

INTERIM REPORT
OF THE
SENATE FINANCE COMMITTEE

GENERAL GOVERNMENT,
PUBLIC SAFETY, AND
ECONOMIC DEVELOPMENT CHARGES



RECOMMENDATIONS
TO THE
79TH LEGISLATURE

DECEMBER 2004

SENATE FINANCE COMMITTEE

78th Legislature

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SENATOR TOMMY WILLIAMS

December 16, 2004

The Honorable David Dewhurst
Lieutenant Governor
State of Texas
Capitol Building, Room 2E.13
Austin, Texas 78701

Dear Governor Dewhurst:

The Senate Finance Committee respectfully submits this report regarding the Committee's General Government, Public Safety, and Economic Development charges to study Funding for Homeland Security, Review Fees at State Regulatory Agencies, monitor Adult and Juvenile Corrections Populations, review Fund 006, and monitor the Enterprise Fund. We thank you for providing us the opportunity to address these important issues.

The Senate Finance Committee conducted a series of public hearings and received testimony on the aforementioned charges in Austin, Texas on April 12th and 13th, March 15th, and March 29th, 2004. In addition, the Committee created a work group composed of Senator John Whitmire (chair), Senator Todd Staples, and Senator Tommy Williams to further study these issues and provide recommendations to the full Committee.


Respectfully submitted,



Senator Stephen E. Ogden, Chair


Senator Judith Zaffirini, Vice-Chair


Senator Kip Averitt


Senator Gonzalo Barrientos


Senator Kim Brimer


Senator Bob Deuell






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Senator Florence Shapiro




Senator Eliot Shapleigh




Senator Todd Staples



Senator Royce West



Senator John Whitmire



Senator Tommy Williams

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Report on Distribution
of
Homeland Security Federal Funds

EXECUTIVE SUMMARY

In the past 3 years, over \$850 million in new money has flowed into the state of Texas for the stated purpose of improving Homeland Security. While the \$850 million mentioned above flows through the appropriations process, there is an indeterminate amount of funds, estimated to be as much as \$350-\$500 million, that flows directly to entities throughout the state, thereby circumventing legislative oversight.¹ As the body tasked with the protection and well-being of Texas citizens as well as the oversight of state agencies, the Senate, at the direction of the Lieutenant Governor, has attempted to gain a better understanding of the flow and use of federal homeland security dollars.

The state relies upon the Councils of Government (COGs) and regional networks to utilize Homeland Security Grant monies and implement protective measures. This money typically flows through the State Administrative Agencies and most recently has been received in one of two types of grant funding allocations, 1) First Responder Grants and 2) Bioterrorism Grants.

SUMMARY OF RECOMMENDATIONS

1. The Legislative Budget Board should require each agency to include in its Legislative Appropriations Requests (LARs) a separate line item in the method of finance showing the amount of homeland security funds received by the agency.
2. The Legislative Budget Board should require that each agency and university submit the types of grants applied for and the matching requirements for those grants and report the findings to the Legislature before the start of each session.

¹ G. Dube email, November 29, 2004. pg. I-64

3. The Office of the Governor should establish procedures to identify all federal homeland security funding and ensure that this funding is expended in a manner that supports the state and national strategic plans, with special emphasis on funds that flow directly to entities not overseen by the State Administrative Agencies.
4. The Office of the Governor should assess internal controls used by the State's Administrative Agencies for Homeland Security funding to ensure appropriate safeguards are in place to minimize the potential for waste, fraud and abuse.
5. Homeland security dollars should be spent in a manner that ensures that the state receives maximum collateral benefit.
6. In order to ensure greater accountability, the Legislature should consider appropriating all Homeland Security Funds that are directed to any state agency or sub-division of the state government.

PROCEDURAL BACKGROUND

The Senate Finance Committee was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that are identified. The Senate Finance Committee (the Committee) met in accordance with the following Public Safety interim charge:

Funding for Homeland Security. Monitor and report on the amount and uses of federal homeland security dollars in Texas appropriated through the Governor's Office and directly to local governments.

The Committee met pursuant to the aforementioned interim charge in a joint public hearing with the Senate Infrastructure Development and Security Committee in Austin, Texas, on April 13, 2004, to consider invited testimony provided by the Legislative Budget Board, the Office of the Governor, the Texas Department of Health, the Texas Association of Regional Councils, the Texas Engineering Extension Service, and the Capitol Area Planning Council. The

Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas, on July 20, 2004; however, none was provided.

The Committee extends its thanks to those who participated in the hearing, and assisted with or made presentations before the Committee.

BACKGROUND

In order to ensure that homeland security dollars are spent in a manner that best provides local response capability in the event of a disaster or terror event, Texas' structure of addressing homeland security preparedness is built upon the existing system of Councils of Government (COGs) and existing regional networks. This has been instrumental in ensuring all areas of the state are well prepared in case of an emergency.

The funding allocations from the federal agencies are in constant flux (Figures 1, 2, 3). Texas state agencies in past years have received direct grant funding from the various federal agencies to respond to events relating to homeland security. However, these funds are usually one-time funding for a specific purpose.

The Texas Engineering Extension Service (TEEX) and the Texas Department of State Health Services (TDSHS) are the two primary administrative of grant funds. Other agencies receive direct grants as well. They include state universities and health science centers, the Adjutant General's Department, Texas Workforce Commission, Texas Commission on Environmental Quality, Texas Department of Agriculture, and Texas Animal Health Commission.²

² Gerry Dube, Analyst, Legislative Budget Board, "New Federal Funding for Homeland Security in Texas,"

STATE ADMINISTRATIVE AGENCIES

The two largest recipients of federal homeland security funds are the Texas Engineering Extension Service (TEEX) and the Texas Department of State Health Services (TDSHS). These two agencies are deemed the State Administrative Agencies (SAA) of the grant funding which is passed on to the local communities (e.g. COGs) for actual purchases. This allows the state some degree of control over how the funds are being allocated, ensuring all areas of the state are able to address their issues in accordance with federal guidelines.

Texas Engineering Extension Service

In 1996, following the Oklahoma City bombing, Congress passed the Nunn-Lugar Dominici program. The program identified the 120 largest cities in the United States based purely on census figures. The Department of Defense provided Weapons of Mass Destruction (WMD) and terrorism training to these cities. Within this program, each city was initially allocated \$300,000 in Department of Defense and Department of Energy surplus equipment. The program also included limited training and exercise components.³ Funds are now allocated through two programs discussed later in this report, the State Homeland Security Grant Program and the Urban Area Security Initiative.

Fiscal year 1999 was the beginning of the State Domestic Preparedness Equipment Program in which the Department of Justice allocated funding to the states for first responder

testimony presented to Senate Infrastructure Development and Security Committee and the Senate Finance Committee, April 13, 2004. pg. I-28

³ Charley Todd, Director of Domestic Preparedness, Texas Engineering Extension Service, "State Homeland Security Grant Programs" testimony presented to the Senate Infrastructure Development and Security Committee and the Senate Finance Committee April 13, 2004. pg. I-44

equipment. Each state was asked to identify a State Administering Agency (SAA). Due to its active involvement at a national level in WMD/terrorism planning and training activities, TEEX was named the SAA for the State of Texas. In 2000, the equipment program began in earnest, and Congress required the states to complete a needs assessment and statewide domestic preparedness strategies.⁴

Since the tragedy of September 11, 2001, the Office of the President and the Governor have put together strategic plans outlining the standard protocol in the event of a terrorist attack or natural disaster. The President released the National Strategy for Homeland Security providing state officials with an outline of how to develop and implement a strategic plan in their state.

The first statewide assessment of threat, vulnerability, required capabilities, existing capabilities, and needs was performed in 2000. Ninety-five jurisdictions completed the first assessment. The second assessment began in January of 2003 with 753 jurisdictions participating. The most current assessment was performed for 2004 with 928 jurisdictions participating, representing 96% of the state's population.⁵

The Department of Homeland Security, Office for Domestic Preparedness, required that each state have a strategy completed and approved in order to receive 2004 grant funding. Texas had the first plan to be unconditionally approved on January 30, 2004.

The Texas Department of State Health Services

⁴ *ibid.* pg. I-33

⁵ Charley Todd, Director of Domestic Preparedness, Texas Engineering Extension Service, "State Homeland Security Grant Programs" testimony presented to the Senate Infrastructure Development and Security Committee and the Senate Finance Committee April 13, 2004. pg. I-41

The Texas Department of State Health Services (TDSHS) began operations in the late 1800's as the Texas Quarantine Department with its main responsibilities being disease quarantine and sanitation. TDSHS underwent many additions and reorganizations in subsequent years, adding vital statistics collection and numerous health related programs. Today, TDSHS performs many public health services such as disease surveillance, laboratory analysis, health promotion and education, consulting, health planning data collection and analysis, vital statistics and environmental regulation. TDSHS also provides direct health care services through its regional offices and network of clinics in rural areas without local health departments or other local providers.⁶

The health department system in Texas is a decentralized system of operation. The local health departments of a city or county are independent of the state health department. In Texas, there are eleven public health regions, eight regional headquarters and nine additional regional offices around the state. The main purpose of the regions is to provide public health services in areas lacking local health departments, to include:

- core public health services,
- direct health care, and
- regulatory services.⁷

The introduction of federal funding for homeland security operations relating to bioterrorism, local and regional health department responsibilities has resulted in expanded responsibilities to include:

⁶ House Concurrent Resolution 44 Work Group. The State of Public Health: Local and State Government Issues in Texas, Report Resulting from HCR 44 of the 75th Legislature. 1998. pg. I-53

⁷ *ibid.* pg. I-53

- Regional Planners,
- Regional Strategic National Stockpile Coordinators,
- Regional Epidemiology Response Teams,
- Biological Emergency Response Team,
- Texas Laboratory Response Network,
- Bioterrorism Trainers, and
- Bi-National Coordinators for Public Health Preparedness and Response.

Detection of a bioterrorism attack is not something that is done by equipment. Rather, it takes evaluation of disease reports by trained public health epidemiologists. Human intelligence is used to identify increased health services needs generally associated with communicable diseases. Therefore, the grant allocations to local health departments consist largely of personnel cost.

State Universities

Universities have received various grants for homeland security with the vast majority of the funds directed to research and laboratory enhancements. The universities identified as receiving grants include:

- The University of Texas Medical Branch at Galveston,
- The University of Texas at Austin,
- The University of Texas at San Antonio,
- Texas A&M University System, Texas Veterinary Medical Diagnostic Laboratory,
- The University of Texas Health Science Center at San Antonio, and

- The University of Texas Health Center at Tyler.⁸

The University of Texas Medical Branch at Galveston (UTMB) has received the largest share of homeland security funding. The grants to UTMB include \$110.1 million for the National Biocontainment Laboratory, \$48.3 million for the Center for Biodefense and Emerging Infections, and \$70.9 million for 58 research grants, accounting for 26.8% of total homeland security funding for fiscal years 2002-04.⁹

All of the universities listed above have received grants, for research and/or laboratory construction, identified after September 11, 2001. Other universities may have been receiving homeland security grants prior to the events of September 11, 2001, but were not identified.¹⁰

Other Agencies

In past years other various agencies have received direct grants from federal agencies.

Those agencies include:

- Adjutant General's Office
- Governor's Criminal Justice Division
- Texas Commission on Environmental Quality
- Texas Animal Health Commission.¹¹
- Texas Department of Public Safety,
- Texas Workforce Commission
- Texas Department of Agriculture

⁸ Gerry Dube, Analyst, Legislative Budget Board, "New Federal Funding for Homeland Security in Texas," testimony presented to Senate Infrastructure Development and Security Committee and the Senate Finance Committee, April 13, 2004. pg. I-27

⁹ *ibid.* pg. I-27

¹⁰ Gerry Dube, Analyst, Legislative Budget Board, "New Federal Funding for Homeland Security in Texas," testimony presented to Senate Infrastructure Development and Security Committee and the Senate Finance Committee, April 13, 2004.

¹¹ *ibid.* pg. I-27

Homeland security funding for these agencies for fiscal years 2002-04 totaled \$52.25 million, representing 6% of the total received by the state.¹² Of the agencies listed above, the Department of Public Safety and the Animal Health Commission were the only two still receiving grant funding in fiscal year 2004.¹³ All other grant funds have ceased, either because they were for a one time use or have been shifted into one of the two SAA's for the purpose of consolidation and/or ease of tracking.¹⁴

GRANT FUNDING ALLOCATIONS

Homeland Security grants typically fall within two types of grant funding allocations - First Responder Grants and Bioterrorism Grants. These allocations fund various types of programs. Following is a discussion of the most typical grants received in Texas.

First Responder Grants

The Texas Engineering Extension Service serves as the SAA that manages grants received by the Office for Domestic Preparedness. The two grant programs administered by the agency are the State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI).¹⁵

¹² *ibid.* pg. I-27

¹³ *ibid.* pg. I-27

¹⁴ *Ibid*

¹⁵ Charley Todd, Director of Domestic Preparedness, Texas Engineering Extension Service, "State Homeland Security Grant Programs" testimony presented to the Senate Infrastructure Development and Security Committee and the Senate Finance Committee April 13, 2004. pg. I-33

State Homeland Security Grant Program

The larger of the two grants is the SHSGP at approximately \$87 million for FY2004. (Figure 4). The eligible entities receiving these funds from the SAA are:

- Counties,
- Incorporated Municipalities,
- Federally recognized Tribes, and
- Councils of Government (for specific regional purposes).¹⁶

To be eligible, these entities must complete the statewide assessment and have an Emergency Operations Plan. Additionally, port authorities, transit agencies and school districts associated with eligible cities or counties may receive funding.¹⁷

The state is allowed to use no more than 20% of the grants received for state needs. Texas has awarded the majority of the funds to the local jurisdictions, and in fiscal year 2004, the allocation to the state will be less than 10%.¹⁸

Objective:

To enhance the capacity of State and local first responders to respond to terrorism incident involving chemical, biological, nuclear, radiological, incendiary, and explosive devices.

Use and Restrictions:

States will receive an allocation of funds to purchase equipment for State and local first responders, in accordance with the authorized equipment list included in the Application Kit, and an allocation to support the planning and conduct of exercises. Administrative funds will be provided to conduct comprehensive threat and needs assessments and to develop and implement a Statewide Domestic Preparedness Strategy to enhance first responder capabilities to respond to a terrorist incident.

Matching Requirements:

There is no match requirement for this program.

¹⁶ *ibid.* pg. I-44

¹⁷ *ibid.* pg. I-44

¹⁸ *ibid.* pg. I-45

Urban Area Security Initiative

UASI funding to local jurisdictions for fiscal year 2004 was approximately \$39 million. The eligibility requirements are the same as the SHSGP; however, eligibility is limited to three urban areas. The defined urban areas are:

- Houston Urban Area - City of Houston, Harris County, Fort Bend County, Galveston County, Montgomery County, Brazoria County, and Port of Houston, Houston Transit Authority
- Dallas Urban Area - City of Dallas, Dallas County, Denton County, Collin County, Kaufman County, Rockwall County, and Tarrant County
- San Antonio Urban Area - City of San Antonio, Bexar County, Comal County¹⁹

Objective

To enhance local emergency, prevention and response agencies' ability to prepare for and respond to threats or incidents of terrorism involving weapons of mass destruction (WMD). This program will also enhance selected mass transit authorities' protection of critical infrastructure and emergency preparedness activities.

Use and Restrictions

Funds provided under this grant are designed to address the unique needs of large urban areas and mass transit authorities. Funds can be used for equipment, training, exercises and planning. No more than 3 percent of the grant award may be used for management and administrative purposes. Urban areas must submit a valid jurisdictional assessment and Urban Area Homeland Security Strategy to ODP, as well as apply online using the Department of Justice (DOJ) Office of Justice Programs (OJP) Grants Management System (GMS).

At least 80 percent of all urban area funding provided through the UASI Program must be obligated by the State to the designated urban area within 60 days after the receipt of funds.

Matching Requirements

There is no match requirement for this program.

¹⁹ *ibid.* pg. I-36

Bioterrorism Grants

The Texas Department of State Health Services serves as the SAA to manage grants received from the U.S. Center for Disease Control and Prevention (CDC) and the Health Resources Services Administration (HRSA). The two grant programs administered by the agency are the Bioterrorism Public Health Preparedness Grants and the National Bioterrorism Hospital Preparedness Program.²⁰

Bioterrorism Public Health Preparedness Grants

Bioterrorism Public Health Preparedness grants are allocated to the states to improve statewide capacity to detect bio-terrorism attacks and to provide funding to local health departments to prepare for response to a bioterrorism attack. The Texas Department of State Health Services administers this grant, while the CDC outlines the focus areas which must be included in the grant application. The Texas Department of State Health Services, in its capacity

Objective

To improve state and local health department capacity to detect, identify and respond to the intentional release of harmful bacteria or virus, thereby improving the level of public health preparedness in Texas to assure a rapid and appropriate response to a bioterrorist attack.

Use and Restriction

The funds must be spent according to a state work plan submitted to, and approved by the U.S. Center for Disease Control and Prevention. The plan must adhere to the guidelines provided by CDC in 7 focus areas. The funds delivered to local government must be contracted to local health departments according to work plans submitted to, and approved by the TDSHS. These funds are for public health preparedness and not first responder or other service areas. The funds may not be used to supplant existing services and must demonstrate improvements in public health preparedness capabilities. There is no federally required formula for distribution of funds to local health departments; the amount and process is left up to the state.

Matching Requirements

There are no matching requirements.

²⁰ Eduardo Sanchez, M.D., MPH, Commissioner of Health, and Texas Department of State Health Services "Preparing Texas for a Public Health Emergency: Getting the best Results from Federal Dollars," Testimony presented to the Senate Infrastructure Development and Security Committee and the Senate Finance Committee April 13, 2004. pg. I-63

as the SAA, prepares the state's grant application outlining the method of allocation within the focus areas identified by the CDC. The focus areas for the 2004 allocation included:²¹

- **Focus Area A** -Preparedness Planning and Readiness Assessment; including the strategic National Stockpile (SNS) program and Small pox Activities.
- **Focus Area B** - Surveillance and Epidemiology Capacity
- **Focus Area C** - Laboratory Capacity - Biological Agents
- **Focus Area D** - Laboratory Capacity - Chemical Agents
- **Focus Area E** - Health Alert Network/ Communication and Information
- **Focus Area F** - Risk Communication and Health Information Dissemination
- **Focus Area G** - Education and Training

The TDSHS allocates funds to the local health departments according to the following method: a fixed amount of \$20,000 and an additional \$1.52 per capita is reserved for the health agency for each county. Additionally, in 2004 funding, there was an allocation for small pox vaccinations calculated at \$.016 per capita.²² (Figure 4, 5) From August 2001 to August 2004, TDSHS received approximately \$115 million in Bioterrorism Public Health Preparedness Grants. Another \$51.8 million is expected in FY 2005.

Where there is no county or city health department, the allocation for the county is sent to the regional health department to provide services to all counties within the region lacking a local health department. ²³

²¹ *ibid.* pg. I-55

²² *ibid.* pg. I-21

²³ *ibid.* pg. I-63

In instances where both a city and county health department exist, the same allocation is made based on the county population and the allocation is then split between the two entities. The TDH regional director facilitates negotiations among the city and county departments to develop a single plan with coordinated activities.²⁴

National Bioterrorism Hospital Preparedness Program

The National Bioterrorism Hospital Preparedness program, administered by the Texas Department of State Health Services²⁵, is a perpetual program which includes funding for planning and implementation of activities designed to prepare regional health care systems for incidents of terrorism or other public health emergencies. In order to ensure funds were spent in the manner in which they are intended, the Health Resources and Services Administration (HRSA) initially required hospitals to address 6 priority areas; Administration, Regional Surge Capacity, Emergency Medical Services, Linkage to Public Health Departments, Education and preparedness Training and Terrorism Preparedness Exercises. Funds are now focused on meeting 16 critical benchmarks that will further enable hospitals to respond to acts of terrorism and other emergencies.

Objective:

To provide funding to health care institutions to increase their preparedness and response capability to bioterrorist attack as measured against 6 critical benchmarks.

Use and Restriction:

At least 80% of funds must go to Texas healthcare institutions (hospitals, community health center). The remainder may be used for statewide projects or administration (10%each)

Matching Requirements:

This program has no statutory formula or matching requirements.

HRSA requires that at least 80% of the funds allocated to Texas go to hospitals, 10% may be used for operational costs and 10% may be used for statewide planning. The actual

²⁴ *ibid.* pg. I-56

²⁵ *ibid.* pg. I-62

allocation, however, was as follows: 85% hospitals, 4% operations costs, and 11% statewide planning. Funding for statewide planning functions include allocations for Clinics, Poison Control Centers (PCC), Metropolitan Medical Response System (MMRS), Bureau of Radiological Control (BRC), Health Alert Network and Public Health Nurses.²⁶

The TDSHS allocates funds to hospitals, clinics and other health care providers according to the following method: a fixed amount of \$5,500 per hospital and an additional \$1.147 per capita. (Figure 6)

2004 Allocation to Hospitals, Clinics and Local Health care Providers from TDSHS	
Fixed amount per hospital	\$5,500
Additional per capita	+ 1.147/capita

The total amount of funds distributed to hospitals was \$28.2 million for Fiscal year 2004. Operations allocations were \$1.4 million and other planning allocations were \$3.7 million. This resulted in the hospital allocation receiving the aforementioned 85% of the total allocation, exceeding the required 80% level.²⁷

Other Direct Grants

As situations arise, various state agencies, universities and local units of government are able to apply for federal grants directly. These grants vary in accordance with federal guidelines outlining the objectives, uses and restrictions, and formula and matching requirements. Therefore, there is no one set of requirements which applies to all of the various grants. Without

²⁶ *ibid.* pg. I-63

²⁷ *ibid.* pg. I-63

federal requirements to name a SAA, there is limited ability to track these grants unless they are issued to an agency which falls under the state legislative appropriations authority.

The Legislative Budget Board (LBB) has the ability to track funds received by various state agencies and universities and report them to the legislature.

RECOMMENDATIONS

1. The Legislative Budget Board should require each agency to include in its Legislative Appropriations Request a separate line item in the method of finance showing the amount of homeland security funds received by the agency.
2. The Legislative Budget Board should require that each agency and university submit the types of grants applied for and the matching requirements for those grants and report the findings to the Legislature before the start of each session.
3. The Office of the Governor should establish procedures to identify all federal homeland security funding and ensure that this funding is expended in a manner that supports the state and national strategic plans, with special emphasis on funds that flow directly to entities not overseen by the State Administrative Agencies.
4. The Office of the Governor should assess internal controls used by the State's Administrative Agencies for Homeland Security funding to ensure appropriate safeguards are in place to minimize the potential for waste, fraud and abuse.
5. Homeland security dollars should be spent in a manner that ensures that the state receives maximum collateral benefit.
6. In order to ensure greater accountability, the Legislature should consider appropriating all Homeland Security Funds that are directed to any state agency or sub-division of the state government.

**Texas Homeland Security Funding,
Fiscal Year 2004**

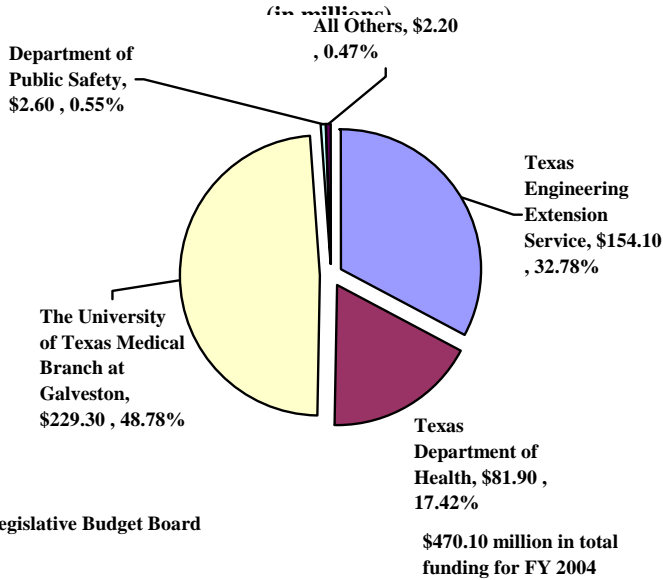


Figure 1

Legislative Budget Board

Figure 2

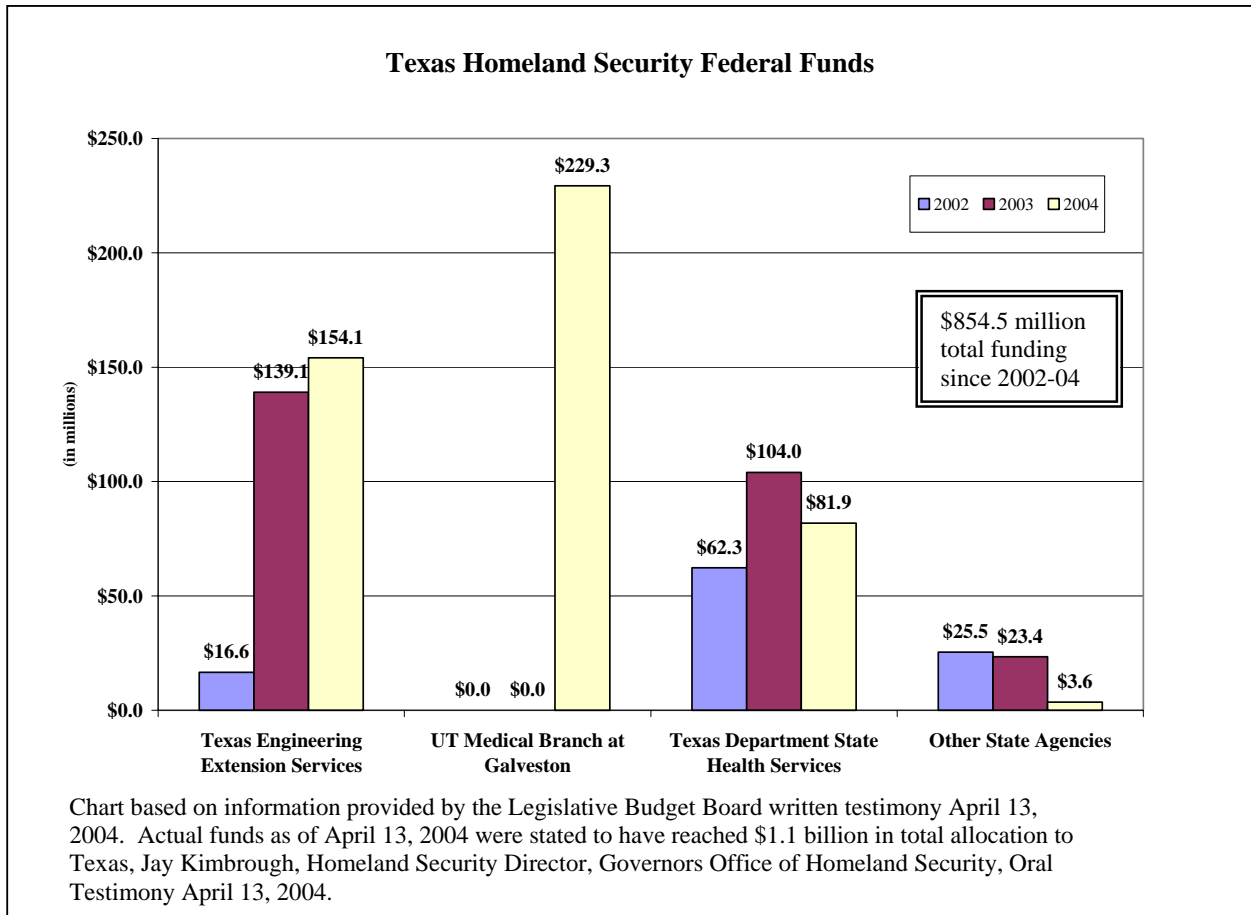


Figure 3

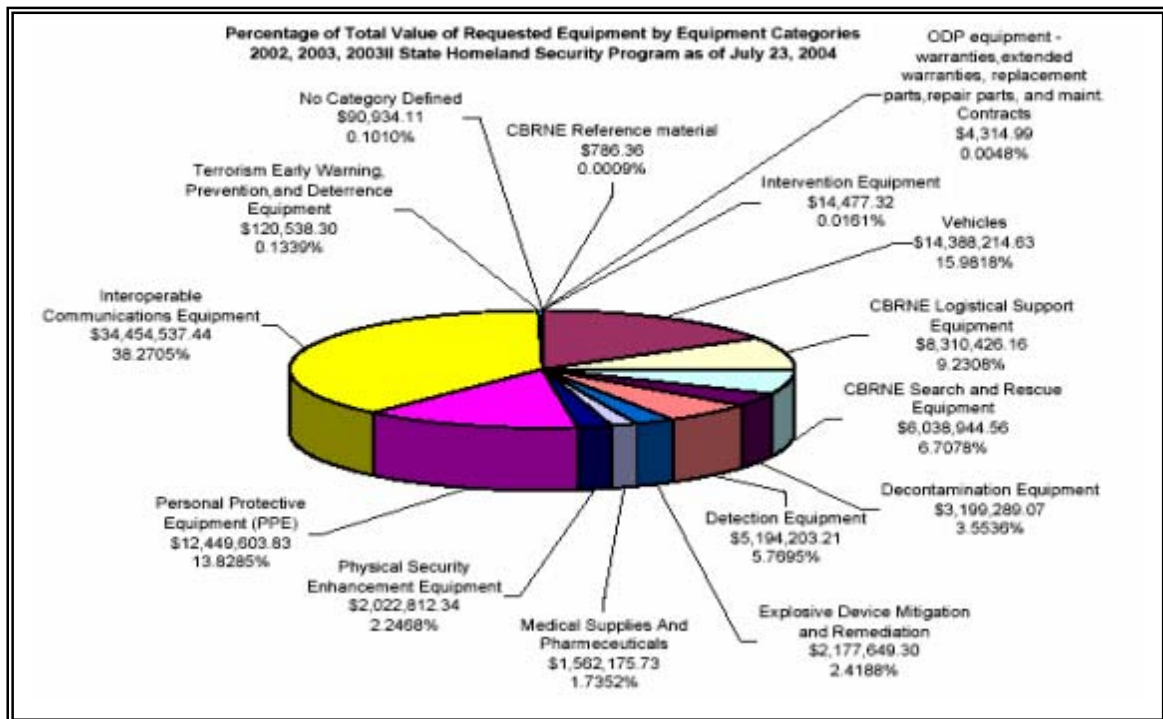


Figure 4

CDC PUBLIC HEALTH PREPAREDNESS FUNDING

(in millions)

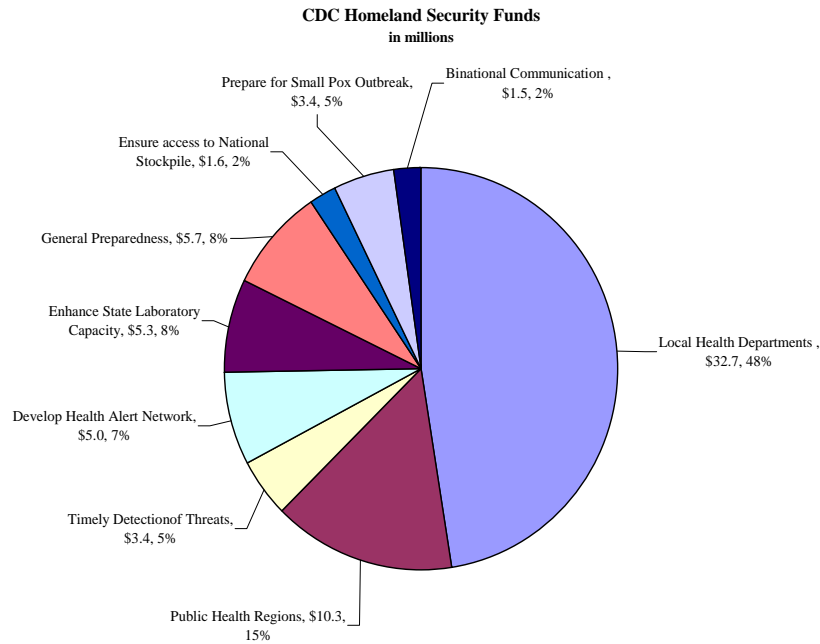
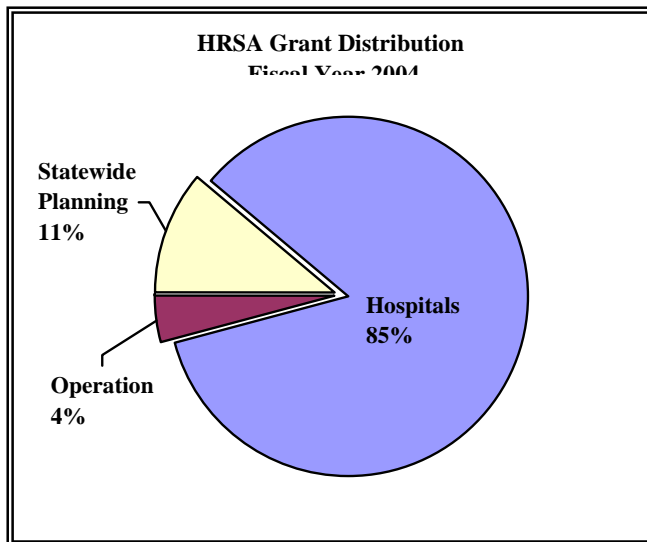


Figure 5

Program	2002-2003	2004
Local Health Departments (includes SNS & Small pox)	\$26.9	\$32.7
Public Health Regions (includes SNS & Small pox)	\$9.2	\$10.3
Strengthen Epidemiology and Surveillance	\$3.6	\$3.4
Develop Health Alert Network	\$5.6	\$5.0
Enhance State Laboratory Capacity	\$5.3	\$5.3
General Preparedness	\$3.5	\$5.7
Strategic National Stockpile	\$0.0	\$1.6
Prepare for Small Pox Outbreak	\$0.0	\$3.4
Binational Communication and Response	\$0.0	\$1.5

Figure 6 Commissioner of Health



Appendix A

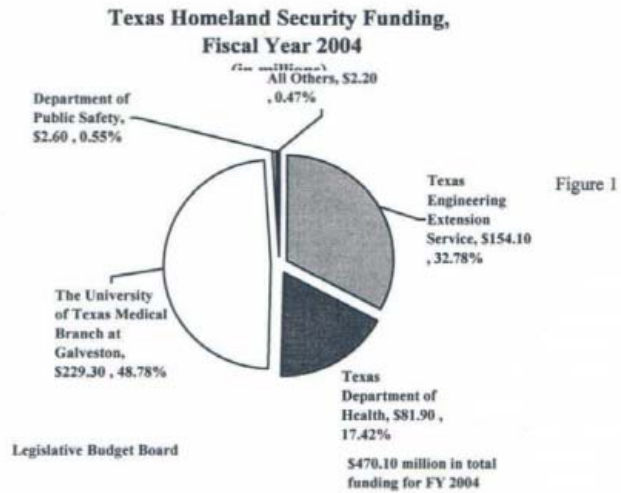


Figure 2

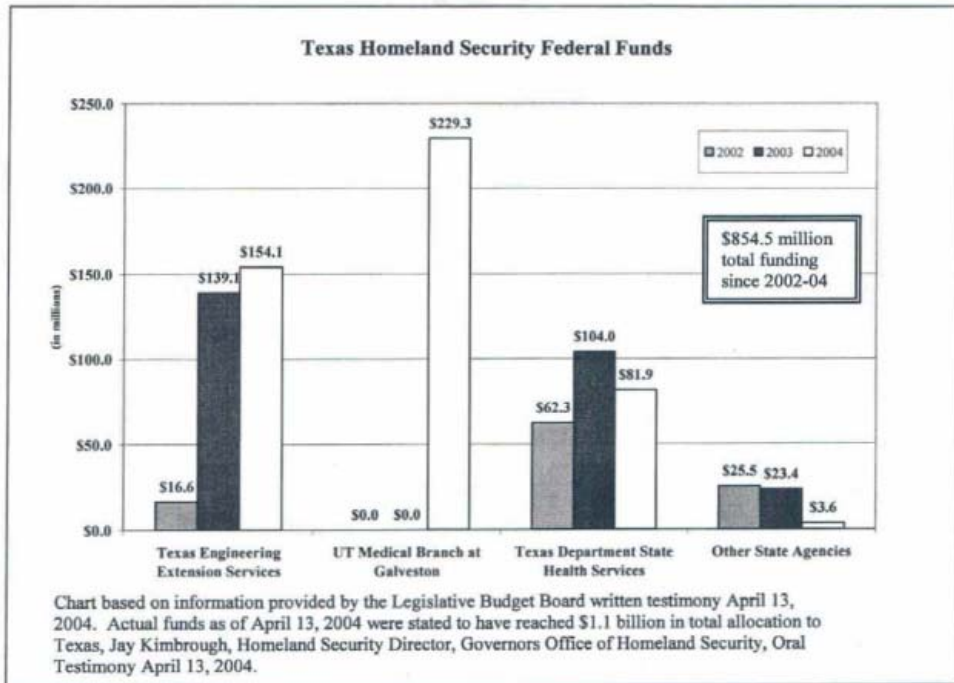


Figure 3

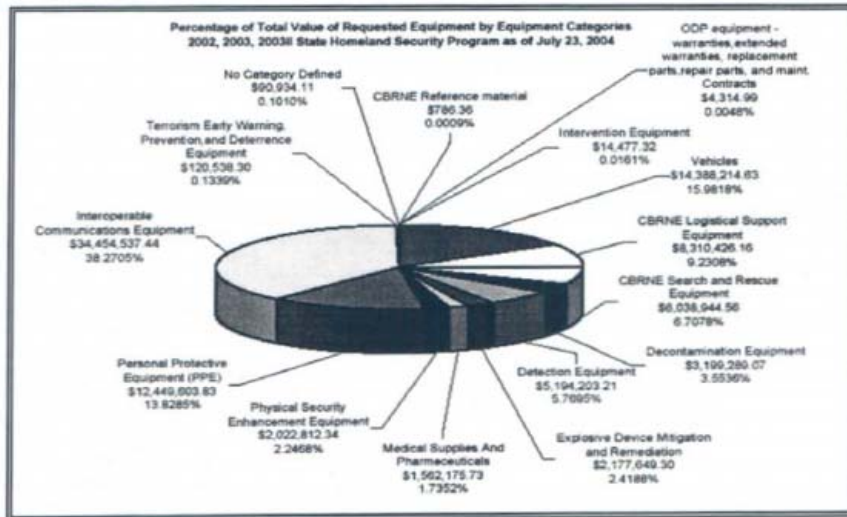


Figure 4

CDC PUBLIC HEALTH PREPAREDNESS FUNDING

(in millions)

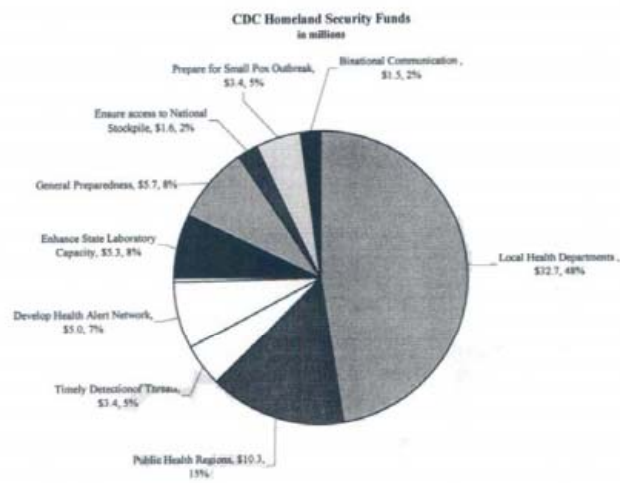
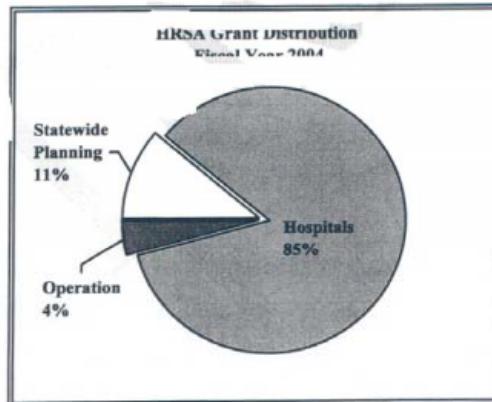


Figure 5

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General Preparedness	\$3.5	\$5.7
Strategic National Stockpile	\$0.0	\$1.6
Prepare for Small Pox Outbreak	\$0.0	\$3.4
Binational Communication and Response	\$0.0	\$1.5

Commissioner of Health

Figure 6



Appendix B



New Federal Funding for Homeland Security in Texas

Prepared by the Legislative Budget Board Staff
for the Senate Committee on Finance and the
Senate Committee on Infrastructure
Development and Security

April 13, 2004

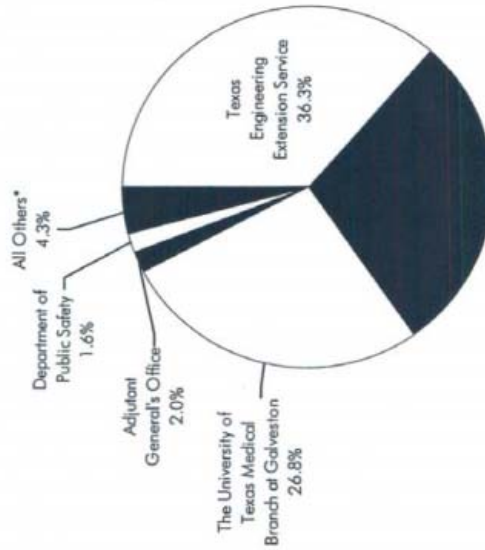
Overview



- In May 2002 state agencies and institutions of higher education were directed to report new Homeland Security funding to the Legislative Budget Board (LBB).
- Since that time state agencies and institutions of higher education have reported a total of \$854.5 million in new Homeland Security funding received between May of FY2002 through the first quarter of FY2004.
- The LBB does not track Homeland Security federal funds that are awarded directly to local entities and do not pass through state agencies.

Texas Homeland Security Federal Funds, Fiscal Years 2002-04

TOTAL = \$854.4 MILLION



*All Others = Governor's Criminal Justice Division \$8.3 million; The University of Texas at Austin \$8.3 million; Texas Workforce Commission \$6.2 million; Texas Commission on Environmental Quality \$5.9 million; The University of Texas at San Antonio \$3.0 million; Texas Veterinary Medical Diagnostic Laboratory \$2.0 million; The University of Texas Health Science Center at San Antonio \$1.2 million; Texas Department of Agriculture \$0.3 million; Texas Animal Health Commission \$1.3 million; and The University of Texas Health Center at Tyler \$0.2 million.
Source: Legislative Budget Board, based on reports from state agencies and institutions of higher education.

Texas Homeland Security Federal Funds

STATE AGENCY/ INSTITUTION OF HIGHER EDUCATION	FISCAL YEAR			TOTAL
	2002	2003	2004	
TEXAS ENGINEERING EXTENSION SERVICE				
National Homeland Security Program			\$25.9	\$25.9
Low Enforcement Terrorism Prevention			\$87.4	\$87.4
State Homeland Security			\$1.8	\$1.8
Citizen Corps	\$115.5	\$83.7		\$99.2
Equipment		\$1.6		\$1.6
Training		\$6.0		\$6.7
Exercises	\$0.7	\$2.1		\$2.1
Planning and Technical Assistance		\$1.1		\$1.5
Administration	0.4			\$0.0
Urban Area Security Initiatives		\$23.8	\$19.8	\$43.6
Houston		\$10.4	\$12.1	\$22.5
Dallas			\$6.3	\$6.3
San Antonio		\$10.4	\$0.8	\$0.8
Trinity Rail				\$10.4
Alert Level Orange		\$16.6	\$139.1	\$154.1
SUBTOTAL				\$809.8
THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON				
National Biocombinment Laboratory			\$110.1	\$110.1
Center for Biodefense and Emerging Infections			\$48.3	\$48.3
58 Research Grants			\$70.9	\$70.9
SUBTOTAL				\$229.3
TEXAS DEPARTMENT OF HEALTH				
Public Health Bioterrorism Preparedness	\$54.0	\$68.9	\$48.6	\$171.5
Hospital Bioterrorism Preparedness	\$8.3	\$35.1	\$33.3	\$76.7
SUBTOTAL	\$62.3	\$104.0	\$81.9	\$248.2
ADJUTANT GENERAL'S OFFICE				
Airport Protection by National Guard	\$17.2			\$17.2
SUBTOTAL	\$17.2			\$17.2
DEPARTMENT OF PUBLIC SAFETY				
Byrne Criminal Justice Grants	\$1.0	\$1.2		\$2.2
Local Law Enforcement Grants		\$1.8		\$1.8
State/Local All Hazards Emergency Operations		\$4.8	\$1.7	\$6.5
Other		\$1.9	\$0.9	\$2.8
SUBTOTAL	\$1.0	\$9.7	\$2.6	\$13.3
STATE AGENCY/ INSTITUTION OF HIGHER EDUCATION	2002	2003	2004	TOTAL
GOVERNOR'S CRIMINAL JUSTICE DIVISION				
Byrne Criminal Justice Grants	\$1.8	\$6.5		\$8.3
Subtotal	\$1.8	\$6.5		\$8.3
THE UNIVERSITY OF TEXAS AT AUSTIN				
10 Research Grants		\$8.3		\$8.3
SUBTOTAL		\$8.3		\$8.3
TEXAS WORKFORCE COMMISSION				
National Emergency Grants	\$5.3	\$0.9		\$6.2
SUBTOTAL	\$5.3	\$0.9		\$6.2
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY				
Texas Blowatch Monitoring Program		\$4.2		\$4.2
Water Protection Counter Terrorism		\$1.5		\$1.5
Physical Security Equipment Grant	\$0.2			\$0.2
SUBTOTAL	\$0.2	\$5.7		\$5.9
THE UNIVERSITY OF TEXAS AT SAN ANTONIO				
Center for Information Assurance and Security	\$2.5			\$2.5
Information Assurance Scholarship Program	\$0.2	\$0.3		\$0.5
SUBTOTAL	\$2.7	\$0.3		\$3.0
TEXAS VETERINARY MEDICAL DIAGNOSTIC LABORATORY				
Network of Diagnostic Labs	\$2.0			\$2.0
SUBTOTAL	\$2.0			\$2.0
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO				
Bioterrorism Training and Curriculum Development		\$1.1		\$1.1
Texas Medical Rangers		\$0.1		\$0.1
SUBTOTAL		\$1.2		\$1.2
TEXAS DEPARTMENT OF AGRICULTURE				
Cooperative/Agricultural Pest Survey Program		\$0.3		\$0.3
SUBTOTAL		\$0.3		\$0.3
TEXAS ANIMAL HEALTH COMMISSION				
Plant and Animal Disease Control and Care Grant		\$0.3	\$1.0	\$1.3
SUBTOTAL		\$0.3	\$1.0	\$1.3
THE UNIVERSITY OF TEXAS HEALTH CENTER AT TYLER				
Health Care Facilities and Other Construction		\$0.2		\$0.2
SUBTOTAL		\$0.2		\$0.2
TOTAL	\$109.1	\$275.3	\$470.1	\$854.5

Purpose of Texas Homeland Security Federal Funds

AGENCY PROGRAM PURPOSE OF FUNDS	AGENCY PROGRAM PURPOSE OF FUNDS
<p>TEXAS ENGINEERING EXTENSION SERVICE LAW ENFORCEMENT TERRORISM PREVENTION Specialized equipment purchases, exercises, training, and planning costs for state and local governments to prevent and respond to incidents of terrorism.</p> <p>STATE HOMELAND SECURITY State and law enforcement planning, organization, equipment, and training exercises as they relate to anti-terrorist activities, such as, threat recognition capability; interoperable communications; intervention and interdiction of terrorists.</p> <p>CITIZEN CORPS Planning, outreach and management of volunteer citizen groups.</p> <p>EQUIPMENT, TRAINING, EXERCISES, PLANNING AND TECHNICAL ASSISTANCE, AND ADMINISTRATION During fiscal years 2002-03 these programs performed the same functions as those currently listed under the National Homeland Security Grants Program for fiscal year 2004. The previous grants were recently consolidated into one grant program under the Office of Domestic Preparedness in the newly created U.S. Department of Homeland Security.</p> <p>URBAN AREA SECURITY INITIATIVES Training, planning, exercises and operational needs of large urban area to protect against terrorist threats (Houston, Dallas San Antonio, Trinity Rail). Also provides protection of mass transit systems with heavy rail and commuter rail components.</p> <p>ALERT LEVEL ORANGE Reimbursement for expenses incurred during orange alerts.</p> <p>TEXAS DEPARTMENT OF HEALTH PUBLIC HEALTH BIOTERRORISM PREPAREDNESS Statewide coordination and planning for bioterrorism; surveillance and epidemiology capacity to local health departments; laboratory capacity and diagnostic capability to major public health laboratories across the state; critical communication networks; education and training for bioterrorism preparedness.</p> <p>HOSPITAL BIOTERRORISM PREPAREDNESS Improved hospital capacity to respond to bioterrorism; emergency reserve of medical supplies; research into new treatments and diagnostic tools.</p>	<p>THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON NATIONAL BIOCONTAINMENT LABORATORY Construction and equipment for one of two national, large scale, biological research facilities focusing on new and emerging disease threats.</p> <p>CENTER FOR BIODEFENSE AND EMERGING INFECTIOUS DISEASES Research to develop medical countermeasures against viruses considered likely to be used as weapons by bioterrorists.</p> <p>SB RESEARCH GRANTS Multiple research projects in diagnostics and in seeking solutions to biological diseases, both natural and man-made.</p> <p>ADJUTANT GENERAL'S OFFICE AIRPORT PROTECTION BY NATIONAL GUARD Placement of national Guard units at major Texas airports after the events of 9/11.</p> <p>DEPARTMENT OF PUBLIC SAFETY BYRNE CRIMINAL JUSTICE GRANTS Additional personnel, equipment, facilities, personnel training and equipment.</p> <p>LOCAL LAW ENFORCEMENT GRANTS Personnel and training for anti-terror activities.</p> <p>STATE AND LOCAL ALL HAZARDS EMERGENCY OPERATIONS Development or updating of the state's comprehensive, all-hazard emergency management plans; coordination and development of a common incident command system; general availability of interoperable communications; and effective mutual aid.</p> <p>OTHER Includes funding for training, plus technological and other enhancements to the Texas Emergency Management Center.</p>

Purpose of Texas Homeland Security Federal Funds (continued)

AGENCY/PROGRAM/PURPOSE OF FUNDS	AGENCY/PROGRAM/PURPOSE OF FUNDS
<p>GOVERNOR'S CRIMINAL JUSTICE DIVISION <i>BYRNE CRIMINAL JUSTICE GRANTS</i> Additional personnel, equipment, facilities, personnel training and equipment.</p>	<p>TEXAS VETERINARY MEDICAL DIAGNOSTIC LABORATORY <i>NETWORK OF DIAGNOSTIC LABS</i> Research and development of the ability to respond quickly if foreign animal diseases are introduced into this country intentionally or accidentally.</p>
<p>THE UNIVERSITY OF TEXAS AT AUSTIN <i>10 RESEARCH GRANTS</i> Research in biological agents, chemical agents, weapons research, and various military and security disciplines.</p>	<p>THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO <i>BIOTERRORISM TRAINING AND CURRICULUM DEVELOPMENT</i> Training and curriculum development on bioterrorism or chemical emergencies for healthcare personnel.</p>
<p>TEXAS WORKFORCE COMMISSION <i>NATIONAL EMERGENCY GRANTS</i> Services provided through Local Workforce Development Boards for workers in the aviation, tourism and related industries affected by the events of 9/11.</p>	<p>TEXAS MEDICAL RANGERS Maintenance of the first Texas State Guard medical reserve corps unit responding to man-made or natural disasters.</p>
<p>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY <i>TEXAS BIOWATCH MONITORING PROGRAM</i> Research and personnel training related to testing and protecting air, water, and land from man-made hazards, as well as natural environmental threats. <i>WATER PROTECTION COUNTER TERRORISM</i> Water source assessments and drinking water protection activities. <i>PHYSICAL SECURITY AND EQUIPMENT GRANT</i> Various special projects to give states greater flexibility to address their highest environmental priorities, improve environmental performance, achieve administrative savings, and strengthen partnerships between the Environmental Protection Agency and the States.</p>	<p>TEXAS DEPARTMENT OF AGRICULTURE <i>COOPERATIVE AGRICULTURE PEST SURVEY PROGRAM</i> Surveillance, detection, and monitoring of agricultural crop pests and biological control agents.</p>
<p>THE UNIVERSITY OF TEXAS AT SAN ANTONIO <i>CENTER FOR INFORMATION ASSURANCE AND SECURITY</i> Hands-on experience in solving computer security problems, intrusion detection and prevention, fraud, privacy, theft, denial of service, secure transactions and secure networks. <i>INFORMATION ASSURANCE SCHOLARSHIP PROGRAM</i> Scholarships to the Center for Information Assurance and Security.</p>	<p>TEXAS ANIMAL HEALTH COMMISSION <i>PLANT AND ANIMAL DISEASE CONTROL AND CARE UNIT</i> Detection of plant pests and animal or plant disease in the food supply and agricultural production; protection of agricultural infrastructure; management of emergency preparedness.</p>
<p>Source: Legislative Budget Board, based on reports from state agencies and institutions of higher education.</p>	<p>THE UNIVERSITY OF TEXAS HEALTH CENTER AT TYLER <i>HEALTH CARE FACILITIES AND OTHER CONSTRUCTION</i> Construction, renovation, and equipment.</p>

Homeland Security Future Funding



The President's proposed budget for FY2005 reduces some Funding for Homeland Security to states.

- Homeland Security Grants would be \$66.1 million, a \$48.8 million reduction from FY2004.
- Increased assistance to high threat urban areas is proposed.
- Public Health Preparedness and Response Grants would decrease to \$41.7 million, a \$6.9 million reduction from FY2004.
- Hospital Bioterrorism Preparedness Grants to Texas would decrease to \$30.6 million, a \$2.7 million loss.

Useful Resources



Federal agency grant information for Homeland Security:

- www.dhs.gov (Department of Homeland Security)
- www.fedgrants.gov (Federal Grants Search Site)

Appendix C

STATE HOMELAND SECURITY
GRANT PROGRAMS

THE TEXAS ENGINEERING EXTENSION SERVICE (TEEX)

AUGUST 31, 2004



SECTION

1

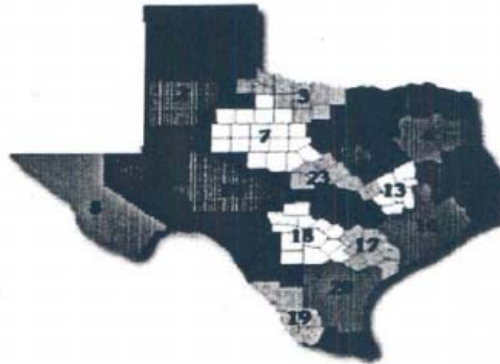
INTRODUCTION

- PURPOSE** This booklet provides an executive overview of State Homeland Security Grants in Texas. Information on how to contact TEEX for additional information may be found on the last page.
- FOUNDATIONS OF PREPARATION** Texas uses an "all hazards" approach that improves the ability to respond to terrorism incidents as well as other disasters. For years, Texas has had a fully-integrated Emergency Management System (EMS) designed to prepare, respond and recover. Texas' Emergency Management System recognizes that local officials are best able to make decisions about disaster preparedness, response, and recovery.
- STATE DIRECTOR OF HOMELAND SECURITY** Policy Direction for Grant Programs is by the Governor's Office through the State Director of Homeland Security.
- TEXAS ENGINEERING EXTENSION SERVICE (TEEX) SERVES AS THE STATE ADMINISTRATIVE AGENCY (SAA)** The Texas Engineering Extension Service (TEEX) serves as the State Administrative Agency (SAA) for the State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI) program. These programs offer funding for equipment, training, exercises, and planning. They also offer "assistance in kind" with training and exercise opportunities that are paid for by the Office for Domestic Preparedness (ODP), US Department of Homeland Security (DHS).

The long experience of the Texas Engineering Extension Service in emergency responder training, its close relationship as a training partner for ODP, and having Texas Task Force One as part of the agency enable TEEX to offer quality assistance to jurisdictions and the state in assessing needs and in developing plans and strategy. TEEX is ideally suited to develop and coordinate training programs, provide world class exercises, and assist in closing gaps in capabilities.

REGIONAL
COUNCILS OF
GOVERNMENTS
(COG)

The key to successful statewide preparation is regionalism built upon the capabilities of jurisdictions linked together by interlocking mutual aid agreements. The 24 COGs are the vehicle for achieving regionalism in Texas.



Regional Councils of Governments

- Region 1: Panhandle Regional Planning Commission
- Region 2: South Plains Association of Governments
- Region 3: Nortex Regional Planning Commission
- Region 4: North Central Texas Council of Governments
- Region 5: Ark-Tex Council of Governments
- Region 6: East Texas Council of Governments
- Region 7: West Central Texas Council of Governments
- Region 8: Rio Grande Council of Governments
- Region 9: Permian Basin Regional Planning Commission
- Region 10: Concho Valley Council of Governments
- Region 11: Heart of Texas Council of Governments
- Region 12: Capital Area Planning Council
- Region 13: Brazos Valley Council of Governments
- Region 14: Deep East Texas Council of Governments
- Region 15: S.E. Texas Regional Planning Commission
- Region 16: Houston-Galveston Area Council
- Region 17: Golden Crescent Regional Planning Commission
- Region 18: Alamo Area Council of Governments
- Region 19: South Texas Development Council
- Region 20: Coastal Bend Council of Governments
- Region 21: Lower Rio Grande Valley Development Council
- Region 22: Texoma Council of Governments
- Region 23: Central Texas Council of Governments
- Region 24: Middle Rio Grande Development Council

SECTION

2

GRANT PROGRAM
OVERVIEW

THE STATE HOMELAND SECURITY GRANT PROGRAM (SHSGP)

THREE PART
PROGRAM

- *The State Homeland Security Program (SHSP)* provides equipment, training, exercise, and planning funding to assist a wide range of emergency response disciplines to prevent, mitigate, respond, and assist in recovery from a potential terrorist incident.
- *The Law Enforcement Terrorism Prevention Program (LETPP)* focuses on prevention and warning.
- *The Citizen Corps Program (CCP)* provides funding for Citizen Corps Councils, public outreach and education, plus funding to support Community Emergency Response Teams (CERT), Neighborhood Watch, Volunteers in Police Service (VIPS), and Medical Reserve Corps (MRC).

SHSGP GRANT
MANAGEMENT

- Grants are through the Office for Domestic Preparedness (ODP), US Department of Homeland Security (DHS).
- Policy direction is from the State Director of Homeland Security.
- The Texas Engineering Extension Service (TEEX) serves as the State Administrative Agency (SAA) to manage the grants.

THE URBAN AREA SECURITY INITIATIVE (UASI)

HOUSTON URBAN AREA *Core elements defined by the Department of Homeland Security*

- City of Houston
- Harris County
- Fort Bend County
- Montgomery County

Additions to the Houston Urban Area by the core city and counties

- Galveston County
- Brazoria County
- Port of Houston
- Houston Transit Authority

DALLAS URBAN AREA *Core elements defined by the Department of Homeland Security*

- City of Dallas
- Dallas County
- Denton County
- Collin County
- Kaufman County
- Rockwall County

Additions to the Dallas Urban Area by the core city and counties

- Tarrant County

SAN ANTONIO URBAN AREA *Core elements defined by the Department of Homeland Security*

- City of San Antonio
- Bexar County
- Comal County

UASI GRANT
MANAGEMENT

- Grants are from DHS through ODP.
- The SAA manages the grants.
- Each Urban Area has an Urban Area Working Group to develop strategy and budgets for the area.
- The core city, core counties and the SAA must concur on funding decisions. The SAA role is to ensure linkage between UASI actions and the State Strategic Plan.

HOMELAND SECURITY GRANTS NOT ADMINISTERED BY THE SAA

EXAMPLES OF OTHER
GRANTS

- Direct from DHS to Port Authorities.
- Direct from DHS to Transit Authorities.
- Grants administered by the US Department of Health and Human Services for Bio-Terrorism.
- Fire Grant program awards to jurisdictions.
- Other grants awarded directly to jurisdictions, agencies, or institutions of higher education from Federal Agencies that may be Homeland Security related.

SECTION

3

FUNDING FROM ODP

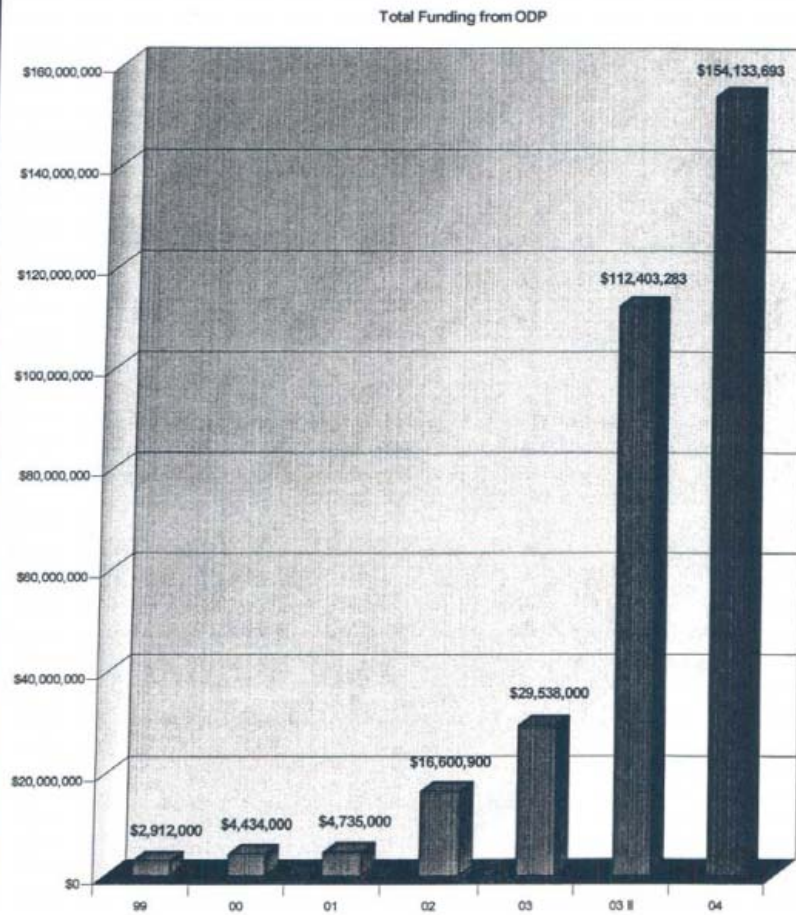
STATE HOMELAND SECURITY AND UASI FUNDING

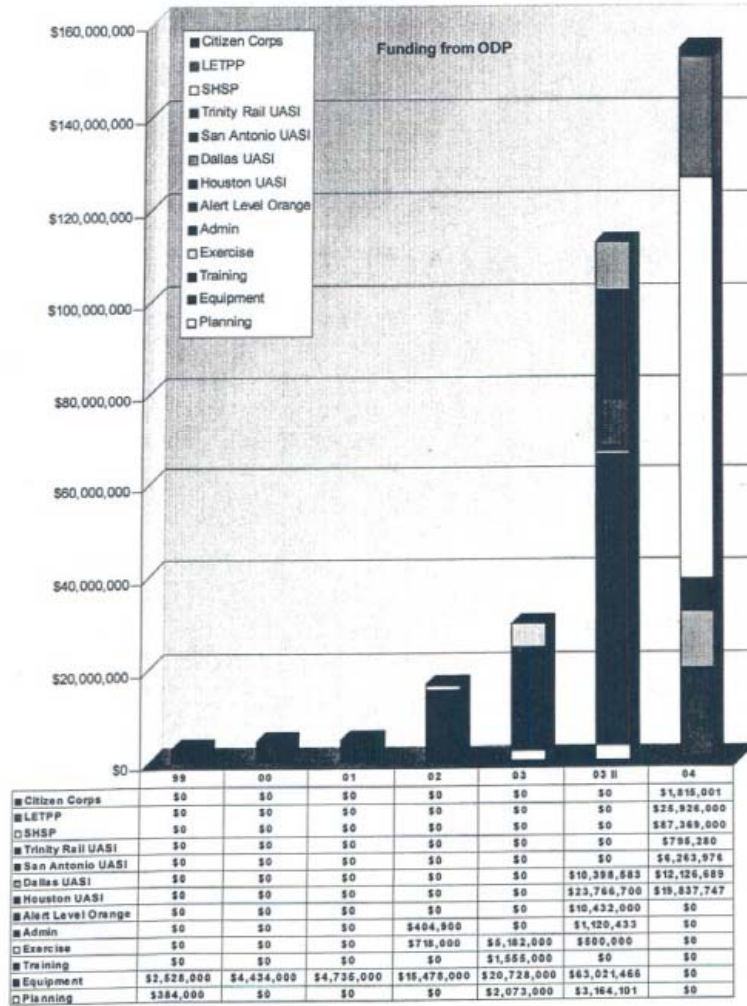
 **Note**

The first chart shows the total funding administered by the SAA for each year. The second chart displays a more detailed breakdown of the funding for each year. The 2004 grant is in the allocation process. When complete it will display amounts for categories such as equipment, training, and exercises as shown for other grant years.

 **Note**

The Urban Area Security Initiatives are included in the totals. TEEX has a key role in assisting the Urban Areas with assessments, strategy development, and acting as a facilitator. However decisions on distribution of UASI funds, consistent with the state and urban area strategies, are under control of the Urban Area and not the state.





Funding from ODP
State Homeland Security and UASI Funding

SECTION

4

REQUIREMENTS FOR THE
STATE AND URBAN AREAS
TO RECEIVE STATE
HOMELAND SECURITY
GRANT PROGRAM AND
UASI FUNDS

ASSESSMENT

COMPLETE A
STATEWIDE RISK,
CAPABILITIES, AND
NEEDS ASSESSMENT

- Assessments are done by cities and counties using ODP developed criteria and an on-line tool. Jurisdictions completed the assessment only once for both the SHSGP and UASI.
- The assessment includes:
 - Threat - Individuals or groups in the jurisdiction area
 - Vulnerability - Infrastructure risk in the area
 - Required Capabilities - equipment, organization, training, exercises
 - Capabilities - Current levels of equipment, organization, training, and exercises
 - Needs - Gap between required and current capabilities
- The first statewide assessment was completed in 2001.
- 95 jurisdictions, representing 62% of Texas' population completed the first assessment.
- The second assessment began in January 2003.
- 753 jurisdictions completed the assessment for 2002, 2003, and 2003 II funding representing 95% of Texas' population
- 928 jurisdictions completed the assessment for 2004 funding representing over 96% of Texas' population.

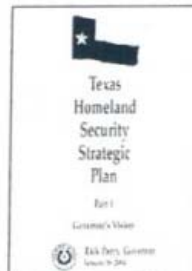
STRATEGY

HAVE AN ODP APPROVED STATEWIDE HOMELAND SECURITY STRATEGIC PLAN AND URBAN AREA STRATEGIC PLANS

- Each State was required to have an approved strategy to receive 2004 funds.
- The Texas Homeland Security Plan was approved by ODP on January 30, 2004. It was the first unconditionally approved State Strategy.
- The Houston and Dallas Urban Area Strategic Plans were approved by ODP on January 30, 2004.
- The San Antonio Urban Area Strategic Plan was approved by ODP on March 17, 2004.
- ODP requires a strategy covering 3 to 5 year period that includes information from the assessment, a strategic vision, a strategic focus, goals, objectives, implementation steps and an evaluation plan.
- Goals provide broad long term guidance.
- Objectives are measurable and have a time component.
- Implementation Steps provide detailed information for achieving objectives.

THE TEXAS THREE PART HOMELAND SECURITY STRATEGIC PLAN

- The Texas Homeland Security Strategic Plan provides broad strategic guidance from the Governor in Part I, Goals and Objectives (the ODP required format) in Part II, and the State Emergency Management Plan in Part III.



PROJECT FOCUS

THE 2004 STATE
HOMELAND
SECURITY GRANT
PROGRAM AND
URBAN AREAS
SECURITY INITIATIVE
GRANTS REQUIRE A
PROJECT FOCUS.

- Projects help ensure that grant expenditures improve Homeland Security capability.

- Examples of projects (not all inclusive):

Assess vulnerability of and harden critical infrastructure
Develop/enhance interoperable communications systems
Enhance capability to support international border and waterway security
Establish/enhance a public health surveillance system
Establish/enhance a terrorism intelligence/early warning system, center, or task force
Establish/enhance agro-terrorism preparedness capabilities
Establish/enhance Citizen Corps Councils
Establish/enhance emergency operations center
Establish/enhance explosive ordnance disposal units/bomb squads
Establish/enhance sustainable homeland security exercise program
Establish/enhance sustainable homeland security training program
Establish/enhance cyber security program
Build/enhance a pharmaceutical stockpile and distribution network
Establish/enhance citizen emergency preparedness awareness campaign
Establish/enhance public-private emergency preparedness program
Establish/enhance regional response teams

- Projects must be linked to strategic goals and objectives.
- Projects use solution areas of planning, equipping, training, and exercises to close gaps identified in the assessment.
- Projects should include a recommended funding amount and a breakdown of funding by discipline.
- When equipment is a selected solution area the project should include the broad categories of equipment the project will include.

SECTION

5

GRANT ALLOCATION IN
TEXAS

Basics

Grant Allocation in Texas

BASICS

ALLOCATION OF
FUNDING TO THE
STATES BY THE
DEPARTMENT OF
HOMELAND
SECURITY

State Homeland Security Grant Program (SHSGP)

The amount for each state was calculated using a base amount of .75 percent of the total allocation for the States (including the District of Columbia and the Commonwealth of Puerto Rico), and .25 percent of the total allocation for the U.S. Territories (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands), with the balance of funds being distributed on a population-share basis. Population figures were determined from 2002 U.S. Bureau of the Census data.

Urban Area Security Initiative

DHS calculated the UASI Program amounts with a formula using a combination of current threat estimates, critical assets within the urban area, and population density.

ELIGIBILITY *SHSGP*

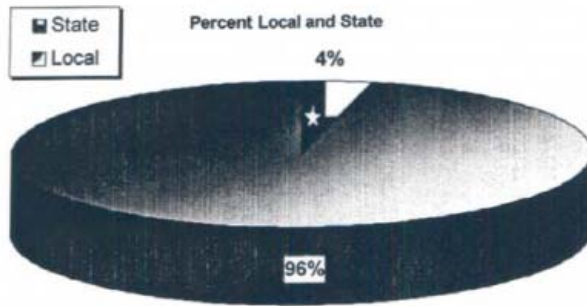
Texas counties, incorporated municipalities, and Federally recognized tribes, that complete the statewide assessment and have an Emergency Operations Plan are eligible for funding. Port Authorities, transit agencies, and school districts associated with eligible cities and counties may also receive funding. Regional Councils of Governments may receive grants for specific regional purposes.

UASI

Eligibility is the same as for the SHSGP except that eligibility is limited to jurisdictions within the defined Urban Area.

Eligibility of State Agencies

The amount of funding to state agencies can be no more than 20% of the total grant. Texas has awarded the majority of the money to local jurisdictions. The chart below shows the split between local and state in Texas through the 2003 Part II grants. Allocation to local jurisdictions from the 2004 grants will exceed 90%.



ALLOCATING FUNDING TO LOCAL JURISDICTIONS -SHSGP

CALCULATING REGIONAL AMOUNTS

2002, 2003, 2003 II, 2004 State Homeland Security Program

Regional funding was determined by an equal weighting of population and the number of jurisdictions in the region.

2004 Law Enforcement Terrorism Prevention Program

Regional funding is determined by a formula that allocates 45% based upon population, 10% based upon population density, and 45% based upon risk factors. This methodology reflects the move toward risk based allocations to the states in future grant years.

DETERMINING ALLOCATIONS TO LOCAL JURISDICTIONS 2002,2003,2003 II

2002, 2003, 2003 II Base Grant calculation

- 50% of each regions's funding was distributed by TEEX to eligible jurisdictions as Base Grants.
- Jurisdiction and COG assessments were used to calculate a score for each jurisdiction.
- The jurisdiction score determined the jurisdiction's percentage of the region's available base grant funding.

Council of Governments Role



Note

All funding decisions at the Council of Governments are made by the COG Governing Board which is comprised of local elected officials.

- Each COG Governing Board determined distribution of 50% of the regional allocations.
- COGs were allowed to distribute the funding to any eligible jurisdiction.
- COGs provided conditions with the regional allocations to ensure allocations were used to enhance regional response.



Note

The grant to a jurisdiction was the sum of the base grant and the regional allocation from the Council of Governments

DETERMINING
ALLOCATIONS TO
LOCAL
JURISDICTIONS
2004 STATE
HOMELAND
SECURITY
PROGRAM

2004 Base Grant Calculation

- 50% of each region's funding was used for calculation of base grant amounts.
- Jurisdiction and COG assessments were used to calculate a score for each jurisdiction.
- The jurisdiction score determined jurisdiction's calculated percentage of the region's available base grant funding.
- When the calculated base grant was less than \$15,000 the funding was placed under COG Governing Board control.
- Calculated base grants for jurisdictions with a population of less than 25,000 who had previously received 2002, 2003, or 2003 II funding were placed under COG Governing Board control.
- COG Governing Boards were able to give funding to any eligible jurisdiction, to include those with populations under 25,000.
- Intent was to allow local decisions through the COG Governing Boards on smaller grants amounts and to ensure that smaller jurisdictions would be able to utilize additional funding.

Council of Governments Role

- Each COG Governing Board determined distribution of the original 50% placed under COG control plus any funds shifted from base grant calculations to the regional fund.
- COG Governing Boards identified projects associated with regional funding. This complies with a requirement from DHS to link projects to the state strategy.

DETERMINING
ALLOCATIONS TO
LOCAL
JURISDICTIONS
2004 LAW
ENFORCEMENT
TERRORISM
PREVENTION
PROGRAM

2004 LETPP Base Grant Calculation

- 30% of each region's total LETPP funding will be distributed by TEEX as base grants.
- Base grants were calculated for jurisdictions that had populations greater than 25,000 population and that had Law Enforcement capability.
- Information from the statewide assessment by jurisdictions and Councils of Governments was used, as it was for the State Homeland Security Program, except that only Law Enforcement related capabilities were used from the COG assessment.

Council of Governments Role

- Each COG Governing Board will determine distribution of 70% of the total amount to the region.
- Program emphasis is on terrorism prevention.

NOTIFICATION

- COG Governing Boards will specify projects for allocations from the regional total.
- The senior elected official of a recipient jurisdiction receives a letter from TEEEX announcing the amount granted to the jurisdiction.
- TEEEX sends materials needed to accept and utilize the grant to the point of contact previously designated by the senior elected official.



Note

The Governor's Office through the Director of Homeland Security is the approval authority for grant allocations

**ALLOCATING FUNDING TO LOCAL JURISDICTIONS -
URBAN AREA SECURITY INITIATIVE (UASI)**

URBAN AREA
WORKING
DEVELOPS
RECOMMENDED
ALLOCATIONS

- Each Urban area has a working group to develop strategy and recommend funding allocations to jurisdictions in the defined Urban Area.
- The core city, core counties, and SAA must concur on all funding allocations.

**ALLOCATING FUNDING TO LOCAL JURISDICTIONS - 2004 CITIZEN CORPS
PROGRAM**

- Councils of Governments accept applications from local jurisdictions.
- Each COG consolidates and forwards the applications to the Texas Association of Regional Councils who reviews the applications and recommends funding for Citizen Corps projects.

SECTION

6

UTILIZING GRANT FUNDING

Utilizing Grant Funding
Authorized Equipment List (AEL)

AUTHORIZED EQUIPMENT LIST (AEL)

EQUIPMENT MUST BE ON THE AEL TO BE PURCHASED WITH STATE HOMELAND SECURITY GRANT PROGRAM OR UASI FUNDS

The AEL is provided by ODP. The range of available equipment has increased greatly since the list provided for the FY 1999-2001 Programs. The following chart shows the list and its evolution.

1999	Personal Protective Equipment
2000	Detection Equipment
2001	Decontamination Equipment Interoperable Communications Equipment (originally communications)
2002	<i>All of 1999-2001 Plus:</i> Explosive Device Mitigation and Remediation Equipment CBRNE Search and Rescue Equipment (originally WMD Technical Rescue Equipment) Physical Security Enhancement Equipment CBRNE Logistical Support Equipment (originally General Support Equipment) Medical Supplies and Limited Types of Pharmaceuticals
2003 2003 II	<i>All of 2002 Plus:</i> Terrorism Incident Prevention Equipment CBRNE Incident Response Vehicles CBRNE Reference Materials
2004	<i>All of 2003-2003 II Plus:</i> Agricultural Terrorism Prevention, Response and Mitigation Equipment CBRNE Response Watercraft CBRNE Aviation Equipment Cyber Security Enhancement Equipment Intervention Equipment (specialized law enforcement equipment) Other Authorized Equipment (includes equipment training, installation costs, maintenance costs, Multiple Integrated Laser Engagement System (MILES), shipping costs, sales tax)

PLANNING, TRAINING, AND EXERCISE FUNDING

- PLANNING** Planning funds may be used for assessments, strategy development, and plan development. Careful consideration must be taken to ensure that the funds are not used to supplant already funded functions.
- TRAINING** Training funds may be used to pay backfill overtime costs for attendance at ODP approved training, and for presenting ODP approved training.
- EXERCISES** Exercise funds may be used to pay exercise expenses and backfill overtime costs. The Texas WMD Exercise Program is the primary exercise program under the State Homeland Security Grant Program.

STEPS FOR A JURISDICTION AFTER GRANT AWARD

THE TEXAS SYSTEM IS DESIGNED TO ACCURATELY CAPTURE WHAT IS APPROVED AND PURCHASED WHILE GIVING FULL FLEXIBILITY IN PROCUREMENT METHODS.

- Sign the sub-recipient agreement to accept the grant and any special conditions.
- Develop projects for base grant portions of the total grant. Determine solution areas where funds will be used (Planning, Equipment, Training, Exercises). This is a new step for 2004.
- Create an equipment list utilizing the Defense Logistics Agency Prime Vendor web site and the SAA web site.
- Submit the list, on-line from the SAA web site, to their COG for approval.
- After COG and SAA approval indicate the purchase method for each item of equipment using the SAA web site. Purchase options are: Prime Vendor, Houston-Galveston Area (H-GAC) Council of Governments Cooperative Purchasing Program, or local purchase. A jurisdiction may use any or all of the methods.
- Order individual items of equipment using the purchase method selected.
- Provide shipping receipts for Prime Vendor Purchases and H-GAC items. (The Defense Logistics Agency and H-GAC will bill TEEX).
- For local purchases send shipping receipts and invoices showing an obligation to pay to TEEX who will make payment within three weeks. This will usually be before payment is due to the vendor. Special arrangements may be made in advance for short billing cycles. The intent is that a jurisdiction is not required to pay for items from local funds.
- Reimbursement for overtime backfill and other personnel costs is made upon submission of a request for payment by the jurisdiction (sub-grantee).

PURCHASING OPTIONS

DEFENSE LOGISTICS AGENCY PRIME VENDOR PROGRAM

This option is offered by the ODP in conjunction with this grant. The Defense Logistics Agency (DLA) Prime Vendor for the Texas area is Fisher Safety. This is an optional choice for jurisdictions. The Defense Logistics Agency directly bills TEEX when this option is used. Ordering is on-line.

HOUSTON GALVESTON AREA COUNCIL OF GOVERNMENTS COOPERATIVE PURCHASING PROGRAM

Vehicles and several communications system are available through this program. H-GAC directly bills TEEX for these items. Jurisdictions may also use this program as a local purchase option for items other than vehicles and the selected communications systems. H-GAC bills the jurisdiction when the cooperative purchasing program is used as a local purchase option.

LOCAL PURCHASE OPTION

Jurisdictions follow standard local purchasing practices to procure equipment. The responsibility to pay the vendor rests with the jurisdiction. TEEX will reimburse the jurisdiction upon receipt of a shipping receipt and an invoice showing an obligation to pay. The maximum time to process a request is three weeks. This will usually be inside the billing cycle for the vendor. Special arrangements can be made for short billing cycles. The intent is that a jurisdiction not "front" the money.

ONGOING RESPONSIBILITIES

TEEX

- Obtain training for jurisdictions in Texas from ODP resources.
- Institutionalize Awareness Training in Texas by developing programs to utilize academy and college resources.
- Deliver the Texas WMD Terrorism Exercise Program.
- Coordinate among agencies that have responsibilities in the strategy to ensure the strategy is accomplished.
- Conduct monitoring visits to selected grant recipients to provide assistance and training in obtaining and properly using available resources.
- Work with the Councils of Government to strengthen regionalism.
- Update the State Strategy as required.
- Provide grant management to support equipment, exercise, training and planning .
- Provide training and assistance in strategy development, training, and planning.

REGIONAL
COUNCILS OF
GOVERNMENTS

- Assist jurisdictions in completing Emergency Operations Plans.
- Assist jurisdictions in developing mutual aid agreements.
- Develop regional projects and allocate funding from new grant cycles.
- Assist jurisdictions in developing equipment requirements.
- Gather and consolidate Citizen Corps proposals.
- Assist in coordination of monitoring visits.

LOCAL
JURISDICTIONS

- Request needed training.
- Maintain accountability for equipment.
- Maintain equipment.
- Participate in monitoring visits (these are not audits).
- Maintain a current Emergency Operations Plan.
- Update assessment information if requested.
- Develop and maintain mutual aid agreements that will enhance regional capability.

ADDITIONAL INFORMATION

You can contact TEEX by E-mail: support@texasdpa.com or by phone at 979-458-6815.

Appendix D

State and Regions

The Texas Department of Health (TDH) began operations in the late 1800s as the Texas Quarantine Department, with its main responsibilities being disease quarantine and sanitation. TDH underwent many additions and reorganizations in the subsequent years, adding vital statistics collection and numerous health-related programs. Today, TDH performs many public health services such as disease surveillance, laboratory analysis, health promotion and education, consultation, health planning, data collection and analysis, vital statistics, and environmental regulation. TDH also provides direct health care services through its regional offices and network of clinics in rural areas without local health departments or other local providers.

The public health regions were initiated in the 1970s after a need was recognized for regional services spread around the state. The public health regions are extensions of TDH and are supported by federal and state funds. The regional boundaries have been redrawn several times, and there are currently eleven public health regions in Texas combined under eight directors (who by law must be physicians). The locations of the regional offices are Lubbock and Canyon (PHR 1); Arlington, Abilene, and Wichita Falls (PHR 2 and 3); Tyler (PHR 4 and 5 North); Houston and Beaumont (PHR 6 and 5 South); Temple and Austin (PHR 7); San Antonio and Uvalde (PHR 8); El Paso, Midland, and San Angelo (PHR 9 and 10); and Harlingen and Corpus Christi (PHR 11). See Figure 2 for a map showing the regional boundaries, headquarters, and additional offices. The regions' main purpose, then as well as now, was to provide public health services in areas with no local health departments, including core public health services, direct health care, and regulatory services. Regional offices were also designed to provide assistance to the LHDs in their regions, specially in emergencies.

Public health regions provide a variety of services, such as the Birth Defects Monitoring System, dental care, emergency medical services (EMS) planning and provider certification, drug and medical device safety, general sanitation, immunizations, meat inspection, tobacco prevention, tuberculosis control, and many more (see Table 2 for summary). Most of the regions offer the same programs, except for special programs addressing problems specific to certain regions, such as border health and seafood safety, or programs that are operated out of a few regions only, such as the cancer registry. For Fiscal Year 1998, TDH is funding a total of 45 regional programs with a total budget of almost \$103 million, including both state and federal funds.¹³ Each of the regions' budgets is between about even and 16 million dollars for the 30 to 40 programs it operates. The regional programs coordinate with TDH headquarters and with local health departments and other health agencies in the region to give technical advice and training in these areas. The regional programs offer back-up support in places that already have local entities providing these services and they perform some public health services in areas with no local public health presence. See Appendix C for profiles of each region, along with other data.



The regions' main purpose is to provide public health services in areas with no local health departments and to provide assistance to the local health departments in their regions.

Appendix E



PREPARING TEXAS FOR A PUBLIC HEALTH EMERGENCY:
GETTING THE BEST RESULT FROM FEDERAL DOLLARS

4/5/04

State and Local Coordination: Preparing for the Strategic National Stockpile (SNS)

- Coordination with partners ensures that medical and pharmaceutical supplies delivered by the federal government in a public health emergency quickly reach all those in need.
- TDH leads the effort by facilitating planning committees that include stakeholders:
 - Local government officials
 - Emergency management and first responders
 - Community leaders
 - Medical professionals and hospitals
- CDC, U.S Marshals and TDH have provided training
- Each Public Health Region is conducting exercises in its area, coordinating with local stakeholders, to test and refine deployment plans

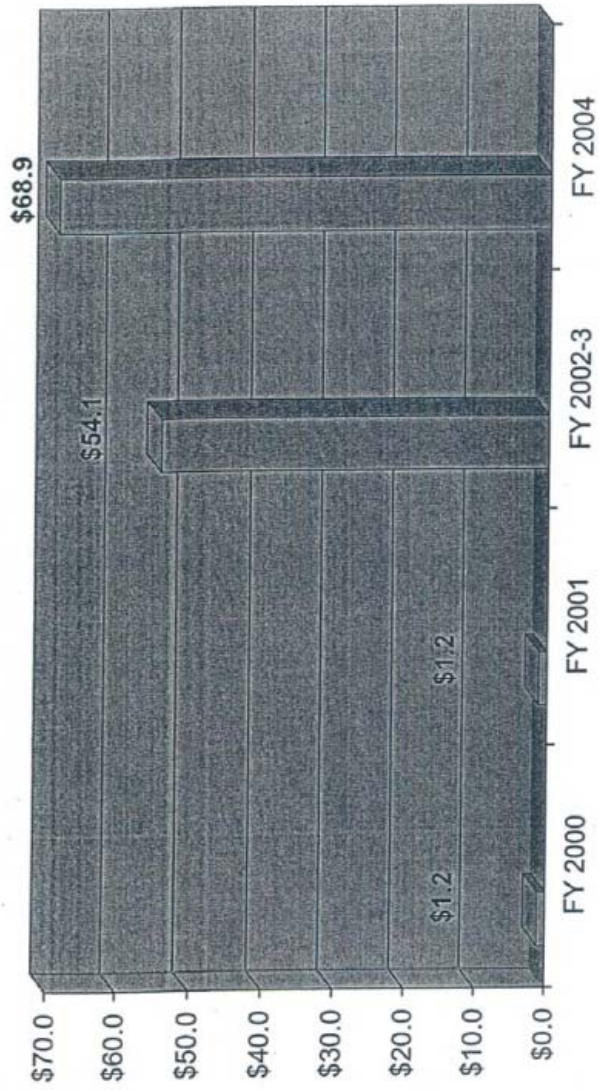
4/5/04

General Objectives

- Strengthen community response through local health departments and public health regions
- Timely detection of threats and epidemiologic response
- Develop the Health Alert Network (HAN) to communicate with providers and local health agencies
- Enhance the state's laboratory capacity
- General Preparedness: quality assurance, planning, risk communications, workforce development
- Ensure access to medical supplies and resources
- Prepare for a smallpox outbreak
- Strengthen communication and planning between Texas and Mexico
- Enhance hospital preparedness

4/5/04

CDC Funding



4/5/04

Timely Detection of Threats and Epidemiologic Response

- Epidemiology and surveillance: \$3.6 million in FY 2002-3 and \$3.4 million in FY 2004
 - Enhance capacity to detect unusual events and disease outbreaks
 - Eight regional epidemiology response teams
 - Training physicians, nurses, medical examiners and veterinarians regarding notifiable disease reporting
 - Comprehensive and timely electronic disease surveillance systems

4/5/04

Enhance the State's Laboratory Capacity

- \$5.3 million in FY 2002-2003 and \$5.3 million in FY 2004
- Rapid and accurate diagnostic testing for select biologic agents at the 10 Laboratory Response Network Laboratories
- Developing capacity to measure select chemical threat agents in human specimens
- Round-the-clock response

4/5/04

*Ensuring Access to Medical Resources and Supplies –
Strategic National Stockpile (SNS)*

- Total of \$4.7 million -- \$1.6 million in FY 2004 for coordination of statewide activities, especially planning and exercises
- \$3.1 million included for this purpose in allocations to PHRs and LHDs
 - Regional SNS workshops
 - Regional planning committees
 - Identification of receiving warehouses and mass dispensing sites
 - Volunteer recruitment
 - Coordination with local, regional and state emergency management partners during planning

4/5/04

Binational Communication Between Texas and Mexico

- \$1.5 million in FY 2004
- Improve coordination and communication across the border
- Multiple Texas-Mexico public health preparedness and response forums addressing the need for:
 - Comprehensive binational public health assessments
 - Cooperative development of border response plans
 - Mutual aid agreements
 - Binational exercises to test and evaluate plans
- First forum (El Paso-Ciudad Juarez) held in late March

Hospital Preparedness

- \$6.8 million in FY 2002-3 and \$28.2 million in FY 2004 for regional hospital response planning and preparedness
- FY 2004: One-time special funding to ten largest cities nationwide
 - \$1.8 million for Houston, Dallas and San Antonio (\$600,000 each)
 - To enhance hospital preparedness in large urban centers
- \$1.5 million in FY 2002-3 and \$1.4 million in FY 2004 for general preparedness:
 - Quality assurance
 - Planning
 - Risk communication
 - Workforce development

4/5/04

**Use of Federal Preparedness Funds from CDC and HRSA,
Fiscal Year 2002 through 2004**

	Grant Awards Fiscal Years 2002-3 \$26.9	Grant Awards Fiscal Year 2004 \$32.7
CDC		
Improve response of Local Health Departments (LHDs), including regional allocations for SNS and smallpox	\$9.2	\$10.3
Improve response of TDH Public Health Regions in areas without LHDs, including regional allocations for SNS and smallpox	\$3.6	\$3.4
Strengthen epidemiology and surveillance	\$5.6	\$5.0
Develop Health Alert Network (HAN)	\$5.3	\$5.3
Improve testing capacity at laboratories	\$3.5	\$5.7
General Preparedness - Quality assurance, planning, risk communications, workforce development		
Strategic National Stockpile (SNS)		\$1.6
Smallpox		\$3.4
Binational communication and response		\$1.5
Total	<u>\$54.1</u>	<u>\$68.9</u>
HRSA		
Strengthen hospitals' response capacity	\$6.8	\$28.2
General Preparedness - Quality assurance, planning, risk communication, workforce development	\$1.5	\$1.4
Non-Hospital Projects-Community planning, communications, workforce		\$3.7
Special One-time funding to Houston, Dallas, and San Antonio		\$1.8
Total	<u>\$8.3</u>	<u>\$35.1</u>
Total, FY 2002-2004	<u>\$62.4</u>	<u>\$104.0</u>

All amounts are in millions of dollars.

4/5/04

Appendix F

From: Gerry Dube
Sent: Monday, November 29, 2004 8:20 AM
To: Richard Wright_SC
Subject: Re: Homeland Security funds

Hello Rich,
Would be happy to send you a copy of the paper. I'm making a few edits at the request of the Lt. Governor's Office today. Just got back from the Thanksgiving Holiday with my family so give me a little time and I'll be in touch shortly.

Federal funds to local government entities were primarily firefighter grants and airport grants, and some of the early urban area security grants and urban transportation grants. There's certainly more. Part of the problem is that some of the funds are buried in regular, direct federal grants to universities and local communities. Also, all of these funds were sent directly to the receiving entities and not through states. It's really hard to pin down a number for Texas, but my guess is somewhere between \$350.0 mil and \$500 mil. over the last three years. Of course, if it doesn't come to through the state treasury or if it is appropriated by Congress between Texas sessions, it just never gets figured into the state budget.

The state will be able to keep better tabs on most of those grant funds from now on because many of these grants will pass through the Texas Engineering Extension Service before being distributed to local entities. Many universities will continue to receive grants directly, but they are required to report and estimate homeland security funding starting this session and must report new grants over \$5.0 million if they were not anticipated during the legislative session. Firefighter grants are going to be incorporated into the "Homeland Security" grant structure. Airport grants are phasing out as airports make necessary changes and purchase required security equipment.

Give me a call if you want to discuss or investigate further.
Gerry Dube
512/463-1177

>>> Richard Wright_SC 11/23/2004 10:37:13 AM >>>
Gerry,

I was not able to attend the BOR that pertained to Homeland Security. You mentioned that you would discuss your white paper regarding agency on-going expenses resulting from initial DHS funds. Can you provide me with a copy of that paper at this time, or is it still restricted?

Additionally, were you able to determine (estimate) how much money entities around the state have or are currently receiving outside of the appropriations process?

Thanks,

Rich Wright
Senate Finance Committee
512.463.0370
512.463.5752 fax

I-64

Report on the Review
of
Fees at State Regulatory Agencies

EXECUTIVE SUMMARY

Article VIII agencies are the primary regulatory agencies of the state. The nature of the services these agencies provide to Texas businesses and individuals enables them to charge a variety of fees, fines, and penalties to support their own functions and possibly to contribute revenue to the state. These 36 agencies are funded through various arrangements, with some agencies making a net contribution to the state, others requiring additional state funds, and others costing the state no net revenue.

The Committee examined the various groups of agencies, a recent history of their fee schedules, and the impact to the overall state budget to formulate recommendations for the next regular session.

Summary of Recommendations

1. Consider any Sunset Commission recommendation to merge additional agencies under the Texas Department of Licensing and Regulation to achieve efficiencies for licensees.
2. Include an Article IX rider that requires each regulatory entity to report the amount of fees, fines, and penalties assessed and collected to the LBB on an annual basis.
3. Give agencies the incentive to collect fines and penalties in an efficient manner by allowing each agency to retain a portions of the money collected.

PROCEDURAL BACKGROUND

The Senate Finance Committee was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that are identified. The Senate Finance Committee (the Committee) met in accordance with the following General Government interim charge as follows:

Review of Fees. Conduct comprehensive review of and report on fees at state regulatory agencies, including historical information on fee amount, expenditures, appropriations, populations affected and general impact to the state budget.

The Committee met pursuant to the aforementioned interim charge in a public hearing in Austin, Texas, on April 12, 2004, to consider invited testimony provided by the Texas Department of Licensing and Regulation, the Texas State Board of Medical Examiners, the Texas Department of Banking, the Public Utility Commission, the Texas Board of Nurse Examiners, the Texas Department of Insurance, and the Texas Legislative Budget Board. The Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas, on July 20, 2004; however, none was provided.

The Committee extends its thanks to those who participated in the hearing, and assisted with or made presentations before the Committee.

BACKGROUND

The regulatory model in Texas generally requires regulatory agencies to assess fees in an amount sufficient to cover their operations.¹ A list of agencies to whom this rider applies appears in Appendix 1, pages II-10 and II-11. There are 3 agencies not required to cover their cost of operations. The State Office of Administrative Hearings, the Public Utility Commission, and the Office of Public Utility Counsel require General Revenue appropriations above the revenue they collect to operate.

A number of regulatory agencies are net contributors to the state. These agencies raise more revenue than required to cover the costs of their programs. This creates an undedicated revenue stream available to the legislature to fund other important state functions. The net revenue generated by these agencies in FY 2002, 2003 and 2004 was \$185,079,627, \$94,955,940 and \$165,746,310, respectively. The contributions made by these agencies, and ultimately the licensees, to General Revenue have traditionally been viewed as a premium paid for the privilege of doing business in Texas.

Through the Self-Directed, Semi-Independent (SDSI) pilot project, the legislature has allowed three net contributing agencies to operate independently of the appropriations process (Board of Public Accountancy, Board of Architectural Examiners, and the Board of Professional Engineers). Each agency can set its own fees but is required to annually remit a certain amount to the General Revenue Fund. This amount is determined by the Comptroller of Public Accounts and is an estimate based on historical

¹ General Appropriations Act, 78th Legislature, Article VIII, *Special Provisions Relating to All Regulatory Agencies*, Sec. 2, *Appropriations Limited to Revenue Collections*, p. VIII-87.

trends of projected net contributions were the agencies not part of this pilot. This project was extended by the 78th Legislature until September 2009.²

There are 6 agencies whose revenues equal their appropriations causing no net gain or loss to the state General Revenue. These agencies are referred to as "self-leveling" or "self-correcting" agencies. Self-leveling agencies are required by statute to match revenue with the costs of appropriations. Amounts collected over and above agency costs are returned to licensees through reduced assessments. These over-collections may not be used by the legislature to fund other government programs. On the other hand, if revenues are too low to match expenses, assessments must be raised in order for the agencies to break even. Self-leveling agencies include the Department of Banking, the Office of Consumer Credit Commissioner, the Credit Union Department, the Savings and Loan Department, the Department of Insurance, and the Worker's Compensation Commission.

FUNCTIONAL LICENSING MODEL

Regulated individuals are frequently willing to accept higher fees in order to improve the effectiveness of their regulatory programs. However, new approaches to licensing and regulation have created efficiencies which may help alleviate the need for regular fee increases. Utilizing its functional licensing model, the Texas Department of Licensing and Regulation (TDLR) has achieved very positive results not only in its regulatory goals, but in its ability to reach them in an efficient manner.

Since the agency is organized along functional lines, TDLR's licensing resources can be concentrated when peak loads occur in a particular program. This avoids the cost

² Additional information on SDSI agencies p. II-12.

of having to staff individual programs at levels sufficient to handle seasonal or periodic peaks all year. Further, as the license base for a functionally aligned agency grows, administrative costs are spread over a larger base, reducing administrative cost per license. Not only does this method distribute fixed costs between regulatory agencies, it has in some cases allowed for certain fee decreases. As directed by the 78th Legislature, TDLR has taken on three new programs with more than 100,000 new licensees, while reducing fees in 12 of the 22 programs.³ The fee reductions ranged from 10% to as high as 75%. In addition TDLR met or exceeded over 94% of the agency's key performance measures in fiscal years 2002 and 2003.

GENERAL IMPACT TO STATE BUDGET

Appropriations to regulatory agencies in 2004 - 05 biennial amount to .7% of the total state budget. This translates to \$768.9 million All Funds, and \$392.9 million in General Revenue.⁴ As mentioned earlier, the net revenue generated by these agencies in FY 2002, 2003 and 2004 were \$185,079,627, \$94,955,940 and \$165,746,310 respectively. To the extent it continues to fall within the policy goals of the legislature, a portion of licensing assessments will continue to be used to fund general government.

HISTORICAL INFORMATION ON FEE AMOUNT

Historical information on fees and penalties is not readily available . The LBB has requested this information from agencies and will provide it as soon as possible.

³ TDLR press release, pp. II-23 - II-24.

⁴ Legislative Budget Board, *Fiscal Size Up*, 2004-2005 Biennium, pp. 4-5.

EXPENDITURES AND APPROPRIATIONS

Appendix 1, pp. II-20 - II-23 provide detailed documentation pertaining to Article VIII expenditures and appropriations.

RECOMMENDATIONS

1. Consider any Sunset Commission recommendation to merge additional agencies under the Texas Department of Licensing and Regulation to achieve efficiencies for licensees.
2. Include an Article IX rider that requires each regulatory entity to report the amount of fees, fines, and penalties assessed and collected to the LBB on an annual basis.
3. Give agencies the incentive to collect fines and penalties in an efficient manner by allowing each agency to retain a portions of the money collected.

Appendix A

REVIEW OF REGULATORY FEES AND FUNDING

- ◆ In general, Article VIII agencies are required to generate enough revenue to cover the costs of operating the agency. Related statutes and riders are as follows:
 - ◆ Section 2 (Special Provisions), of Article VIII, Appropriations Limited to Revenue Collections. Provision was added to the 1998-99 General Appropriations Act by the 75th Legislature.
 - ◆ Department of Insurance, Rider 6, Appropriations Limited to Revenue Collections. Provision was added to the 1996-97 General Appropriations Act by the 74th Legislature.
 - ◆ Texas Worker's Compensation Commission, Rider 4, Appropriations Limited to Revenue Collections. Provision was added to the 1996-97 General Appropriations Act by the 74th Legislature.
 - ◆ Securities Board, House Bill 1840, 78th Legislature, Regular Session.
 - ◆ Residential Construction Commission, Section 11.61, Article IX, 2004-05 General Appropriations Act.

REVIEW OF REGULATORY FEES AND FUNDING

Sec. 2. Appropriations Limited to Revenue Collections. It is the intent of the Legislature that fees, fines, and other miscellaneous revenues as authorized and generated by each of the following agencies cover, at a minimum, the cost of appropriations made above and elsewhere in this Act to those agencies as well as an amount equal to the amount identified in the informational item "Other Direct and Indirect Costs Appropriated Elsewhere in This Act." Contingent upon the continuation of the Self-directed Semi-independent Agency Project Act (Article 8930, Vernon's Annotated Texas Civil Statutes) by the Seventy-eighth Legislature relating to the operation of the self-directed semi-independent agency pilot project, the Board of Public Accountancy, the Board of Professional Engineers, and the Board of Architectural Examiners shall be removed from this section.

Board of Public Accountancy
Board of Architectural Examiners
Board of Barber Examiners
Board of Chiropractic Examiners
Cosmetology Commission
Credit Union Department
Board of Dental Examiners
Board of Professional Engineers
Department of Banking
Office of Consumer Credit Commissioner
Savings and Loan Department
Funeral Service Commission

REVIEW OF REGULATORY FEES AND FUNDING

- Board of Professional Geoscientists
- Department of Insurance
- Office of Public Insurance Counsel
- Board of Professional Land Surveying
- Department of Licensing and Regulation
- Board of Medical Examiners
- Board of Nurse Examiners
- Board of Vocational Nurse Examiners
- Optometry Board
- Structural Pest Control Board
- Board of Pharmacy
- Executive Council of Physical Therapy and Occupational Therapy Examiners
- Board of Plumbing Examiners
- Board of Podiatric Medical Examiners
- Board of Examiners of Psychologists
- Racing Commission
- Real Estate Commission
- Board of Tax Professional Examiners
- Board of Veterinary Medical Examiners
- Research and Oversight Council on Workers Compensation

In the event that actual and/or projected revenue collections are insufficient to offset the costs identified by this provision, the Legislative Budget Board and Governor may direct that the Comptroller of Public Accounts reduce the appropriation authority provided by this Act to be within the amount of fee revenue expected to be available.

Source: 2004-05 General Appropriations Act, Page VIII-87

REVIEW OF REGULATORY FEES AND FUNDING

- ◆ Types of fees and revenues
 - ◆ Individual Professional Fees - Barber License, Funeral Director, Plumbers, Physician, etc.
 - ◆ Professional Facility Fees - Barber Shop, Salon, Pest Control Business, Kennel, etc.
 - ◆ Maintenance Taxes
 - ◆ Department of Insurance - A tax, based on a rate, set as a percentage of premium volume is assessed on nine separate types of insurance.

Texas Worker's Compensation Commission - A tax is charged on gross premiums collected by worker's compensation insurance carriers. The rate is set in October and is currently 1.125 percent.
 - ◆ Financial Institution Regulatory Fees - Depending on the size and type of institution, examination charges are based on flat fees or a sliding scale based on size (assets) of the institution.

REVIEW OF REGULATORY FEES AND FUNDING

- ◆ Fees and Revenues not counted toward agency expenses.
- ◆ \$200 Professional Fee. Established in 1991 and originally deposited into the Foundation School Fund (25%) and General Revenue Fund (75%). Dedication expired in August of 1995 and all revenue is currently deposited directly into the General Revenue Fund.
- ◆ Gross Premium Tax on Insurance. Taxes are charged on gross insurance premiums across various types of insurance. Revenue is deposited directly into the General Revenue Fund with 25 percent allocated to the Foundation School Fund.
- ◆ Securities Fees. Certain fees for each securities dealer, salesman registration or certificate issued. Revenue is deposited directly into the General Revenue Fund.

REVIEW OF REGULATORY FEES AND FUNDING

- ◆ Exceptions to the general rule: Agencies not required to cover the cost of its operations.

- ◆ State Office of Administrative Hearings
- ◆ Public Utilities Commission
- ◆ Office of Public Utility Counsel

- ◆ Self-Directed Semi-Independent Project. This project was established by SB 1438 by the 76th Legislature and generally allows the participants to operate outside the General Appropriations Act. Funds are deposited in the Safe Keeping Trust Account and overseen by the Comptroller's Office. All revenue and expenditures go through the account. Senate Bill 1382 in the 78th Legislature extended the pilot until September of 2009.

- ◆ Board of Public Accountancy
- ◆ Board of Architectural Examiners
- ◆ Board of Professional Engineers

REVIEW OF REGULATORY FEES AND FUNDING

- ◆ Compliance with Appropriations Limited to Revenue Collections Rider. The tables on the next two pages provide data for 2003, 2004 and 2005 under the following areas:
 - ◆ "Appropriations Subject to Rider": General Revenue related appropriations made to the agency in the General Appropriations Act or by other legislation.
 - ◆ "Other Direct and Indirect Costs": Estimated costs appropriated to other agencies (employee benefits, facilities cost) on behalf of the Article VIII agency.
 - ◆ "Total Subject to Rider": Direct appropriations plus the other direct and indirect costs.
 - ◆ "Collections/Biennial Estimated Revenue": Generally fees collected by the agency and deposited into General Revenue related funds.
 - ◆ "Difference": Projected cost or contribution of the agency to the General Revenue related funds.

Compliance with Appropriations Limited to Revenue Collections Rider

Agency	Appropriations Subject to Rider		Other Direct and Indirect Costs		Total Subject to Rider		Collections		Percent of Total		Difference
	2003	2003	2003	2003	2003	2003	2003	2003	2003	2003	
Board of Public Accountancy	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Board of Architectural Examiners	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Board of Barber Examiners	802,096	286,586	286,586	888,684	888,684	969,105	969,105	109.0%	80,421	N/A	
Board of Chiropractic Examiners	327,430	144,484	144,484	471,914	471,914	1,104,423	1,104,423	234.0%	327,213	N/A	
Cosmetology Commission	2,008,688	790,103	790,103	2,798,791	2,798,791	7,994,008	7,994,008	285.6%	5,195,217	N/A	
Credit Union Department	1,489,142	361,056	361,056	1,850,198	1,850,198	5,081,907	5,081,907	274.7%	3,231,709	N/A	
Board of Dental Examiners	1,317,684	429,997	429,997	1,747,681	1,747,681	2,360,575	2,360,575	135.4%	618,894	N/A	
Board of Registration of Professional Engineers	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Department of Banking*	10,585,107	2,140,517	2,140,517	12,725,624	12,725,624	12,505,188	12,505,188	98.3%	(220,436)	N/A	
Consumer Credit Commissioner*	2,816,755	612,034	612,034	3,428,789	3,428,789	9,404,530	9,404,530	274.3%	5,975,741	N/A	
Savings and Loan Department**	1,933,946	376,912	376,912	2,212,758	2,212,758	3,342,857	3,342,857	151.1%	1,130,099	N/A	
Funeral Services Commission	751,389	120,405	120,405	871,794	871,794	2,336,637	2,336,637	268.0%	1,464,843	N/A	
Board of Geoscientists	733,735	N/A	N/A	733,735	733,735	N/A	N/A	N/A	N/A	N/A	
Department of Insurance*	47,535,152	17,520,358	17,520,358	65,055,510	65,055,510	87,022,076	87,022,076	133.8%	21,966,566	N/A	
Office of Public Insurance Counsel	1,143,154	333,742	333,742	1,476,896	1,476,896	1,796,215	1,796,215	121.6%	319,319	N/A	
Board of Professional Land Surveying	334,857	69,882	69,882	404,739	404,739	508,688	508,688	125.7%	104,029	N/A	
Department of Licensing and Regulation	9,864,139	2,347,852	2,347,852	12,311,991	12,311,991	12,505,188	12,505,188	101.6%	193,197	N/A	
Board of Medical Examiners	5,308,217	1,658,589	1,658,589	6,966,806	6,966,806	10,494,316	10,494,316	150.6%	3,527,510	N/A	
Board of Nurse Examiners**	2,472,692	847,751	847,751	3,320,443	3,320,443	5,081,907	5,081,907	153.0%	1,761,464	N/A	
Board of Vocational Nurse Examiners**	1,370,037	350,004	350,004	1,720,041	1,720,041	2,260,418	2,260,418	131.4%	540,377	N/A	
Optometry Board	334,802	117,015	117,015	451,817	451,817	516,412	516,412	114.3%	64,595	N/A	
Structural Pest Control Board	1,210,341	446,940	446,940	1,659,281	1,659,281	2,180,895	2,180,895	131.4%	521,614	N/A	
Board of Pharmacy	2,899,475	768,973	768,973	3,668,348	3,668,348	3,936,801	3,936,801	107.3%	268,453	N/A	
Council of Physical & Occupational Therapy Examiners	735,252	259,353	259,353	994,605	994,605	2,511,257	2,511,257	252.5%	1,516,662	N/A	
Board of Plumbing Examiners	1,646,914	416,576	416,576	2,063,590	2,063,590	2,476,679	2,476,679	120.0%	413,089	N/A	
Board of Podiatric Medical Examiners	211,407	86,984	86,984	298,391	298,391	389,225	389,225	130.4%	90,834	N/A	
Board of Psychologists	627,636	195,639	195,639	823,275	823,275	1,065,264	1,065,264	129.4%	241,989	N/A	
Racing Commission	9,973,223	1,004,927	1,004,927	10,978,150	10,978,150	10,629,798	10,629,798	96.8%	(348,352)	N/A	
Real Estate Commission	4,520,886	1,193,446	1,193,446	5,714,332	5,714,332	7,110,865	7,110,865	124.5%	1,402,533	N/A	
Residential Construction Commission	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Securities Board	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Board of Tax Professional Examiners	164,630	75,340	75,340	239,970	239,970	252,680	252,680	105.3%	12,710	N/A	
Public Utility Commission	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Office of Public Utility Counsel	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Board of Veterinary Medical Examiners	594,030	171,175	171,175	765,205	765,205	880,194	880,194	115.0%	114,989	N/A	
Workers Compensation Commission*	49,853,332	11,482,075	11,482,075	61,345,407	61,345,407	72,790,611	72,790,611	118.7%	11,445,204	N/A	

* Agency is "self leveling" and is required by statute to match revenue with costs.

** Now combined into one agency pursuant to HB 1483.

Compliance with Appropriations Limited to Revenue Collections Rider

Agency	Appropriations Subject to Rider		Other Direct and Indirect Costs		Total Subject to Rider		Biennial Revenue Estimate		Percent of Total		Biennial Difference	
	2004-05		2004-05		2004-05		2004-05		2004-05		2004-05	
Board of Public Accountancy	N/A		N/A		N/A		N/A		N/A		N/A	
Board of Architectural Examiners	1,154,352		489,202		1,643,554		1,853,000		N/A		N/A	
Board of Barber Examiners	654,426		280,267		934,693		2,220,000		112.7%		1,305,307	
Board of Chiropractic Examiners	4,003,466		1,626,876		5,630,342		13,440,000		236.7%		7,809,658	
Cosmetology Commission	3,356,811		712,278		4,071,089		3,666,728		90.1%		(402,361)	
Credit Union Department	2,762,631		919,425		3,682,056		4,327,000		117.5%		644,944	
Board of Dental Examiners	N/A		N/A		N/A		N/A		N/A		N/A	
Department of Registration of Professional Engineers	22,636,395		4,463,118		27,101,513		23,874,000		88.1%		(3,227,513)	
Department of Banking*	6,856,566		1,251,936		8,108,502		6,300,000		77.7%		(1,808,502)	
Savings and Loan Department*	7,448,002		1,190,100		8,638,102		4,304,000		49.8%		(4,334,102)	
Funeral Services Commission	1,171,183		288,354		1,459,537		2,426,000		166.2%		966,463	
Board of Geoscientists	897,907		N/A		897,907		1,840,000		204.9%		942,093	
Department of Insurance*	103,750,416		37,999,005		141,749,421		150,625,000		106.3%		8,875,579	
Office of Public Insurance Counsel	2,027,066		629,874		2,657,040		4,000,000		150.5%		1,342,960	
Board of Professional Land Surveying	689,672		134,760		824,432		962,000		116.7%		137,568	
Department of Licensing and Regulation	18,808,507		4,585,188		23,393,695		27,853,000		119.1%		4,459,305	
Board of Medical Examiners	16,895,018		3,215,353		20,050,371		20,786,000		103.7%		735,629	
Board of Nurse Examiners**	4,580,509		1,466,916		6,047,425		9,512,000		157.3%		3,464,575	
Board of Vocational Nurse Examiners**	2,568,299		772,648		3,340,947		4,410,000		132.0%		1,069,053	
Optometry Board	677,252		254,006		931,258		1,087,000		116.7%		155,742	
Structural Pest Control Board	2,436,324		746,178		3,182,502		4,510,000		141.6%		1,327,498	
Board of Pharmacy	6,526,183		1,614,704		8,140,887		8,032,000		98.7%		(108,887)	
Council of Physical & Occupational Therapy Examiners	1,681,752		513,367		2,195,119		4,800,000		218.7%		2,604,881	
Board of Plumbing Examiners	3,119,038		700,432		3,819,470		4,750,000		124.4%		930,530	
Board of Podiatric Medical Examiners	407,949		149,659		557,608		744,000		133.4%		186,392	
Board of Psychologists	1,311,127		397,079		1,708,206		2,006,000		117.4%		297,794	
Racing Commission	19,659,809		1,826,979		21,486,788		24,919,000		116.0%		3,432,212	
Real Estate Commission	8,834,842		1,981,347		10,766,189		10,756,000		99.9%		(10,189)	
Securities Board*	10,533,360		N/A		10,533,360		10,533,360		100.0%		0	
Residential Construction Commission	7,008,072		N/A		7,008,072		7,008,072		100.0%		0	
Board of Tax Professional Examiners	326,636		158,072		484,708		474,000		97.8%		(10,708)	
Public Utility Commission	N/A		N/A		N/A		N/A		N/A		N/A	
Office of Public Utility Counsel	1,185,864		325,896		1,511,760		1,732,000		114.6%		220,240	
Board of Veterinary Medical Examiners	106,053,461		22,411,024		128,464,485		121,276,000		94.4%		(7,188,485)	
Workers Compensation Commission*												

* Agency is "self leveling" and is required by statute to match revenue with costs.

** Now combined into one agency pursuant to HB 1483.

REVIEW OF REGULATORY FEES AND FUNDING

- ◆ Contingent Revenue Riders
 - ◆ Additional appropriations are made to the agency contingent on the agency increasing revenue above the Comptroller's revenue estimate in a similar amount.
 - ◆ Requires the Comptroller to issue a "finding of fact" that the additional revenues will be generated before the appropriations are released.
 - ◆ The agency's contribution to the General Revenue Fund is preserved.
- ◆ Regulatory Response Riders (Savings and Loan Department, Credit Union Department and Department of Banking)

REVIEW OF REGULATORY FEES AND FUNDING

- ◆ **Contingent Revenue.** Of the amounts appropriated above to the Texas State Board of Dental Examiners in A.I.1. Strategy: Complaint Resolution, the amount of \$328,245 in fiscal year 2004 and \$207,625 in fiscal year 2005 is contingent upon the Texas State Board of Dental Examiners assessing fees sufficient to generate, during the 2004-05 biennium, \$328,245 in excess of \$2,018,000 (Object Code 3562) in fiscal year 2004 and \$207,625 in excess of \$2,077,000 (Object Code 3562) in fiscal year 2005, contained in the Comptroller of Public Accounts' Biennial Revenue Estimate. Also contingent upon the Texas State Board of Dental Examiners meeting the above revenue target, the "Number of Full-time Equivalent Positions (FTE)" figure indicated above is hereby increased by 5 in each fiscal year. The Texas State Board of Dental Examiners, upon completion of necessary actions to assess or increase such additional fees, shall furnish copies of the Texas State Board of Dental Examiners' minutes and other information supporting the estimated revenues to be generated for the 2004-05 biennium under the revised fee structure to the Comptroller of Public Accounts. If the Comptroller finds the information sufficient to support the projection of increased revenues, a finding of fact to that effect shall be issued and the contingent appropriation shall be made available for the intended purposes.

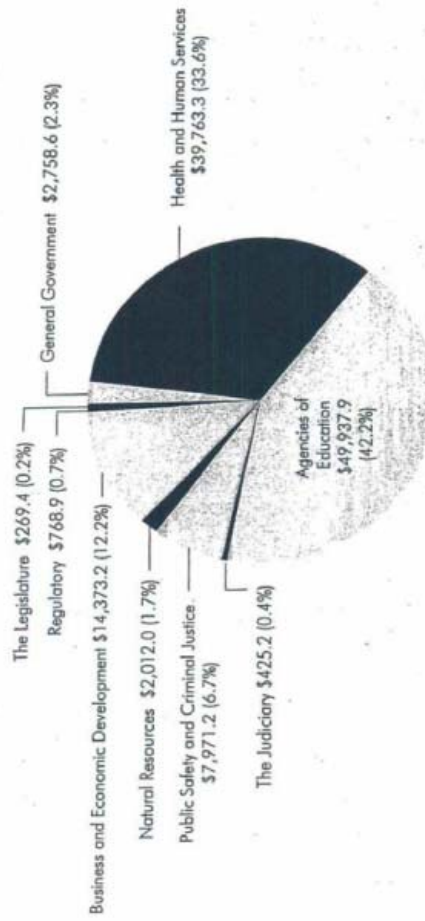
Source: 2004-05 General Appropriations Act, Page VIII-18

REVIEW OF REGULATORY FEES AND FUNDING

ALL FUNDS BUDGET FOR THE 2004-05 BIENNIUM

TOTAL = \$118,200.4 MILLION

IN MILLIONS



Source: Legislative Budget Board, Fiscal Size-up: 2004-05 Biennium

REVIEW OF REGULATORY FEES AND FUNDING
ALL FUNDS BUDGET

FUNCTIONS	EXPENDED/ BUDGETED 2002-03 ^{1, 2, 5}	APPROPRIATED 2004-05 ^{3, 4, 5}	BIENNIAL CHANGE	% CHANGE
Article I - General Government	\$2,632.1	\$2,758.6	\$126.5	4.8
Article II - Health and Human Services	38,493.8	39,763.3	1,269.5	3.3
Article III - Agencies of Education	48,750.6	49,937.9	1,187.3	2.4
Public Education	32,932.7	33,825.5	892.8	2.7
Higher Education	15,818.0	16,112.5	294.5	1.9
Article IV - The Judiciary	422.8	425.2	2.4	0.6
Article V - Public Safety and Criminal Justice	8,317.9	7,971.2	(346.8)	(4.2)
Article VI - Natural Resources	2,135.6	2,012.0	(123.6)	(5.8)
Article VII - Business and Economic Development	13,915.6	14,373.2	457.6	3.3
Article VIII - Regulatory	712.9	768.9	56.0	7.9
Article IX - General Provisions	0.0	(79.3)	(79.3)	NA
Article X - The Legislature	297.2	269.4	(27.8)	(9.4)
TOTAL, ALL FUNCTIONS	\$115,676.6	\$118,200.4	\$2,523.8	2.2

¹Reflects provisions in House Bill 7, Seventy-eighth Legislature, Regular Session, 2003.
²Fiscal year 2003 reflects a lapse of \$127 million in General Revenue Funds due to receipt of state fiscal relief funds.
³Reflects certain appropriations made in Article IX of the 2004-05 General Appropriations Act and other legislation affecting appropriations, excluding Third Called Special Session, 2003.
⁴Does not reflect expenditures of newly authorized bonds for highways and defense-related communities.
⁵Fiscal year 2003 includes \$449.5 million in appropriations from the Economic Stabilization Fund (i.e., General Revenue). The 2004-05 biennium includes \$801 million from the Economic Stabilization Fund.
 Note: Article totals exclude interagency contracts.
 Source: Legislative Budget Board, Fiscal Size-up, 2004-05 Biennium

REVIEW OF REGULATORY FEES AND FUNDING
ALL FUNDS APPROPRIATIONS FOR REGULATORY AGENCIES

AGENCY	EXPENDED/ BUDGETED 2002-03 ¹	APPROPRIATED 2004-05 ²	BIENNIAL CHANGE	% CHANGE
Board of Public Accountancy ³	\$1.5	\$0.0	\$(1.5)	(100.0)
State Office of Administrative Hearings	14.0	13.4	(0.6)	(4.2)
Board of Architectural Examiners ³	0.7	0.0	(0.7)	(100.0)
Board of Barber Examiners	1.2	1.2	<(0.1)	(1.3)
Board of Chiropractic Examiners	0.7	0.7	<(0.1)	(3.9)
Cosmetology Commission	4.8	4.6	(0.2)	(4.0)
Credit Union Department ⁴	3.0	3.7	0.7	24.1
Texas State Board of Dental Examiners	3.1	3.2	<0.1	0.9
Board of Professional Engineers ³	0.8	0.0	(0.8)	(100.0)
Department of Banking ⁴	21.2	33.7	12.5	59.0
Office of Consumer Credit Commissioner	6.1	6.9	0.8	12.6
Savings and Loan Department ⁴	3.4	12.4	9.0	262.4
Funeral Service Commission	1.5	1.2	(0.4)	(23.5)
Board of Professional Geoscientists	0.2	0.9	0.7	349.0
Department of Insurance	104.0	104.4	0.4	0.4
Office of Public Insurance Counsel	2.3	2.0	(0.3)	(12.9)
Board of Professional Land Surveying	0.7	0.7	<(0.1)	(5.4)
Department of Licensing and Regulation	16.5	14.7	(1.8)	(10.8)
Board of Medical Examiners	11.3	17.1	5.8	51.0
Board of Nurse Examiners	6.5	5.9	(0.6)	(9.9)
Board of Vocational Nurse Examiners	2.8	2.6	(0.2)	(5.7)
Optomety Board	0.8	0.7	<(0.1)	(5.4)
Structural Pest Control Board	3.0	2.7	(0.3)	(9.8)
Board of Pharmacy	6.4	6.5	0.2	2.6
Executive Council of Physical Therapy and Occupational Therapy Examiners	\$1.7	\$1.7	\$<0.1	0.7
Board of Plumbing Examiners	3.3	3.1	(0.2)	(6.3)
Board of Podiatric Medical Examiners	0.5	0.4	<(0.1)	(8.2)

Continued next page.

REVIEW OF REGULATORY FEES AND FUNDING
ALL FUNDS APPROPRIATIONS FOR REGULATORY AGENCIES

IN MILLIONS	EXPENDED/ BUDGETED 2002-03 ¹	APPROPRIATED 2004-05 ²	BIENNIAL CHANGE	% CHANGE
AGENCY				
REGULATORY AGENCIES (CONTINUED)				
Board of Examiners of Psychologists	1.5	1.4	(0.1)	(4.9)
Racing Commission	21.0	21.7	0.6	3.1
Real Estate Commission	9.6	9.2	(0.4)	(4.0)
Residential Construction Commission ³	0.0	1.5	1.5	NA
Securities Board	8.0	10.5	2.5	30.9
Board of Tax Professional Examiners	0.3	0.3	<(0.1)	(1.7)
Public Utility Commission of Texas	237.8	262.7	24.9	10.5
Office of Public Utility Counsel	3.7	3.5	(0.2)	(6.2)
Board of Veterinary Medical Examiners	1.2	1.2	(0.1)	(4.8)
Workers' Compensation Commission	105.8	112.7	6.9	6.5
Research and Oversight Council on Workers' Compensation ⁴	2.0	0.0	(2.0)	(100.0)
SUBTOTAL, REGULATORY	\$613.3	\$689.5	\$56.1	9.2
Retirement and Group Insurance	\$66.9	\$67.0	\$0.2	0.2
Social Security and Benefit Replacement Pay	25.4	25.1	(0.3)	(1.2)
SUBTOTAL, EMPLOYEE BENEFITS	\$92.3	\$92.2	\$(0.2)	(0.2)
Lease Payments	\$10.8	\$10.7	\$(0.1)	(1.1)
Article VIII, Special Provisions	0.0	0.3	0.3	NA
Less Interagency Contracts	3.5	3.7	0.1	3.9
TOTAL, ARTICLE VIII - REGULATORY	\$712.9	\$768.9	\$56.0	7.9

¹Reflects provisions in House Bill 7, Seventy-eighth Legislature, Regular Session, 2003.
²Reflects certain appropriations made in Article IX of the 2004-05 General Appropriations Act and other legislation affecting appropriations, excluding Third Called Special Session, 2003.
³Agency included in the Self-directed Semi-independent pilot project.
⁴The 2002-03 biennium does not include unactivated contingency appropriations for regulatory response.
⁵Created by House Bill 730, Seventy-eighth Legislature, Regular Session, 2003.
⁶2004-05 appropriations eliminated by Governor veto; its duties assumed by the Department of Insurance.
 Note: Article totals exclude interagency contracts.
 Source: Legislative Budget Board, Fiscal State-yr. 2004-05 Biennium

REVIEW OF REGULATORY FEES AND FUNDING

MAJOR FUNDING ISSUES FOR REGULATORY AGENCIES

The Seventy-eighth Legislature, Regular Session, 2003, created a new General Revenue—Dedicated account for the System Benefit Trust Fund and appropriated \$221.9 million to the Public Utility Commission of Texas for customer education, assistance for certain low-income electricity customers, and wholesale electric market oversight activity. Funds from the account also support the Office of Public Utility Counsel.

In an effort to increase enforcement in the medical field, the Seventy-eighth Legislature, Regular Session, 2003, created an \$80 surcharge for physician registration permits to raise the \$6.5 million appropriated to the Board of Medical Examiners. This additional funding will support 20 new full-time-equivalent positions to improve the agency's regulation of medical professionals.

Most of the regulatory agencies are subject to a special provision expressing legislative intent that agency revenues cover the cost of agency appropriations as well as an amount equal to other direct and indirect costs appropriated elsewhere in the 2004-05 General Appropriations Act.

A number of licensing agencies are included in an Article VIII rider contained in the 2004-05 General Appropriations Act concerning the TexasOnline Internet occupational licensing system. Fees charged to a licensee when they use the TexasOnline system are appropriated through this rider to the agency for the purpose of supporting the online system.

The Seventy-eighth Legislature, Regular Session, 2003, also provided contingency riders authorizing a fee-generated increase of \$12.6 million and up to 71.5 full-time-equivalent positions in the event additional resources (including conditional examiner salary increases) are needed to adequately regulate the financial industry.

In addition, the Legislature provided a similar contingency provision authorizing up to \$3.7 million in fee-generated funding and 30 full-time-equivalent positions for the mortgage broker industry.

Appendix
B

TDLR TO LOWER 29 LICENSE FEES August 16, 2004

Page 1 of 2



*Texas Department of
Licensing and Regulation*

Texas Department of Licensing and Regulation
News Release

For Immediate Release
DATE: August 16, 2004

Contact: Patrick Shaughnessy
512-463-3208

TDLR TO LOWER 29 LICENSE FEES

AUSTIN - The cost of doing business in Texas just dropped - at least for many of the people engaged in occupations licensed by the Texas Department of Licensing and Regulation (TDLR).

The Texas Commission of Licensing and Regulation, TDLR's governing body, has voted unanimously to reduce 29 licensing and registration fees in 12 of TDLR's 22 programs. Fee reductions range from 10 percent to as high as 75 percent.

"We perform an annual review to ensure that the licensing fees we charge cover only the cost of operating each of our programs," said William Kuntz, TDLR's executive director. "As our license base grows, the efficiency of our agency structure becomes more pronounced. Our efficiency is good news for our licensees."

Because of the way TDLR is structured, the addition of programs to the existing license base results in lower per license costs. The 78 th Texas Legislature added three new programs to the agency's portfolio last year.

When the Texas Legislature created TDLR in 1989, it was envisioned as an "umbrella" licensing agency capable of regulating a wide variety of occupations. This structure promotes efficiency by allowing the costs of administration - such as executive management, human resources, legal services, information services and accounting - to be spread across many licensing programs. As the number of programs is increased, or the licensee population grows, the processing cost per license actually drops as the administrative costs are apportioned to a larger population base.

"This doesn't surprise me. This level of performance is exactly what the legislature expected when we gave those additional responsibilities to TDLR," said Texas Sen. Tommy Williams of The Woodlands, who is a member of the Senate Finance Committee. "TDLR has earned its reputation for efficiency. They provide a model for what successful consolidation should look like."

Other states also have umbrella licensing agencies, but not like TDLR. In other states, an umbrella agency might consist of a collection of licensing clusters, each responsible for the entirety of a single regulatory program. One group of employees processes and issues a single type of license and also tracks compliance and prosecutes enforcement cases.

TDLR, however, is structured along functional lines. So, at TDLR, the licensing division processes applications and issues licenses for all of the agency's 22 programs. TDLR's philosophy is that program experts belong in the compliance division, which tracks adherence to the law and the rules

10/6/2004

for all license types. The enforcement division prosecutes all violators. Aligning along functional lines eliminates redundancies among programs and allows even greater efficiencies.

"The same basic functions are required regardless of the type of license," Kuntz said. "So it only makes sense to us to have the same people issuing all licenses rather than setting up a system of specialists for each type of license. This also gives us more flexibility to handle the regular ebbs and flows of the licensing business."

Examples of the fee reductions include: air conditioning contractors, reduced from \$125 annually to \$80, a 36 percent reduction; journeyman electrician, \$50 annually to \$40, a 20 percent reduction; staff leasing services companies with less than 250 assigned employees, \$1,000 annually to \$250, a 75 percent reduction; licensed court interpreters, \$175 annually to \$75, a 57 percent reduction. To see a complete list of TDLR licensing fees that will be reduced, visit the TDLR website at <http://www.license.state.tx.us/feereductions.htm>.

Before the lower fees can become effective, TDLR's rules will have to be adjusted. Adjustment of rules involving 12 programs will take some time, but TDLR staff will begin modifying the rules immediately and all rule changes should be completed by the end of the year.

To receive news and updates on any of the programs TDLR administers, sign up for TDLR's email subscription service at:

<http://www.license.state.tx.us/newsletters/TDLRnotificationLists.asp>

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10/6/2004

Report on
Adult and Juvenile Correction
Populations

EXECUTIVE SUMMARY

Based on projections by the Legislative Budget Board, the adult and youth populations overseen by the Texas Department of Criminal Justice (TDCJ) and the Texas Youth Commission (TYC) are projected to increase. There are two primary forces driving the increase in the adult population -- the first being an increase in direct sentences to prison, and the second being a decline in adult community supervision caseloads. The juvenile population increase warrants attention as actual commitments are exceeding estimated commitments.

Based on the most recent population projections, budget decisions made for the 2004-2005 biennium need to be revisited in order to accommodate the projected increases in TDCJ and TYC populations. In the immediate future, TDCJ will need a supplemental appropriation of approximately \$30-\$50 million to enable the agency to address population growth in the current fiscal year. TYC will require guidance pertaining to capacity, particularly contract capacity.

SUMMARY OF RECOMMENDATIONS

Adult Population

1. Strengthen Judicial confidence in Community Supervision Programs. Confidence in the programs can be improved by providing increased funding and implementing the use of intermediate sanction facilities for probation revocations.
2. Address the growing revocation rate of felons on community supervision to prison and state jail.
3. Reduce the growing population of non-United States citizens housed within TDCJ and ensure that those individuals released to foreign governments do not immediately return to Texas and subsequently to TDCJ.
4. Additional efforts should be made to reduce the growing geriatric population housed within TDCJ and their ever-increasing medical cost.

Youth Population

1. Maintain the Texas Youth Commission contract facility resources and the usable, innovative capacity they provide at a level that is both cost-effective and best meets specialized needs.
2. Provide additional emphasis and resources to the juvenile probation system to encourage the management of juvenile offenders at the local level.
3. Improve reading levels of youths committed to Texas Youth Commission facilities.

PROCEDURAL BACKGROUND

The Senate Finance Committee was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that are identified. The Senate Finance Committee (the Committee) met in accordance with the following Public Safety interim charge as follows:

Adult and Juvenile Correction Populations. Monitor population trends in the adult and juvenile correction facilities and determine if budget decisions made in the 78th Legislature remain viable. Make recommendations for improvement, as necessary.

The Committee met pursuant to the aforementioned interim charge in a public hearing in Austin, Texas, on April 13, 2004, to consider invited testimony provided by the Texas Legislative Budget Board, the Texas Department of Criminal Justice, the Texas Board of Criminal Justice, and the Texas Youth Commission. The Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas, on July 20, 2004; however, none was provided.

The Committee extends its thanks to those who participated in the hearing, and assisted with or made presentations before the Committee.

BACKGROUND

In preparation for the Seventy-Ninth Legislative Session, the Legislative Budget Board's (LBB) Criminal Justice Data Analysis Team issued its long term adult and juvenile correctional population projections on June 1, 2004.¹ The projections provide an early warning that the growing prison population will exceed operational capacity in FY 2006, and available population capacity in FY 2008. The LBB projections also alert the Legislature that the previously observed decline in juvenile correctional population is expected to reverse and increase slightly in the very near future.

Another item of concern for legislators revealed by these projections is a continual decrease in the adult community supervision direct population through FY 2009, as there is a direct correlation between a decrease in the adult community supervision direct population and an increase in prison population. A review of the LBB data, contained in Appendix A, of the June 1, 2004, report provides that the decline in this population began in FY 1999 and has averaged a 6% decline each year. This trend was assumed within LBB projections to continue.

Additionally, foreign citizens serving sentences in Texas prisons are a concern, as TDCJ has experienced a significant decrease, \$18.4 million in FY 2004, in anticipated federal funds for the confinement of foreign citizens. As of November 13, 2003, there were 9,777 inmates of foreign birth and foreign citizenship. A final order for deportation had been served through the

¹ Legislative Budget Board, Adult and Juvenile Correctional Population Projections, June 1, 2004
http://www.lbb.state.tx.us/Projections/Projections_Report.pdf

The LBB assumed these data analysis responsibilities from the former Criminal Justice Policy Council, which was vetoed by the Governor and ceased to exist on September 1, 2003.

² Senate Criminal Justice Committee, Interim Report to the 79th Legislature, December, 2004. pg. 64

U.S. Immigration and Naturalization Service for 3,510 of those inmates, 2,290 of which were parole eligible.²

Concerning the Texas Youth Commission (TYC), which operates the state's juvenile institutions, the LBB report indicates that the TYC population currently exceeds the available internal capacity and will continue to grow through FY 2009.³ TYC has historically utilized appropriated funding for contract beds to contain its overages. As in the adult arena, the referrals to Juvenile Probation Departments have a significant impact on the number of offenders housed within TYC. Unlike in the adult population, the LBB projects that these referrals will continue to grow through FY 2009, helping to relieve the population pressure on TYC. Although the juvenile correctional population has been somewhat stable over the last few years, any significant change to the population drivers such as probation referrals (decrease), direct commitments to TYC (increase) and probation or parole revocations (increase) could have a major impact on the requirements to house juvenile offenders.⁴

As in the juvenile scenario, the projections of increased adult prison population, due primarily to an increase in direct commitments to the Texas Department of Criminal Justice (TDCJ) and a decrease in the number of adult direct supervision probationers will define the environment that will confront the 79th Legislature.⁵ Funding decisions will be required to provide housing for a larger prison population, redirect portions of these offenders to alternative programs, or in some other manner provide for the public safety in processing the growing offender population.

³ *ibid*, 8.

⁴ *ibid*, pg. 9.

⁵ *ibid*, pg. 10.

ADULT CORRECTIONS POPULATIONS

The LBB projections have identified two major contributors to, or primary drivers of, the TDCJ incarcerated populations: the increase in direct sentences to prisons by judges and the decline in the adult community supervision direct caseloads.² Although crime rates and unemployment rates have not been incorporated into the LBB projections model, they were considered during the development of the projections.⁶ These items are of interest, as crime rates have decreased from a peak in 1988 and have remained steady at a lower level since 2000 along with unemployment rates that are expected to decline, even as the adult population (17 and over) is growing at 1.8% a year.⁷ LBB continues to monitor these items for their predictive value in future projections as subsequent LBB studies may reinforce the notion that direct sentences to prisons and adult community supervision direct caseloads should be addressed.

One explanation for the increase in direct sentences to incarceration is found in a survey of judges conducted by the Texas Department of Criminal Justice Community Assistance Division (CJAD). This survey reveals that the responding judges would be more likely to use community supervision as a sentencing option if:

- There were more specialized caseloads (71%) or residential facilities (84%) and
- There was more funding to departments utilizing a system of progressive sanctions (77%).⁸

CJAD also provided information concerning the decline in community supervision direct caseloads. Among the numbers for the ten largest Community Supervision and Corrections

² *ibid*, pg. 2, 5.

⁶ *ibid*, pg. 11.

⁷ *ibid*, pg. 11.

⁸ TDCJ-CJAD, Summary of Responses to TDCJ-CJAD Sentencing Survey, August 2004.
http://www.tdcj.state.tx.us/publications/cjad/Survey_1-21_Rev_8-16-04.pdf, pg. 3

Departments (CSCD), the Harris County CSCD direct caseload has declined 22.4% since July 1994, while Tarrant County CSCD and Bexar County CSCD have shown declines of 3.5% and 6.2% respectively.⁹

In an attempt to understand the above numbers, CJAD conducted a review of the completion rates for felony probationers for FY 2003. Probation is completed and closed either administratively, through early termination, or when a probationer dies. Probation is also considered closed when it is revoked due to law violations or technical conditions. CJAD found that of 53,007 felons who had their probation closed during FY 2003, 24,575 (46%) were closed by revocation and incarceration.¹⁰ Among the ten largest departments, the CJAD review revealed that felons closed by revocation constituted:

- Harris County CSCD revoked 49% of its closed felons;
- Travis County CSCD revoked 53% of its closed felons;
- Dallas County CSCD revoked 54% of its closed felons;
- Tarrant County CSCD revoked 65% of its closed felons.¹¹

In addition, a prior CJAD presentation provides that felony revocations for technical violation have grown by 95% during the period of 1994 to 2003. This report also found a 14% increase in the revocations of felons for a new offense during the same time frame.¹²

Confronted with rising prison populations, the 78th Legislature sought to expand the prison capacity in a number of ways. The nine month program at the Substance Abuse Felony Punishment Facilities was reduced to six months and consolidated into fewer facilities, freeing

⁹ TDCJ-CJAD, Statistical Trends in Community Supervision Report, January 2003.

<http://www.tdcj.state.tx.us/publications/cjad/stattrends2002%20PDF%20Report.pdf>, pg. 11

¹⁰ TDCJ-CJAD, Strengthening Community Supervision, Texas Center for the Judiciary Criminal Justice Conference, May 25, 2004, pg. III-15.

¹¹ CJAD, Felons closures review FY-2003, pg. III-17.

¹² CJAD, Strengthening Community Supervision, pg. III-16.

up beds to be used as inmate transfer beds. Utilizing the statutory process (commonly known as HB 124 authority), additional beds were added to select state jail facilities, and the Hamilton Unit was transferred from TYC to TDCJ. Upon completion of these events, the total capacity of the TDCJ Correctional Institution Division will be 154,486 beds, with 97.5% of the total designated as the operational capacity of 150,624.¹³ The LBB projections indicate that by the end of FY 2006, the TDCJ system population is expected to reach 151,983 offenders and grow to 159,084 by the end of FY 2009.¹⁴

During the committee hearing, a question arose concerning TDCJ's process of leasing temporary capacity from county jails and private prison companies to accommodate inmate overages. This method has historically been utilized and was last ended in August of 2002 when Rider 64 in the General Appropriations Act was implemented due to sufficient internal capacity negating the necessity of the contracted beds. Those contracts were terminated and the inmates transferred into the TDCJ system. During the last use of temporary contracted beds, the criteria for inmates to be assigned to these contract beds were:

- G1 or G2 level of custody (General Population),
- No murder or sexual offenses, no escape risks,
- Must be fully processed through TDCJ's intake system with travel card and admission summary completed and a full record established,
- No offenders with felony detainers, no history of escape from an adult penal institution within the last ten years,
- No confirmed affiliation to a TDCJ identified security threat group,

¹³ TDCJ Current Status and End result of HB 124 Capacity Additions fact sheet, June 10, 2004, pg. III-23.

¹⁴ Legislative Budget Board, Adult and Juvenile Correctional Population Projections, June 1, 2004
http://www.lbb.state.tx.us/Projections/Projections_Report.pdf, pg. 3.

- No offenders on psychotropic medication,
- No chronic medical problems (cardiac, epilepsy, asthma),
- No major disciplinary cases within the last six months, and
- Sentence of 10-15 years preferred, non-violent offender may have sentence of 40 years or less, if one violent offense sentence must be 20 years or less.¹⁵

On September 15, 2004, in anticipation of the possible need to again utilize contract beds, TDCJ requested proposals from county jails and private prison companies to provide temporary capacity beds. The deadline for submission was set for 3:00 PM on December 10, 2004.¹⁶ By beginning the contracting process early, expanding the scope of institutions that are eligible to bid, and then following up with aggressive negotiation of the cost per day, TDCJ expects to be able to reduce the cost of contracted beds to be used within the TDCJ Correctional Institution Division.

JUVENILE CORRECTIONS POPULATION

In 1995, the Legislature approved the most far-reaching juvenile justice system reforms in Texas history, changing how juveniles are handled throughout the juvenile justice system from arrest through sanctioning.¹⁷ These reforms toughened penalties for juvenile offenders and increased funding for prevention, probation and correction policies, and established a progressive sanction policy. The stated goals of these reforms were to increase juvenile offender

¹⁵ TDCJ, Baldwin, September 16, 2004, pg. III-25.

¹⁶ TDCJ Letter from Cheryl Cowart, CTPM, Contract Administrator, September 15, 2004, pg. III-26.

¹⁷ CJPC, the Impact of Juvenile Justice Reforms on the Recycling of Juvenile Offenders, October 2001.
<http://www.cjpc.state.tx.us/reports/juvsanct/juvOct11.pdf>

accountability in their initial contacts with the juvenile justice system and to provide more services and supervision to enforce this accountability.¹⁸

The success of these reforms was evident by January 2001, with the growth within the TYC population becoming stable, due also in part to the impact of the diversion policies established within the Texas Juvenile Probation Commission (TJPC).¹⁹ By January 2003, the improvements and enhancements to the juvenile justice system were well established and included:

- A lower number of felony referrals which reflects the decline in the juvenile arrest rate and translates into correctional costs avoided since 1996,
- Correctional costs avoided because of decrease in demand for probation and TYC resources due to the lower number of referrals, and
- State avoided approximately \$350 million in probation supervision and TYC incarceration costs between 1995 and 2001.²⁰

Primarily due to the successes observed within the juvenile justice system, the 78th Legislature swept surplus funds and under-utilized resources from the system to help manage the budget shortfall of 2003. TYC transferred the Hamilton Youth Facility to the TDCJ, removing 544 beds from their internal capacity. Along with this reduction, the number of contract beds was reduced from 768 beds to 600 beds.²¹ For the 2004-2005 biennium, appropriations to TYC were reduced by \$32 million or 7% of 2002-2003 appropriations. The current combination of internal capacity and contract beds is 5,046 and fits within LBB projections until approximately

¹⁸ *ibid*, pg. i.

¹⁹ CJPC, Biennial Report to the Governor and the 77th Texas Legislature, January 2001 <http://www.cjpc.state.tx.us/reports/bienrep/Biennial2001.pdf>, pg. 41

²⁰ CJPC, Biennial Report to the Governor and the 78th Texas Legislature, January 2003 <http://www.cjpc.state.tx.us/reports/bienrep/2003Biennial.pdf>, pg. 57

²¹ Dwight Harris Letter to LBB, May 14, 2004, pg. III-27.

FY 2008, which projects an end of year total of 5,147 youths.²² A reduction of contract beds as proposed in the TYC legislative appropriations request for FY 2005 and FY 2006 would reduce TYC total capacity to 4,809 beds. If LBB projections hold true, this number of beds will be insufficient for the LBB projected population for May 2006 of 4,841 incarcerated youths. The LBB projections are based on an average increase in commitments to TYC of 1.6% per year until FY 2009.²³ However, recent observations have noted that three counties, which account for one-third of the total commitments to TYC, have significantly increased their commitments as follows:

- Harris County's commitments are up 32 % in FY 2004 (400 to 527),
- Bexar County's commitments are up 20% in FY 2004 (188 to 226), and
- Tarrant County's commitments are up 12% in FY 2004 (170 to 190).²⁴

It should also be noted that, as with the TDCJ system, which operates more efficiently at an operational capacity of 97.5%, the juvenile system operates more efficiently at a 98% population level. The rationale for both is that operating at less than 100% total population allows the system to handle population spikes and transfer requirements and to assign youths to the appropriate security and treatment institutions.

An additional factor in the funding and capacity needs of TYC is the length of time served component. Ninety-four percent of youths committed to TYC are serving indeterminate sentences, placing the juvenile under the jurisdiction of TYC until the juvenile's 21st birthday.²⁵ The length of time served within TYC is determined by the juvenile's commitment offense, time

²² TYC Bed Capacity and population summary, LAR, September 20, 2004, pg. III-29.

²³ LBB, Adult and Juvenile Correctional Population Projections, June 1, 2004
http://www.lbb.state.tx.us/Projections/Projections_Report.pdf, pg. 13

²⁴ J. Anderson email, September 20, 2004, pg. III-30.

²⁵ CJPC, An Overview of Texas Juvenile Justice Population Trends and Dynamics: An Update, March 2003
<http://www.cjpc.state.tx.us/reports/juvproj/2001trends.pdf>, pg.11

to complete TYC's re-socialization program and the youth's behavior while in TYC custody. A significant part of the 78th Legislature's cost reductions for FY 2004 and 2005 assumed the reduction of the average time served from 22.7 months to 20.7 months.

Time served is important because it dictates the capacity levels needed to provide housing and services to committed youths. Time served also dictates the level of programming available to the juvenile offender, and ultimately, the performance measures associated with those programs. One example of impacted programming is the effort to improve the reading skills of committed youth that arrive at TYC with a number of strikes against them. According to TYC, most employers regard completion of a GED or high school diploma as a prerequisite for entry-level jobs. TYC states that the majority of youths can pass the GED if they possess reading and math skills at the 9th grade level.

- Almost 90% of offenders are reading below grade level for their age.
- On average these youths are functioning four to five grade levels below the expected grade level for their age. Median age at intake is 16 years old while their median grade level is between 5th and 6th grades.
- Over 75% of those committed have a below average IQ.
- Currently 44% of youths at TYC are eligible for and receive special education services.
- Ten percent of TYC population are identified as limited English proficient and are provided special language support.²⁶

TYC has been able to exceed its budgeted performance target of 17% of youth reading at grade level at release, with a success rate of 19.4% in this category for FY 2003.²⁷ Their experience is that a youth will gain one month of reading level for each month of instructions, with the average length of stay at TYC being 21 months (17 months for general offenders which account for 60%

²⁶ Dwight Harris Letter to Senator Ogden, April 23, 2004, pg. III-31.

²⁷ *ibid*, pg. III-32.

of their population).²⁸ Based on this information, an offender would have to gain seven years of educational progress in less than two years of instructional time, while in TYC custody.²⁹

RECOMMENDATIONS

Texas Department of Criminal Justice's Correctional Facility population trends reveal that the budget decisions made in the 78th Legislature need to be revisited. Based on the known FY 2005 budget shortfalls, reductions in federal funds to TDCJ, and increasing medical costs, current resources will not support the increasing prison population as projected by the LBB.

The prison population is expected to exceed the operational capacity of TDCJ by FY 2006 unless policy initiatives are implemented to:

1. Strengthen Judicial confidence in Community Supervision Programs. Confidence in the programs can be improved by providing increased funding and implementing the use of intermediate sanction facilities for probation revocations.
2. Address the growing revocation rate of felons on community supervision to prison and state jail.
3. Reduce the growing population of non-United States citizens housed within TDCJ and ensure that those individuals released to foreign governments do not immediately return to Texas and subsequently TDCJ.
4. Additional efforts should be made to reduce the growing geriatric population housed within TDCJ and their ever increasing medical cost.

Texas Youth Commission Correctional Facility population trends reveal that the budgetary decisions made by the 78th Legislature to reduce TYC institution capacity should be revisited. Recommendations are as follows:

²⁸ *ibid*, pg. III-32.

²⁹ *ibid*, pg. III-32.

1. Maintain TYC contract facility resources and the usable, innovative capacity they provide at a level that is both cost-effective and best meets specialized needs.
2. Provide additional emphasis and resources to the juvenile probation system to encourage the management of juvenile offenders at the local level.
3. Improve reading levels of youth committed to Texas Youth Commission facilities,

To accomplish the above goals intended to stabilize the adult and juvenile correctional facility population growth over the long term, the Committee will have to consider new funding or face a costly expansion of the state's correctional facility capacity.

Appendix A

Strengthening Community Supervision



Texas Center for the Judiciary
Criminal Justice Conference
Texas Department of Criminal Justice
Community Justice Assistance Division

Bonita White, Director

May 25, 2004

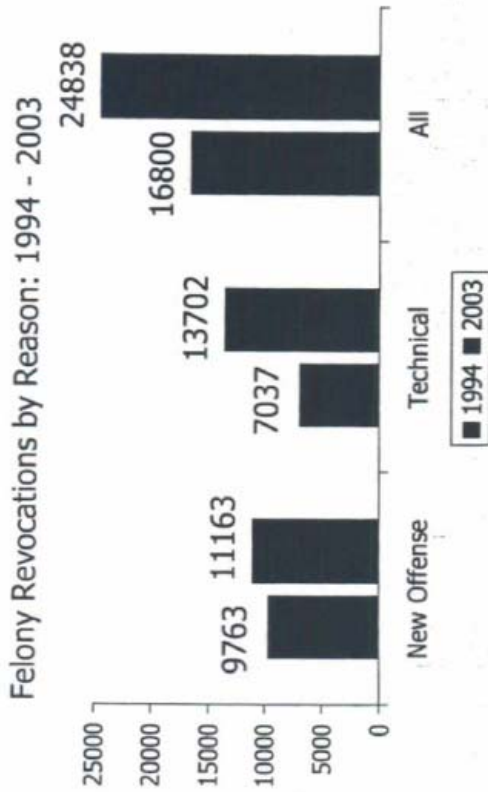
Does Current Funding Strategy Maximize Completions?

Completions FY 2003

Termination Type: Felons	FY 2003
Completed	28,432 (54%)
Early Termination	3,931 (8%)
Expired	24,501 (46%)
Revoked	24,575 (46%)
County Jail	1,294 (2%)
State Jail	10,431 (20%)
ID	12,850 (24%)
Total Terminations	53,007 (100%)

- Can different funding strategies provide incentives to increase completion rates?

95% Increase in Revocations for Technical Violations Primary Source of Growth



- 14% increase in revocations for new offense from 1994-2003
- 95% increase in revocations for technical violations from 1994-2003

Appendix B



Texas Department of Criminal Justice

Gary L. Johnson
Executive Director

Inter-Agency Memorandum

Date: August 5, 2004

To: Larance Coleman, Senate Criminal Justice

From: Mike Eisenberg, TDCJ-CJAD

Re: Supervision Termination Data

Pursuant to your request, I am providing you data on termination types for offender terminating supervision for each CSCD for Calendar Year 2003. The first document indicates terminations from supervision by CSCD for the following categories as reported in the MCSCR: Early Termination, Expired Term, Revoked to ID/SJ, and Revoked to County Jail. The second document calculates the percentage of cases that terminated supervision by early termination and expired term divided by the sum of Early Terminations, Expired Terms, Revoked to ID/SJ, and Revoked to County.

If you have any questions regarding this information please contact me.

COMMUNITY JUSTICE ASSISTANCE DIVISION
Bonita White, Division Director
www.tdcj.state.tx.us

Price Daniel Sr. Building, 209 West 14th Street,
Suite 400, Austin, Texas 78701
Phone (512) 305-9300

P.O. Box 12427 Capitol Station
Austin, Texas 78711
Fax (512) 305-9368

Committee on Senate Finance, Interim Report on Adult and Juvenile Correction Populations

COUNTY	Percent Successful
Anderson	44.55
Andrews	53.45
Angelina	39.89
Aransas	65.91
Archer	56.25
Armstrong	.
Atascosa	57.97
Austin	44.44
Bailey	100.00
Bandera	37.50
Bastrop	43.08
Baylor	64.71
Bee	44.07
Bell	45.04
Bexar	57.02
Blanco	71.43
Borden	.
Bosque	56.14
Bowie	53.07
Brazoria	60.53
Brazos	53.10
Brewster	85.71
Briscoe	66.67
Brooks	97.37
Brown	49.40
Burleson	62.50
Burnet	59.46
Caldwell	47.47
Calhoun	57.78
Callahan	65.38
Cameron	62.47
Camp	76.92
Carson	62.96
Cass	44.05
Castro	35.00
Chambers	59.62
Cherokee	72.45
Childres	42.86
Clay	41.94
Cochran	62.50
Coke	92.86
Coleman	80.56
Collin	63.39
Collings	40.00
Colorado	55.77
Comal	62.20
Comanche	61.90
Concho	77.78
Cooke	50.00
Coryell	58.27

COUNTY	SUCCESSF
Cottle	66.67
Crane	71.43
Crockett	72.41
Crosby	78.57
Culberson	94.44

Committee on Senate Finance, Interim Report on Adult and Juvenile Correction Populations

Dallam	56.00
Dallas	45.87
Dawson	34.69
Deaf Smi	44.74
Delta	33.33
nton	48.38
ewitt	76.56
Dickens	100.00
Dimmit	70.00
Donley	36.84
Duval	78.05
Eastland	49.12
Ector	39.47
Edwards	50.00
El Paso	69.36
Ellis	44.16
Erath	58.00
Falls	64.10
Fannin	56.88
Fayette	64.10
Fisher	71.43
Floyd	66.67
Foard	100.00
Fort Ben	55.88
Franklin	30.00
Preston	52.27
Frio	78.13
Gaines	51.16
Galvesto	45.38
Garza	55.00
Gillespi	45.95
Glasscoc	100.00
Goliad	60.87
Gonzales	50.72
Gray	40.00
Grayson	53.13
Gregg	50.31
Grimes	66.67
Guadalup	45.98
Hale	46.48
Hall	25.00
Hamilton	64.71
Hansford	84.62
Hardeman	84.62
Hardin	25.00

COUNTY	SUCCESSF
Harris	51.28
Harrison	36.49
Hartley	91.67
Haskell	66.67
Hays	43.03
Hemphill	66.67
Henderso	38.83
Hidalgo	66.47
Hill	37.19
Hockley	40.00
Hood	32.06
Hopkins	46.06
Houston	49.44
Howard	44.71
Hudspeth	88.89
Hunt	47.17
Hutchins	52.63

Committee on Senate Finance, Interim Report on Adult and Juvenile Correction Populations

Irion	33.33
Jack	26.32
Jackson	30.61
Jasper	73.68
Jeff Dav	50.00
Jefferso	51.69
m Hogg	83.33
Jim Well	74.36
Johnson	57.39
Jones	62.32
Karnes	46.43
Kaufman	84.89
Kendall	76.67
Kenedy	.
Kent	100.00
Kerr	57.60
Kimble	75.00
King	.
Kinney	83.33
Kleberg	72.86
Knox	75.00
La Salle	73.68
Lamar	46.39
Lamb	43.18
Lampasas	58.18
Lavaca	55.00
Lee	43.75
Leon	41.30
Liberty	69.82
Limeston	54.22
Lipscomb	80.00
Live Oak	71.43
Llano	66.67

KUNTY	SUCCESSF
oving	.
ubbock	43.89
ynn	32.14
adison	59.09
arion	58.90
artin	50.00
ason	50.00
atagord	52.54
verick	78.38
Culloc	81.82
Lennan	36.97
Mullen	100.00
dina	61.68
nard	96.00
iland	51.04
lam	62.86
lis	68.75
chell	63.16
tague	47.62
tgome	61.75
re	49.12
ris	55.36
ley	100.00
pp	56.02
ur	63.73
on	55.88
n	45.59
es	45.80
ltre	43.18

Committee on Senate Finance, Interim Report on Adult and Juvenile Correction Populations

Oldham	85.00
Orange	45.14
Palo Pin	50.83
Panola	51.22
Parker	47.86
Parmer	85.71
Pecos	84.62
Polk	53.03
Potter	45.93
Presidio	79.31
Rains	29.41
Randall	49.79
Reagan	88.24
Real	53.85
Red Rive	34.38
Reeves	37.25
Refugio	72.86
Roberts	.00
Robertso	65.79
Rockwall	41.38
Runnels	71.43

COUNTY	SUCCESSF
Rusk	59.14
Sabine	83.33
San Augu	83.33
San Jaci	59.32
San Patr	55.14
San Saba	62.50
Shleich	58.82
Scurry	67.86
Shackelf	70.59
Shelby	48.94
Sherman	66.67
Smith	50.09
Somervel	78.57
Starr	68.67
Stephens	52.94
Sterling	50.00
Stonewal	66.67
Sutton	91.67
Swisher	56.52
Tarrant	35.52
Taylor	67.28
Terrell	.00
Terry	42.59
Throckmo	33.33
Titus	57.69
Tom Gree	59.19
Travis	46.95
Trinity	50.00
Tyler	71.67
Upshur	44.62
Upton	64.29
Uvalde	68.52
Val Verd	75.00
Van Zand	43.55
Victoria	61.54
Walker	56.62
Waller	63.27
Ward	58.00
Washingt	62.24
Webb	79.52
Wharton	54.92

Committee on Senate Finance, Interim Report on Adult and Juvenile Correction Populations

Wheeler	25.00
Wichita	55.13
Wilbarger	77.50
Willacy	85.53
Williams	54.07
Wilson	44.07
Wheeler	26.32
Wise	26.03
Wood	37.41

COUNTY	SUCCESSF
Yoakum	43.75
Young	63.64
Zapata	77.42
Zavala	14.29
Total	52.72

Number of cases read: 255 Number of cases listed: 255

Appendix C
Texas Department of Criminal Justice
Current Status and End Result of HB 124 Capacity Additions

Original Capacities				
	SAFPF*	ID / State Jail**	Agency	Current Agency Capacity***
As of March 1, 2003	5,378	146,092	151,470	153,192
SAFPF Additions				
Unit	SAFPF	ID / State Jail	Agency	Current Status
Glossbrenner	108	0	108	108 Beds Added - 03/10/03
Johnston	108	0	108	108 Beds Added - 03/03/03
Sayle	120	0	120	120 Beds Added - 03/10/03
Halbert	108	0	108	108 Beds Added - 05/20/03
Subtotal	444	0	444	444 Beds Added
HB 124 #1				
Unit	SAFPF	ID / State Jail	Agency	Current Status
Garza East	0	128	128	128 Beds Added - 06/16/03
Garza West	0	128	128	128 Beds Added - 06/16/03
Middleton	0	126	126	128 Beds Added - 06/16/03
Joe Ney	72	0	72	72 Beds Added - 06/16/03
Wheeler	72	0	72	72 Beds Added - 06/16/03
Havins	72	0	72	72 Beds Added - 09/02/03
Henley	72	0	72	72 Beds Added - 06/10/04
Subtotal	288	384	672	672 Beds Added
HB 124 #2				
Unit	SAFPF	ID / State Jail	Agency	Current Status
Dominguez	0	132	132	132 Beds Added - 11/26/03
Gist	0	132	132	132 Beds Added - 11/26/03
Hutchins	0	132	132	132 Beds Added - 11/13/03
Lychner	0	132	132	132 Beds Added - 11/26/03
Plane	0	132	132	132 Beds Added - 01/07/04
Subtotal	0	660	660	660 Beds Added
HB 124 #3				
Unit	SAFPF	ID / State Jail	Agency	Current Status
Hamilton	0	1,166	1,166	
Subtotal	0	1,166	1,166	Approved / Not Added
SAFPF Conversions to ID / SJ				
Unit	SAFPF	ID / State Jail	Agency	Current Status
Joe Ney	-576	576	0	576 Bed Converted - 04/01/03
Wheeler	-576	576	0	576 Beds Converted - 06/03/03
Havins	-596	596	0	596 Beds Converted - 09/02/03
Henley	-576	576	0	504 Beds Converted - 09/02/03
Subtotal	-2,324	2,324	0	2,252 Beds Converted
HB 124 #4				
Unit	SAFPF	ID / State Jail	Agency	Current Status
Gurney	0	128	128	128 Beds Added - 06/10/04
Holliday	0	128	128	128 Beds Added - 06/10/04
Travis Co.	0	128	128	
Ware	0	16	16	16 Beds Added - 06/10/04
Subtotal	0	400	400	272 Beds Added
New Capacities				
	SAFPF***	ID / State Jail***	Agency***	Current Capacities***
Net Gain / Loss	-1,591	4,934	3,343	SAFPF - 3,787
Total	3,787	150,699	154,486	ID / State Jail - 149,405

* Includes Kyle Private Prison.

** Includes all Non-SAFP Facilities.

***ID/Agency capacity was reduced by 160 due to the closing of the Big Spring Work Camp on 09/02/03, by 67 due to the redesignation of Close Custody beds to Ad. Seg. on Wing C of the Smith Unit Expansion Cellblock on 09/17/03 and by 100 due to the closing of the Sweetwater Work Camp on 10/01/03. In addition to the SAFP additions listed above, on 11/13/03 the capacity of the Sayle SAFP was reduced by 12 beds and the Estelle SAFP was increased by 13 beds.

As of 06/10/04, agency capacity is 153,192. Operating capacity (97.5%) is 149,362.

Upon completion of the HB124 additions, capacity will be 154,486. Operating capacity (97.5%) will be 150,624.

Appendix D



Texas Department
Of
Criminal Justice

P.O. Box 13084, Capitol Station
Austin, Texas 78711-3084

From: Jeff Baldwin, Executive Administration
Phone #: (512) 463-9776
Fax #: (512) 936-2169

This fax is intended for the eyes of the addressee or an agent of the addressee. You are notified that any use of this fax is strictly prohibited. If you have received this fax by mistake, please immediately notify Issuer by telephone and return this fax to us by mail at our expense.

To: Larance Coleman, Policy Director
Senate Criminal Justice Committee

Fax #: 475-2015

Date: 9/17/04

Total # of pages: 2

Comments - The following is transmitted:
Per your request copy of TDCJ Request for Proposals for Temporary Capacity Beds letter dated September 15, 2004.

Thank you,

Larance Coleman

From: Jeff.Baldwin@tdcj.state.tx.us
Content: Thursday, September 16, 2004 4:12 PM
To: Larance Coleman_SC
Cc: brad.livingston@tdcj.state.tx.us
Subject: Fw: Requested information

Attached are the criteria that were used the last time we contracted for temporary lease beds. I cannot say for certain whether the same identical criteria will be used again.

----- Forwarded by Jeff Baldwin/Executive_Directors_Office/TDCJ on 09/16/2004 03:59 PM -----

Becky Price/Operations/ TDCJ		To
09/16/2004 02:55 PM	Jeff Baldwin/Executive_Directors_Office/ TDCJ@TDCJ	
		cc
	Gary Gomez/Operations/TDCJ@TDCJ, Pamela Williams/Operations/TDCJ@TDCJ, Larry LeFlore/Operations/TDCJ@TDCJ, Frank AuBuchon/Operations/TDCJ@TDCJ	
	Requested information	Subject

The following criteria was previously used to assign offenders to leased bed facilities.

G1 or G2 Custody
No murder or sexual offenses, No escape risks. They are fully processed through TDCJ's intake, with the travel card and admission summary completed, and a full record established. No offenders with felony detainers, no history of escape from an adult penal institution within the last 10 years. No confirmed affiliation to a TDCJ identified security threat group. No offenders on psychotropic medication. A special medical screening/clearance to eliminate all chronic medical problems (cardiac, epilepsy, asthma, etc). No major disciplinary cases within the last 6 months.

Try to assign short term sentences 10-15 yrs.
If offense non violent may have a sentence of 40 years or less If one violent offense sentence must be 20 years or less



Texas Department of Criminal Justice

Gary L. Johnson
Executive Director

September 15, 2004

RE: Request for Proposals for Temporary Capacity Beds
696-ID-5-P006

Dear Prospective Offeror:

Enclosed for your consideration is the above referenced solicitation for Temporary Capacity Beds.

When submitting proposals, please ensure all required information is included. Section L.8 of the solicitation contains submission instructions and lists all items that must be included. Proposals should be submitted in an unbound original (suitable for photocopying) with three additional bound copies and sent to the address in Block 7 of the Solicitation, Offer and Award form. The deadline for proposal submissions is 3:00 p.m., local time on December 10, 2004. Late proposals will not be accepted.

Questions concerning the solicitation requirements must be submitted in writing before 5:00 p.m. local time on October 22, 2004. Questions may be faxed to my attention at (936) 437-7089 or e-mailed to cheryl.cowart@tdcj.state.tx.us.

If you downloaded this solicitation from the *Texas Electronic State Business Daily* rather than requesting a hard copy from the Department, please note that you must submit your name, address and fax number to me in order to receive amendments. Amendments will not be posted on the Internet, and the Department will not be responsible for an Offeror's failure to receive amendments or changes if the Offeror has not submitted the above information. This information can be provided via mail, fax or e-mail.

Additionally, a random reference list of Texas Historically Underutilized Businesses and a listing of two (2) minority or women trade organizations are included as a part of Exhibit J.1, Historically Underutilized Business (HUB) Subcontracting Plan. All Offerors are required to submit a HUB Subcontracting Plan in accordance with Section H.2 and Exhibit J.1 of this solicitation. Please note that this is a new HUB Subcontracting Plan, which went into effect on September 1, 2004. Offerors should read carefully and comply with the new requirements. Failure to submit a HUB Subcontracting Plan with appropriate forms will subject your proposal to be rejected from further consideration.

Offerors are instructed to comply with the statutory Public Hearing Requirements and Notification Requirements outlined in Section L.1.2. In particular, the requirements of Local Government Code, Chapter 244 were revised during the 78th Legislature, Regular Session. These new requirements are detailed in Section L.1.2, Item B. Due to the fact that public notice and hearing requirements are time-sensitive, it is recommended that any questions regarding this area be submitted as soon as possible.

Thank you for your interest in doing business with the Texas Department of Criminal Justice. If I can be of further assistance, please call me at (936) 437-7116.

Sincerely,

Handwritten signature of Cheryl Cowart in cursive.

Cheryl Cowart, CTPM
Contract Administrator

Enclosures

P.O. Box 99
Huntsville, Texas 77342-0099
www.tdcj.state.tx.us

** TOTAL PAGE.02 **

Appendix E



**TEXAS YOUTH
COMMISSION**

DWIGHT HARRIS
Executive Director
LINDA S. REYES, PH.D.
Deputy Executive Director

COMMISSION MEMBERS

THE HONORABLE PETE C. ALFARO
Chairman, Baytown
NICHOLAS T. SERAFY, JR.
Vice-Chairman, Brownsville
STEVE FRYAR
Brownwood
PATSY REED GUEST
Duncanville
DON BETHEL
Lamesa
BILL MAHOMES
Dallas
GOGI DICKSON, PH.D.
San Antonio

4900 N. Lamar
Austin, Texas 78751
P. O. Box 4260
Austin, Texas 78765
(512) 424-6130 (Voice)
1-800-RELAY-TX (TDD)



Equal Opportunity Employer

RECEIVED

2004 MAY 18 AM 9:39

LEGISLATIVE BUDGET
BOARD

May 14, 2004

Mr. Val Shepard, Budget Manager
Legislative Budget Board
1501 North Congress
Robert E. Johnson Building, 5th Floor
Austin, Texas 78701

Dear Val:

As you recall, at the Senate Finance Committee Hearing on April 13, 2004, population trends and future bed capacity needs for the Texas Youth Commission (TYC) were discussed. Two important issues impacting the amount of bed capacity needed for the Texas Youth Commission (besides population projections) are the level of security and the type of services delivered. These issues are important because of the need to place youth into residential treatment programs that provide the appropriate level of security and services. While all TYC institutions are secure programs with fences and an outside security surveillance component, the 218 TYC Halfway House beds are all non-secure programs, and the 600 Contract Care beds are both secure and non-secure as detailed in Attachment A.

At the hearing, Legislative Budget Board staff presented a handout to Committee members that showed TYC residential populations from September 2001 through March 2004, and population projections from May 2004 through August 2005 that were made by the Criminal Justice Policy Council in March 2003. The populations were divided into the three types of residential programs used to meet individual needs of youth in TYC custody: Institutions, Contract Care, and Halfway Houses. They did not, however, distinguish between *secure* and *non-secure* beds.

TYC continues to manage populations efficiently and place youth within TYC operated facilities when practical. However, I would like to emphasize that Contract Care provides treatment programs sometimes not feasible within our system while also providing an economical means to address wide fluctuations in populations.

Please call Don McCullough at 512-424-6206 if you have questions.

Sincerely,

Dwight Harris
Executive Director

Attachment A

Texas Youth Commission Contract Care Beds

	ADP
Secure Programs:	
Coke County Juvenile Justice Center	192
Eagle Lake	56
Garza County Regional Juvenile Center	10
Hemphill County Juvenile Detention Facility	50
Victoria County Juvenile Justice Center	20
Total Secure Programs	328
Non-Secure Programs:	
Alliance Children's Services	35
Associated Marine Institute	27
Brookhaven Youth Ranch	12
Byrds Therapeutic Group Home	8
Gulf Coast Conservation Corps.	15
Gulf Coast Trades Center	37
Mel Matthews Boys Ranch	15
Mel Matthews Vocational Center	21
Southwest Key Residential Treatment Center	32
Southwest Key Supervised Living	24
Specialized Alternatives for Youth	34
WINGS for Life	12
Total Non-Secure Programs	272
Total Contract Care Programs	600

Exhibit...

Texas Youth Commission

Bed Capacity and Population Summary

Baseline and Exceptional Item #1 (Restore Two - 96 Bed Dorms)
Fiscal Years 2005-2007

TYC Institutions	FY 2005			Baseline Requested			Exceptional Requested		
	Bed Capacity	Budgeted ADP		FY 2006	Budgeted ADP	Bed Capacity	FY 2007	Budgeted ADP	Bed Capacity
Ron Jackson Unit I	348	348		348	348	348	348	348	348
Ron Jackson Unit II	112	112		112	112	112	112	112	112
Crockett State School	264	264		264	264	264	264	264	264
Gainesville State School	340	340		340	340	340	340	340	340
Giddings State School	376	376		376	376	376	376	376	376
West Texas State School	240	240		240	240	240	240	240	240
Evins Regional Center	240	240		240	240	240	240	240	240
Al Price State Juvenile Corr. Facility	312	312		312	312	312	312	312	312
Marlin Orientation & Assessment	436	436		436	436	436	436	436	436
Victory Field Correctional Academy	336	288		336	336	336	336	336	336
Corsicana Residential Treatment Center	198	198		198	198	198	198	198	198
San Saba State School	356	356		356	356	356	356	356	356
McLennan Cty. St. Juv. Corr. Facility I	352	352		352	352	352	352	352	352
McLennan Cty. St. Juv. Corr. Facility II	320	240		320	320	320	320	320	320
Sheffield Boot Camp	128	126		128	128	128	128	128	128
Close Two 96-Bed Dorms	0	0		-192	-192	-192	0	0	0
Over/Under Population				125	125		-57	-57	
Total, Institutions	4,358	4,228		4,358	4,291	4,358	4,358	4,291	4,358
Halfway Houses	218	218		218	218	218	218	218	218
Total, TYC Operated Facilities	4,576	4,446		4,576	4,509	4,576	4,576	4,509	4,576
Contact Care		600			300			300	
Total Budgeted Population - TYC Board		5,046		4,809	4,809		4,809	4,809	4,876
% Population over Capacity, TYC Institutions		100%		103%	103%		98%	98%	100%
H.B. 1 Population Targets		5,212							
Over/Under H.B.1 Targets		-166							
LBB Population Projections (ADP)		4,802		4,809	4,809		4,809	4,809	4,876
Over/Under LBB Projected		244							
LBB End of Year Population				4,879	4,879		4,879	4,879	4,955

Appendix F

Larance Coleman_SC

From: Joy Anderson [Joy.Anderson@tyc.state.tx.us]
Sent: Monday, September 20, 2004 3:32 PM
To: Larance Coleman; Larance Coleman_SC
Cc: Terry Graham
Importance: High

Larance,
Here is the information regarding population increases in some counties. Let me know if you need anything else. Joy

As you know, the LAR is based on LBB population projections -- which indicate less than 2 percent growth for the upcoming biennium. (FY2006-2007)

At the same time, we can't ignore some blips on the screen from the three counties that already make up one-third of our youth population:

Harris County's commitments to TYC were up 32 percent last year. (400 to 527)
Bexar County was up 20 percent. (188 to 226)
Tarrant County was up 12 percent. (170 to 190)

Dallas decreased 27 percent. (286 to 212)
El Paso steady at 71 each of last 2 years.

Joy Anderson
Texas Youth Commission
Chief of Staff
512/424-6237
512/424-6099 fax
www.tyc.state.tx.us

9/20/2004

Appendix G



**TEXAS YOUTH
COMMISSION**

DWIGHT HARRIS
Executive Director

LINDA S. REYES, Ph.D.
Deputy Executive Director

COMMISSION MEMBERS

THE HONORABLE PETE C. ALFARO
Chairman, Baytown

DON BETHEL
Lamesa

STEVE FRYAR
Brownwood

PATSY REED GUEST
Duncanville

LEONARD E. LAWRENCE, M.D.
San Antonio

BILL MAHONES
Dallas

NICHOLAS T. SERAFY, JR.
Brownsville

4900 N. Lamar
Austin, Texas 78751
P.O. Box 4260
Austin, Texas 78755
(512) 424-6130 (Voice)
1-800-RELAY-TX (TDD)



Equal Opportunity Employer

April 23, 2004

The Honorable Steve Ogden, Chair
Senate Finance Committee
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Dear Chairman Ogden:

We wanted to follow-up regarding our discussion last week at the Senate Finance Committee hearing. We share your interest and desire to have our youths reading and performing math at grade level before they leave our care, and we have made some progress in the last few years. There is still much work to do, primarily related to the educational deficits these young people have when they reach our doors.

As you probably remember from our previous discussions, young people come to us with a number of strikes against them, especially related to their education. For instance:

- Almost 90% of youths are reading below grade level for their age when they enter TYC.
- On average, youths entering TYC are functioning four to five grade levels below the expected grade level for their age. (Median age at intake is 16, while their median grade level is between 5th and 6th grades.)
- Over 75% of entering TYC youths have below-average IQ scores.
- Currently about 44% of youths at TYC are eligible for and receive special education services.
- 10% are identified as Limited English Proficient and are provided special language support.

The Honorable Steve Ogden
April 22, 2004
Page 2 of 3 Pages

Measuring Progress

We generally see the fastest progress in reading gain for our youths during the first year they're with us. After the first year, their rate of progress levels off somewhat. In TYC's Agency Performance Measures, we include student reading (and math) gains, as well as the percentage of students reading at grade level at release. The agency's FY2003 Key Performance Target Report shows that overall, almost 65% of TYC students gained one month of reading for each month of instruction. The percent of students reading at grade level at release was 19.24% in FY2003, which is slightly above the 17% budgeted performance target.

The average length of stay for a youth in TYC for the first half of 2004 was 21 months (17 months for general offenders, who make up 60% of the population). To attain *grade level* while they are in our care would require the average student to gain almost seven years of educational progress in less than two years of instructional time.

We're proud of the progress our youth do make. However, we know that their progress is ultimately related to their learning capability. Some may never read at grade level, but they can become literate, productive citizens.

Reading Program

To help students make reading gains, TYC has developed a reading program based on national and state research. The program incorporates the state mandated essential skills and knowledge (TEKS) under three broad categories – word recognition, fluency, and comprehension. Through the use of grants and federal funding, TYC libraries have been upgraded and students have increased access to books and other educational reading materials in their dorms for after-school and weekend reading. Many TYC classrooms have technology programs that allow students to follow along with printed text. TYC teachers incorporate reading skills into their course work, and students practice reading abilities as they work through the phase-based Resocialization program. Additionally, across the state, hundreds of volunteer mentors partner with the agency to assist youths in improving their reading abilities.

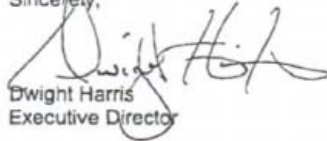
Transition Services

When TYC youths transition to parole, education is included as an important part of their parole requirements. Also, to further enable our students to continue the progress they've made, our educational liaisons provide support to youths while they re-enter high school, college, or vocational programs in their home communities. Three special education liaisons and seven liaisons for regular education students assist TYC youths across the state, coordinating enrollment and services. In addition, both groups of educational liaisons have developed electronic databases to track TYC students. Monitoring of educational services provided by local school districts to TYC youths in Halfway Houses and contracted facilities is now conducted by educational transition staff as well.

The Honorable Steve Ogden
April 22, 2004
Page 3 of 3 Pages

If you would like more details on any of these efforts to promote reading gains, please let me know. We would welcome any thoughts or suggestions on how to achieve even greater gains. Your support of and interest in TYC is appreciated.

Sincerely,



Dwight Harris
Executive Director

cc: Senate Finance Committee Members

Report
on
State Highway Fund 006

EXECUTIVE SUMMARY

With a growing statewide population and a goal of moving people and goods efficiently across our cities and our state, transportation funding continues to be an important issue for the State of Texas. Historically, the State Highway Fund (Fund 006) has been the major source of revenue for improving our state's highway system. Portions of revenue from the state motor fuels tax and vehicle registration fees, and reimbursements from the federal government are all deposited in the State Highway Fund (Fund 006). These specific revenues then become constitutionally dedicated to promoting public road construction, acquisition, maintenance, and policing of the state highway system.

Considering the potential impacts of changes mandated by the Texas Legislature, upcoming changes mandated by federal reauthorization legislation, and the large amounts of money that flow into and out of the fund on a monthly basis, it is key that all available resources are being used in an efficient and appropriate manner. The Committee has examined the testimony presented at the March 15th, 2004, Senate Finance Hearing and has formulated the following recommendations regarding Fund 006 for the next regular legislative session.

Summary of Recommendations

1. The Legislature and state should more carefully appropriate and monitor Fund 006 to ensure expenditures are constitutionally appropriate.
2. The Legislature should closely watch and try to ensure the federal highway fund reauthorization legislation is maximized to solve our states most pressing highway transportation needs. The Legislature should strongly encourage the federal

government to increase the state's share of transportation dollars to make it more equitable as compared to the amount of gasoline taxes paid by Texas taxpayers.

3. The Legislature should consider alternate funding for the Texas Department of Public Safety (DPS) from a portion of the fine, license, and weight revenues collected.
4. The sheer size of the budget of the Texas Department of Transportation (TxDOT) coupled with the significant new financial authority granted to the agency during the 78th Legislative Session calls for improvements to the agency's financial reporting methods.
5. The sweeping changes created by House Bill 3588, 78th Legislature, Regular Session, are still being tested as to their impact on Fund 006 and the state's ability to better meet the transportation needs of the State of Texas and its communities. The Legislature should continue to monitor the implementation and effects of House Bill 3588 and its impact on the future of Fund 006.
6. The Legislature should review the appropriateness of TxDOT maintaining large fund balances outside the state's treasury and outside the appropriations process.

PROCEDURAL BACKGROUND

The Senate Finance Committee was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that are identified. The Senate Finance Committee (the Committee) met in accordance with the following Economic Development interim charge as follows:

Fund 006. Review revenue sources into and appropriations out of Fund 006. Review policy decisions by the 78th Legislature that will impact the future of the Fund. Make recommendations for improvement, as needed.

The Committee met pursuant to the aforementioned interim charge in a public hearing in Austin, Texas, on March 15, 2004, to consider invited testimony provided by Congressman Michael Burgess, Federal Highway Administrator Mary Peters, the Texas

Department of Transportation, the Texas Department of Public Safety, and the Texas Legislative Budget Board. The Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas on July 20, 2004; however, none was provided.

The Committee extends its thanks to those who participated in the hearing, and assisted with or made presentations before the Committee.

BACKGROUND

Fund 006 is funded primarily through motor vehicle registration fees, the motor fuels taxes, motor fuel lubricant taxes, federal matching receipts and interest on state deposits and treasury investments. Specifically, the Texas Constitution, Section 7-a, Article VII states that revenues collected from motor vehicle registration fees, motor fuel taxes, and motor fuel lubricant taxes are dedicated for acquiring rights-of-way, constructing, maintaining, and policing public roadways, and for administering laws prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads. The Texas Constitution in Section 7-b, Article VIII dedicates federal revenues received as reimbursement for state expenditures made from dedicated funds for the same purposes. Other revenues collected are considered non-constitutionally dedicated and expenditures of these funds are not subject to the constitutional mandates. The fund is also subject to numerous statutory guidelines and provisions which discuss the use of the funds and requirements for bonds, loans and notes.¹

¹ Texas Transportation Code Sections: 222.001, 222.002, 222.003, 201.115, 201.962, 201.963, 201.964.

REVENUE SOURCES INTO FUND 006

Fund 006 receives revenues from the following sources: state motor fuels tax, federal funds, motor vehicle registration fees, sales tax on lubricants, and other revenues.²

See Appendices A, B, and C.

State Motor Fuel Tax

The State Motor Fuel Tax provides approximately 35.4% of the biennial revenues to Fund 006, for FY 04-05 estimated to be \$4,260.9 million.³ Revenues are derived from taxes assessed on the sale of motor fuels including gasoline, diesel fuel, and liquefied gas. Diesel fuel and gasoline are taxed at \$0.20 per gallon and liquefied gas is taxed at \$0.15 per gallon.

Two significant deductions are made prior to revenues being deposited into Fund 006. These deductions are as follows:

- Comptroller of Public Accounts: 1% of the gross amount collected is allocated to the Comptroller for the administration and enforcement of state motor fuel tax laws.
- County and Road District Highway Fund (Fund 0057): The first \$7.3 million collected from the state motor fuels tax is a historical allocation deposited to Fund 0057 for the purpose of taking care of outstanding county and road district indebtedness. The fund is distributed to the counties of the state by formula for the purpose of meeting obligations.

² Texas Comptroller's 2003 Annual Cash Report. Other revenues include items such as vehicle certificates, special vehicle registrations, commercial transportation fees and the sale of publications.

³ Legislative Budget Board's March 15, 2004 presentation to the Senate Finance Committee.

After all deductions are made, 25% of the balance is allocated to the Available School Fund (Fund 0002), and the remaining balance (75%) is allocated to Fund 006.

Federal Funds

Federal funds account for the largest single contribution to Fund 006 at 46.0% of revenues to the fund, estimated to be \$5,529.4 million in FY 04-05.⁴ 98% of the federal funds received in Fund 006 are reimbursements for state highway planning and construction expenditures.⁵ The remaining 2% is grant money received for specific transportation programs such as airport improvements, highway safety and public transportation.

Federal appropriations are made each fiscal year from revenues collected two years prior. Reimbursements for specific federal programs are limited during the annual federal appropriations process. Federal highway reimbursement rates average 80%, but can vary between 50-100%, depending upon the program. Penalties for failure to comply with provisions such as clean air compliance and safety regulations can also affect federal reimbursements.⁶

Currently, Congress is considering a new federal transportation authorization act, and any decisions made could create a significant financial benefit or loss to the future of Fund 006.

⁴ Legislative Budget Board's March 15, 2004 presentation to the Senate Finance Committee.

⁵ Current reimbursements are received under two federal authorization Acts the Intermodal Surface Transportation Efficiency Act (ISTEA) FY 1992-1997 at a rate of \$0.77 for every \$1.00 in federal highway taxes and the Transportation Efficiency Act for the 21st Century (TEA-21) FY 1998-2003 at a rate of \$0.905 for every \$1.00 in federal highway taxes. These rates are based on a minimum rate on 90% of federal allocated dollars. The rate of return on all federal funds received is lower.

⁶ Legislative Budget Board's March 15, 2004 presentation and written materials to the Senate Finance Committee.

Motor Vehicle Registration Fees

Annually, fees are collected for the registration of motor vehicles, trailers or semi-trailers. These fees account for 13.7% of revenues into Fund 006 or an estimated \$1,644.5 million in FY 04-05.⁷ However, not all registration fees are deposited to Fund 006. Currently, counties are authorized by Section 502.1025, Texas Transportation Code to retain 100% of motor vehicle registration fees collected up to a limit (\$60,000 + \$350 x the number of county maintained road miles (to a maximum of 500 miles) + 5% of the counties previous years motor vehicle sales tax collections). Beginning in 1991 and continuing through 2005, the 5% has been retained (100%) from Fund 006 and Motor Vehicle Registration Collections.

Beginning in FY 2006, this amount will once again begin to be retained directly from Motor Vehicles Sales Tax collections and the General Revenue Fund, as opposed to Motor Vehicle Registration and fund 006. The process will begin in FY 2006 and will increase at 10% increments over 10 years until FY 2015 when the entire amount will be retained directly from General Revenue.⁸

Sales Tax on Lubricants

Sales tax on lubricants provides 0.5% of the revenues to Fund 006. These monies are collected from taxes assessed on the sale, storage, or use of lubricating and motor oils

⁷ Legislative Budget Board's March 15, 2004 presentation and written materials to the Senate Finance Committee.

⁸ House Bill 3588, 78th Regular Legislative Session.

for motor vehicles, and for FY 04-05, this revenue is estimated to be approximately \$64 million.⁹

Other Revenues to the State Highway Fund

Approximately 4.4% of the total revenues into Fund 006 come from other revenue sources including vehicle certificates, special vehicle registrations, commercial transportation fees and the sale of publications. In FY 04-05, \$527 million is projected to be deposited to Fund 006 from these sources.¹⁰

Summary of Total Revenue Available in the State Highway Fund for FY 04-05

The Comptroller estimates the following revenues will be available to Fund 006 for the 2004-2005 biennium:¹¹

State Motor Fuels Tax:	\$4,260.9 million
Federal Funds:	\$5,529.4 million
Motor Vehicle Registration Fees:	\$1,644.5 million
Sales Tax on Lubricants:	\$64.3 million
Other Revenues:	\$527.0 million
Total Revenues for Fund 006:	\$12,026.1 million¹²

⁹ Legislative Budget Board's March 15, 2004 presentation and written materials to the Senate Finance Committee.

¹⁰ Legislative Budget Board's March 15, 2004 presentation and written materials to the Senate Finance Committee.

¹¹ Note: Amounts do not include balances remaining from prior fiscal years.

¹² Legislative Budget Board's March 15, 2004 presentation and written materials to the Senate Finance Committee. Estimates derived from Comptroller's December 2003 Revenue Estimates.

APPROPRIATIONS OUT OF FUND 006

The Texas Department of Transportation (TxDOT) receives approximately 88.6% of monies appropriated out of Fund 006, or \$5,793 million for FY 04-05.¹³ The next largest recipient of Fund 006 appropriations is the Texas Department of Public Safety (DPS). For FY 04-05, DPS is estimated to receive \$724 million, approximately 90% of its \$797 million budget, from appropriations out of Fund 006.¹⁴ These two state agencies administer the majority of constitutionally allowed expenditures for acquiring rights-of-way, constructing, maintaining, and policing public roadways, and for administering laws prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads.¹⁵

Fund 006 is also used to appropriate both constitutionally and non-constitutionally dedicated monies to other agencies and to fund related expenditures associated with the constitutional and/or statutory requirements. The following associated costs, unless otherwise noted, are sourced to information provided from agency submitted Legislative Appropriations Requests as currently reflected in ABEST, and were provided by the LBB:

- **Higher Education Coordinating Board:** Article III, Special Provisions Rider No. 55 appropriates \$26 million in each year to the Higher Education Coordinating Board with the intent that the Comptroller reimburse General Revenue up to \$26 million each year from Fund 006 to provide for the construction, maintenance, and policing of roads and streets on university campuses.¹⁶

¹³ Article VII, 2004-05 GAA

¹⁴ Article V, 2004-05 GAA.

¹⁵ Texas Constitution. Article VIII, Sec.7-b.

¹⁶ Information provided by LBB, November 3, 2004

- **Office of the Attorney General:** The Office of the Attorney General provides legal services on behalf of the TxDOT and DPS, including right-of-way acquisitions proceedings and representation in lawsuits. For this purpose, \$5,621,076 came out of Fund 006 in fiscal year 2004 and \$5,585,588 is projected to be used in fiscal year 2005.¹⁷
- **State Office of Administrative Hearings:** Appropriations from Fund 006 pay for SOAH hearings for the Department of Public Safety's Administrative License Revocation Program. Funding for this purpose in FY 2004 was \$2,776,100 and is projected to be \$2,764,292 in FY 2005.¹⁸
- **Public Integrity Unit:** The Travis County District Attorney's Office receives funding to investigate and prosecute motor fuel tax fraud cases. Funds used in FY 2004 were \$728,348 and are projected to be \$1,065,170 in FY 2005.¹⁹
- **Texas Transportation Institute:** For transportation safety research, \$5,431,551 was spent out of Fund 006 in FY 2004 and \$5,433,743 is projected to be spent in FY 2005.²⁰
- **Comptroller of Public Accounts-Fiscal Programs:** Appropriations are estimated for the payment of all necessary miscellaneous claims, tort claims, and federal judgments as needed. \$141,060 was appropriated in fiscal year and will be appropriated in FY 2005 as needed.²¹
- **Employee Benefits:** Funding is provided for insurance, retirement, Social Security, and benefit replacement pay costs for employees and retirees whose salaries are paid

¹⁷ Information from LBB, November 3, 2004.

¹⁸ id.

¹⁹ id.

²⁰ id.

²¹ id.

for from Fund 006. This amount was \$201,581,671 in FY 04 and is estimated to be \$212,602,547 in FY 2005.²² These benefits are paid for employees at the Department of Transportation, the Department of Public Safety, the Office of the Attorney General, the State Office of Administrative Hearings, and the Texas Transportation Institute.²³

STATE HIGHWAY FUND BALANCES

Since May of 2002, the Fund 006 balance has been steadily increasing. On March 15, 2004, TxDOT testified that Fund 006 had a balance of \$730 million on August 31, 2003, the highest year ending fund balance to date. TxDOT also acknowledged the fund balance was higher than desirable but testified that the high balance was partly a result of previous transactions. TxDOT testified that several factors lead to the increased fund balance, including the \$51 million Sugar Land sale, the \$144.6 million State Infrastructure Bank loan transfer, and the \$65 million turnpike loan repayment. However, TxDOT testified that the high fund balance was mostly attributable to two factors: a need to cover existing commitments and the use of "tapered match" to accelerate the receipt of federal funds²⁴ See Appendix D.

Tapered Match

Passage of the Transportation Equity Act for the 21st Century, gave the Federal Highway Administration the authority to establish more flexible policies regarding how

²² Information from LBB, November 3, 2004.

²³ Legislative Budget Board's March 15, 2004 presentation and written materials to the Senate Finance Committee.

²⁴ Michael W. Behrens, P.E. testimony and written materials before the Senate Finance Committee on March 15, 2004.

states can manage their obligations within the context of the regular Federal-Aid Highway Program. One such policy, "tapered match" allows more federal reimbursements on the front end of a project, As a result, federal reimbursement of state expenditures can be as high as 100% in the beginning phases of a project, as long as by the project's completion, the overall federal contribution does not exceed federal statutory aid limits for a particular project.²⁵ TxDOT explained that as federal funds are received earlier in the life of the project, the state can delay expenditure of state matching funds and earn interest until those funds are needed. TxDOT testified that revenues to Fund 006 on the onset of utilizing this technique will see an increase in the early years of implementation, but over time, the funding will return to more traditional levels as the state's matching funds are required and the mechanism has been fully implemented.²⁶

Existing Commitments

According to TxDOT, the accounts receivable and payable (or "existing commitments") must also be considered to determine the actual unreserved balance of Fund 006. As can be seen in Appendix D, Fund 006's balance on August 31, 2003 of \$730 million is significantly higher than its unreserved balance of \$260 million. TxDOT also noted that at the close of FY 03, an additional \$5.2 billion remained to be paid on existing highway improvement projects, and explained that existing commitments and their effects on Fund 006 can be even more significant when bonds are issued with debt service to come from Fund 006 or commitments are made to fund gaps for revenue bond

²⁵ Michael W. Behrens, P.E. testimony and written materials before the Senate Finance Committee on March 15, 2004.

²⁶ *id.*

funded projects.²⁷ The available balance of Fund 006 on September 27, 2004, was \$562 million, and TxDOT anticipates the balance will continue to trend downward.²⁸

78th LEGISLATIVE POLICIES IMPACTING THE FUTURE OF FUND 006

House Bill 3588 (Regular Session) related to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress improvement, policing, and safety of transportation in the state. The legislation provided for new revenues into Fund 006, with provisions such as the vehicle registration/sales tax swap, but also legislated provisions which will expend additional dollars from the fund.

For example, House Bill 3588 provided for the issuance of bonds and other public securities secured by Fund 006, and House Bill 471 (Regular Session) also amended the Transportation Code to allow the Texas Transportation Commission (TTC) to authorize TxDOT to borrow money and pay debt service out of Fund 006 to carry out the functions of the agency,²⁹ Completing the plan, the constitutional provision allowing for the use of short and long term borrowing secured by Fund 006, was ratified by the voters of the State of Texas in September 2003 with the passage of Proposition 14.

Additionally, in an effort to coordinate statewide public transportation more efficiently, House Bill 2292 (Regular Session), directed TxDOT to provide required transportation services to health and human services clients. The legislature provided an

²⁷ Michael W. Behrens, P.E. testimony and written materials before the Senate Finance Committee on March 15, 2004.

²⁸ Information form TxDOT, September 27, 2004.

²⁹ Fiscal Note, House Bill 471.

estimated \$111.8 million from Fund 006 for this function in the 04-05 biennium.³⁰ Lastly, House Bill 7 (3rd Called Session) also directed revenues from the sale of surplus property to be deposited to the General Revenue Fund. Prior to the passage of this bill, both TxDOT and DPS deposited surplus properties to Fund 006. The impact of diverting these revenues from Fund 006 to General Revenue is approximately \$6 million per year.³¹

Summary of Recommendations

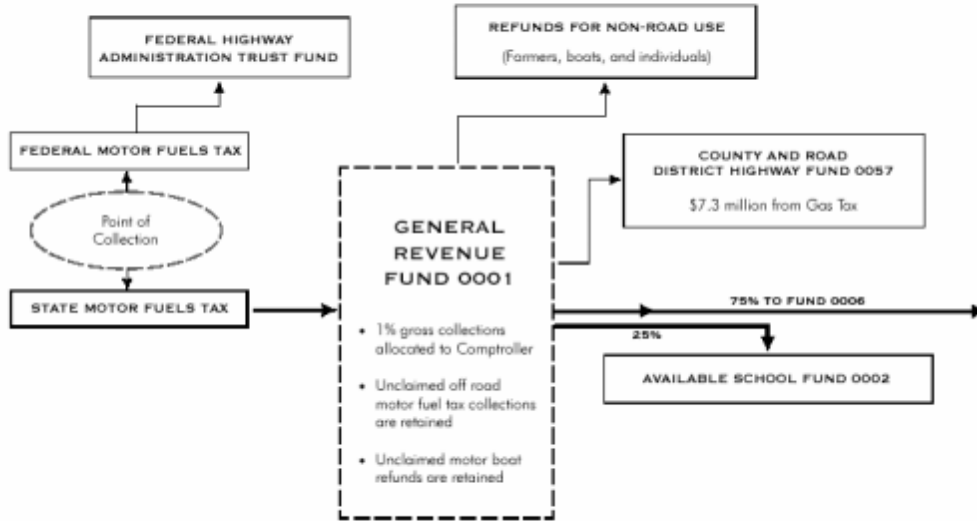
1. The Legislature and state should more carefully appropriate and monitor Fund 006 to ensure expenditures are constitutionally appropriate.
2. The Legislature should closely watch and try to ensure the federal highway fund reauthorization legislation is maximized to solve our states most pressing highway transportation needs. The Legislature should strongly encourage the federal government to increase the state's share of transportation dollars to make it more equitable as compared to the amount of gasoline taxes paid by Texas taxpayers.
3. The Legislature should consider alternate funding for the Texas Department of Public Safety (DPS) from a portion of the fine, license, and weight revenues collected.
4. The sheer size of the budget of Texas Department of Transportation (TxDOT) coupled with the significant new financial authority granted to the agency during the 78th Legislative Session calls for improvements to the agency's financial reporting methods.
5. The sweeping changes created by House Bill 3588, 78th Legislature, Regular Session, are still being tested as to their impact on Fund 006 and the state's ability to better meet the transportation needs of the State of Texas and its communities. The legislature should continue to monitor the implementation and effects of House Bill 3588 and its impact on the future of Fund 006.
6. The Legislature should review the appropriateness of TxDOT maintaining large fund balances outside the state's treasury and outside the appropriations process.

³⁰ Legislative Budget Board's March 15, 2004 presentation and written materials to the Senate Finance Committee.

³¹ Michael W. Behrens, P.E. testimony and written materials before the Senate Finance Committee on March 15, 2004.

Appendix A

GENERAL OVERVIEW OF STATE HIGHWAY FUND 006

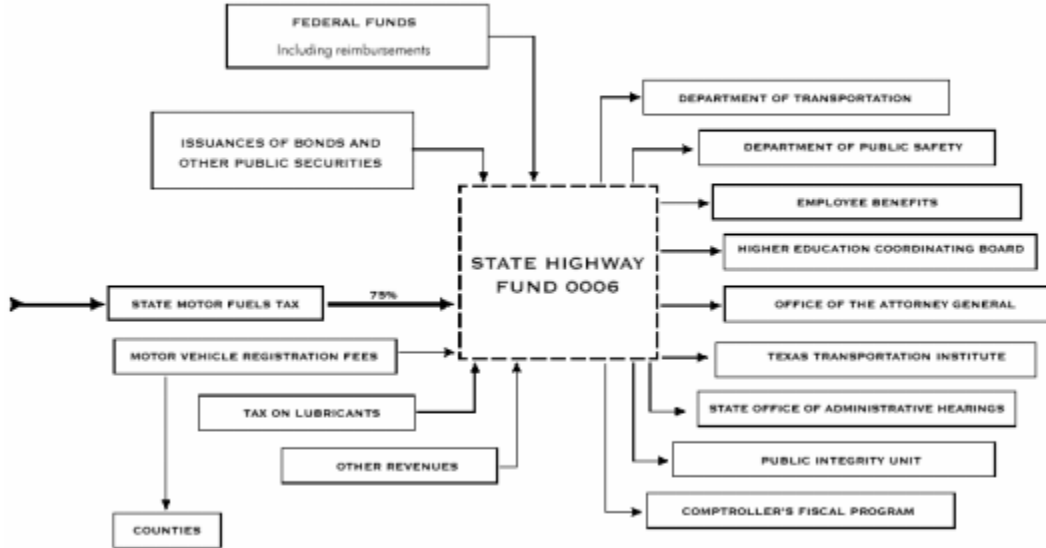


Note: Motor fuel taxes include taxes on gasoline, diesel fuel, and liquid gas.

Note: Charts from Legislative Budget Board's written testimony to Senate Finance Committee on March 15, 2004.

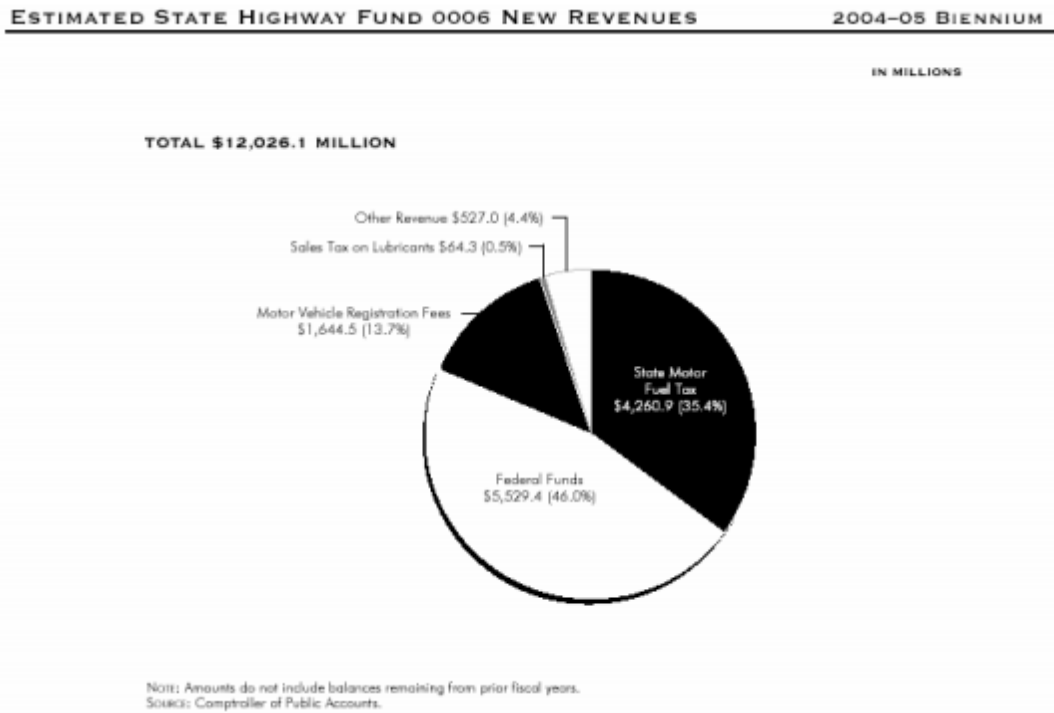
Appendix B

GENERAL OVERVIEW OF STATE HIGHWAY FUND 0006 (CONTINUED)



Note: Charts from Legislative Budget Board's written testimony to Senate Finance Committee on March 15, 2004.

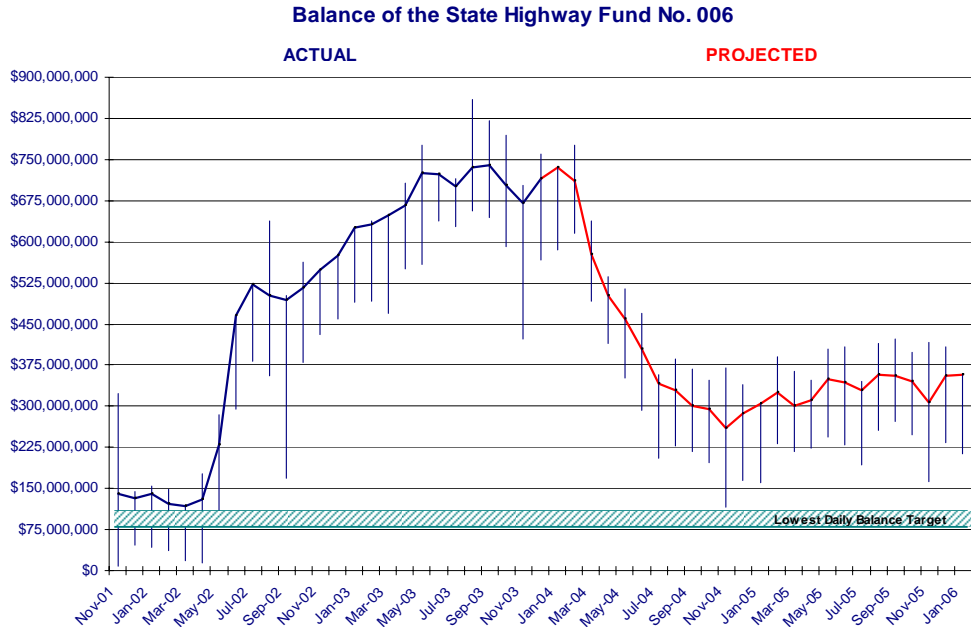
Appendix C



Note: Charts from Legislative Budget Board's written testimony to Senate Finance Committee on March 15, 2003.

Appendix D

Balance of the State Highway Fund No. 006 from August 31, 2003.



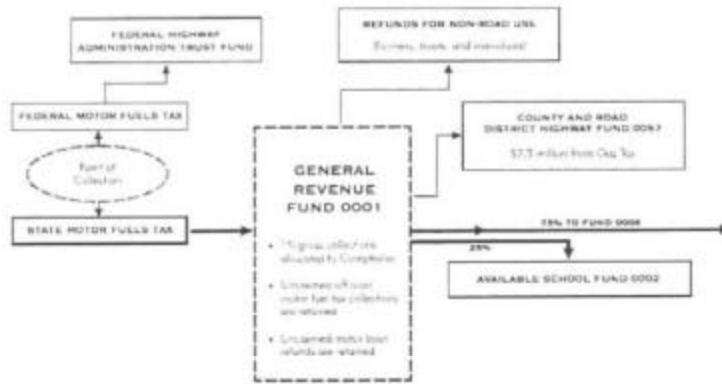
TxDot Commitments On August 31, 2003

Cash	\$730 million
Receivables and Other Assets	\$870 million
Payables	(\$641 million)
Retainage and Other Liabilities	(\$559 million)
Funds Reserved for Encumbrances, Inventories, and Other	(\$140 million)
Unreserved Fund Balance	\$260 million

Note: Chart provided by TxDOT written materials before the Senate Finance Committee on March 15, 2004

Appendix A

GENERAL OVERVIEW OF STATE HIGHWAY FUND 006

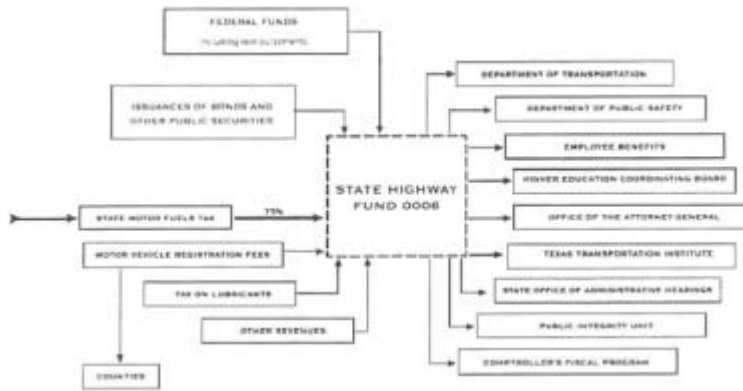


NOTE: Motor fuel taxes include taxes on gasoline, diesel fuel, other liquid fuels.

Note: Charts from Legislative Budget Board's written testimony to Senate Finance Committee on March 15, 2004.

Appendix B

GENERAL OVERVIEW OF STATE HIGHWAY FUND 0006 (CONTINUED)



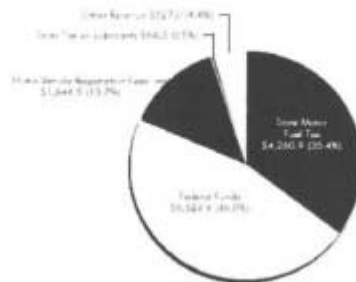
Note: Charts from Legislative Budget Board's written testimony to Senate Finance Committee on March 15, 2004.

Appendix C

ESTIMATED STATE HIGHWAY FUND 006 NEW REVENUES 2004-05 BIENNIAL

IN MILLIONS

TOTAL \$12,028.1 MILLION

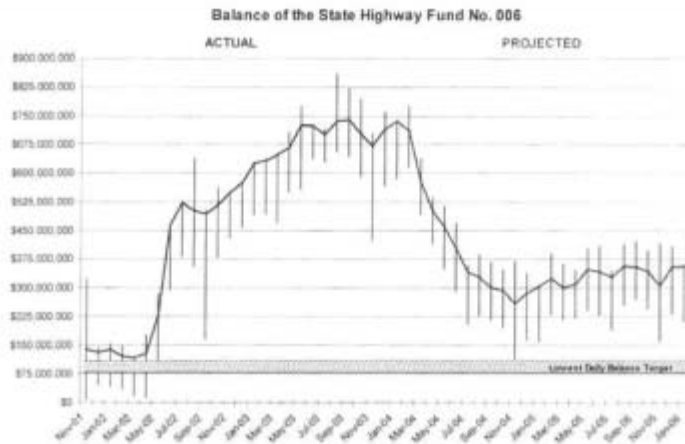


Notes: Revenue does not include interest income from prior fiscal years.
Does not include income of public accounts.

Note: Charts from Legislative Budget Board's written testimony to Senate Finance Committee on March 15, 2003.

Appendix D

Balance of the State Highway Fund No. 006 from August 31, 2003.



TxDOT Commitments On August 31, 2003

Cash	\$730 million
Receivables and Other Assets	\$870 million
Payables	(\$641 million)
Retainage and Other Liabilities	(\$559 million)
Funds Reserved for Encumbrances, Inventories, and Other	(\$140 million)
Unreserved Fund Balance	\$260 million

Note: Chart provided by TxDOT written materials before the Senate Finance Committee on March 15, 2004

**Appendix
E**

**Overview of State Highway Fund 0006
Revenues and Allocations, and the Texas
Mobility Fund**

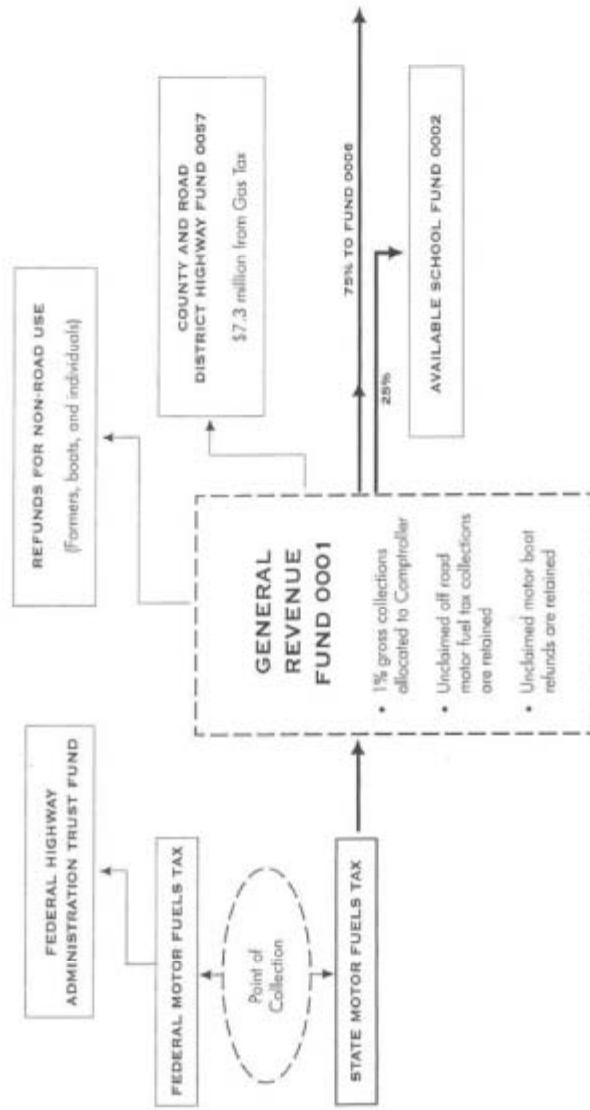
**PRESENTATION TO
SENATE FINANCE COMMITTEE**

**MARCH 15, 2004
LEGISLATIVE BUDGET BOARD**

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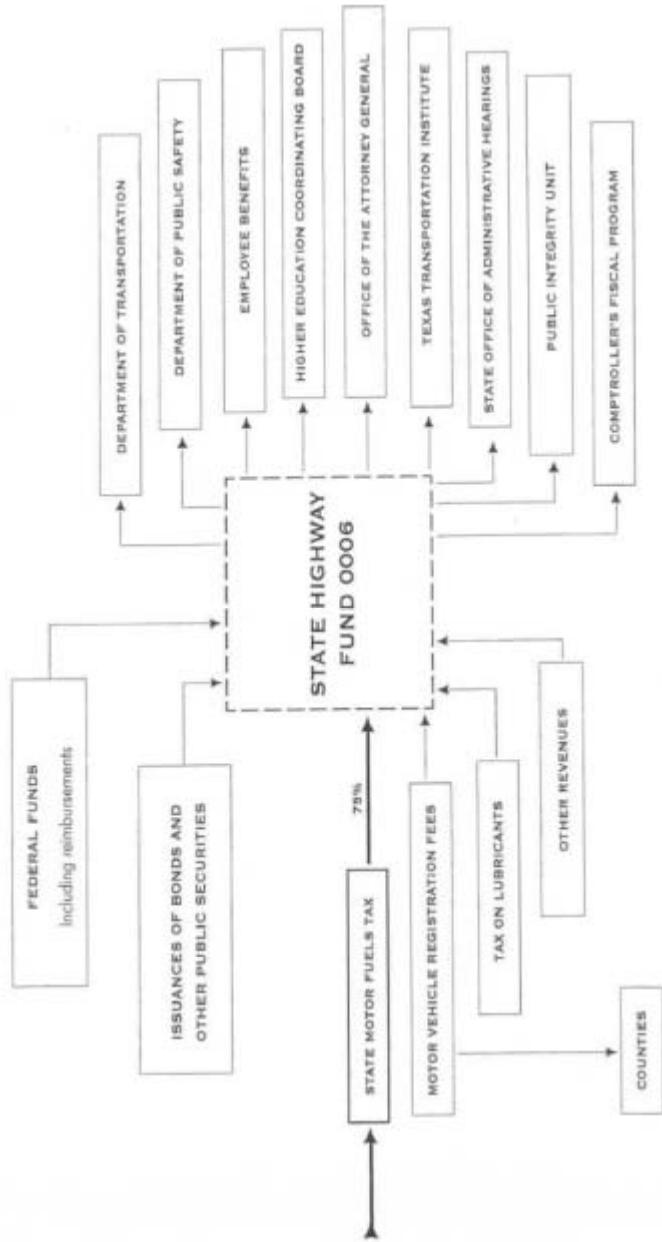
General Overview of State Highway Fund 0006	1	2004-05 Biennium State Highway Fund 0006	
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GENERAL OVERVIEW OF STATE HIGHWAY FUND 0006

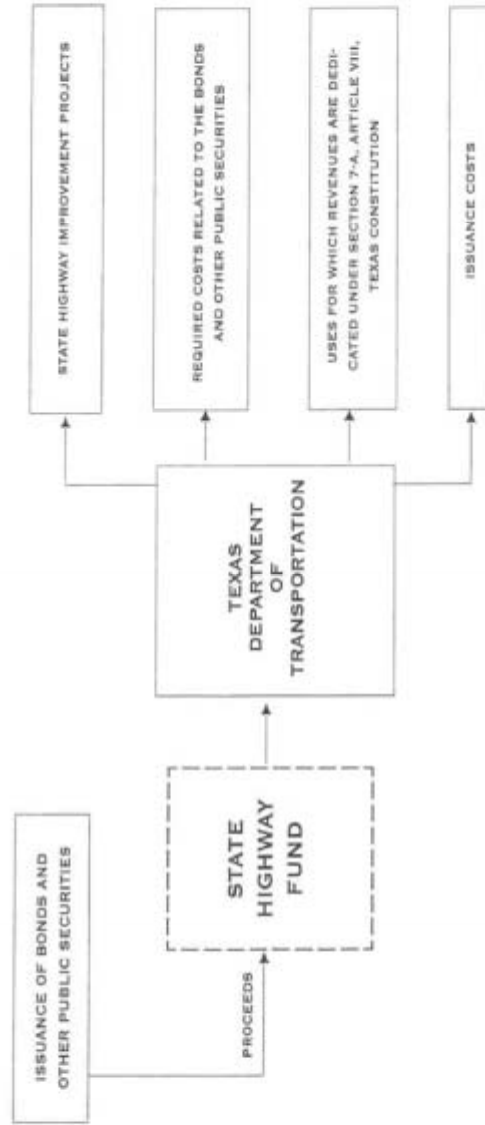


Note: Motor fuel taxes include taxes on gasoline, diesel fuel, and liquid gas.

GENERAL OVERVIEW OF STATE HIGHWAY FUND 006 (CONTINUED)



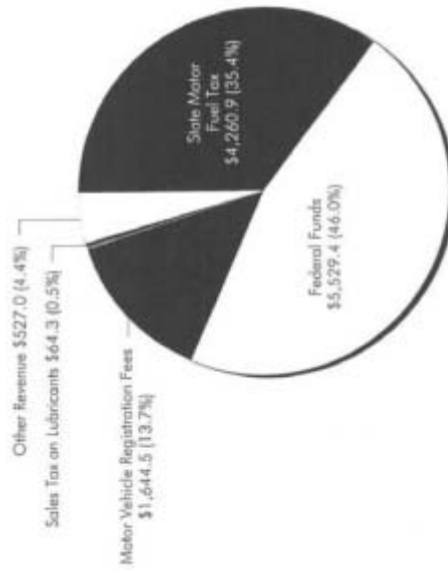
GENERAL OVERVIEW OF ISSUANCES SECURED BY REVENUE IN THE STATE HIGHWAY FUND



ESTIMATED STATE HIGHWAY FUND 0006 NEW REVENUES 2004-05 BIENNium

IN MILLIONS

TOTAL \$12,026.1 MILLION



Note: Amounts do not include balances remaining from prior fiscal years.
Source: Comptroller of Public Accounts.

MARCH 18, 2004

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LEGISLATIVE BUDGET BOARD

STATE HIGHWAY FUND 0006 REVENUES

STATE MOTOR FUELS TAX

- ◆ Revenues are generated through taxes assessed on the sale of motor fuels including gasoline, diesel fuel, and liquefied gas.
 - Diesel fuel and gasoline tax rate is \$0.20 per gallon.
 - Liquefied gas tax rate is \$0.15 per gallon.
- ◆ One percent of the gross amount collected is allocated to the Comptroller of Public Accounts for the administration and enforcement of state motor fuel tax laws.
- ◆ The first \$7.3 million collected from the gasoline tax is allocated to the County and Road District Highway Fund (Fund 0057).
- ◆ After deductions, 25 percent of the collected state motor fuel tax balance is allocated to the Available School Fund (Fund 0002) and the remaining 75 percent is allocated to the State Highway Fund.
- ◆ The Comptroller estimates \$4.3 billion will be available for the 2004–05 biennium.
- ◆ Since the effective date of the last motor fuel tax increase in fiscal year 1992, revenues increased by 62.6 percent, from \$1.3 billion to \$2.1 billion in fiscal year 2003.

STATE HIGHWAY FUND 0006 REVENUES (CONTINUED)

FEDERAL FUNDS

- ◆ 98 percent of the federal funds received in the State Highway Fund are reimbursements for state highway planning and construction expenditures. Current reimbursements are received under two federal transportation authorization acts:

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT (ISTEA)

- Authorized highway funding for fiscal years 1992–1997;
- Texas' rate of return was \$0.77 for every \$1.00 in federal highway taxes.

TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-21)

- Authorized highway funding for fiscal years 1998–2003;
 - Texas' rate of return increased to \$0.905 for every \$1.00 in federal highway taxes.
- ◆ Federal program appropriations are made each fiscal year from revenues collected two years prior.
 - ◆ Total reimbursements for specific federal programs are limited during the annual federal appropriations process.
 - ◆ Highway funding reimbursement rates average 80 percent, but range from 50 percent to 100 percent depending on the program.
 - ◆ Reimbursements are subject to penalties for failure to comply with certain provision, such as clean air compliance and safety regulations.
 - ◆ The remaining 2 percent are grants received through other transportation programs, like airport improvements, highway safety, and public transportation.
 - ◆ Congress is currently considering a new federal transportation authorization act.
 - ◆ The Comptroller estimates \$5.5 billion in federal reimbursements will be available for the 2004–05 biennium.

STATE HIGHWAY FUND 0006 REVENUES (CONTINUED)

MOTOR VEHICLE REGISTRATION FEES

- ◆ Fees are collected annually for the registration of motor vehicles, trailers, or semitrailers.
- ◆ Counties retain the first \$60,000 collected and \$350 for each mile of county road maintained by the county up to 500 miles.
- ◆ Counties will continue to retain an amount equivalent to 5 percent of the motor vehicle sales tax collected from the sale of vehicles in their jurisdictions during the previous year and other amounts required by law through fiscal year 2005.
- ◆ Beginning in fiscal year 2006, counties will receive less revenue from motor vehicle registration fees and will retain more revenue from motor vehicle sales tax collections proportionally each year through fiscal year 2015 to meet the equivalency amount of 5 percent of the motor vehicle sales tax collected during the previous year. No motor vehicle registration fees will be allocated for the 5 percent equivalency amount in 2015 and following years, as motor vehicle sales tax revenue will cover the full amount.
- ◆ The Comptroller estimates \$1.6 billion will be available for the 2004–05 biennium.

SALES TAX ON LUBRICANTS

- ◆ Revenues are collected from taxes assessed on the sale, storage, or use of lubricating and motor oils for motor vehicles.
- ◆ The Comptroller estimates \$64.3 million will be available for the 2004–05 biennium.

OTHER REVENUES

- ◆ Revenues are generated from many other sources including vehicle certificates, special vehicle registrations, commercial transportation fees, and the sale of publications.
- ◆ The Comptroller estimates \$527.0 million will be available for the 2004–05 biennium.

STATE HIGHWAY FUND 0006 CONSTITUTIONAL GUIDELINES AND PROVISIONS

SECTION 7-a, ART. VIII, TEXAS CONSTITUTION

- ♦ Dedicates net revenues from motor vehicle registration fees, motor fuels taxes, and lubricant taxes to be used only for "acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads."
- ♦ Requires one-fourth of the revenue collected from the motor fuel tax to be allocated to the Available School Fund. (This was established in accordance with the 1883 Constitutional Amendment of Article VII, Section 3 [a]).
- ♦ Establishes a floor for net revenues derived by counties from motor vehicle registration fees.

SECTION 7-b, ART. VIII, TEXAS CONSTITUTION

- ♦ Dedicates revenues received from the federal government as reimbursement for state expenditures from funds "dedicated for acquiring rights-of-way and constructing, maintaining, and policing public roadways" for the same purposes.

SECTION 49-m, ART. III, TEXAS CONSTITUTION

- ♦ Allows the Legislature to authorize the Texas Transportation Commission to authorize the Texas Department of Transportation to issue notes or borrow money from any source to carry out the functions of the department.
- ♦ Limits any loans obtained or notes issued to a term of no more than two years.

STATE HIGHWAY FUND 0006 CONSTITUTIONAL GUIDELINES AND PROVISIONS (CONTINUED)

SECTION 49-m, ART. III, TEXAS CONSTITUTION

- ◆ Authorizes the Legislature to appropriate money dedicated by Sections 7-a and 7-b, Article VIII, of the Constitution for the purpose of paying a debt created by the notes or loan.

SECTION 49-n, ART. III, TEXAS CONSTITUTION

- ◆ Allows the Legislature to authorize the Texas Transportation Commission to issue bonds and other public securities and enter into bond enhancement agreements that are payable from revenue deposited to the credit of the State Highway Fund to fund highway improvement projects.
- ◆ Appropriates amounts from the State Highway Fund in each fiscal year sufficient to pay the principal of and interest on the bonds or other public securities that mature or become due during the fiscal year and any cost related to the bonds and other public securities, including payments under bond enhancement agreements, that becomes due during that fiscal year.
- ◆ Prohibits modifying any dedication or appropriation of revenue to the credit of the State Highway Fund that would impair any outstanding bonds or other public securities secured by a pledge of that revenue unless provisions are made for a full discharge of those securities.

STATE HIGHWAY FUND 0006 STATUTORY GUIDELINES AND PROVISIONS

SECTION 222.001, TRANSPORTATION CODE

- ◆ Requires that revenue deposited in the State Highway Fund, "be used only:
 - (1) to improve the state highway system;
 - (2) to mitigate adverse environmental effects that result directly from construction or maintenance of a state highway by the department; or
 - (3) by the Department of Public Safety to police the state highway system and to administer state laws relating to traffic and safety on public roads."

SECTION 222.002, TRANSPORTATION CODE

- ◆ Allows money in the fund that is not required to be used on public roadways by the Texas Constitution or federal law to be used for any function performed by the department.

SECTION 222.003, TRANSPORTATION CODE

- ◆ Authorizes the Texas Transportation Commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the State Highway Fund in accordance with all laws affecting the issuance of bonds and other public securities by governmental entities, including Chapters 1201, 1202, 1204, 1207, 1231, and 1371, Government Code.
- ◆ Limits the aggregate principal amount of bonds and other public securities issuances to \$3 billion overall with an additional restriction allowing no more than an aggregate principal amount of \$1 billion to be issued each year.

STATE HIGHWAY FUND 0006 STATUTORY GUIDELINES AND PROVISIONS (CONTINUED)

SECTION 222.003, TRANSPORTATION CODE (CONTINUED)

- ◆ Requires the Texas Transportation Commission to issue bonds or other public securities in an aggregate principal amount of \$600 million to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system.
- ◆ Prohibits proceeds of bond and other public security issuances under this section from being used for the construction of a state highway or other facility on the "Trans-Texas Corridor".
- ◆ Requires the bond and public security proceeds to be used for costs related to the bonds and other public securities and for purposes for which revenues are dedicated under Section 7-a, Article VIII, Texas Constitution.
- ◆ Requires the annual expenditures for related obligations, principal amounts, and terms, to be 10 percent or less of the amount deposited to the credit of the State Highway Fund in the immediately preceding year and that bonds and other public securities must mature no later than 20 years after their dates of issuance, subject to any refunds or renewals.
- ◆ Requires the Comptroller to make all necessary payments from the State Highway Fund under the direction of the Texas Transportation Commission for the principal, interest, and other costs related to the bonds and other public securities that become due.

STATE HIGHWAY FUND 0006 STATUTORY GUIDELINES AND PROVISIONS (CONTINUED)

SECTION 201.115, TRANSPORTATION CODE

- ♦ Authorizes the Texas Transportation Commission to borrow money from any source to carry out the functions of the department and allows money in the State Highway Fund to be used to repay such a loan, if appropriated by the legislature for that purpose.
- ♦ Requires that any loans made under this section may not be a general obligation of the state and are payable only as authorized by legislative appropriation.

SECTION 201.962, TRANSPORTATION CODE

- ♦ Authorizes the Texas Transportation Commission to issue, sell, and deliver tax and revenue anticipation notes on behalf of the state in anticipation of a temporary cash flow shortfall in the state highway fund during any fiscal year, with the approval of the cash management committee.

SECTION 201.963, TRANSPORTATION CODE

- ♦ Authorizes the Texas Transportation Commission to act as an issuer and to exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 1371, Government Code.
- ♦ Exempts the notes from review by the Bond Review Board, but requires the review and approval by the Attorney General.
- ♦ Authorizes the Comptroller to assist the Texas Transportation Commission with the issuance of notes.

STATE HIGHWAY FUND 0006 STATUTORY GUIDELINES AND PROVISIONS (CONTINUED)

SECTION 201.963, TRANSPORTATION CODE (CONTINUED)

- ◆ Requires that issued tax and revenue anticipation notes may not be counted as debts of the state, that they must mature and be paid in full during the fiscal biennium in which they were issued, and that they may be used only to make up a temporary shortfall in the State Highway Fund's cash flow.
- ◆ Requires that tax and revenue anticipation note proceeds be deposited in a special fund in the state treasury, that depository interest be credited to the fund, and that the department must transfer the net proceeds from the fund to the State Highway Fund as necessary to pay authorized expenditures.
- ◆ Allows amounts in the highway tax and revenue anticipation note fund to be pledged to secure the payment of the notes and performance of obligations under credit agreements relating to the notes and be used to pay issuance costs and required rebates to the federal government.

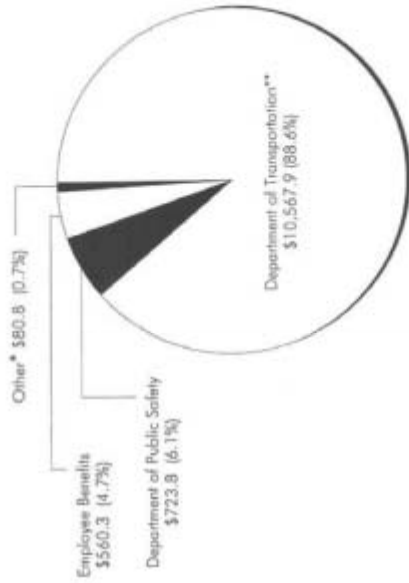
SECTION 201.964, TRANSPORTATION CODE

- ◆ Requires the Texas Department of Transportation to periodically transfer cash received in the State Highway Fund to the highway tax and revenue anticipation note fund to ensure the timely payment of the notes.

2004-05 BIENNIUM STATE HIGHWAY FUND 0006 APPROPRIATED AMOUNTS

IN MILLIONS

TOTAL \$11,932.8 MILLION



*Other:
 Higher Education Coordinating Board \$52.0 (0.4%)
 Office of the Attorney General \$11.3 (0.1%)
 Texas Transportation Institute \$10.2 (0.1%)
 State Office of Administrative Hearings \$5.5 (0.05%)
 Public Integrity Unit \$1.8 (0.02%)

**Department of Transportation appropriation amounts are estimated and include prior fiscal year remaining balances and Federal Funds.
 Source: Legislative Budget Board.

2004-05 BIENNIUM STATE HIGHWAY FUND 0006 APPROPRIATED AMOUNTS (CONTINUED)

COMPTROLLER OF PUBLIC ACCOUNTS

- ♦ Prior to required allocations being deposited to the Available School Fund and the State Highway Fund, one percent of the gross amount of motor fuel taxes collected is allocated to the Comptroller for the administration and enforcement of the motor fuel tax laws.

DEPARTMENT OF TRANSPORTATION

- ♦ Funding is provided for planning, designing, researching, building, maintaining, and preserving the state transportation system, as well as maximizing the effectiveness and efficiency of transportation services, systems, programs, and resources.
- ♦ In accordance with House Bill 2292, Seventy-eighth Legislature, 2003, the department was appropriated an estimated amount of \$111.8 million and 172 FTEs to provide required health and human services client transportation services in efforts to coordinate statewide public transportation more effectively and efficiently.

DEPARTMENT OF PUBLIC SAFETY

- ♦ Funding is provided to police the state highway system and administer state traffic and safety laws on public roads.

EMPLOYEE BENEFITS

- ♦ Funding is provided for insurance, retirement, Social Security, and benefit replacement pay costs for employees and retirees from the Department of Transportation, the Department of Public Safety, the Office of the Attorney General, the State Office of Administrative Hearings, and the Texas

2004-05 BIENNIIUM STATE HIGHWAY FUND 0006 APPROPRIATED AMOUNTS (CONTINUED)
Transportation Institute.

HIGHER EDUCATION COORDINATING BOARD

- ♦ Funding is provided for maintenance, construction, and policing of roads and streets on university campuses.

OFFICE OF THE ATTORNEY GENERAL

- ♦ Funding provides legal services on behalf of the Department of Transportation and the Department of Public Safety, (includes right-of-way acquisition proceedings and representation in lawsuits).
- ♦ In fiscal year 2003, the Office of the Attorney General performed 93,644 hours of legal work for the Department of Transportation and the Department of Public Safety.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

- ♦ Funding is provided for hearings for Department of Public Safety's Administrative License Revocation Program.

PUBLIC INTEGRITY UNIT

- ♦ Funding is provided to the Travis County District Attorney's Office to investigate and prosecute motor fuel tax fraud cases.

TEXAS TRANSPORTATION INSTITUTE

- ♦ Funding is provided for transportation safety research.

COMPTROLLER OF PUBLIC ACCOUNTS, FISCAL PROGRAMS

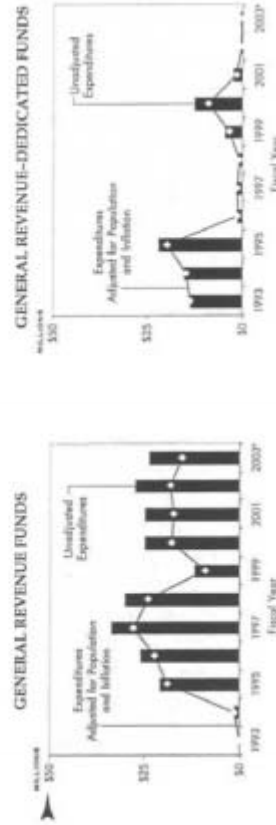
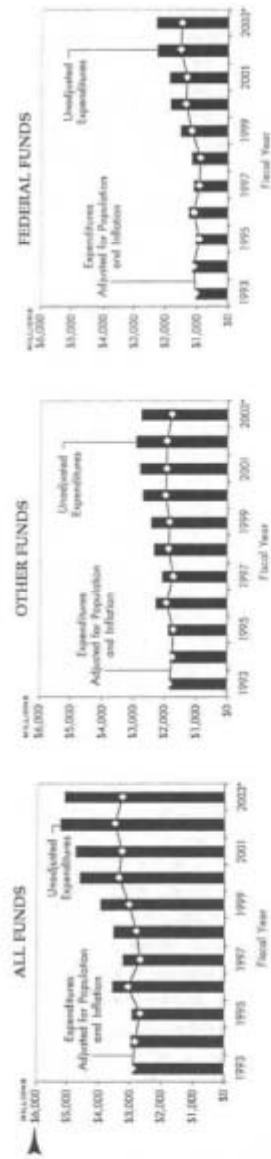
- ♦ Funding is provided to pay miscellaneous claims, tort claims, and federal judgements.

MARCH 15, 2004

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LEGISLATIVE BUDGET BOARD

DEPARTMENT OF TRANSPORTATION EXPENDITURES FISCAL YEARS 1993-2003



*Fiscal year 2003 estimated.
SOURCE: Legislative Budget Board, Comptroller of Public Accounts.

DEPARTMENT OF TRANSPORTATION EXPENDITURES FISCAL YEARS 1993-2003

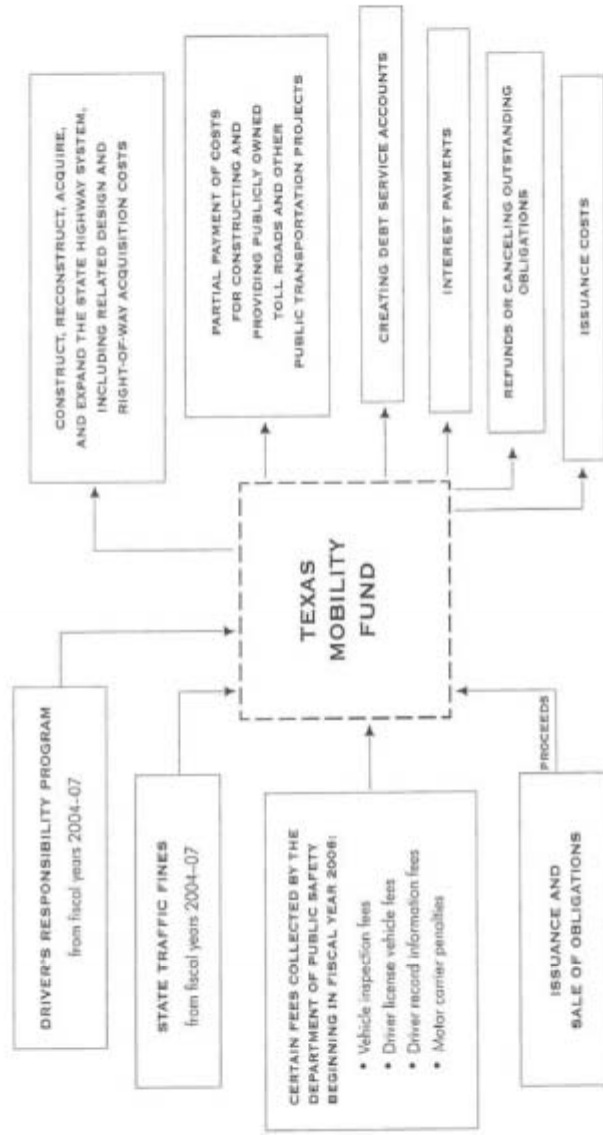
FISCAL YEAR	GENERAL REVENUE EXPENDITURES		GENERAL REVENUE-DEDICATED EXPENDITURES		FEDERAL FUNDS EXPENDITURES		OTHER FUNDS EXPENDITURES		ALL FUNDS EXPENDITURES		ALL FUNDS PERCENTAGE INCREASE
	UNADJUSTED	ADJUSTED*	UNADJUSTED	ADJUSTED*	UNADJUSTED	ADJUSTED*	UNADJUSTED	ADJUSTED*	UNADJUSTED	ADJUSTED*	
1993	\$0.0	\$0.0	\$13.6	\$13.6	\$1,027.6	\$1,027.6	\$1,858.1	\$1,858.1	\$2,899.3	\$2,899.3	N/A
1994	1.5	1.4	15.5	14.8	1,133.2	1,080.1	1,818.5	1,733.4	2,968.8	2,834.9	(2.4)%
1995	21.0	19.1	21.9	19.8	1,013.7	920.3	1,866.3	1,712.4	2,942.8	2,678.0	(5.6)
1996	25.7	22.2	1.5	1.3	1,262.0	1,092.4	2,265.9	1,961.3	3,555.1	3,079.1	15.2
1997	33.5	27.8	1.7	1.4	1,101.2	909.7	2,079.7	1,717.9	3,216.2	2,666.7	(13.7)
1998	30.0	23.9	1.0	0.8	1,137.7	905.6	2,350.7	1,871.2	3,519.4	2,815.4	5.5
1999	11.8	9.0	4.8	3.7	1,512.9	1,158.5	2,423.7	1,855.8	3,953.2	3,031.5	8.0
2000	24.6	17.9	12.7	9.2	1,649.3	1,346.4	2,712.9	1,975.2	4,399.4	3,343.2	10.6
2001	24.8	17.2	2.4	1.7	1,888.2	1,305.8	2,816.4	1,947.7	4,731.7	3,293.7	(2.3)
2002	27.3	18.2	0.6	0.4	2,268.1	1,516.5	2,929.9	1,959.1	5,225.9	3,535.5	6.8
2003**	23.5	15.1	0.6	0.4	2,311.6	1,481.3	2,770.4	1,775.3	5,106.1	3,271.9	(6.4)
Average increase		N/A		(0.3)%		3.7%		(0.5)%		12%	

*Expenditures adjusted for population and inflation.

**Estimated.

Sources: Legislative Budget Board; Comptroller of Public Accounts.

GENERAL OVERVIEW OF THE TEXAS MOBILITY FUND



TEXAS MOBILITY FUND CONSTITUTIONAL GUIDELINES

SECTION 49-k, ARTICLE III, TEXAS CONSTITUTION

- ◆ Created the Texas Mobility Fund in the state treasury as a revolving fund to finance costs for the acquisition of right-of-way and the design, construction, reconstruction, acquisition, and expansion of state highways.
- ◆ Authorizes money in the fund to be used to allow the state to participate in paying part of the costs for constructing and providing publicly owned toll roads and other public transportation projects.
- ◆ Requires the Texas Transportation Commission to administer the fund and authorizes it to issue and sell obligations of the state and enter into related credit agreements that are payable from and secured by money in the fund in an aggregate principal amount that can be repaid when due from the fund.
- ◆ Requires obligation proceeds to be deposited in the fund and used for making authorized refunds; creating payment reserves; paying issuance costs; and paying interest on obligations and related credit agreements.
- ◆ Authorizes the Legislature to dedicate revenues from specific sources, portions, or amounts to the fund, including taxes and other state monies that are not constitutionally dedicated, and revenues from other sources that are allocated to the same costs as revenues dedicated by Section 7-a, Article VIII, of the Texas Constitution.
- ◆ Appropriates revenues dedicated to the fund for the purposes established in statute upon being received and deposited into the fund without further appropriation.

TEXAS MOBILITY FUND CONSTITUTIONAL GUIDELINES (CONTINUED)

SECTION 49-k, ARTICLE III, TEXAS CONSTITUTION (CONTINUED)

- ◆ Allows the Legislature to authorize the Texas Transportation Commission by law to guarantee the payment of any obligation and credit agreement issued and executed under this section by pledging the full faith and credit of the state to that payment if dedicated revenues, taxes, and monies are insufficient to make all payments when due.
- ◆ Requires that the first money received in the state treasury, that is not otherwise appropriated by the constitution, must be deposited in the fund during each fiscal year in an amount sufficient to pay the principal and interest of any obligations and agreements due during that fiscal year less any amount available in the fund for that payment if dedicated revenues, taxes, and monies are insufficient to make all payments when due and appropriates those funds.
- ◆ Prohibits reducing, rescinding, or repealing the dedication of a specific source or portion of revenue, taxes, or other money made to the fund while money in the fund is pledged to pay outstanding obligations or related credit agreements unless the Legislature by law dedicates a substitute or different source projected by the Comptroller to be of greater or equal value than the source or amount being reduced, rescinded, or repealed and authorizes the Texas Transportation Commission to guarantee the payment of any obligations and credit agreements issued and executed by pledging the full faith and credit of the state to that payment if dedicated revenue is insufficient for that purpose and the Texas Transportation Commission implements that authority.
- ◆ Requires the Comptroller to project aggregate principal amounts of state obligations and credit agreements that are payable from the fund.

TEXAS MOBILITY FUND CONSTITUTIONAL GUIDELINES (CONTINUED)

SECTION 49-k, ARTICLE III, TEXAS CONSTITUTION (CONTINUED)

- ◆ Requires that the Attorney General to review proceedings authorizing obligations and related credit agreements for the purposes of approving their legality and establishes that such obligations and related credit agreements are incontestable for any cause after receiving an Attorney General approval, after obligation purchasers make a payment, and after the agreements are executed and delivered.
- ◆ Prohibits any obligations and credit agreements issued or executed under this section from being included in the computation required by Section 49-j, Article III, of the Constitution, unless money is dedicated to the fund without specification of its source or the payment of obligations and credit agreements is guaranteed by pledging the full faith and credit of the state.
- ◆ Requires that obligations and credit agreements must be included in the computation required by Section 49-j, Article III, of the Constitution, to the extent the Comptroller projects that general funds of the state will be required to pay amounts due on or on account of the obligations and credit agreements.
- ◆ Authorizes the collection and deposit of amounts required by this section of the constitution, applicable law, and contract to be applied to the payment of obligations and credit agreements issued, executed, and secured to be enforced by mandamus against the Commission, the Texas Department of Transportation, and the Comptroller in a district court of Travis County, and waves the sovereign immunity of the state for that purpose.

TEXAS MOBILITY FUND STATUTORY GUIDELINES

SECTION 201.942, TRANSPORTATION CODE

- ♦ Requires the Comptroller to hold the fund.
- ♦ Requires the Texas Transportation Commission to manage, invest, use, and administer the fund through the Texas Department of Transportation.

SECTION 201.943, TRANSPORTATION CODE

- ♦ Authorizes the Texas Transportation Commission to issue obligations and enter into credit agreements in the name and on behalf of the state for financing the construction, reconstruction, acquisition, and expansion of state highways and other mobility projects through the Texas Department of Transportation and the Texas Mobility Fund.
- ♦ Provides the Texas Transportation Commission with the powers granted to other bond-issuing governmental agencies and units and to nonprofit corporations by Chapters 1201, 1207, and 1371, Government Code.
- ♦ Requires obligations to be secured by and payable from a pledge of and lien on all or part of the money in the fund.
- ♦ Allows obligations to be additionally secured by and payable from credit agreements and allows amounts due on the obligations to be paid from discretionary money available to the Texas Transportation Commission that is not dedicated to or appropriated for other specific purposes.

TEXAS MOBILITY FUND STATUTORY GUIDELINES (CONTINUED)

SECTION 201.943, TRANSPORTATION CODE (CONTINUED)

- ◆ Allows obligations to be issued for one or more of the following purposes:
 - to pay all or part of the costs for the acquisition of right-of-way and the design, construction, reconstruction, acquisition, and expansion of state highways have with an expected useful life, without material repair, of not less than 10 years;
 - to allow the state to participate in paying part of the costs for constructing and providing publicly owned toll roads and other public transportation projects that are determined by the Texas Transportation Commission to be in the best interests of the state;
 - to create debt service reserve accounts;
 - to pay interest on obligations for a period of not longer than two years;
 - to refund or cancel outstanding obligations; and
 - to pay the commission's costs of issuance.
- ◆ Prohibits obligations from being issued unless the Comptroller projects in a certification that the amount of money dedicated to the fund and required to be on deposit in the fund and the investment earnings on that money, during each year of the period during which the proposed obligations are scheduled to be outstanding, will be equal to at least 110 percent of the requirements to pay the principal of and interest on the proposed obligations during that year.
- ◆ Requires that the Attorney General review proceedings authorizing obligations and related credit agreements for the purposes of approving their legality and establishes that such obligations and related credit agreements are incontestable for any cause after receiving an Attorney General approval, after obligation purchasers make a payment, and after the agreements are executed and delivered.

TEXAS MOBILITY FUND STATUTORY GUIDELINES (CONTINUED)

SECTION 201.944, TRANSPORTATION CODE

- ♦ Pledges the full faith and credit of the state to the payment of obligations and credit agreements in the event that revenue and money for and on deposit in the fund would be insufficient to cover debt obligations.
- ♦ Requires that the first money received in the state treasury, that is not otherwise appropriated by the constitution, must be deposited in the fund during each fiscal year in an amount sufficient to pay the principal and interest of any obligations and agreements due during that fiscal year less any amount available in the fund for that payment if dedicated revenues, taxes, and monies are insufficient to make all payments when due and appropriates those funds.

SECTION 201.945, TRANSPORTATION CODE

- ♦ Requires revenue dedicated or appropriated pursuant to the requirements of the Texas Constitution to be deposited in the fund.

SECTION 201.946, TRANSPORTATION CODE

- ♦ Allows money in the fund to be invested in the investments permitted by law for the investment of money on deposit in the state highway fund.
- ♦ Requires that income received from the investment of money in the fund be deposited in the fund subject to any requirements imposed by proceedings authorizing obligations to protect the tax-exempt status of interest payable on the obligations under the Internal Revenue Code of 1986.

TEXAS MOBILITY FUND STATUTORY GUIDELINES (CONTINUED)

SECTION 201.947, TRANSPORTATION CODE

- ◆ Prohibits the Texas Transportation Commission from issuing obligations prior to the Texas Department of Transportation developing a strategic plan to outline how funds would be used and would benefit the state.

SECTION 542.4031, TRANSPORTATION CODE, AND SECTION 3.01 OF HOUSE BILL 2, SEVENTY-EIGHTH LEGISLATURE, THIRD CALLED SESSION, 2003

- ◆ Requires 67 percent of the state traffic fines collected during fiscal years 2004 and 2005 to be deposited to the credit of the Texas Mobility Fund.
- ◆ Requires 67 percent of the state traffic fines collected during fiscal years 2006 and 2007 to be deposited to the credit of the Texas Mobility Fund after the total amount of state traffic fines and surcharges from the Driver's Responsibility Program deposited to the credit of the General Revenue Fund equals \$250 million for that year.

SECTION 780.002, TRANSPORTATION CODE, AND SECTION 3.01 OF HOUSE BILL 2, SEVENTY-EIGHTH LEGISLATURE, THIRD CALLED SESSION, 2003

- ◆ Requires 49.5 percent of the surcharges from the Driver's Responsibility Program collected during fiscal years 2004 and 2005 to be deposited to the credit of the Texas Mobility Fund.
- ◆ Requires 49.5 percent of the surcharges from the Driver's Responsibility Program collected during fiscal years 2006 and 2007 to be deposited to the credit of the Texas Mobility Fund after the total amount of state traffic fines and surcharges from the Driver's Responsibility Program deposited to the credit of the General Revenue Fund equals \$250 million for that year.

TEXAS MOBILITY FUND GUIDELINES

SECTIONS 521.058, 521.313, 521.3466, 521.427, 522.029, 524.051, 548.508, 644.153, AND 724.046 TRANSPORTATION CODE, AND SECTION 3.01 OF HOUSE BILL 2, SEVENTY-EIGHTH LEGISLATURE, THIRD CALLED SESSION, 2003

- ◆ Requires certain fees and penalties collected by the Department of Public Safety to be deposited to the credit of the Texas Mobility Fund instead of the General Revenue Fund beginning in fiscal year 2006.

**Appendix
F**



**STATE HIGHWAY FUND
TEXAS MOBILITY FUND**

**Testimony Before the
Texas Senate Finance Committee**

**Michael W. Behrens, P.E.
Executive Director**

**Texas Department of Transportation
March 15, 2004**

MICHAEL W. BEHRENS, P.E.

STATE HIGHWAY FUND / TEXAS MOBILITY FUND

Testimony before the Texas Senate Finance Committee

INTRODUCTION

Today's Testimony

The Texas Department of Transportation (TxDOT) appreciates the opportunity to participate with the Texas Senate Finance Committee in its interim review of the State Highway Fund and the Texas Mobility Fund. We greatly appreciate the leadership of the Texas Senate in the development and passage of significant transportation legislation this session – legislation that provides powerful new tools to accelerate and expand transportation in Texas.

It is appropriate that you also receive testimony on federal activity in both the legislative and executive branches. Transportation reauthorization legislation and its implementation are of great interest and concern to the State of Texas. It is the leadership of those such as Congressman Burgess, the knowledge and experience of Mary Peters, and the continued efforts of the members of this panel that will allow TxDOT and Texas to receive the highest returns in terms of formula funds and discretionary expenditures that can be achieved.

REVENUES AND EXPENDITURES

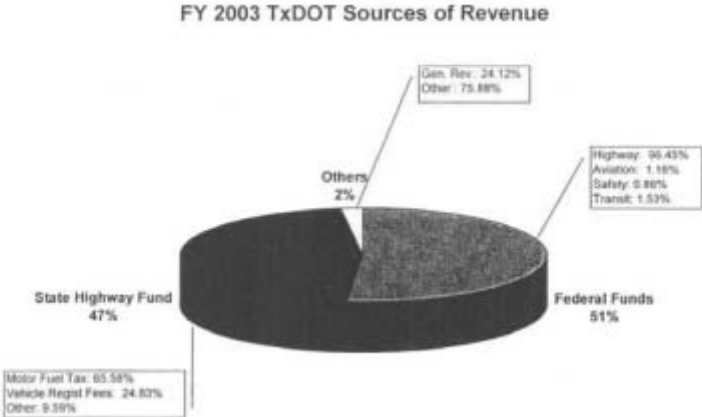
You have asked us to address the State Highway Fund and Texas Mobility Fund as they relate to TxDOT operations and appropriations, and to address revenues and expenditures. The following three charts lay out TxDOT's sources of revenue and expenditures by category for Fiscal Year (FY) 2003:

Chart 1: FY 2003 TxDOT Sources of Revenue

Chart 2: FY 2003 TxDOT Budget Expenditures (dollars)

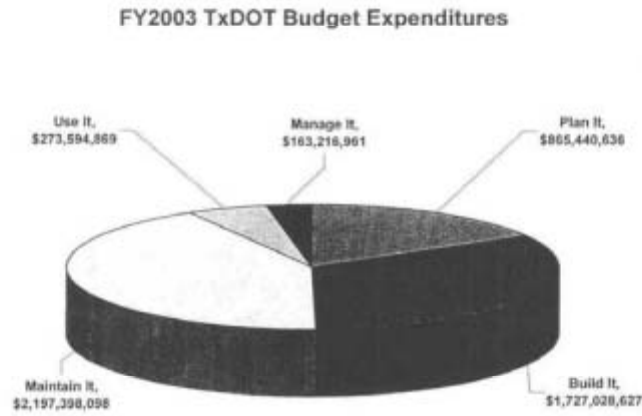
Chart 3: FY 2003 TxDOT Budget Expenditures (percent of total).

Chart 1: FY 2003 TxDOT Sources of Revenue



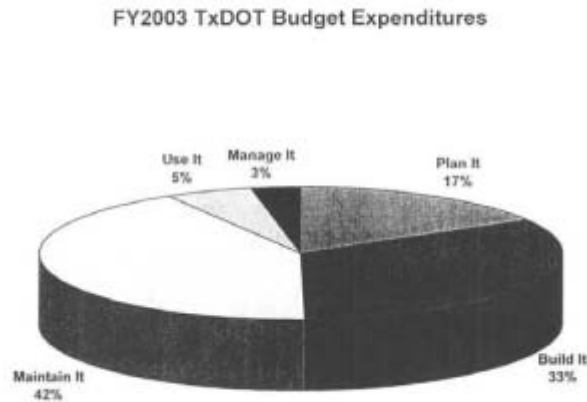
Sources: FY2004 Operating Budget - Revised 2/9/2004

Chart 2: FY 2003 TxDOT Budget Expenditures (dollars)



Source: FY2004 Operating Budget - Revised 2/9/2004

Chart 3: FY 2003 TxDOT Budget Expenditures (percent of total)



Source: FY2004 Operating Budget - Revised 2/9/2004

STATE HIGHWAY FUND

You are receiving a briefing from the Legislative Budget Board in the course of this hearing on the State Highway Fund. TxDOT has been asked to address the balance in the State Highway Fund. Chart 4 shows the monthly balance in the fund over time, past and projected, including the lowest and highest daily balances. The balance decrease that is projected for the future is primarily due to an increase in contractor payments for highway projects.

The current balance in the fund is higher than desirable, partly resulting from previous transactions but largely due to two factors: a need to cover existing commitments and the use of tapered match to accelerate the receipt of federal funds.

Previous Transactions

Factors leading to the balance increase include the \$51 million Sugar Land sale, the \$144.6 million State Infrastructure Bank (SIB) loan transfer, and the \$65 million turnpike loan repayment.

Existing Commitments

The ending cash balance of the State Highway Fund for FY 2003 was \$730 million; however, this snapshot leaves a false impression of the fund's activity. . An analogy can be drawn to household finance: just as one would not rely solely upon the monthly bank statement to manage a personal checking account, one would not evaluate the financial health of the State Highway Fund based on one day's ending balance.

For the full picture the amounts expected and obligated – the accounts receivable and payable – must be considered, which is what TxDOT does in preparing the Annual Financial Report depicting the unreserved balance of the State Highway Fund. The Department's Annual Financial Report illustrates our commitments of the Fund 6 balance which is summarized as follows for August 31, 2003:

Cash	\$730 million
Receivables and Other Assets	\$870 million
Payables	(\$641 million)
Retainage and Other Liabilities	(\$559 million)
Funds Reserved for Encumbrances, Inventories, and Other	(\$140 million)
Unreserved Fund Balance	\$260 million

As the above shows, although the fund had a cash balance of \$730 million on August 31, it also had \$870 million of receivables, \$641 million of payables, \$559 million of retainage and other liabilities in addition to \$140 million of encumbrances. When all of these items are considered, the result was an unreserved balance of \$260 million. On that day TxDOT also had \$5.2 billion remaining to be paid on existing highway improvement projects.

Existing commitments and their effects on the State Highway Fund balance will take on much greater significance when bonds are issued with debt service to come from Fund 6 or commitments are made to cover funding gaps for revenue bond funded projects.

1:40 *Tapered Match*

Federal law allows a number of innovative financing strategies. These include:

- Advance Construction
- Partial Conversion of Advance Construction
- Flexible Match
- Tapered Match
- Toll Credits and Various Toll Options
- State Infrastructure Banks
- Transportation Infrastructure Finance and Innovation Act (TIFIA)

Of these, tapered match has had a notable influence on the fund balance. Tapered match enables the project sponsor to vary the non-Federal share of a Federal-aid project over time, as long as the Federal contribution toward the project does not exceed the Federal-aid limit.

Since inception of the Federal-Aid Highway Program, Title 23 of the U.S. Code has required that states match Federal grants for individual highway projects on a payment-by-payment basis. Under this approach, states paid the required non-Federal matching share of project costs each and every time they sought reimbursement of eligible project costs. This requirement not only ensured that the state would pay the required non-Federal share over the life of a project's construction, but also that the state would do so at every step of the way to completion. The Transportation Equity Act for the 21st Century (TEA-21), section 1302, modified Title 23, United States Code, section 121, by removing a sentence which required the Federal share of project costs be applied to each progress payment. A similar restriction was removed from the Surface Transportation Program provisions in 23 U.S.C., section 133, by TEA-21, section 1108(d). The removal of this restriction allows the Federal Highway Administration (FHWA) to establish a more flexible matching share policy for progress payments and created the option for states to use the tapered match approach within the context of the regular Federal-Aid Highway Program.

Under the tapered match approach, the non-Federal matching ratio is imposed on projects rather than individual payments. Thus, Federal reimbursement of state expenditures can be as high as 100 percent in the early phases of a project provided that by the time the project is complete, the overall Federal contribution does not exceed the statutory Federal-aid limit for the project in question.

The decision to use tapered match on a project follows this procedure:

1. State submits tapered match project request to the FHWA.
2. FHWA determines that requirements are met and establishes Federal-aid share to be applied to total project costs.
3. State and FHWA agree on taper schedule.
4. FHWA approves match and executes project agreement specifying non-Federal match schedule.
5. State submits billings for progress payments.
6. FHWA reimburses costs according to schedule.
7. By close of project, Federal/non-Federal share equals agreed ratio.

TxDOT believes that the higher than normal balance in the State Highway Fund is primarily due to a change TxDOT has made in implementing tapered match and managing the reimbursements received from the FHWA.

The Fund 6 balance has been temporarily peaking with the current acceleration of the receipt of federal funds. Historically, Fund 6 would typically receive as reimbursement 80% of each progress payment made on federal-participating projects. TxDOT is now employing a method referred to as Tapered Match in which the agency receives the FHWA's 80% participation as reimbursement for the first 80% of the project's cost. This allows us to receive the funding from our federal transportation partner sooner than we would otherwise. It also allows us to delay the expenditure of state matching funds and earn interest on them in the meantime. As this technique merely allows the acceleration of federal participation (it does not increase the amount of federal participation) it will cause revenue (and therefore cash balances) to increase in the early years of implementing this change before returning to more traditional levels.

BONDS AVAILABLE TO TxDOT

Revenue Bonds

TxDOT, through the Texas Turnpike Authority Division and under the provisions of Transportation Code Chapter 361, is authorized to study, design, construct, operate, expand, enlarge or extend a turnpike project as part of the state highway system. Any revenue bonds issued for state-owned turnpike projects are a decision of the Texas Transportation Commission with oversight by the state bond review board.

Revenue bonds allow the Texas Transportation Commission to issue bonds for a specific turnpike project that are then repaid by the tolls generated. This provides new revenue to finance transportation in Texas and help deliver projects faster. The toll would remain in place until the debt is paid. Any surplus revenue may be used for operation and maintenance. Once the debt is paid on a state-owned turnpike, then the tolls may be removed, reduced to cover the costs of operation and maintenance only, or retained in order to continue expanding the toll system. For a project owned by a regional mobility authority, surplus revenue may be used to reduce the tolls, deposited in the Texas Mobility Fund or used to develop other regional transportation projects (non-tolled or tolled).

Generally, revenue bonds are best-suited for projects with strong traffic projections, which tend to be located in metropolitan areas. To determine a project's toll viability several factors are analyzed such as public input, potential traffic demand, projected revenue, population and employment growth, existing road network, connection to other transportation facilities, economic indicators, and operation and maintenance costs.

State Highway Bonds (Proposition 14)

Voters in 2003 approved Proposition 14, which along with enabling legislation passed by the 78th Legislature allow the issuance of bonds to build needed roads faster and improve safety by supplementing the traditional pay-as-you-go method of financing highway construction. The new authority allows the Texas Transportation Commission to issue bonds that are secured by the

state highway fund. The proposition also allows the Commission to issue short-term debt to cover cash shortages in the State Highway Fund.

Since these bonds must be paid back from the State Highway Fund, this source does not provide new revenue to finance transportation in Texas, but does help deliver projects faster.

Proceeds can be used to finance highway and safety improvements on the state-maintained highway system. A total of \$3 billion – no more than \$1 billion in a year – can be issued for highway improvements. At least \$600 million of the total bonds issued must be used for safety related projects. The bonds may be issued for as much as 20 years. The debt service in any year is limited to no more than 10 percent of the total revenue deposited to the State Highway Fund in the previous year.

Bond proceeds will generally be used for expansion projects. Safety improvement projects must account for at least 20 percent of the total bonds issued. These projects will be selected based on criteria to be determined by the Commission. Criteria for safety improvement projects will include accident data, traffic volume, pavement geometry and other roadway conditions.

Texas Mobility Fund Bonds

Before approval by voters and the legislature, highways were the only major capital projects for which the state did not borrow money by issuing bonds. Cities and counties in Texas, however, routinely finance street and road projects with bonds. Growing demand for increased mobility and reduced traffic congestion and lost economic opportunities led to a need to revise the transportation funding system.

Voter approval in 2001 of Proposition 15 and enactment of enabling legislation by the 77th Legislature in 2001 created the Texas Mobility Fund in the state treasury. The Texas Transportation Commission can now issue bonds that are secured by the Texas Mobility Fund. Funds can be used to finance road construction on the state-maintained highway system, publicly owned toll roads, or other public transportation projects.

Proposition 15 not only created the Texas Mobility Fund, it also allowed for toll-equity spending by the state on toll roads. Toll equity authorizes TxDOT to lend or grant money from any source for the acquisition, construction, maintenance or operation of public toll roads and toll bridges. Previously, any participation by TxDOT towards toll facilities needed to be repaid from tolls or other turnpike revenue.

The 78th Legislature (2003) redirected certain transportation-related fees to the Texas Mobility Fund, which had been going to the General Revenue Fund. Deposits to the fund are expected to leverage highway bonds to produce up to \$3 billion in new funding, which in combination with other tools will enable projects to begin sooner.

The Texas Transportation Commission administers this fund to finance acquisition of right of way, along with design, construction, reconstruction, and expansion of state highways. Further, the commission administers the fund to provide participation in the costs of publicly owned toll roads and other public transportation projects.

TEXAS MOBILITY FUND AND FUND 6 BONDS (PROPOSITION 14 BONDS)

The Texas Mobility Fund can be used to pay for constructing, reconstructing, expanding, and acquiring state highways (including necessary design and right-of-way) with expected life of at least 10 years without major repair; state participation in toll projects and other public transportation projects; creation of debt service reserve accounts; interest for no more than two years; refunding or canceling outstanding obligations and, the cost of issuance. A detailed graph of the funding sources for the Texas Mobility Fund follows in Chart 5, and surcharge distribution is shown in Chart 6.

Chart 5: Revenues Dedicated to the Texas Mobility Fund.

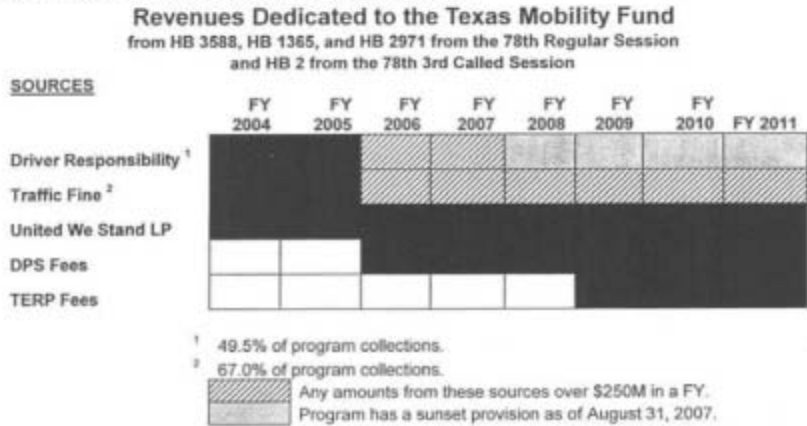


Chart 5 continued

ESTIMATED AMOUNTS (in millions)

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Driver Responsibility	59.3	112.6	0.0	0.0	0.0	0.0	0.0	0.0
Traffic Fine	79.4	99.2	0.0	0.0	0.0	0.0	0.0	0.0
United We Stand Special License Plate	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DPS Fees	0.0	0.0	232.7	236.9	238.9	241.3	243.7	246.1
Texas Emission Reduction Plan Fees	0.0	0.0	0.0	0.0	0.0	78.0	78.5	79.0
	138.7	211.8	232.7	236.9	238.9	319.3	322.2	325.1

Enacting Legislation Details

Driver Responsibility	HB 3588, 78th Regular Session, Article 10, Section 780.002 and Article 20, Section 20.02 (b) through (d) as amended by HB2, 78th Legislature, 3rd Called Session, Article 3, Section 3.01 (a) and (b)
Traffic Fine	HB 3588, 78th Regular Session, Article 12, Section 542.4031 and Article 20, Section 20.02 (b) through (d) as amended by HB2, 78th Legislature, 3rd Called Session, Section 3.01 (a) and (b)
United We Stand LP	HB 2971, 78th Regular Session, Section 504.628
DPS Fees	HB 3588, 78th Regular Session, Article 11, Section 11 and Article 20, Section 20.02 (e) as amended by HB2, 78th Legislature, 3rd Called Session, Section 3.01 (c)
TERP Fees	HB 1365, 78th Regular Session, Section 24 (b) (3) (C) (ii)

Chart 6: Distribution of Surcharges

	General Revenue	Trauma	DPS	
Driver Responsibility Act	49.5%	49.5%	1.0%	Sunset Provision as of August 31, 2007.
State Traffic Fines	67.0%	33.0%	0.0%	

- 1) The revenue from the sources above in FY 2004 and FY 2005 will be deposited to the Texas Mobility Fund.
- 2) Once the revenue from the sources above reaches \$250M in a FY the excess will go to the Texas Mobility Fund.

Fund 6 Bonds can be used for any costs related to the bonds and other public securities including debt service and issuance costs and the purposes for which Fund 6 revenues are dedicated which is primarily to build, construct and maintain roads. The bond proceeds cannot be used for the construction of a state highway or other facility on the Trans-Texas Corridor. A comparison of the statutes for the two bond programs clarifies their differences (Chart 7).

Chart 7: Comparison of Fund 6 Bonds and Texas Mobility Fund Bonds

Description	Mobility Fund Bonds	Fund 6 Bonds
Maximum Amount	3 billion (estimated)	3 billion
Maximum Annual Amount	None	1 billion
Maximum Maturity	30 years	20 years
Maximum Annual Debt Service	None	10 % of the amount deposited in preceding year
Minimum Debt Coverage	110%	None
Proceeds can be spent on Trans-Texas Corridor	Yes	No
Security for the Bonds	Revenues Deposited to the Fund	Revenues Deposited to the Fund
Back Stop or Secondary Pledge	Full Faith and Credit of the State	None
Bond Proceeds will be Held in	Fund 365 in the State Treasury	Fund 6 of the State Treasury

Steps to Issue Bonds

Like the home mortgage process, the bond issuance process involves a financial institution, estimating income, and a promise to pay back the money borrowed. The bond issuance process generally follows these steps:

- 1) Acquire the services of a financial advisor to assist the agency.
- 2) For revenue bonds for a toll road, identify project cost and acquire the services of a company to perform an Investment Grade Traffic and Revenue Forecast. This will facilitate the sizing of the bond issuance and identify any funding gap (total project costs not covered by bond proceeds).
- 3) For revenue bonds, determine how a funding gap, if applicable, will be filled and obtain a commitment from those parties to fill the gap.
- 4) Acquire the services of one or more underwriters who will buy the bonds on a specified date.
- 5) Negotiate to determine the optimal financing structures including types and amounts of debt instruments to be sold, maturity schedules, credit enhancements, bond covenants, revenue pledges.
- 6) Bond Counsel prepares drafts of bond issuance documents and other information about the project which includes a promise to pay bond holders.
- 7) Make presentations to ratings agencies and appropriate Federal and State Agencies such as the Federal Highway Administration or Bond Review Board.
- 8) Finalize documents, issue bonds, receive proceeds (similar to closing day on a home mortgage).
- 9) Evaluate how the issuance went (e.g. schedule and terms) to determine how to improve the process for the next issuance.

PLANS FOR USE OF THE FUNDS

Given the significant nature of the funds and the expectations surrounding their use, the Texas Transportation Commission has committed to establishing a strategic plan that takes into account public input and is created in the public view. To that end, the commission at its February 26 hearing posted as an official discussion item the "Texas Mobility Fund Strategic Plan." It is the commission's intent to accept public input and develop the plan in the near term, with formal adoption as soon as practicable.

SIGNIFICANT LEGISLATION

You have asked TxDOT to address significant legislation from the 78th Session affecting revenues.

HB 3588

Much has already been written about HB 3588 and the sweeping nature of its provisions. HB 3588, signed into law June 19 by Governor Rick Perry, is the most important transportation bill in Texas since passage of House Bill 2 in 1917 (an 11-page measure that created the state highway department). The new law is divided into 20 articles and contains some 77,750 words. That's nearly one word for every center-line mile of highway in Texas.

This tool kit, expanding funding, right of way and overall mobility options, will play a large role in the department's ability to fulfill many of the state's pending transportation needs.

The foundation for the law involves:

- Local control, giving communities the authority and flexibility they need to solve their own transportation problems
- Toll roads, recognizing that they are the fastest way to improve mobility and safety in Texas
- The private sector, creating full-fledged partnerships on a scale unheard of in transportation implementation
- Rail and public transit, adding those and other modes of transportation to the mix of alternatives available to TxDOT and communities when seeking congestion solutions
- New privately-funded transportation corridors, combining highways, rail and utilities to provide long-range transportation benefits while retaining funds for still more projects.

Several key components of HB 3588 include:

- Regional Mobility Authorities (RMAs), which have new powers to construct, maintain and operate turnpike projects, giving local governments more control over highways within their jurisdiction. Parts of the state highway system can now be converted to turnpikes and transferred to an RMA by the commission. RMAs can now issue revenue bonds and have gained the authority of eminent domain.
- Toll Roads, considered the fastest way to improve mobility and safety in Texas, gained new clout through HB 3588, giving regional groups financial help when they are creating a toll project that hasn't yet produced revenue.
- Bonds, a means of leveraging money in various transportation funds, increasing TxDOT's ability to pay for projects. The new authority replaces the "pay as you go" approach with the ability to pay for roads over time, just as home buyers do. In addition, the Legislature took the historic step of capitalizing the Texas Mobility Fund. Ultimately, this could add up to an additional \$3 billion in bonds.
- Comprehensive Development Agreements (CDAs), giving TxDOT clear authority to partner with the private sector in financing, constructing and operating state highways. The agreements can combine design and construction of a turnpike, reducing costs and speeding project delivery. The new power will enable TxDOT to place project financing, right of way acquisition, turnpike operation or maintenance into one single agreement. RMAs also have the ability to enter into CDAs.
- New transportation options, such as the Trans Texas Corridor, are now open to TxDOT. Instead of improving the transportation system one small piece at a time, Texas will gain, through the Trans Texas Corridor, more mobility and safety by building the new road, rail and utility toll corridors parallel to existing highways.

In addition, the law gives TxDOT for the first time ever the authority to build and manage rail infrastructure. Rail is key to boosting economic prosperity in the state since companies seeking to relocate in Texas require reliable and cost-effective ways to ship their products.

HJR 28/HB 471

HJR 28 proposed a constitutional amendment that was approved and allows the Legislature to authorize the Texas Transportation Commission to issue notes or borrow money from any source to carry out the functions of the department and to issue bonds and other public securities payable from money in the state highway fund. The Commission could authorize TxDOT to issue notes or borrow money for short-term needs (HB 471) and issue long-term debt obligations (HB 3588) that are secured by the State Highway Fund.

The purpose of the short-term debt is to cover cash shortages in the State Highway Fund. The purpose of the long-term debt is to fund highway improvement projects. The approval of this amendment allows the department to leverage future Fund 6 revenues and provide cash for immediate use. Critical projects delayed due to funding issues can proceed.

HB 7 (Revenues from the Sale of Surplus Property)

HB 7 directed all revenues from the sale of surplus property to be deposited to the General Revenue Fund. TxDOT asked the Attorney General to clarify whether revenue derived from selling TxDOT personal property purchased with revenues constitutionally dedicated to highway purposes should be placed in the general revenue fund under Government Code section 2175.134(a), as amended in 2003.

The Attorney General opined that proceeds from the sale of agency salvage or surplus personal property purchased with funds dedicated to highway purposes by Texas Constitution article VIII, sections 7-a and 7-b are not themselves constitutionally dedicated to highway purposes. Accordingly, proceeds from the sale of agency salvage or surplus property that was purchased with revenues constitutionally dedicated to highway purposes and sold on or after September 1, 2003 may be placed in the general revenue fund.

The 3-year average of this type of revenue that has been deposited by TxDOT is around \$3.5 million each year. Prior to passage of this law, the Department of Public Safety also had deposited surplus property funds to Fund 6 and their 3-year average is around \$2.3 million each year. Therefore, the impact to Fund 6 is estimated at \$6 million per year.

CONCLUSION

The new tools given by the Texas Legislature and the people of Texas create a tremendous opportunity. The Transportation Commission is committed to proper planning and input from the public in developing the proper approach to using these tools.

TxDOT as an agency is working hard to maintain our legacy of building a safe and long-lasting transportation network to keep Texans moving. Through applying the watchwords of safety, quality, and accountability, we are committed to doing a job that will serve you and your constituents well. We appreciate the opportunity to appear before you today and would be pleased to answer any questions you may have.

Report on the Enterprise Fund

EXECUTIVE SUMMARY

The creation and funding of the Texas Enterprise Fund (Fund) by the 78th Legislature has enabled Texas to attract some key businesses to the state that are projected to create approximately 14,000 new jobs over the next 20 years. While the results are positive, a look at how some other states are managing their job creation funds provides insight to possible ways Texas could further leverage its Fund and ensure that the intended purpose is achieved.

Summary of Recommendations

1. Statewide economic and fiscal impact models should be prepared for all projects being considered for funding from the Texas Enterprise Fund. Impact models should include the direct and indirect impact on Texas from the project, including outputs, employment, earnings, tax revenue, etc.
2. A set of criteria for investment should be considered including a project cost-benefit analysis system based on return-on-investment, local participation, etc.
3. Annual updates should be submitted to the Legislature on each project currently under an Economic Agreement with the state.
4. The Legislature should structure the Texas Enterprise Fund so that disbursements are based on meeting certain performance measures or similar criteria rather than up-front disbursements of the entire grant amount.
5. The state should offer low interest bonds in lieu of, or in conjunction with, Enterprise Fund grants, particularly in funding of manufacturing projects where start-up costs are significant. The state should explore using the Enterprise Fund to buy down interest rates or to provide bonds for start-up costs like equipment.
6. Claw-back provisions should be required in all agreements for grants from the Texas Enterprise Fund.
7. The state should set goals to achieve broad geographic disbursements from the Enterprise Fund, including rural areas and areas of high unemployment.
8. Calculating and determining future job growth is highly subjective and unpredictable. Enterprise grants/disbursements should be made based on criteria that are easier to

measure and are a suitable proxy for future job creation, such as capital investments or production levels.

PROCEDURAL BACKGROUND

The Senate Finance Committee was charged with conducting a thorough and detailed study of the following issue, including state and federal requirements, and preparing recommendations to address problems or issues that are identified. The Senate Finance Committee (the Committee) met in accordance with the following Economic Development interim charge as follows:

Enterprise Fund. Monitor and report on current and potential future uses of the Enterprise Fund. Study and develop recommendations for using economic development funds and assessing potential projects, including, but not limited to, establishing criteria for investment, developing standards for cost-benefit analyses, leveraging local participation, and incorporating claw-back provisions if goals are not met.

The Committee met pursuant to the aforementioned interim charge in a public hearing in Austin, Texas, on March 29, 2004, to consider invited testimony provided by the Texas Governor's Office, Economic Development and Tourism Division, and the Texas Legislative Budget Board. The Committee solicited public testimony on the interim charge in a public hearing in Austin, Texas, on July 20, 2004; however, none was provided.

The Committee extends its thanks to those who participated in the hearing, and assisted with or made presentations before the Committee.

BACKGROUND

Senate Bill 1771, as passed by the 78th Texas Legislature, created the Texas Enterprise Fund (Fund) for the purpose of economic development, infrastructure development, community

development, job training programs, and business incentives.¹ Upon creation of the Fund, the 78th Texas Legislature appropriated \$285 million from the Economic Stabilization Fund to the Fund for the purpose of economic development initiatives. The Truusted Programs within the Office of the Governor were appropriated all amounts in the Fund for the biennium beginning September 1, 2003.²

The Governor may negotiate agreements on behalf of the state regarding grants from the Fund.³ However, the express written prior approval of the Lieutenant Governor (Lt. Governor) and the Speaker of the House of Representatives (Speaker) are needed for the Governor to award the grant money. To assist with economic development initiatives, the 78th Legislature created an Advisory Board of Economic Development Stakeholders (Board). The Board is comprised of three members appointed by the Governor, two members appointed by the Lt. Governor, and two members appointed by the Speaker. The Board is charged with collecting and disseminating information on economic development programs, including loans, grants, and other funding sources.⁴

By statute, the Governor has the authority to enter into written agreements with potential grantees to specify actions to be taken or goals to be achieved by the grantee and corresponding actions by the state if the terms of the agreement are not upheld. However, statute does not require specific provisions be included in the agreement, nor does it require that a written

¹ TEX. GOV. CODE ANN. § 481.078. (78th Leg., R.S., (S.B. 1771)).

² General Appropriations Act, 78th Leg., R.S., (H.B. 1), at I-52, 55.

³ TEX. GOV. CODE ANN. § 481.078. (78th Leg., R.S., (S.B. 1771)).

⁴ TEX. GOV. CODE ANN. § 481.169. (78th Leg., R.S., (S.B. 1771)).

agreement be signed. Some of the provisions included in the authorizing statute are discussed below.⁵

If any portion of the grant is used to build a capital improvement, the Governor may enter into a written agreement specifying that the state retain a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the improvement. If the capital improvement is sold, the grantee may be required to repay the state the grant money used to pay for the improvement with interest, at a rate according to the agreement, and may be required to share with the state a proportionate amount of any profit realized from the sale.⁶

The written agreement between the state and the grantee may also require the grantee to repay the state any unused grant money as of a certain date and any related interest at an agreed rate and on agreed terms.⁷ Though the Government Code permits the Governor to include claw-back provisions if the terms of an agreement are not met, such provisions are not required.

QUALIFYING FOR THE TEXAS ENTERPRISE FUND

The Office of the Governor, Economic Development and Tourism division (OGEDT) receives all applications for grants from the Fund. The application provides information on how the funds are to be utilized and how the proposed project meets the criteria of the Fund. To be eligible for Fund support, a project must demonstrate a significant return on the state's investment and strong local support. The review process considers a variety of factors, including

⁵ TEX. GOV. CODE ANN. § 481.078. (78th Leg., R.S., (S.B. 1771)).

⁶ *ibid.*

⁷ *ibid.*

job creation and wages, capital improvement, the financial strength of the applicant, the applicant's business history, analysis of the relevant business sector, and public and private sector financial support.⁸

According to testimony by OGEDT, weekly meetings are conducted by staff from the Office of the Governor, Lt. Governor, Speaker, and various state agencies. At these meetings, information is gathered on each prospect and is incorporated into a spreadsheet to determine the return on investment to the state. Eventually, the spreadsheet becomes a decision sheet that is given to the Governor, Lt. Governor, and Speaker. Depending upon where the application is in the review process, projects are given a status of requested, reserved, committed, announced, or disbursed.

TEXAS ENTERPRISE FUND AGREEMENTS TO DATE

Of the initial \$295 million in the Fund, \$184.8 million has been disbursed or announced for a total of 15 projects by mid-December 2004. According to OGEDT, the \$184.8 million in Fund allocations is matched by over \$5.981 billion in investments from the grant recipients and will create 15,196 new jobs in Texas.⁹

Of the 15 projects announced to date, five projects totaling \$126.8 million will directly or indirectly benefit institutions of higher education in Texas, including funding for a bovine genome sequencing project at Baylor College of Medicine; the Texas Instruments (TI) semiconductor manufacturing plant with the University of Texas at Dallas (UTD); the Center for

⁸ Office of the Governor, Economic Development & Tourism Division, (<http://www.governor.state.tx.us/divisions/ecodev/tefund>).

⁹ Written materials provided by the Office of the Governor, Economic Development & Tourism division, August 11, 2004 and updated as of December 10,2004. pg. V-12

Advanced Diagnostic Imaging at the University of Texas Health Science Center at Houston (UTHSC) and M.D. Anderson Cancer Center; the Sematech Advanced Materials Research Center with the University of Texas at Austin; and the Internet2 project, which focuses on developing new internet technology.¹⁰ In the case of the semiconductor plant at UTD, an additional \$250 million will be raised from private and public sources, including funding from the University of Texas Systems (UT Systems) and assistance from the General Land Office to construct new campus facilities.¹¹ To attract the Center for Advanced Diagnostic Imaging, UTHSC and M.D. Anderson have joined together to fund an additional \$25 million and UT Systems has committed to an additional \$5 million in funding.¹²

The economic development agreements entered into by the state and the grant recipients differ on a case-by-case basis. In the case of Vought Aircraft Industries, Inc., the state paid Vought a total of \$35 million up front from the Fund. In return, Vought committed to create 3,000 new jobs in Texas by the end of 2009 and to maintain a total of 6,000 jobs in Texas through 2019. According to the terms of the agreement, the 6,000 jobs shall have an average annual gross compensation of at least \$53,000 per year. Vought is required to submit annual compliance verification to OGEDT. If job target deadlines are not met in any year of the agreement, the OGEDT may require Vought to refund \$1,000 per unmet position for that year. Similarly, if Vought exceeds the job target in a given year, the company will receive a surplus job credit for each extra position maintained. The credits can be used to offset a repayment

¹⁰ *ibid.*

¹¹ Office of the Governor, Economic Development & Tourism division,
<http://www.governor.state.tx.us/divisions/press/pressreleases/PressRelease.2003-06-30.4818>

¹² The University of Texas Health Science Center at Houston, News on the Go, Issue 297, May 24, 2004,
<http://newsonthego.uthouston.edu/archive/2004/nog297/>.

penalty in following years or toward meeting the remaining job target for future years. If Vought accumulates enough surplus job credits, it can be released from the contractual agreement early. The OGEDT may also expand the types of eligible positions to include positions created with on-site suppliers to Vought or positions created with Vought suppliers.¹³

In the agreement with TI, \$50 million from the Fund will be utilized by UTD. As of August 2004, \$21.5 million had been distributed. An additional \$250 million in private and public funding will be raised for the UTD School of Engineering and Computer Science to pursue status as a Tier 1 institution. In return, TI will locate its semiconductor manufacturing plant in Richardson, Texas. The facility will represent a \$3 billion investment by TI and is expected to employ 1,000 people. In this agreement, there are no job target commitments.¹⁴

COMPARISON OF "DEAL CLOSING FUNDS" AND INCENTIVE GRANTS

Eight states, including Texas, have created “deal-closing” funds to persuade businesses to remain, relocate, or expand in the state. Seven of the states finance the fund with general tax revenue. Georgia finances its fund with tobacco settlement funds. The Texas Enterprise Fund is the largest deal-closing fund in the nation.¹⁵

Grant funds in most states receive an annual appropriation of between \$10-20 million. In states where the fund provides both grants and loans, the annual appropriation may be larger.

¹³ Economic Development Agreement between the State of Texas and Vought Aircraft Industries, Inc., Execution Copy, February 26, 2004.

¹⁴ Testimony and written materials provided by the Office of the Governor, Economic Development & Tourism division. pg. V-12

¹⁵ Research Division, Texas Legislative Council, Facts at a Glance, Survey of State “Deal-Closing” Funds and Other Incentive Grant Programs for Job Creation, March 2004.
<http://www.tlc.state.tx.us/pubspol/dealclosing.pdf>

¹⁶ *ibid.*

Due to budget constraints, several states have put incentive grant programs on hold, but still maintain tax and loan incentive programs.¹⁶

Generally, states write terms of agreement that include job and investment minimums and claw-back provisions if the terms of the grant are not met. Most states also factor in the location of the jobs in deciding the grant amount. In general, states do not award grants equating to more than \$10,000 for every job created.¹⁷

RECOMMENDATIONS

As competition for business increases, more states are expected to create deal-closing funds to retain and attract businesses to their states. For Texas to remain competitive in attracting new businesses, a mixture of incentive grant programs should be explored that includes low-interest bonds, deal-closing funds for grants and/or loans, and existing tax incentive programs. While the Texas Enterprise Fund has allowed the state to react quickly to business opportunities, the administration of the Fund must be carefully monitored to ensure the state is getting a return on its investment. Should the legislature appropriate additional money to the Fund in future biennia, the legislature should adopt measures to ensure the Fund is being used for its intended purpose and that all grants are based on sound economic decisions.

1. Statewide economic and fiscal impact models should be prepared for all projects being considered for funding from the Texas Enterprise Fund. Impact models should include the direct and indirect impact on Texas from the project, including outputs, employment, earnings, tax revenue, etc.
2. A set of criteria for investment should be considered, including a project cost-benefit analysis system based on return-on-investment, local participation, etc.

¹⁷ *ibid.*

3. Annual updates should be submitted to the Legislature on each project currently under an Economic Agreement with the state.
4. The Legislature should structure the Texas Enterprise Fund so that disbursements are based on meeting certain performance measures or similar criteria rather than up-front disbursements of the entire grant amount.
5. The state should offer low-interest bonds in lieu of or in conjunction with Enterprise Fund grants, particularly in funding of manufacturing projects where start-up costs are significant. The state should explore using the Enterprise Fund to buy down interest rates or to provide bonds for start-up costs like equipment.
6. Claw-back provisions should be required in all agreements for grants from the Texas Enterprise Fund.
7. The state should set goals to achieve broad geographic disbursements from the Enterprise Fund, including rural areas and areas of high unemployment.
8. Calculating and determining future job growth is highly subjective and unpredictable. Enterprise grants/disbursements should be made based on criteria that are easier to measure and are a suitable proxy for future job creation, such as capital investments or production levels.

Appendix A

TEXAS ENTERPRISE FUND (TEF)
\$295 MILLION TRUSTEE PROGRAM

OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT & TOURISM

Company	Location	Industry	Jobs*	Capital Investment	TEF Grant**	Annual Gross State Product Impact***	Total Jobs****	Annual State Return (GSP/TEF)	Total Project Return (Direct Jobs & Inv.)	Comments
TEF PROJECTS UNDER CONTRACT >>										
					\$136.2M	\$3,048,246,000	45,148	49.0X	804%	\$105.5M Disbursed
Sematech	Austin	High-tech Consortium	4,000	\$190,000,000	\$40,000,000	\$245,500,000	4,623	6.1X	194%	Announced 3/04; \$27M disburse 4/04; \$9M disburse 6/04; \$3M disburse 8/04; \$1M disburse 10/04
Vought	Dallas	Aviation	3,000	\$598,000,000	\$35,000,000	\$2,242,000,000	29,377	64.1X	248%	Announced 2/04; \$35M disburse 4/04
Texas Energy Center	Sugarland	Energy Cluster	1,500	\$20,000,000	\$3,600,000	\$49,100,000	2,500	13.6X	637%	Announced 3/04; \$1.6M disburse 3/04
Texas Instruments	Richardson	Semi-conductor	1,000	\$3,000,000,000	\$50,000,000	\$323,006,000	4,035	6.5X	264%	Announced 6/03; \$21.5M disburse 5/04
Citgo Petroleum	Houston & Corpus Christi	HQ, Refinery & Expansion	820	\$828,000,000	\$5,000,000	\$42,500,000	3,611	8.5X	900%	Announced 4/04; \$5M disburse 12/04
Cabel's	Fort Worth & Buda	Tourist Destination	600	\$70,000,000	\$600,000	\$146,140,000	1,002	243.6X	2591%	Announced 5/04; \$400K disburse 11/04
Baylor College of Medicine	Houston	Agriculture		\$51,000,000	\$2,000,000					\$1M disburse 3/04; \$1M disburse 6/04
TEF PROJECTS CONTRACT PENDING & ANNOUNCED >>										
UTHSC, MD	Houston	Biomedical	2,252	\$55,000,000	\$25,000,000					Announced 5/04
Anderson, GEMS	Austin & New Braunfels	Data Processing & Distribution	843	\$809,170,000	\$6,500,000					Announced 7/04
Home Depot	San Antonio	Semi-conductor	500	\$90,000,000	\$1,500,000					Announced 12/03
Maxim Integrated Products	Odessa, Woodlands & Port Neches	Chemicals	326	\$226,725,000	\$3,000,000					Announced 10/04
Koyo Steering	Erwin	Automotive Parts	200	\$30,000,000	\$333,000					Announced 8/04
Lee Container	Nacogdoches	Manufacturing	105	\$5,636,000	\$300,000					Announced 10/04
Superior Essex Communication	Brownwood	Tele-communications	50	\$7,600,000	\$250,000					Announced 8/04
Internal2	Statewide	Higher Education			\$9,780,000					Announced 9/04
TOTAL TEF PROJECTS ALLOCATED >>			15,196	\$5,961,131,000	\$184,663,000					
AVAILABLE TEF BALANCE >>					\$110,137,000					

Notes: (*) Based on CGEDT Assessment
(**) TEF grant utilized by University Trustee at Dallas
(***) Economic Impact Report by Independent Economic Analysis

Appendix B

EXECUTION COPY

ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN

THE STATE OF TEXAS

AND

VOUGHT AIRCRAFT INDUSTRIES, INC.

FEBRUARY 26, 2004

THIS AGREEMENT ("Agreement") is by and between the State of Texas (the "State"), acting by and through the Office of Economic Development and Tourism, a division within the Office of the Governor ("OGEDT"), and Vought Aircraft Industries, Inc. ("Vought"), a corporation incorporated in the State of Delaware. The State and Vought are hereinafter referred to either individually as the "party," or collectively as the "parties." The Effective Date of this Agreement is February 26, 2004.

RECITALS

WHEREAS, Texas traditionally has been an international leader in the aerospace arena, and Texas desires to become the international leader in the manufacturing, design, and assembly of aircraft parts for the most advanced aircraft in the world; and

WHEREAS, Vought is the largest independent manufacturer of aerostructures for commercial, military, and business jet aircraft in North America, and one of the largest independent providers of aerostructures in the world; and

WHEREAS, Vought's aerostructures are subsequently integrated into a wide range of commercial, military, and business jet aircraft manufactured by the leading prime manufacturers of such aircraft, including Airbus, Bell Helicopter, Boeing, Cessna, Embraer Empresa Brasileira, Gulfstream, Lockheed Martin, Northrop Grumman and Raytheon; and

WHEREAS, since 1948, Vought and its legacy companies have been an integral part of the Texas aerospace enterprise, contributing high-paying professional and manufacturing jobs to the State's economy; and

WHEREAS, with headquarters, major design, and primary manufacturing operations located in Dallas and Grand Prairie, Vought currently employs approximately 3,000 employees including professional, clerical and technical personnel at its Texas facilities; and

WHEREAS, a recent economic impact analysis conducted on behalf of the Greater Dallas Chamber by expert economists estimated that Vought's current Texas operations in Texas support

a total of 14,569 permanent jobs, \$701.7 million in personal income, and a total annual expenditure in Texas in excess of over \$2 billion each year in the state; and

WHEREAS, Vought has proposed a business expansion and modernization plan, through which Vought would expand and modernize its Texas operations to create approximately 3,000 new jobs in Texas by December 31, 2009; and

WHEREAS, the Vought business expansion plan involves consolidating and modernizing Vought's key capabilities and replacing its aging equipment with state-of-the-art design and manufacturing equipment and facilities; and

WHEREAS, the Vought business expansion plan also includes the potential for the development of a neighboring manufacturing "campus," stimulating the co-location of key suppliers and creating a projected 250 additional jobs; and

WHEREAS, the Vought business expansion plan also contemplates the establishment of an academic/industry strategic relationship with the University of Texas at Arlington ("UTA") to enhance the core competencies of the two organizations and to establish Vought and UTA as a preferred provider for contracted research and development in aerospace-related disciplines; and

WHEREAS, the Vought business expansion plan is expected to have a tremendous positive impact upon the Texas economy in the coming years, including:

- (i) providing Vought with the competitive advantage needed to win additional new business and bring additional jobs to Texas; and
- (ii) adding an estimated 3,000 new jobs with Vought in Texas by 2009; and
- (iii) increasing Vought's Texas supplier business by as much as 20 percent and creating opportunities for development of new aerospace suppliers in the state; and

WHEREAS, an impact analysis of the Vought business expansion plan by expert economists indicates that, in addition to the thousands of new high-paying jobs at Vought, the plan has the potential to more than double Vought's current contribution to the Texas economy, supporting nearly 30,000 jobs and producing \$98 Million in annual state fiscal revenues; and

WHEREAS, in making its decision to select Texas as the site for expansion, the management of Vought relied in part on the following assumptions:

- (i) the continued availability to Vought of applicable state, regional and local tax incentives, abatements, and tax-preferenced status designations from all appropriate taxing entities in connection with Vought's expansion plan, including, without limitation, House Bill 1200 tax legislation, the sales tax exemption for manufacturing machinery, equipment and supplies, and tax abatements from the City and County of Dallas (the "State and Local Incentives"); and
- (ii) Vought's ability to secure appropriate terms and conditions and necessary agreements with appropriate government entities, including the General Land

Office, governing Vought's long-term occupancy of the current Vought facility in Dallas, Texas (the "Facility"); and

- (iii) Vought's ability to secure agreements with all entities necessary to provide appropriate airfield access necessary for its proposed operations; and

WHEREAS, Article III, Section 52-A of the Texas Constitution expressly authorizes the State to use public funds for the public purposes of development and diversification of the economy of the State, the elimination of unemployment or underemployment in the State, or the development of commerce in the State; and

WHEREAS, SB 1771 of the 78th Texas Legislature established the Texas Enterprise Fund ("TEF") to be used with the express written approval of the Governor, Lieutenant Governor, and Speaker of the House of Representatives for economic development, infrastructure development, community development, job training programs, and business incentives, and HB 7 of the 78th Texas Legislature appropriated \$295 million from the Texas Economic Stabilization Fund to the TEF for the 2004-2005 biennium; and

WHEREAS, the State values Vought as a distinguished and important Texas corporate citizen, and wishes to receive a commitment that Vought will remain and expand in Texas, and Vought wishes to provide such a commitment; and

WHEREAS, the Governor, Lieutenant Governor, and Speaker have each approved a grant from the TEF to Vought; and

WHEREAS, to ensure that the benefits the State provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, and other law, Vought has agreed to comply with certain conditions and deliver certain performance, including achieving measurable job creation and retention commitments, in exchange for receiving these benefits; and

WHEREAS, the parties desire to have such proposals set forth in a valid, binding and enforceable agreement; and

WHEREAS, the State believes it is in the best public interest to enter into this Agreement for the reasons set forth above;

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

1. STATE OF TEXAS COMMITMENT

- a. **Grant of Funds from the Texas Enterprise Fund.** The State agrees to pay from the Texas Enterprise Fund to Vought cash in the amount of Thirty-Five Million Dollars (\$35,000,000) (the "Funds") as soon as practicable following the execution of this Agreement.

2. VOUGHT FUNDING CONDITIONS

Vought must meet all of the following "Funding Conditions", or will be subject to the repayment penalties set forth in Section 4 below. The Funding Conditions are as follows:

a. Job Target. As discussed above, Vought commits to meeting a job target of (i) creating three thousand (3,000) new Employment Positions and (ii) maintaining a total of six thousand (6,000) Employment Positions in Texas by December 31, 2009, and maintaining these job numbers through December 31, 2019. The 6,000 total Employment Positions shall be referred to herein as the "Job Target".

For the purposes of this Agreement, "Employment Positions" shall be defined as jobs meeting all of the following criteria:

- (i) Full-time employment or full-time contract-labor positions in the State of Texas with Vought, affiliates or subsidiaries of Vought in which Vought has more than a 50% ownership interest, or joint ventures in which Vought has more than a 33% ownership interest; and
- (ii) With an average annual gross compensation paid to all such Employment Positions (including benefits calculated on an annualized basis) of at least \$53,000 per year; and
- (iii) Having been in place and filled for at least the 12 consecutive months preceding.

For the purposes of this Agreement, "New Employment Positions" shall be defined as Employment Positions created after the Effective Date of this Agreement.

b. Annual Compliance Verification. During the term of this Agreement, within 30 days following the end of the preceding calendar year, and continuing every year thereafter through the end of 2019, Vought must deliver to OGEDT a compliance verification signed by a duly authorized representative of Vought that shall: (i) certify the number of and generally describe the New Employment Positions for the year just ended and (ii) certify the number of total Employment Positions existing as of December 31 of the year just ended (the "Annual Compliance Verification"). All Annual Compliance Verifications shall be in a form reasonably satisfactory to OGEDT and shall provide appropriate back-up data for the Employment Position numbers provided.

3. VOUGHT'S ADDITIONAL COMMITMENTS

a. Periodic Progress Briefings. In a manner consistent with the need to protect privacy and the intellectual property of Vought and third parties, Vought will provide to OGEDT periodic briefings on the progress of Vought in Texas (the "Periodic Progress Briefings") as reasonably requested by OGEDT.

b. Use and Retention of Texas Suppliers. Vought will use reasonable efforts to use qualified Texas-based suppliers to provide products and services under this Agreement, provided however, Vought may in its sole discretion select suppliers and contractors based on program needs, scientific criteria, and industry standards.

c. Record Keeping and Reports. Vought will maintain detailed and accurate records, and other supporting data that relate to its satisfying its obligations under this Agreement for four (4) years from the date of termination of this Agreement. All such records will be maintained in a commercially reasonable manner consistent with Vought's policies.

d. Financial Information. Vought will furnish to OGEDT a copy of Vought's year-end audited financial statements. Vought will allow OGEDT or its designee (including the state auditor) to audit deposits to and disbursements from Vought accounts related to Vought's commitments associated with this Agreement for the purpose of determining whether Vought is complying with its obligations under this Agreement. OGEDT will follow and cause its designee to follow procedures reasonably acceptable to Vought to protect, to the extent legally permitted, the confidentiality of the financial information made available for inspection and audit by OGEDT's auditors.

4. VOUGHT'S JOB TARGET DEADLINES; REPAYMENT PENALTIES

a. Job Target. As set forth in Section 2 above, annually during the term of this Agreement through January 2020 Vought must deliver to OGEDT an Annual Compliance Verification demonstrating that it has met the Job Target for the year just ended. The consequences to Vought of satisfying, failing to satisfy or exceeding the Job Target are as follows:

i. Compliance With Job Target. If, beginning with the Annual Compliance Verification due on or after December 31, 2009, Vought provides a satisfactory Annual Compliance Verification that demonstrates that it has maintained a total of 6,000 Employment Positions for the preceding year, then Vought will be deemed to have met its obligations for such preceding year and no penalty is due.

ii. Failure to Meet Job Target. If, beginning with the Annual Compliance Verification due on or after December 31, 2009, Vought provides an Annual Compliance Verification that demonstrates that it has not maintained a total of 6,000 Employment Positions for the preceding year, OGEDT may require Vought to refund \$1,000 of the money it has received from the TEF for every Employment Position by which it is short that year.

iii. Exceeding Job Target. If an Annual Compliance Verification filed by Vought demonstrates that it maintained more than 6,000 Employment Positions during 2005 or any year thereafter during the term of this Agreement, Vought will be deemed to have exceeded its obligations, and will receive a "Surplus Job Credit" for each extra Employment Position that it has maintained above the Job Target during the preceding year. Vought may utilize any earned Surplus Job Credits in following years as follows:

A. Vought may expend a Surplus Job Credit in lieu of paying a repayment penalty in the amount of \$1,000 (for example, if Vought owes a repayment penalty of \$100,000 for 100 Employment Positions lacking in a particular year, Vought may discharge this repayment penalty by expending 100 Surplus Job Credits it has earned in prior years); and/or

B. Vought may apply Surplus Job Credits toward meeting the remaining Job Target for future years, such that if Vought accumulates enough Surplus Job

Credits it will be deemed to have fulfilled all of its obligations under the Agreement, and will be released from the Agreement early (for example, if Vought has accumulated at least 6000 Surplus Job Credits by December 31, 2017, then it may apply these Surplus Job Credits forward to fulfill its Job Target for 2018, and may thereby fulfill its obligations and be released from the Agreement one year early).

b. Failure to Provide Verification. If after the end of a calendar year Vought fails to provide an Annual Compliance Verification by the deadline for that year, OGEDT may make a good faith estimate, based on information available to OGEDT, of the Employment Positions at Vought as of December 31 of that year and, if the estimated Employment Positions fall short of the Job Target, require corresponding refunds in accordance with Section 4(a)(ii) above. Vought will not be eligible to earn Surplus Job Credits for any such year for which it fails to provide an Annual Compliance Verification by the deadline for that year.

c. Requirements for Vought's Commitments. Vought and the State acknowledge that the following elements of State and local support are necessary elements of Vought's expansion plans:

- (i) Vought's ability to secure appropriate terms and conditions and necessary agreements with appropriate government entities, including the General Land Office, governing Vought's long-term occupancy of the Facility (defined herein); and
- (ii) The continued availability of the State Incentives and the Local Incentives (defined herein); and
- (iii) Vought's ability to secure agreements with all entities necessary to provide appropriate airfield access necessary for its proposed operations.

If any of the foregoing does not occur, Vought anticipates that it will not be able to achieve the Job Target. If Vought cannot achieve the Job Target as a result of the failure of any of the foregoing to occur, the State, in consultation with Vought, will: (i) use its best efforts, including efforts to obtain legislative, appropriative, or other necessary action, to provide Vought with comparable alternative incentives of equivalent economic value, and Vought will in good faith work with the State to develop, obtain, and reasonably accept as performance such substitute incentives; or (ii) consider an appropriate mitigation or reduction of the penalty that would otherwise be due.

d. Consideration of Outside Created Jobs. Beginning with the Annual Compliance Verification covering the year ending December 31, 2011, OGEDT may in its discretion expand the definition of "Employment Positions" to also include one or more of the following types of positions: (i) new full-time employment and full-time contract-labor positions created in Texas with on-site suppliers to Vought and (ii) new full-time employment positions created in Texas with Vought suppliers. All such positions must be a direct result of Vought's expansion plan and shall be subject to appropriate verification by the State.

5. GENERAL PROVISIONS

a. Authority. Each party represents that it has obtained all necessary authority to enter into this Agreement.

b. Relationship of Parties and Disclaimer of Liability. The parties will perform their respective obligations under this Agreement as independent contactors and not as agents, employees, partners, joint venturers, or representatives of the other party. Neither party can make representations or commitments that bind the other party. Vought is not a "governmental body" by virtue of this Agreement or the use of TEF or other funding.

c. Limitation of Liability. In no event will either party be liable to the other party for any indirect, special, punitive, exemplary, incidental or consequential damages. This limitation will apply regardless of whether or not the other party has been advised of the possibility of such damages.

d. Term. The term of this Agreement commences on the Effective Date of the Agreement and continues until December 31, 2019, unless terminated earlier pursuant to the terms of this Agreement.

e. Dispute Resolution and Applicable Law.

(i) **Informal Meetings.** The parties' representatives will meet as needed to implement the terms of this Agreement and will make a good faith attempt to informally resolve any disputes.

(ii) **Non-binding Mediation.** Except to prevent irreparable harm for which there is no adequate remedy at law, neither party shall file suit to enforce this Agreement without first submitting the dispute to confidential, non-binding mediation before a mediator mutually agreed upon by the parties and conducted in accordance with the rules of the American Arbitration Association ("AAA").

(iii) **Venue.** Venue for any litigation brought under this Agreement shall be in Travis County, Texas.

(iv) **Governing Law and Jurisdiction.** Any disputes arising in connection with these terms will be governed by the laws of the State of Texas and the United States of America. The parties irrevocably submit to the jurisdiction of the courts within the State of Texas and the U.S. District Court Western District of Texas to resolve disputes which cannot be resolved by the parties.

f. Publicity. The parties agree to cooperate fully to coordinate with each other in connection with all press releases and publications regarding this Agreement.

6. MISCELLANEOUS PROVISIONS

a. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

b. Merger. This document constitutes the final entire agreement between the parties and supersedes any and all prior oral or written communication, representation or agreement relating to the subject matter of this Agreement.

c. Severability. Any term in this Agreement prohibited by, or unlawful or unenforceable under, any applicable law or jurisdiction is void without invalidating the remaining terms of this said Agreement. However, where the provisions of any such applicable law may be waived, they are hereby waived by either party, as the case may be, to the fullest extent permitted by the law, and the affected terms are enforceable in accordance with the parties' original intent.

d. Survival of Promises. Notwithstanding any expiration, termination or cancellation of this Agreement, the rights and obligations pertaining to payment of funds, export control, confidentiality, disclaimers and limitation of liability, indemnification, and any other provision implying survivability will remain in effect after this Agreement ends.

e. Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the parties and their successors and assigns and shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the parties hereto.

f. Successors and Assigns. Vought, or any legal successor thereto or prior assignee thereof, may assign its rights and obligations under this Agreement, including by merger or operation of law, to any legal successor or any person or entity that acquires all or substantially all of its business and operations. In addition, with the prior written consent of the State, which consent shall not be unreasonably withheld or delayed, Vought, or any legal successor company thereto or prior assignee thereof, may assign its rights and obligations under this Agreement to any parent or wholly owned subsidiary that it currently has in place or later establishes, if it is constituted as a separate legally recognized business entity. Any such assignment will be made without additional consideration being payable to the State. This Agreement shall survive any sale, change of control or similar transaction involving Vought, any successor thereto or prior assignee thereof and no such transaction shall require the consent of the State.

g. Force Majeure. Neither party shall be required to perform any obligation under this Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to strikes, lockouts or labor shortages, embargo, riot, war, revolution, terrorism, rebellion, insurrection, flood, natural disaster, or interruption of utilities from external causes.

h. Notice. All notices, requests, demands and other communications will be in writing and will be deemed given and received (i) on the date of delivery when delivered by hand, (ii) on the following business day when sent by confirmed simultaneous teletype, (iii) on the following business day when sent by receipted overnight courier, or (iv) three (3) business days after deposit in the United States Mail when mailed by registered or certified mail, return receipt requested, first class postage prepaid, as follows:

If to the State to:

General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711
Phone: 512-463-1788
Fax: 512-463-1932

If to Vought to:

Vought Aircraft Industries, Inc.
Attn: W. Bruce White, Jr.
Vice President and General Counsel
Vought Aircraft Industries, Inc.
PO Box 655907
MS 49R-09
Dallas, TX 75265-5907
Phone: (972)-946-5530
Fax: (972) 946-5642

{Remainder of Page Intentionally Left Blank; Signature Page Follows}

The parties have caused this Economic Development Agreement to be executed by their duly authorized representatives as of the date first specified above.

THE STATE OF TEXAS

VOUGHT AIRCRAFT INDUSTRIES, INC.


GOVERNOR RICK PERRY


TOM D. RISLEY
PRESIDENT AND CHIEF EXECUTIVE OFFICER

Appendix C

Office of the Governor - Economic Development & Tourism Regional Offices
 Disbursed, Announced & Committed Texas Enterprise Fund Projects

