance TxDOT’s environmental review process.
  - a. Require TxDOT to develop a process and identify reasonable timeframes for TxDOT district and division review and approval of environmental documents, including the possibility of concurrent review.
  - b. Give the primary approval process of the technical documents and public involvement process to the districts, in the case of large urban districts.
  - c. Provide additional resources at the district and division level to meet a reasonable and accountable environmental review timeframe.
  - d. Consider additional staffing at state resource agencies dedicated to reviewing TxDOT environmental documents, funded either by the specific agency or by TxDOT.
  - e. Work with the Texas delegation to support environmental streamlining at the federal (FHWA) level.

(Dan A. Gattis, County Judge – Williamson County)
50. Require TxDOT to hold every project that goes through TxDOT or touches the state highway system to the same standards of noise, air, and water pollution, and the same requirements for public participation and environmental review, regardless of funding source. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
51. Require TxDOT to recognize that development follows transportation infrastructure, steward strategic land use by anticipating and evaluating the land use impacts of proposed transportation projects, and choose projects that minimize those impacts. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)

52. Require TxDOT to notify local officials of land use impacts from any TxDOT project, regardless of the source of funding. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
53. Require TxDOT to invest in infrastructure that supports development of livable centers, such as transit, bikeways, and sidewalks. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
54. Require TxDOT to perform verifiable, auditable, comparative analysis of various transportation alternatives, including those the Department rejects. Require TxDOT to include both road and non-road transportation projects in this analysis. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
55. Require TxDOT to quantitatively assess the current CO2 emissions in proposed transportation corridors, and the long-term impact of the proposed project alternatives on CO2 and other climate change-related emissions from anticipated increases in vehicle counts. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
56. Adopt a state environmental statute similar to the National Environmental Policy Act (NEPA) enhanced with substantive requirements for air, light, noise, and water standards. Apply the statute to all state agencies at the state and local levels, including all transportation agencies such as TxDOT, county toll road authorities, regional toll road authorities, freight rail districts, and all other transportation agencies in the state. Require these agencies to consider project alternatives, including the no-build and alternative transportation options. Eliminate sovereign immunity for these agencies and their contractors. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
57. Require that the New Braunfels Outer Loop Study be re-opened to include the use of existing roads. (Sharon Levett – Citizens Alliance for Smart Expansion, New Braunfels)
58. Hold TxDOT accountable for flawed research and have the Texas Transportation Institute review New Braunfels Outer Loop Study to reduce the number of properties that are severed into separate tracts. (Sharon Levett – Citizens Alliance for Smart Expansion, New Braunfels)

### **Road Construction and Maintenance**

59. In non-attainment and near non-attainment areas, in connection with a contract for a highway project, require TxDOT to allocate to the district or districts in which the project is located an amount equal to not less than one half of one percent of the amount to be spent under the contract for construction, maintenance, or improvement of the highway, to be used for landscaping improvements. Landscaping improvements are defined as planting of indigenous or adapted trees and other plants that are suitable for the climate in which they will be located, and preparing the soil and installing irrigation systems for the growth of the trees and plants. (Charles McMahan, Member – Sunset Advisory Commission)
60. Require TxDOT to stop subcontracting out the repairing of roads. (C. Marie Day – Shell Global Solutions (US) Inc., HSE Consultancy, Houston)



61. Prohibit TxDOT from farming out the construction of our state highways to private corporations that need to make a profit, resulting in increased costs to users. (Mickey Burleson, Farmer, Volunteer, and retired Commissioner – Texas Parks and Wildlife Department)
62. Require TxDOT to prioritize investment in maintenance of existing facilities over development of new facilities and include an estimate of long-term maintenance costs in all project plans. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
63. Prohibit the construction of any non-traditional road. (Don P. Dixon, San Antonio)
64. Direct TxDOT to hire a great paving contractor, great engineers, a great successful businessman to get the most done with the least revenue, and a great inspector to make sure of quality work. Require all four to agree to any project before it gets out to bid, then have them meet maybe monthly with the Legislature to hold their feet to the fire for accountability. (Al Haney, Fort Stockton)

### **Toll Roads and the Trans-Texas Corridor**

65. Remove the Texas Turnpike Authority (TTA) from TxDOT and establish it as a stand-alone agency that is not administratively attached to TxDOT. Establish a five-member board to oversee the agency. The Governor would appoint the five members to staggered six-year terms. The Chair of the Transportation Commission or the Commissioner of Transportation would serve as a non-voting, ex-officio member. Require TTA to be funded through its own appropriation, separate from TxDOT. The Executive Director of TTA would not be required to be a professional engineer. Local toll authorities would retain primacy in the development of toll projects within their jurisdictions, as specified in Senate Bill 792 from the 80th Legislature. (Representative Linda Harper-Brown, Member – Sunset Advisory Commission)
66. Establish local toll authorities in areas where most toll roads are being built, including Austin, Dallas/Fort Worth, El Paso, San Antonio, and the Rio Grande Valley. Each toll road authority would have primacy and could enter into public/private partnerships, with the local toll authority owning 50 percent or more which would allow the local toll authority to leverage bond funds needed to build more roads without selling Texas' highways. (Charles McMahan, Member – Sunset Advisory Commission)
67. Establish a State Toll Road Authority separate from TxDOT. This Authority would focus on roads not being built by local toll road authorities. (Charles McMahan, Member – Sunset Advisory Commission)
68. Create a separate and independent rulemaking body to regulate tolling entities, including state, county, or regional mobility authorities. Require this body to approve rates and hear disputes regarding rates, much like those existing for electricity, gas, and water. Require TxDOT to file a rate case for each toll project just as other utilities must justify rates. Require members of the rulemaking body to be familiar with public funding, rate caps, bonding processes and underwriting, interest rate swaps, and financial derivative instruments. Require each toll road to file annual costs of service requirements to the Treasurer's Office, the State Auditor's Office, and other appropriate bodies. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)

69. Prohibit TxDOT or other local toll entities from operating toll roads on a system-wide basis. Prohibit toll entities from redirecting toll revenue from one region to fund projects in another region. Delete all statutory references to “rate recovery” from a toll road system. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
70. On all current and future toll roads in non-attainment and near non-attainment areas, in conjunction with a contract for a highway project, require TxDOT and/or the toll road authority to allocate to the TxDOT district or districts in which the project is located, an amount equal to not less than one-half of one percent of the amount to be spent under the contract for construction, maintenance, or improvement of the highway, to be used for landscaping improvements. Landscaping improvements are defined as planting of indigenous or adapted trees and other plants that are suitable for the climate in which they will be located, and preparing the soil and installing irrigation systems for the growth of the trees and plants. (Charles McMahan, Member – Sunset Advisory Commission)
71. The market valuation studies, feasibility studies, and financial terms for all toll projects should be transparent to the public. (Cathy Catlett, Elgin; Blythe Christopher de Orne, Austin; Theresa Gage Dieringer, Georgetown; Jennifer Hale, Austin; Barry Maxwell, Austin; Cynthia Randall, Austin; Daniel Randall, Huntsville; Darrell Randall, Austin; Joan Randall, Austin; Kay Randall, Austin; Mary Randall, Huntsville; Anthony Rezendes, Austin; Melissa Roberts, Austin; Kristie Robles, Austin; Joe Robles, Austin; Yvette Scott, Pflugerville; Brady Severns, Austin; Christina Velasquez, Austin)
72. Prohibit toll roads. (William Campbell, Fort Worth)
73. Require TxDOT to make traffic and revenue studies related to toll projects public. (Anonymous, Austin)
74. Have an objective outside party evaluate the impact of toll projects on the economic health of each affected region. (Anonymous, Austin)
75. Put every toll project to a vote by the public. (Joan and David Black, Houston; Jack M. Finger – San Antonio Toll Party, San Antonio; Rae T. Gray, Houston; Judith Shields, Spring; Benny L. Stancik, Sealy; Louise Whiteford, President – Texans for Immigration Reform, Inc., Houston)
76. As part of the criteria when selecting a route for a segment of the Trans-Texas Corridor or any similar new transportation corridor project that requires a new footprint or expands capacity to existing federal highways, federal interstates, or state highways, require the Transportation Commission to obtain a resolution of support, passed in an open meeting, from each of the counties being considered for implementation of the route. (Representative Lois Kolkhorst, Member – Sunset Advisory Commission)
77. Have citizens in the areas where toll roads are being built vote on all toll roads, including the Trans-Texas Corridor. (George Braun, San Antonio)
78. Have citizens vote on tolling existing highways. (Ed McGann, San Antonio)

79. Give local governments and councils of government complete authority on all toll road decisions, including which highways become toll roads, which agency owns the toll road, toll rates, contract duration, and privatization. (Oscar “Erik” Slotboom, Dallas)
80. Require TxDOT to allow questions from the floor at its Town Hall Meetings. (James C. Loomis, San Antonio)
81. Eliminate all foreign funding, all private ownership or operation of toll roads and restrict the use of toll roads to only rare occasions. (William A. Allen, Adkins)
82. Put an immediate hold on NEPA environmental reviews approved this year for toll projects and investigate the validity of these documents. (Margaret Canty, Manor)
83. Prohibit TxDOT from lobbying for private development of toll roads. (Margaret Canty, Manor)
84. Prohibit TxDOT from using any current TxDOT right of way previously purchased with taxpayer funds from being converted to a toll facility. (Margaret Canty, Manor; Weldon Denny; Don P. Dixon, San Antonio)
85. Extend the moratorium on development of the Trans Texas Corridor enacted by SB 792. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
86. Prohibit TxDOT from developing the proposed I-69/Trans-Texas Corridor and other associated roads like the Grand Parkway, since these projects are environmentally destructive, economically unwise, and socially divisive. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
87. Prohibit TxDOT from controlling the cash flow and revenues from toll projects. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
88. Require TxDOT to disclose the cost difference between public funding of toll roads and private funding of toll roads, the reasons for such differences, and what private financiers will gain from ownership of the system. (Robin Holzer, Chair – Citizens’ Transportation Coalition, Houston)
89. For roads being considered for development as toll roads, require TxDOT to provide a side-by-side comparison of the cost of fixing the roads and keeping them freeways versus the cost of turning them into tollways. (Woody Curd – TURF, San Antonio; Terri Hall, Founder –TURF, San Antonio)
90. Prohibit TxDOT from pegging toll rates to the consumer price index (CPI). (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
91. Require TxDOT to use tolling for congestion pricing and demand management, including high-occupancy toll (HOT) lanes priced dynamically to reflect actual travel conditions and ensuring free-flowing traffic conditions for transit and carpool users. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)

92. Require TxDOT to retain high-occupancy vehicle (HOV) lanes instead of converting them to high-occupancy toll (HOT) lanes. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
93. Prohibit TxDOT from continuing to pursue the public-private partnership model that resulted in the Trans-Texas Corridor planning. (Susan Garry, Coupland)
94. Stop the Trans-Texas Corridor. (Don P. Dixon, San Antonio; A.L. Gregory, Conroe; Leslie Moyer, College Station; Joan Ream, Rockwall County; Jerry Teltschick, Hallettsville; Sharon Yeisley, Elgin)
95. Assure the opposition to the Trans-Texas Corridor is adequately represented and considered by the Citizens' Advisory Committee. (Judy Martens, Somerville)
96. Rather than build a whole new TTC-35, upgrade I-35 and then also upgrade and promote an existing parallel highway on each side of I-35. (Mickey Burleson, Farmer, Volunteer, and retired Commissioner – Texas Parks and Wildlife Department)
97. Prohibit TxDOT from awarding toll contracts based on “best value.” (Terri Hall, Founder – TURF, San Antonio; Daniel Gordey – TURF, San Antonio)
98. Prohibit payments to losing bidders on toll projects. (Terri Hall, Founder – TURF, San Antonio; Daniel Gordey – TURF, San Antonio)
99. Prohibit TxDOT from using state employee retirement funds for toll roads. (Don P. Dixon, San Antonio)
100. Ensure that the people of Texas own their own roads, have a vote whether to toll a road, are free from paying a toll road if they have paid for it (example, US 281), and have the right to hold TxDOT accountable for its actions. (Alan Cutting – TURF, San Antonio)
101. Scrutinize all TxDOT activities since the inception of the Trans-Texas Corridor and require TxDOT and those who financially benefitted from its campaign pay back to the treasury our state funds stolen as a result of these activities. (Joan Stutts Escamilla, Bedias)
102. Rescind all aspects of the original TIER II of the original corridor route of US 59 from Laredo to Texarkana. (Noble J. Campbell – Trinity County TURF, Austin)
103. Require that tolls be removed once a road is paid for. (Brent Schott, Providence Village)
104. If the Attorney General rules (Request # RQ-0721-GA) that it is not permitted under current law, change the statute to allow funds paid by the North Texas Tollway Authority to develop SH 121 be transferred from Fund 6 to a local bank account operated by the Council of Governments. Create two committees to ensure legislative involvement in the process, oversight, and proper management of funds from SH 121 and any future revenues generated. First, create a Financial Oversight Committee made up of three members of the Legislature, three members of the Regional Transportation Council Executive Committee, and the President of the Council of Governments. This committee would establish a trust

fund, set up fund categories, distribute funds, and submit annual audited financial statements. Second, create an Investment Committee made up of seven prominent individuals from the region with investment backgrounds to ensure proper investment of the funds. (Jere Thompson, Co-Chair – Dallas Citizens Council Transportation Committee)

### **Multi-Modal, Rail, and Public Transportation**

105. Clarify TxDOT's mission as a transportation agency with a duty to embrace a multi-modal approach to transportation, rather than continuing to operate solely as a highway department. Apply a similar mission to all transportation entities that are subdivisions of the state. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
106. Require TxDOT to focus on all modes of transportation, not only roads. Direct the legislative appropriations committees to appropriate funds to support all modes of transportation. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
107. Require TxDOT to shift priorities from road systems to other modes of transportation, including freight rail, intercity passenger rail, intracity public transit, bicycling, and walking. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston; Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
108. Change TxDOT into a truly multi-modal transportation agency responsible for covering the whole spectrum of ground transportation options from walking to high-speed rail. (David Crossley, President – Gulf Coast Institute, Houston)
109. Require TxDOT to report what amount of money goes for what transportation mode and ensure transportation modes other than one person/one vehicle are fairly funded. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
110. Require every TxDOT district engineer to be well-versed in multi-modal transportation development, with personal experience in freight rail and transit projects, not just highway development. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
111. Require TxDOT to allow citizens to propose transportation alternatives such as rail, bicycling, walking, vanpools, carpools, etc., instead of roads. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
112. Define "transportation" functionally to include alternatives to petroleum burning vehicles and mass transportation, and ensure transportation involves much more than highways. (Frank H. Dietz, New Braunfels)
113. Change TxDOT's mission to include more transportation choices beyond highways to suburbia. (John Boyd, Board Member – Citizen's Transportation Coalition, Houston)

114. Direct TxDOT, as a management action, to determine the market value of the South Orient Railroad and study the feasibility of selling the railroad to private interests, and report this information to the Legislature by February 28, 2009. (Representative Carl Isett, Chair – Sunset Advisory Commission)
115. Direct TxDOT to sell the South Orient Railroad or work with private industry to develop a public-private partnership to rehabilitate the railroad so that it can support normal freight operations, divert trucks from highways, and stimulate economic development in West Texas. (John Helsley – Texas Alliance of Rail Districts; Bob Turner – Pecos County Rural Rail District, Fort Stockton)
116. Require TxDOT to focus more time and resources on the Texas rail system, including building rail bypasses, including rail components in new highway projects, and using rail instead of new highways to increase freight capacity. (Dick Kallerman, Transportation Issues Chair – Lone Star Chapter of the Sierra Club, Austin)
117. Increase state funding for public transportation, prevent decreases in funding, and acknowledge the important contributions and services that public transportation provides to the citizens of Texas. (Loren “Ben” Herr, Executive Director – Texas Transit Association, Austin)
118. Increase support to small urban and rural transit providers, and take full advantage of available federal transit funding by:
  - ◆ increasing state funding support for small urban and rural transit systems to \$100 million;
  - ◆ exempting public transit systems within the state from paying the 20 cent per gallon state sales tax;
  - ◆ passing legislation which enables counties to add up to \$10 per registered automobile to support mobility programs including public transit; and
  - ◆ abolishing the TxDOT state funding formula for small urban and rural transit systems.
 (Barry M. Goodman, member – Texas Transit Association, Houston)
119. Re-organize TxDOT, adding a larger transit component, including more joint projects with various transit authorities around the state. (Janet Redeker – Trip Reduction Efficiency Council, Houston)
120. Direct TxDOT to work with local communities to expand light rail, bus, and commuter rail service, instead of building more roads and tollroads. (Anonymous, Dallas)
121. Require TxDOT to focus its efforts in the future to moving the most people or freight possible on forms of transportation that use the least amount of fuel. (Anonymous, Dallas)
122. Require TxDOT to work with private rail companies to divert more freight from long-distance trucking to high speed rail. (Anonymous, Dallas)



123. Require TxDOT to focus on building high speed rail service between major urban centers (ie: Dallas, Ft. Worth, Austin, San Antonio, Houston) instead of the Trans-Texas Corridor. (Anonymous, Dallas)

### **Motor Vehicle Functions**

124. Transfer the motor vehicle functions currently within TxDOT, including Vehicle Titles and Registration (VTR), Motor Vehicle Division (MVD), Motor Carrier Division (MCD), and Automobile Burglary and Theft Prevention Authority (ABTPA) to a newly created Texas Department of Motor Vehicles. Require the Governor to appoint a five-member board to oversee the new agency, consisting of one automobile dealer representative, one automobile manufacturer representative, one county tax assessor-collector representative and two public members. The board members would serve staggered, two-year terms. The standard Sunset Across-the-Board provisions would be applied to the new agency and board. (Representative Ruth Jones McClendon, Member and Representative Linda Harper-Brown, Member – Sunset Advisory Commission)
125. Maintain the responsibility for issuing oversize/overweight permits at TxDOT and transfer ABTPA and its Board to the Department of Public Safety, instead of transferring these functions to the newly created Texas Department of Motor Vehicles. (Charles McMahan, Member – Sunset Advisory Commission)
126. Improve the operations of and maximize the performance of the vehicle divisions, including Vehicle Titles and Registration (VTR), Motor Vehicle Division (MVD), Motor Carrier Division (MCD), and Automobile Burglary and Theft Prevention Authority (ABTPA), by making the following changes in the State's overall approach to their administration, including options for their organization in TxDOT or a newly formed agency.
- a. Clearly establish the vehicle divisions and the industries that they oversee as “partners” versus “employees” in the governmental and operational processes.
  - b. Place customer service as the highest priority of the vehicle divisions and hold the divisions directly accountable for the highest level of customer service possible within reasonable financial means. Provide resources and technology accordingly to support this focus.
  - c. Give the vehicle divisions the opportunity to stand on their own merits in terms of customer service, public safety, financial, personnel, and technology needs.
  - d. Support the vehicle divisions by creating an independent organizational structure, regardless of their placement in TxDOT, another agency, or a newly formed agency.
  - e. Establish an independent policy and/or advisory board to oversee and guide the operations of the vehicle divisions.
  - f. Maintain the ABTPA Board in its current form, regardless of its placement in TxDOT, another state agency, or a newly formed independent agency.

- g. If the vehicle divisions remain in TxDOT, give consideration to reviewing their needs based on different criteria or standards than the road and engineering operations.
- h. Provide the vehicle divisions the tools and resources necessary in terms of personnel, technology, and financial support to implement standards and improvements in operational performance. Require a properly constituted review process to show that increased tools and resources would be of benefit financially, operationally, and in improved customer service.
- i. Require a comprehensive review of all statutes affecting the motor vehicle related industries with the goals of achieving increased efficiencies within the operations of each division, structuring the proper balance between support and regulation of the industries, and best ensuring the protection and promotion of consumer interests, public health, and public safety.
- j. Afford the vehicle divisions the opportunity to make their respective and collective cases for increased allocations of funding, resources, and technology to an independent policy review body or person in addition to the legislative budget review process, separate and apart from the internal TxDOT budget review process.
- k. Encourage the innovative use of resources, technology, and staffing. Authorize the review and possible use of outside firms and consultants to improve performance in the short run, while planning for staffing needs after technology updates have resulted in increased efficiencies and productivity.
- l. Allow the vehicle divisions to manage all aspects of their own technology operations to better foster technology upgrades the vehicle industry and the public need. Exempt the vehicle divisions from the Team for Texas technology initiative if placed in an independent agency.
- m. Give each of the vehicle divisions a dedicated revenue stream derived from the funds that each division collects.
- n. Prevent diversions of revenue that the vehicle divisions collectively generate to support state agencies other than TxDOT until a full independent review of the needs of each division is completed and proper funding established to support the vehicle divisions in their reconstituted form.
- o. Ensure that the amount of additional funding necessary to properly promote and enhance the performance of the vehicle divisions does not have an adverse impact on the net amount currently dedicated to the State Highway Fund and used by TxDOT to design, construct, and maintain Texas roadways and highways.
- p. Prohibit the net amount that is currently being distributed to the State Highway Fund from being reduced as a result of the relocation or realignment of the vehicle divisions.
- q. Authorize the vehicle divisions to conduct independent studies resulting in potential internal reorganization or restructuring either within their respective divisions or across divisional lines.



- r. Separate the restructuring the vehicle divisions from consideration of the road and engineering divisions of TxDOT.
- s. Resolve operational and cultural conflicts that could arise from restructuring the vehicle divisions within TxDOT by deferring to the overriding need to promote the independent and special needs of the motor vehicle related industries as much as possible.
- t. Require the Motor Carrier Division's permit section to remain attached operationally to TxDOT's road divisions to ensure continued protection of public safety in transporting goods and equipment on Texas highways and roads.
- u. Restructure the vehicle divisions currently within TxDOT, including Vehicle Titles and Registration (VTR), Motor Vehicle Division (MVD), Motor Carrier Division (MCD), and Automobile Burglary and Theft Prevention Authority (ABTPA).

**Option 1:** Leave the vehicle divisions in TxDOT and maintain the high-level organizational structure, with the proposed operating improvements as suggested above.

**Option 2:** Leave the vehicle divisions in TxDOT, but structure them as an independent organizational unit. Establish separate oversight through an independent board or formal advisory committee. Implement proposed operating improvements as suggested above.

*Agency Comment:* TxDOT Executive Management has indicated that Option 2 is not acceptable. TxDOT Executive Management does not believe they can have rules and procedures for the vehicle divisions that are different from the road and engineering divisions.

**Option 3:** Transfer the vehicle divisions to a newly created independent agency that reports to either a single Commissioner appointed by the Governor or a Governor-appointed board, with the applicable operating improvements as suggested above.

*Staff Comment:* Based on the recommendations for the vehicle divisions to have the personnel, technology, and financial support needed to improve performance, the Vehicle Division Work Group estimated that each Option would require costs of approximately \$6.3 million annually and 83 total FTEs, just to make needed operational changes, regardless of the placement of the vehicle divisions in TxDOT, another state agency, or a newly formed agency. Option 3, the newly created independent agency would require additional costs of \$7.3 million and 24 FTEs to establish and support the new independent structure.

(Vehicle Division Work Group – Texas Department of Transportation)

- 127. Create a separate and distinct agency to oversee motor vehicle and related operations governed by a board whose members are appointed by the Governor. The agency should contain the existing motor vehicle-related divisions currently in TxDOT which are Motor Vehicles, Motor Carrier Regulation, Vehicle Titles and Registration, and Texas Automobile Burglary Theft Prevention Authority. (Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin; Matthew Godlewski – Alliance of Automobile Manufacturers, Washington, D.C.)

128. Create a stand-alone agency that encompasses the motor vehicle industry and the many functions dedicated to that end, including titling and registering motor vehicles. (Karen Phillips, Chief Counsel – Texas Automobile Dealers Association, Austin)
129. Create a separate agency for motor vehicle functions that reports to a regulatory Motor Vehicle Board, consisting of a balance of industry and public members, all of these appointed by the Governor. (Jeffery Lee Martin, Executive Director – Texas Independent Automobile Dealers Association)
130. Create the Texas Department of Motor Vehicles to include the function of motor vehicle processing. (Richard Reyes, President – Statewide Lien/Title Service, San Antonio)
131. Allow TxDOT to handle the day-to-day stuff, like vehicle registrations and set up a new organization to handle road building and repairs. (Jim Frenzel, Round Top)
132. Require the State to examine, with participation by all members of the auto industry, the potential benefits of withdrawing certain divisions of TxDOT, in particular the Motor Vehicle Division, and placing these functions in a separate new motor vehicle agency. (Kenneth L. Roche, Jr., Vice President-Government Relations and Senior Counsel – Gulf States Toyota, Inc., Houston)
133. Strengthen enforcement of vehicle titling laws to prevent the undisclosed sale of damaged, unsafe vehicles and parts. (Bruce Ormand, Legislative Director – Texas Automotive Recyclers Association, Pearland)
134. Require TxDOT to brand a vehicle's title as a "Manufacturer Buyback" or "Voluntary Manufacturer Buyback" or other identifying mark to provide adequate notice to subsequent owners that a vehicle has been the subject of a warranty claim or manufacturer or distributor buy-back under the "Lemon Law." (Karen Phillips, Chief Counsel – Texas Automobile Dealers Association, Austin; Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin)
135. Allow TxDOT to use a consistent and constant amount in the charging and calculating of vehicle registration fees, instead of the current complicated statutory formula. (Karen Phillips, Chief Counsel – Texas Automobile Dealers Association, Austin; Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin)
136. Specify that filing a Texas Motor Vehicle Transfer Notification Form (VTR-346) with TxDOT provides conclusive evidence of a vehicle sale and provides the seller of a vehicle with complete protection from civil or criminal liability based on the transgressions of the ultimate retail purchaser. (Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin)
137. Establish in law that a motor vehicle dealer or manufacturer license currently issued by TxDOT does not expire, subject to the payment of all appropriate annual fees and compliance with all other appropriate provisions of a law and rules promulgated by the Department. (Victor Vandergriff – Van Tuyl Automotive Group and Texas Automobile Dealers Association, Austin)

## Miscellaneous

138. Direct TxDOT, as a management action, to report to the Legislature on opportunities and challenges for increasing the use of propane vehicles in its fleet. TxDOT should report on factors – both technological and regulatory – affecting the greater use of propane in its vehicle fleet. The report must include the following:

- ◆ a description of the make-up of TxDOT's current fleet, including year, make, and model of gasoline and diesel vehicles;
- ◆ an outline of TxDOT's plan for future fleet purchases, including the year, make, and models the agency is planning to purchase; which fuel-type the vehicles will operate on; the reason for choosing a particular fuel-type; and an explanation of whether TxDOT will be able to convert the chosen engine-type to run on alternative fuel in the future;
- ◆ an analysis that compares the fuel-economy and range of all alternative fuels;
- ◆ economic models and methods that would enable TxDOT to transition to greater use of alternative fuels in its fleets; and
- ◆ the use and citation of existing case studies produced by the private-sector on its use of alternative-fuel vehicles in fleets, for example, UPS and Schwann's.

Other considerations TxDOT would need to consider in its assessment include availability of propane during natural disasters; efficiency of using vehicles weighing more than a half-ton; cost-savings of using propane compared to other fuels; future plans by auto manufacturers to build vehicles retrofitted to use propane; and status of EPA's certification of propane conversion kits.

(Representative Dan Flynn, Member – Sunset Advisory Commission)

139. For all overweight permits issued under Transportation Code, Chapter 623, require an applicant to pay a highway maintenance fee in an amount determined by TxDOT that is commensurate to the amount of damage done to the roads and bridges by the permitted vehicle. (Charles McMahan, Member – Sunset Advisory Commission)

140. Require anyone whose company would potentially profit from a TxDOT project to disclose this when submitting comments or testimony. (Joan and David Black, Houston)

141. Thoroughly investigate how many relatives of TxDOT staff have high-paying jobs with companies TxDOT contracts with. (Hugh Caddess, San Antonio)

142. Investigate if TxDOT staff members have bought real estate at below market prices within recent years. (Hugh Caddess, San Antonio; Steve and Jan Tracy, Nacogdoches)

143. Prohibit personnel in high positions at TxDOT from taking jobs with related industries for two years after leaving the agency. (Loretta Van Coppenolle, San Antonio)

144. Require that TxDOT develop rules to ensure the following.
- a. Highway interchanges are never constructed over waterways.
  - b. The lower level of overpasses carries the major traffic flow.
  - c. Interchange height is minimized.
  - d. Major traffic routes use straight, level, minimum inclined plane highway construction whenever possible for best fuel economy.
  - e. Funds must be spent efficiently and agency transactions audited.
  - f. Overhead costs on toll roads do not exceed 25 percent of total revenue generated. If that percentage is exceeded, tolls should be immediately removed.
  - g. Toll roads are not tolled for more than 30 years.
  - h. TxDOT functions involving fundraising are eliminated, with the exception of TxDOT's role as recipient of federal grant money.
  - i. TxDOT acquires right of way as soon as possible for future roads. Land within 1,000 feet of this right of way should be zoned by the state for only farming or parking lot use to keep future development cost lower.

(John Metzger, Austin)

145. Require TxDOT to inform and educate the public about the possible effects of climate change on our transportation system, request input from the public on what should be done, and implement recommendations to protect the transportation system from climate change impacts. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
146. Require the Houston-Galveston Area Council to have more diverse representation on the Transportation Policy Council, Transportation Advisory Committee, and the Regional Air Quality Planning Advisory Committee. Require representation from labor, transit riders, bicyclists, low income residents, ethnic minorities, disabled persons, seniors, youth, students, teachers, academicians, civic groups, environmentalists, small business owners, pedestrians, and transit advocates. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)
147. Abolish the Grand Parkway Association and the advocacy functions performed by its board. Transfer planning functions performed by the Grand Parkway Association to TxDOT. (Robin Holzer, Chair – Citizens' Transportation Coalition, Houston)
148. Abolish the Grand Parkway Association. (Brandt Mannchen, Air Quality Issue Chair – Lone Star Chapter of the Sierra Club and Air Quality Committee Chair – Houston Regional Group of the Sierra Club, Houston)

149. Articulate clear requirements for the designation and enforcement of scenic corridors along Texas roadways. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
150. Require training for Texas motorists and peace officers promoting awareness of pedestrians, bicycles, and the laws that govern interactions. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
151. Adopt a statutory optimum speed limit (e.g. 55 mph) to provide enhanced fuel efficiency and mitigate air quality impacts. Require TxDOT to adopt regulations to enforce that limit. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
152. Require that new development along TxDOT right of way construct new site drainage to meet existing local storm water detention requirements instead of using publicly-funded right-of-way drainage. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
153. Prohibit TxDOT from leasing public rights of way to private parties. (Don P. Dixon, San Antonio)
154. Abolish sovereign immunity by statute at all levels of state transportation agencies, including TxDOT, counties, and hybrid agencies to the extent that they interact with TxDOT. Prohibit sovereign immunity for private entities directly or indirectly involved with toll facilities. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
155. Require TxDOT, Metropolitan Planning Organizations, Regional Mobility Authorities (RMAs), and other local transit organizations to include fuel price as a significant variable for demand modeling, cost/benefit, and other analyses. Direct TxDOT to lobby for federal reform if federal law prevents inclusion of fuel prices in these analyses. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
156. Require the Texas Legislature to meet annually instead of biennially, and provide sufficient funding for salaries and staffing support. (Robin Holzer, Chair – Citizens’Transportation Coalition, Houston)
157. Assist state officials in facilitating an Initiative and Referendum process to correct legislative injustices such as TTC-35 and TTC-69. (Brent Wesley Amos, Acting Director – Bluebonnet Neighborhood Association, Elgin)
158. Eliminate Regional Mobility Authorities. (Don P. Dixon, San Antonio)
159. Require at least 50 percent of the total governing board members of all existing and future RMAs be elected from the geographic region from which they are established. (Jim Vance, P.E., Taylor)
160. Require all current and future RMAs to participate in and adhere to the Metropolitan Planning Organization process. RMAs should not compete with TxDOT for potential projects or be capable of precluding TxDOT from undertaking reasonable improvements on “competing” roads or other transportation facilities that might reduce or redirect possible travel demand that would theoretically result in a financial “loss” to the RMA. (Jim Vance, P.E., Taylor)

161. Establish a comprehensive and reliable audit process for motor fuels tax payments and actual sales, and establish a reliable accounting mechanism for tax payments (and consumption) by geographic subunits (e.g., counties or county groups) for use in distributing funds among districts and for projects. (Jim Vance, P.E., Taylor)
162. Require the State to partner with railroads to provide financial support for double-track construction in the major corridors which serve ports, border ports of entry, transcontinental routes, and major metropolitan areas that might enable re-establishment of a strengthened intercity/interurban rail network. (Jim Vance, P.E., Taylor)
163. Rename the Railroad Commission the Oil and Gas Commission and transfer all of its railroad-related policy functions to the reconstituted Transportation Commission, with the regulation and safety elements associated with operational management consolidated within TxDOT. (Jim Vance, P.E., Taylor)
164. Require Independent School District boards to establish long-range infrastructure development and educational service plans, consistent with the formally-adopted urban master plans of the cities and towns which lie within their district boundaries. (Jim Vance, P.E., Taylor)
165. Prohibit Independent School Districts from establishing new school sites of any level which require direct access from a designated road within the State Highway system. (Jim Vance, P.E., Taylor)
166. Require TxDOT and the Public Utility Commission to adopt a uniform electrical code standard to be used for street lighting in the right-of-ways of Texas highways, thus resolving a dispute between the two agencies over the use of National Electric Safety Code or National Electric Code standards. (Leonard Scarcella, Mayor – City of Stafford)

### *Commission Decision*

- ◆ Adopted New Issues 7, 8, 10, 17, 59, 70, and 138.
- ◆ Amended and adopted New Issue 9 to require the Commissioner of Transportation and TxDOT's Chief Financial Officer to certify in writing that they:
  - are responsible for establishing and maintaining internal controls;
  - have evaluated the effectiveness of the agency's internal controls;
  - have presented their conclusions about the effectiveness of the internal controls and reporting requirements; and
  - have effectively complied with all legislative mandates.



- ◆ Amended and adopted New Issue 114 to direct TxDOT, as a management action, to determine the market value of the South Orient Railroad and study the feasibility of selling the railroad to private interests, and report this information to the Legislature by February 28, 2009. If the State decides to sell the railroad, it must remain as a viable functioning railroad.
- ◆ Amended and adopted New Issue 124 as follows. Transfer the motor vehicle functions currently within TxDOT, including Vehicle Titles and Registration, Motor Vehicle Division, Motor Carrier Division, and Automobile Burglary and Theft Prevention Authority to a newly created Texas Department of Motor Vehicles. Require the Governor to appoint a seven-member board to oversee the new agency, consisting of two automobile dealer representatives, one county tax assessor-collector representative, one motor carrier industry representative, one law enforcement representative who is not a state employee, and two public members. The board members would serve staggered, six-year terms. The standard Sunset Across-the-Board provisions would be applied to the new agency and board. The Transportation Legislative Oversight Committee would oversee the coordination, cooperation, and collaboration between TxDOT and the new Texas Department of Motor Vehicles during the transition of these functions and until the conclusion of the Committee's responsibilities.

Also adopted the following three new issues, not previously listed.

- ◆ Require TxDOT to establish a Rail Transportation Division. The new Division would be charged with assuring that rail becomes an integral part of the transportation plan for Texas. The Division's duties would include coordination and oversight of projects approved and funded through the Texas Rail Relocation and Improvement Fund; development of planning for improved rail passenger and freight service; and coordination of state, federal, and private funding for further rail development in Texas.
- ◆ Require the new Texas Department of Motor Vehicles to review and report on improving the regulation of oversize/overweight vehicles, including consideration of the following.
  - Prohibiting overweight vehicles from using Texas highways if the loads cannot be engineered to prevent damage to the road(s) or bridges(s) based upon the weight specifications for which the roads and bridges were built.
  - For all overweight permits issued under Transportation Code, Chapter 623, requiring an applicant to pay at a graduated rate based on overweight amount, a highway maintenance fee in an amount commensurate to the amount of deterioration done to the roads and bridges by the permitted vehicle.
  - Requiring all fees collected by the state from oversize and overweight permits to be deposited to the State Highway Fund.
  - Eliminating all exemptions for overweight vehicles. Requiring an overweight permit and fee in an amount commensurate to the amount of deterioration done to the roads and bridges by the permitted vehicle.
- ◆ Require all electronic signage to be actively managed to mitigate congestion, including designating alternative routes.

## *Legislative Action*

---

Although H.B. 300 failed to pass, separate legislation transfers the State's motor vehicle functions from TxDOT to a newly created Texas Department of Motor Vehicles. House Bill 3097 creates this new Department made up of TxDOT's Motor Vehicle and Vehicle Titles and Registration divisions, the motor carrier registration and enforcement functions of the Motor Carrier Division, and the Automobile Burglary and Theft Prevention Authority. The Legislature modified the original bill that had reflected the Sunset Commission's recommendations to exclude oversize and overweight permitting and enforcement from the transfer, keeping these functions at TxDOT. The Legislature also modified the make up the new Department's oversight board to make it a nine-member instead of a seven-member board, adding a third motor vehicle dealer and specifying that two represent franchised dealers of different classes and one represents independent dealers, and adding one member to represent a manufacturer or distributor and who holds a license in Texas. The other members of the board are a tax assessor-collector, a representative of a law enforcement agency of a county or municipality, a representative of the motor carrier industry, and two public members. The Legislature also added provisions to ensure an orderly transfer of these functions from TxDOT to the new Department by November 1, 2009. (New Issue 124)



# GROUP A



# Group A

---

Jessica Alexander, Austin  
Faye Andrews, Normangee  
Susan Andrus, Austin  
James Archie, Huntsville  
Jean L. Archie, Huntsville  
Lockie Archie, Huntsville  
Kathy Bailey, Bedia  
J. Balland, Huntsville  
Marie T. Balester, Austin  
Dayna Banks, Austin  
Kathy Bates, Austin  
B. Bell, Trinity  
Elizabeth Bell, Huntsville  
Randy Bell, Trinity  
Rebecca Bell, Riverside  
Lance Blankenship, Austin  
L. Blalock, Huntsville  
Bill Boone, Tomball  
Shirley Boone, Tomball  
Judith L. Borowitz, Onalaska  
Q. Bouker, Huntsville  
Carol Brady, Huntsville  
Ray Brantley, Trinity  
Wanda Brewer, Centerville  
Cindy Bridges, Kennard  
Madeline Brock, Apple Springs  
Robert Brock, Apple Springs  
George Brown, Huntsville  
Tanya Buck, Huntsville  
Carolyn Butler, Huntsville  
William B. Byrne, Huntsville  
Travis Caffey, San Marcos  
Terri L. Cain, Shepherd  
Betty Callaway, Huntsville  
Leo Callaway, Huntsville  
Jeff Campbell, Elgin  
Noble J. Campbell, Austin  
Tammy Campbell, Elgin  
Dianne Campo, Huntsville  
Angela Carroll, Austin  
Lloyd Carter, North Lulch  
Lucas Cena, Austin  
David Chapa, Huntsville  
Marilyn Chumbley, Huntsville  
John Clayton, Austin  
Lucas Clendenen, Round Rock  
Felicia Cleveland, Huntsville  
Raymond C. Clyde, Huntsville  
Sue Clyde, Huntsville  
Sally Collier, Richmond  
Wade Collier, Richmond  
Joshua Coquat, Austin  
Angel Coronado, Bedia  
Sabrina G. Coronado, Bedia

## Group A

Don Costilow, Huntsville	Dorothy Farmer, Buffalo
Ashley Cotton, New Waverly	Shakon Finney, Austin
Casey Crosby, Austin	Gloria Fordyce, Huntsville
Nita Currie, Oakhurst	Crissie Fowler, Huntsville
Timothy Dailey, Austin	Justin Fowler, Huntsville
Betty Darby, Bedias	Sandra Franco, Austin
K. Davidson, Huntsville	Craig Franzetti, Huntsville
Ronnie Davidson, Austin	L. Gano, Huntsville
Betty Davis, Trinity	R. Gano, Huntsville
Billy N. Davis, Bedias	Amy Geffen, Austin
June Davis, Huntsville	Gabe Geffen, Austin
Ken Davis, Huntsville	Pete Gonzales, Austin
Rodney Davis, Huntsville	Joshua Green, Austin
Mayra Deanda, Austin	Stephanie Green, Austin
Sandra Deanda, Austin	Nikki Greer, Hockley
Jo L. Deis, Groveton	Cheryl Gregory, New Waverly
Matthew Deyo, San Marcos	Martha Grisham, Huntsville
Winifred Dockrey, Austin	Juanita Grounds, Huntsville
Aspen Douglas, Huntsville	Christa Haber, Onalaska
John Douglas, Huntsville	Brandy Haidusek, Austin
Jonathan Douglas, Huntsville	J. Hardy, Huntsville
Teresa Ecclestar, Austin	H. Harrell, Madisonville
Carol L. Ellison, Huntsville	T.E. Harrell, II, Madisonville
Sarah Elsey, Austin	Misty Harrelson, Huntsville
Chyrel Evans, Huntsville	Robert Harrelson, Huntsville
Ilaysia Evans, Huntsville	Billy Harris, Bedias
Lee Evans, Huntsville	J.J. Harris, Bedias

## Group A

Kathy Harris, Bedia	Carolyn Johnson, Pflugerville
Valentina Hatcher, Pflugerville	Charlie M. Johnson, Huntsville
J.R. Hawkins, Huntsville	Debra Johnson, Huntsville
Robin Head, Lovelady	Donnie Johnson, Huntsville
Emily Heinemann, Huntsville	Gunner Johnson, Pflugerville
April Henry, Huntsville	Homer Johnson, Austin
Betty Higgins, Huntsville	Kay Johnson, Austin
L. Higgins, Huntsville	L. Johnson, Huntsville
Frank Hightower, Huntsville	Lea N. Johnson, Huntsville
M. Hightower, Missouri City	E.R. Johnston, Huntsville
Mildred Hightower, Huntsville	Harvey Johnston, Madisonville
Amanda Hill, Huntsville	M.J. Johnston, Huntsville
A. Hoffzimmer, Huntsville	Lenora Jones, Missouri City
Kira Hoffzimmer, Huntsville	A.M. Kagmarek, Riverside
Nicole Hoffzimmer, Huntsville	Melissa Kemper, Groveton
Phillip Hoffzimmer, Huntsville	D. King, Huntsville
Sydney Hollingsworth, Huntsville	M. P. King, Huntsville
Charles Horne, Huntsville	Margaret King, Austin
L. Horne, Huntsville	Ray J. King, Jr., Austin
Alyson Hosea, Huntsville	Virginia K. King, Trinity
D. Hosea, Huntsville	D. Knapp, Huntsville
Teresa Hosey, Huntsville	Dave Koury, Austin
Terry Ingram, Round Rock	John Kuchar, Georgetown
Annie Jackson, Huntsville	Chris Lamprecht, Austin
Bill Jackson, Austin	Tamara K. Langley, Huntsville
Courtney Jackson, Huntsville	Carolyn Larson, Taylor
C. Johnson, Huntsville	Todd Larson, Taylor

## Group A

Nathan Little, Austin	Diana Kay Pevec, Huntsville
Krystle Longoria, Austin	Donna Pinon, Huntsville
Mollie McCeffrey, Austin	Jason Pinon, Huntsville
Benny McClair, Groveton	Whitton Porter, Huntsville
Dewey A. McMillen, Huntsville	Tiffany Posey, Austin
Marie McMillian, Huntsville	Don Price, Huntsville
Glenda McNaller, Bedia	Cathy Pugh, Huntsville
Evette Mabry, Pflugerville	Charlie Pugh, Huntsville
Warren Mabry, Pflugerville	Mike Pugh, Huntsville
Tony Mahler, Huntsville	Carmen Randall, Huntsville
Silvia Manzano, Dale	Jeremy Randall, Huntsville
Patricia Marcello, Huntsville	J. Randall, Huntsville
Bill Markuly, Onalaska	Joe V. Randall, Huntsville
Kimberly Messer, Austin	Steven Randell, Austin
Karen Morley, Huntsville	Judy Randell, Austin
Patricia G. Moss, Elgin	L.J. Reardon, College Station
Amanda Muller, Austin	Buddy Reynolds, Groveton
A. Nagel, Huntsville	G. Reynolds, Huntsville
Karen Nagel, Huntsville	Kerri Reynolds, Groveton
Sharon Newton, Bedia	Robert Rhea, Huntsville
William L. Noble, Austin	James Roberts, Huntsville
Belinda Ortiz, Huntsville	Laura J. Rocha, Round Rock
Lucille Ottinger, Cedar Park	Rob Rogers, Elgin
Ruby Parker, Huntsville	Judith Rosenberg, Huntsville
N. Paul, Huntsville	Johnny Ross, Huntsville
Kelli Payton, Austin	Robert Ross, Austin
J. Petrosky, Katy	Drew Russell, Huntsville

## Group A

Linda Russell, Huntsville	C. Tucker, Bedias
M. Salyers, Huntsville	Mark Tull, Bedias
Danyelle Sawyers, Austin	Justin Veillon, Orange
Donald Scallan, Huntsville	L. Wagner, Huntsville
Kaylor Schafer, Huntsville	Dustin Walden, Austin
Renee Schauss, Huntsville	Patricia Walker, Huntsville
Rachel Schnee, Austin	Mary Katherine Waller, Austin
B. Shaw, Huntsville	Jim Ward, Austin
Dan Shelton, Huntsville	B. Wardlaw, Huntsville
Byrom Short, Huntsville	Elizabeth Wardlaw, Huntsville
Mike Sickkinen, Austin	L. Wardlaw, Huntsville
Matt Silaski, Austin	Hazel Weidman, Bedias
J.M. Lee Simpson, Austin	John R. Welch, Austin
Jeff Simpson, Austin	Tomi V. Welch, Austin
K. Smith, Huntsville	Terry Wells, Huntsville
Gladys Soiseth, Austin	Mary Nell Whatley, Austin
Jeffrey Soiseth, Austin	C. Joan White, Huntsville
Maura L. Sucker, Bedias	B. Wilhite, Huntsville
Jean Susaraba, Austin	Zack Wilhite, Elgin
Bob Taylor, Huntsville	Eddie Williams, Huntsville
Sharon K. Taylor, Round Rock	Kathy Williams, Richards
Donald B. Thompson, Huntsville	Martha Williams, Huntsville
Linda Thompson, Huntsville	Leroy Willis, Huntsville
Dan Townsend, Madisonville	Wynell Willis, Huntsville
Susan Townsend, Huntsville	M. Wood, Huntsville
Cecil Trantham, Huntsville	Felicia Woodard, Huntsville
Linda Trantham, Huntsville	B. Woodward, Huntsville

## Group A

Lily L. Woodward, Huntsville

L. Woodward, Huntsville

John Wright, Austin

4 Illegible, Austin

1 Illegible, Bryan

6 Illegible, Bedia

1 Illegible, College Station

1 Illegible, Conroe

1 Illegible, Houston

68 Illegible, Huntsville

2 Illegible, Livingston

3 Illegible, Lovelady

1 Illegible, Lubbock

1 Illegible, Midway

1 Illegible Montgomery

2 Illegible, New Waverly

2 Illegible, Oakhurst

1 Illegible, Pearland

1 Illegible, Point Blank

1 Illegible, Richards

1 Illegible, Riverside

1 Illegible, Seabrook

1 Illegible, Spring

3 Illegible, Trinity

1 Illegible, Tomball

# PROVISIONS ADDED BY LEGISLATURE





# *Provisions Added by Legislature*

---

House Bill 300 failed to pass.



# SUNSET STAFF REVIEW OF THE TEXAS DEPARTMENT OF TRANSPORTATION



## REPORT PREPARED BY:

**Jennifer Jones**, Project Manager

**Hector Morales**

**Karl Spock**

**Katharine Teleki**

**Cee Hartley**

**Joe Walraven**, Project Supervisor

**Joey Longley**

Director

Sunset Advisory Commission  
PO Box 13066  
Austin, TX 78711

Robert E. Johnson Bldg., 6th Floor  
1501 North Congress Avenue  
Austin, TX 78701

512-463-1300 Fax 512-463-0705

To obtain an electronic version of this report please visit our website at [www.sunset.state.tx.us](http://www.sunset.state.tx.us).

*In compliance with the Americans With Disabilities Act, this document may be requested in alternative forms.*