

EXECUTIVE SUMMARY

Texas Department of Transportation

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The Texas Department of Transportation (TxDOT) has reached another pivotal moment in its long and often turbulent history. After a decade of intense legislative scrutiny including multiple Sunset reviews, frequent leadership changes, and continuing organizational flux, TxDOT is now embarking on another high-stakes transition as it prepares to spend billions of dollars in new funding. Over the next 10 years, this amount could top \$80 billion, more than double previous funding estimates, primarily due to voter approval of Propositions 1 and 7 and the Legislature's ending of diversions from the State Highway Fund.

Given this significant new investment, one central question permeated the Sunset review: "Is TxDOT ready?" Though the department has a broader transportation mission, the vast majority of TxDOT's overall funding, including its new state sources of revenue, is overwhelmingly restricted to highway projects. As a result, the review primarily evaluated TxDOT's core responsibilities. While this new funding represents a historic opportunity for the state, it also poses a significant challenge for the department to plan, select, and deliver projects effectively and transparently, a perennial area of concern.

TxDOT needs to stabilize and complete many half-finished tasks so it can meet the tremendous challenges at hand.

Generally, the review found the department has made good-faith efforts to address previous concerns, but improvements most critical to its ability to meet high expectations are far from complete. TxDOT needs to get out of its crisis mode mentality developed in previous times of change and funding uncertainty, and implement a more proactive and streamlined approach to delivering highway projects from beginning to end. Chief among these improvements is a continued push toward a more transparent and performance-based planning and project selection process—a longstanding legislative goal, but still a work in progress. TxDOT also needs to quickly rectify well-documented inefficiencies in its project development pipeline, which have led to persistent over-time and over-budget highway projects. Other recommendations aim to improve TxDOT's immense \$32 billion contracting operation, primarily with tools to improve timeliness of the department's frequently delayed construction projects.

Because the department is tentatively on the right track, continuing TxDOT without another wholesale reinvention would allow the department much

needed time to stabilize and complete many half-finished tasks critical to meeting the tremendous challenges at hand. While continued legislative scrutiny is certainly warranted especially with the new funding, the Legislature can still keep a close watch on TxDOT in other ways until the next Sunset review, such as through the joint oversight committee recommended in this report. Also, since TxDOT's highway building work occurs over a long time horizon, recommended changes will take several years to fully implement and determine ultimate impact.

The following material summarizes the Sunset staff recommendations as previously discussed, as well as improvements for several other functions of the Texas Department of Transportation.

Issues and Recommendations

Issue 1

TxDOT's Progress Toward a More Transparent, Performance-Based Transportation Planning Process Is Far From Complete.

Beginning with the 2009 and 2011 Sunset reviews and more recently through House Bill 20 in 2015, the Legislature has required TxDOT to develop a more transparent and performance-based project planning process. The Sunset review identified persistent challenges requiring attention to ensure the department fully implements past and ongoing improvements, given that many decisions about how to use significant new funding are yet unmade and untested. The review found TxDOT still does not clearly communicate how funding decisions impact the state's overall transportation goals. Long-range plans remain disjointed; funding allocation decisions lack clear, objective analysis to understand and explain tradeoffs; and overall performance reporting lags behind best practices. When selecting and prioritizing projects, TxDOT's approach tends to validate the status quo instead of ensuring the highest-priority projects receive the most focus and attention. TxDOT also continues to struggle with providing useful information and opportunities for meaningful public input.

Key Recommendations

- Require TxDOT to adopt one consistent set of statewide transportation goals, revise its approach to distributing funding to better align with these goals, and better analyze and report on the impact of funding decisions.
- Require TxDOT to update its approach to project prioritization, evaluating a project's strategic need and impact on transportation goals before other factors.
- Require TxDOT to streamline and clarify public information requirements relating to its key 10-year planning document and improve the online project tracker system.
- Maintain oversight of TxDOT's delivery of significant new funds and progress toward performance-based planning through a joint oversight committee.

Issue 2

TxDOT Must Quickly Finalize Ongoing Project Development Fixes to Eliminate Backlogs and Prepare for the Future.

As currently structured, TxDOT's project development process is not meeting expectations and is not prepared to effectively handle the influx of new transportation funding projected to double over the next decade. TxDOT has not met key on-time or on-budget measures for several years, indicating underlying problems with the department's management of its project portfolio through complex steps including environmental review, design, and right-of-way acquisition. Additionally, TxDOT administration does not regularly monitor and analyze performance problems at key points in the project development pipeline to address issues as they arise. TxDOT's ad hoc approach to project development and backlogs in right-of-way and utility relocation processes have prevented a more forward-thinking, collaborative, and risk-based approach to delivering projects. Though TxDOT is aware of these problems and has taken recent steps in the right direction to address them, the efforts were too new to fully evaluate during the Sunset review. Also, TxDOT's long-term fixes heavily depend on a high-risk and currently troubled information technology project.

Key Recommendations

- Require TxDOT to finalize implementation of its new project portfolio review process and publicly share resulting performance information.
- Direct TxDOT to regularly analyze performance and report on its progress addressing several problem areas, including on-time, on-budget construction; right-of-way backlogs; and the Modernize Portfolio and Project Management information technology project.
- TxDOT should develop a more risk-based, cross-functional focus to its internal project development activities and improve proactive external stakeholder outreach to avoid conflicts with future planned transportation projects.

Issue 3

TxDOT Lacks Critical Contract Oversight Tools to Efficiently Spend Billions in Taxpayer Dollars and Better Deliver Construction Projects on Time.

In evaluating TxDOT's \$32 billion contracting operation, the Sunset review focused on the types of contracts that will be most impacted by the significant transportation funding increase on the horizon: traditional low-bid highway contracts, professional engineering services contracts, and large strategic contracts such as design-build. TxDOT lacks standard, effective remedies and oversight tools to quickly address construction delays caused by poorly performing contractors, which have resulted in significant negative impacts on businesses and the traveling public in recent years. The department also has not fully developed the use of contractor incentives such as milestone payments to effectively shorten construction time for targeted projects. TxDOT also has not provided basic tools to assist its districts in managing a dramatic increase in the use of outsourced construction engineering inspectors, risking inefficient use and poor oversight of the critical quality assurance role these inspectors provide. Additionally, TxDOT recently decentralized responsibility for managing large, complex strategic contracts such as design-build without a clear plan for ensuring effective accountability and oversight. Finally, TxDOT's administrative

approach to centralized contract approvals does not match level of risk with level of review, potentially causing unnecessary delays in negotiating and executing contracts as its volume of contracts continues to rise.

Key Recommendations

- Require TxDOT to include a range of contract remedies in its traditional low-bid highway contracts and adopt rules to ensure its liquidated damages accurately reflect the cost of project delays.
- Require TxDOT to conduct contractor evaluations and consider past performance in determining bid capacity through a process defined in rule.
- Direct TxDOT to develop criteria for applying project incentives such as milestone payments.
- Direct TxDOT to provide guidance for district management of construction engineering inspectors, including how to perform staffing analyses and manage these expanding contracts.
- Direct TxDOT to provide additional guidance and training for newly decentralized responsibilities such as managing design-build contracts and certain professional engineering services procurements.
- Direct TxDOT to develop a risk-based approach to reviewing and approving contracts.

Issue 4

TxDOT Has Not Taken Proactive Steps to Improve Contracting Opportunities for Disadvantaged Businesses.

The department administers three separate business opportunity programs intended to help level the playing field for small, minority-, and women-owned businesses to contract with the state. However, TxDOT has not done enough to effectively manage these programs to provide meaningful opportunities. For example, TxDOT does not strategically set or monitor participation goals and lacks a standard process for addressing missed goals. Overlapping certifications among the three programs combined with gaps in outreach efforts limit full participation of eligible businesses. TxDOT also does not ensure proper quality assurance and support for day-to-day program implementation decentralized throughout the department. Finally, TxDOT's largely dormant small business enterprise program does not currently provide meaningful opportunities for small businesses and needs further evaluation as to its future role.

Key Recommendations

- Direct TxDOT to set more meaningful goals for its business opportunity programs and streamline certification to increase participation of businesses eligible for multiple programs.
- Direct TxDOT to improve central monitoring and support for its business opportunity programs.
- Direct TxDOT to evaluate the small business enterprise program and develop policies and rules to provide meaningful opportunities for small businesses.

Issue 5

TxDOT's Process Improvement Efforts Lack Clear, Measurable Results.

Despite spending more than \$100 million on private management consulting contracts to improve performance since 2010, TxDOT has little information to clearly evaluate the results of these multiple, expensive efforts. TxDOT does not centrally track or evaluate these contracts and lacks criteria needed to ensure efficient use of existing internal resources already dedicated to performance improvement. The Texas Workforce Commission offers a better model for a successful and less expensive approach to improving performance.

Key Recommendation

- Direct TxDOT to centrally coordinate and track results of business process improvement efforts, including the use of private management consultant contracts, and consider implementing a rapid process improvement program similar to the Texas Workforce Commission.

Issue 6

TxDOT Does Not Effectively Oversee or Support Its 25 Districts.

TxDOT has not sufficiently mitigated the disadvantages inherent in its decentralized organizational structure. With the state's vast size and the widely varied challenges faced by TxDOT's 25 districts, a decentralized approach to project delivery is understandable from a practical standpoint, but the Sunset review found several examples in which central office divisions in Austin, such as construction and design, do not clearly communicate expectations or sufficiently monitor district performance. A generally hands-off approach to monitoring districts jeopardizes the department's ability to effectively detect and address performance problems. As a result, TxDOT administration does not have enough overall management information, and districts do not receive the support and feedback they need.

Key Recommendations

- Direct TxDOT to actively and consistently monitor, evaluate, and report district performance.
- Direct TxDOT to improve communication with and support of the districts.

Issue 7

The State's Aging Aircraft Fleet Raises Questions About Its Future and Requires More Accountability for Its Use.

The Legislature currently lacks adequate information to address the future of the state's aging aircraft fleet, which should include the possibility of replacing current aircraft as well as other ways of providing flight services, such as contracted charter services. In addition, unclear lines of accountability provide little oversight and direction for use of the fleet. Although general state law for agency travel prioritizes cost effectiveness as a primary consideration in travel decisions, statute does not clearly assign responsibility for verifying appropriate use of the fleet. Even TxDOT, the largest user of the fleet, does not ensure its use is cost effective. Overall, state law governing fleet usage is too broad and enables convenience, rather than cost effectiveness, to be a key reason for using the fleet.

Key Recommendations

- Require TxDOT to provide the Legislature a thorough range of analyses and options for deciding the future of the state aircraft fleet within its long-range fleet plan.
- Tighten statutory criteria for use of state aircraft, prioritizing cost effectiveness and need over convenience, and specify state agency heads are responsible for ensuring their employees' use of state aircraft meets statutory criteria.
- Direct TxDOT to adopt a clear internal policy governing the appropriate use of the state aircraft fleet by department staff and regularly monitor usage.

Issue 8

Paper Crash Reports Increase Administrative Costs and Limit the Reliability and Timeliness of Vital Safety Data.

Statute allows paper-based submission of required crash reports to TxDOT by law enforcement agencies, adding administrative costs, delaying access to critical safety data, and increasing risk of data errors. Despite changes to TxDOT's crash records system making electronic crash report submission easier, many law enforcement agencies still submit reports by mail, costing TxDOT about \$1 million per year for data entry expenses. Statute also requires TxDOT to receive and retain crash reports from individual drivers without a clear government purpose, needlessly wasting additional state resources.

Key Recommendation

- Require law enforcement agencies to submit crash reports electronically to TxDOT by September 1, 2019 and eliminate the unnecessary driver crash report requirement.

Issue 9

Texas Has a Continuing Need for the Texas Department of Transportation.

The need for TxDOT's mission to plan, design, build, and maintain Texas' transportation infrastructure is here to stay and will increase as the state's population continues to grow. Though various controversies have surrounded the department over the years, TxDOT has generally made good-faith efforts to address previous concerns. Overall, the Sunset review concluded that the department needs time to stabilize, especially considering its numerous organizational changes over the last decade. Sufficient legislative and internal agency monitoring tools exist to provide ongoing oversight of TxDOT until the next Sunset review, including through the numerous recommendations in this report.

Key Recommendation

- Continue the Texas Department of Transportation for 12 years.

Issue 10

The Department's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Based on standard elements evaluated as part of every review, Sunset staff identified several needed changes to TxDOT's statute and management practices. First, TxDOT's statute does not reflect updated requirements for commission member training. In addition, two of the department's reporting requirements are no longer necessary and four others need to be modified. Finally, TxDOT has continually struggled to improve its workforce diversity, repeatedly falling below statewide civilian workforce percentages for employment of African Americans, Hispanics, and women, yet has not fully implemented its own plans for improvement.

Key Recommendations

- Update the standard across-the-board requirement related to commission member training.
- Discontinue two of TxDOT's reporting requirements and modify four others.
- Direct TxDOT to more proactively implement and monitor its efforts to increase workforce diversity.

Fiscal Implication Summary

Overall, the recommendations in Issue 8 would result in a net positive fiscal impact to the state of approximately \$3.3 million over the next five fiscal years, as described in the chart below. Many other recommendations in the report are designed to improve internal operations and efficiency at the department, but their impact would ultimately depend on implementation, two of which are also highlighted below.

Issue 3 — Adjusted liquidated damages to reflect road user costs could have a positive fiscal impact to the state, but the amount cannot be estimated without knowing the increased amount of liquidated damages, number of projects for which these liquidated damages would be applied, and length of time delayed.

Issue 7 — Changes in use or composition of the state fleet could result in a fiscal impact. For example, TxDOT could sell or purchase aircraft, or develop an entirely new model for delivering flight services using contracted services. In addition, as a direct result of the recommendation requiring agencies to prioritize overall cost effectiveness over convenience, state agencies may use the state aircraft less frequently, resulting in savings to the state.

Issue 8 — The recommendations to require electronic submission of law enforcement crash reports and eliminate an unnecessary driver crash report would have a net positive fiscal impact of \$40,470 in fiscal years 2018 and 2019, and about \$1.06 million positive impact beginning in fiscal year 2020 due to a reduction of two full-time equivalent positions and the elimination of the data entry costs associated with paper crash reports.

Texas Department of Transportation

Fiscal Year	Cost to the General Revenue Fund	Savings* to the State Highway Fund	Change in the Number of FTEs From 2017
2018	\$5,130	\$45,600	-1
2019	\$5,130	\$45,600	-1
2020	\$5,130	\$1,069,300	-2
2021	\$5,130	\$1,069,300	-2
2022	\$5,130	\$1,069,300	-2

* TxDOT initially funds data entry costs from the State Highway Fund and then recoups the cost by billing the Federal Highway Administration.

