Sunset Advisory Commission

Staff Report

Capital Metropolitan Transportation Authority

April 2010

Sunset Advisory Commission

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

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Table of Contents

Summary

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Capital Metro faces a crisis that could threaten its ability to maintain current services unless the Board takes immediate action to shore up the Authority's finances. In anticipation of building passenger rail, Capital Metro accumulated more than $200 million in reserve funds, but did not responsibly manage these funds. The Board took on financial liabilities without setting aside money to pay for its commitments, and did not adequately consider the long-term financial consequences of its decisions. At the same time, the Board did little to rein in the high costs of its basic services, and greatly underestimated the costs of developing commuter rail. Now, with little money left in reserve and sales tax revenues down, Capital Metro's overspending cannot be sustained.

Capital Metro's overspending cannot be sustained.

In its review of Capital Metro, Sunset staff found that the Authority needs to make major changes to improve its basic budgeting and capital planning practices. Mired in labor difficulties, Capital Metro also struggles with a costly labor and organizational structure rooted in decades-old federal labor laws. In addition, while finally completing its first commuter rail project, Capital Metro now faces the high costs of maintaining deteriorating bridges and track infrastructure to ensure the highest level of ongoing safety.

To address these longstanding problems, Capital Metro's new Board must rise to the challenge of conducting its business in a new way that embraces fiscal constraint and open accountability for its expenditure of public funds. The new Board faces many difficult but necessary decisions that will require effective engagement with all stakeholders, including the local transit union, the disability community, transit users, and the public.

Unlike state agencies, Capital Metro is not subject to abolishment under the Sunset Act. Instead, the legislation that placed Capital Metro under Sunset review, Senate Bill 1263 by Senator Kirk Watson, 81st Legislative Session, requires Sunset to assess Capital Metro's governance, management, operations, and compliance with legislative requirements. In addition to this review, the bill also provides for another Sunset review of Capital Metro in 2017.

The material on the following pages summarizes staff recommendations on the Capital Metropolitan Transportation Authority.

Issues and Recommendations

Issue 1

Capital Metro Has Failed to Responsibly Manage Its Finances.

Spending decisions over the last several years have led Capital Metro on a risky financial path. First, Capital Metro has obligated itself to significant future financial liabilities without setting aside funds to pay for its commitments. Second, it has failed to maintain an operating reserve to ensure the Authority could weather economic downturns and other variables such as high fuel costs or unanticipated health claims. In addition, Capital Metro pays significantly higher costs than its peers for most transit services and has done little to control these costs. The Authority also has a long history of subsidizing fares at levels far in excess of its transit peers.

Capital Metro's lack of adequate financial planning, combined with its high cost of services, places its long-term financial viability at risk. Turning the Authority's finances around will mean taking ownership of previous mistakes and implementing new basic budgeting procedures, including a more robust capital planning process. Taking action on Sunset's recommendations for reducing costs and increasing revenues would begin to move the Authority toward greater financial security. Ultimately, making these needed changes work will depend on the new Board's commitment to working with stakeholders to make difficult, but necessary, financial decisions.

Key Recommendations

- Require the Board to maintain a reserve equal to at least two months of operating expenses, and define criteria for its use.
- Require the Board to adopt, and annually reevaluate, a five-year strategic plan that clearly links to, and drives, the budget.
- Require the Board to adopt an ongoing five-year capital improvement plan.
- The Board should evaluate, and take action on, measures to reduce costs and increase revenues.

Issue 2

Costs for Capital Metro's In-house Transit Services Are Excessive and Not Sustainable.

Housed within Capital Metro, a private nonprofit corporation known as StarTran provides the vast majority of the Authority's transit services, but at a high cost that Capital Metro cannot effectively control nor sustain. Essentially, Capital Metro pays the bills for StarTran, but with no performance-based contract in place. Thus, StarTran exists as a perpetual sole-source provider that offers no better performance for its higher costs than Capital Metro's two other contracted transit providers.

Originally created to resolve a conflict between federal and state labor laws, maintaining StarTran as a transit provider is increasingly untenable for Capital Metro in these financial times. Competitively contracting out for these services would require major changes to the Authority's organization and would not come without some disruption and dissention. However, competitively procuring these transit services would provide taxpayers and transit users with the best value for their dollars, and provide Capital Metro with the tools needed to hold all providers equally accountable for performance.

Key Recommendation

- Require Capital Metro to competitively bid all transit services not directly provided by its own employees.

Issue 3

Capital Metro Must Enhance Commuter Rail Safety Before Expanding Its Rail System.

While the Federal Railroad Administration approved Capital Metro's commuter line for service in March 2010, Sunset staff found documentation that many of the Authority's railroad bridges, including some on the corridor shared by commuter and freight operations, will need major repair or replacement to remain safe. However, in its push to start commuter rail service, Capital Metro has yet to budget for, or complete a cost estimate and prioritization of, all necessary bridge work. Given Capital Metro's financial difficulties and the need to ensure the highest level of public safety, critical bridge repairs must take precedence over other capital projects, such as additional commuter rail lines or any enhancements to the current line.

Sunset staff also reviewed numerous stumbling blocks Capital Metro encountered in developing its commuter rail line. These problems stemmed from unreliable tracking of commuter rail expenses, insufficient planning, persistent technical problems, poor contract oversight, fragmented project management, and a lack of accountability for results across departments. As a result, the Authority launched the rail line significantly over budget and two years later than planned. Capital Metro needs to take steps to ensure that these problems do not occur again on any future rail project, but more importantly, that these problems do not impact the ongoing safe operation of its current rail service.

Key Recommendations

- Require Capital Metro to maintain a comprehensive rail safety plan and to regularly report on the ongoing safety of the system.
- Require Capital Metro to employ a Rail Director to oversee and be accountable for all rail system development, operations, maintenance, and safety.
- Capital Metro's Board should take immediate action to prioritize needed replacement, repair, and maintenance of its railroad bridges.
- Capital Metro should develop a contract monitoring plan for major rail projects to ensure accountability for the cost-effective delivery of services.
- Capital Metro should develop a clear approach for planning, developing, and implementing any future rail-related projects.

Issue 4

The Board Has Not Effectively Engaged Stakeholders, Eroding Public Trust in Its Decisions.

Capital Metro's newly composed Board faces a significant challenge in overcoming the Authority's long legacy of appearing "tone deaf" to public concerns. Sunset staff found that Capital Metro invests significant time in efforts to interact with stakeholders and collect public input, but this overall perception persists. The Board also obtains advisory committee input, but key stakeholders continue to feel disenfranchised. In particular, Capital Metro's working relationship with the disability community is in serious disarray, which has left critical decisions on paratransit services unresolved for years.

The new Board has begun initiating changes to improve public participation and build public trust. However, these recent changes have not been in effect long enough for Sunset staff to evaluate their long-term impact.

Key Recommendations

- Require Capital Metro to develop and implement a policy that guides and encourages more meaningful public involvement efforts.
- The Board should assess its overall process for receiving input on paratransit issues, including evaluating the size and composition of the Access Advisory Committee.

Fiscal Implication Summary

The recommendations in this report would not have fiscal implications for the State, because Capital Metro does not receive state appropriations. However, these changes overall, if adopted, could result in significant savings to Capital Metro, as summarized below.

- ***Issue 1*** – Based on a series of Sunset management recommendations, Capital Metro could realize annual savings of up to $14 million, annual revenue gains of up to $5.1 million, and one-time avoided costs of about $54.5 million. Sunset staff did not include these amounts in the chart below as the actual fiscal impact will depend on specific actions of the Capital Metro Board. In addition, requiring Capital Metro to implement a capital budgeting and planning process would result in an annual cost of about $156,000 for two budget analysts; however, Capital Metro can cover these costs within current resources.

- ***Issue 2*** – Requiring Capital Metro to competitively contract out transit services would result in a net estimated savings of $11.8 million initially and up to $22.2 million once some initial costs have been covered. While Capital Metro may take action sooner, this estimate conservatively provides a year to implement these changes. In addition, the exact amount of these savings would depend on contract negotiations. These savings take into account costs to Capital Metro related to converting StarTran's pension plan into a private plan, and paying out vacation and sick leave for StarTran employees. In addition, Capital Metro would need four staff for contract administration and oversight, at an annual cost of $300,000, however these costs would be covered by savings associated with eliminating StarTran management and administrative staff.

- ***Issue 3*** – Requiring Capital Metro to create a new Rail Director position would have a cost of about $195,000 annually; however, Capital Metro can cover these costs using currently budgeted and unfilled executive positions.

Capital Metropolitan Transportation Authority

Fiscal Year	Savings to Capital Metro	Costs to Capital Metro	Net Savings to Capital Metro
2012	$0	$0	$0
2013	$22,200,000	$10,400,000	$11,800,000
2014	$22,200,000	$6,000,000	$16,200,000
2015	$22,200,000	$6,000,000	$16,200,000
2016	$22,200,000	$0	$22,200,000

Capital Metro at a Glance

Capital Metro at a Glance

Created in 1985, the mission of the Capital Metropolitan Transportation Authority (Capital Metro) is to provide quality public transportation choices that meet the needs of its growing region. To carry out its mission, Capital Metro provides the following key services:

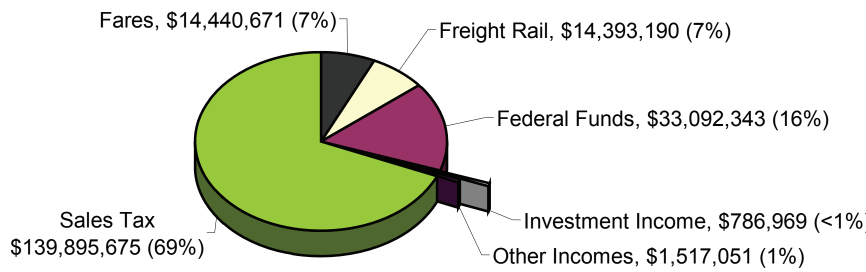
- bus services on regular routes, express bus services, park and ride services, and shuttle services for the University of Texas-Austin;
- door-to-door paratransit service for people with disabilities who cannot use regular bus service;
- commuter rail, including the design and construction of the first line running from Austin to Leander, that started service in March 2010; and
- freight rail operations, including the maintenance of 162 miles of rail that Capital Metro owns, running from Giddings to Llano.

Capital Metro's service area includes the City of Austin; the outlying communities of Leander, Lago Vista, Jonestown, Manor, San Leanna, Volente, and Point Venture; and select unincorporated areas of Travis and Williamson counties. While originally in the service area, the communities of West Lake Hills, Rollingwood, Cedar Park, and Pflugerville have withdrawn.

Key Facts

- **Board of Directors.** The Board comprises eight members, with the City of Austin appointing two members, Travis County and Williamson County appointing one member each, the mayors of small cities in the service area appointing one member, and the Capital Area Metropolitan Planning Organization appointing three members. One member must have financial or accounting experience and one member must have executive management experience. Of the eight, three are elected officials. Members serve staggered three-year terms.
- **Funding.** In fiscal year 2009, Capital Metro received revenues of about $204 million. Capital Metro does not receive state appropriations, but does rely heavily on public funding, with the majority of its funding coming from a 1 percent sales tax on eligible goods and services in the Capital Metro service area. The pie chart, *Capital Metro Sources of Revenue*, shows that for fiscal year 2009, sales tax made up 69 percent of the Authority's funding, federal funds accounted for 16 percent, and fares made up 7 percent. Overall, Capital Metro recovers about 10 percent of its operating costs from fares. At the end of fiscal year 2009, Capital Metro had a balance of $4.6 million in reserves.

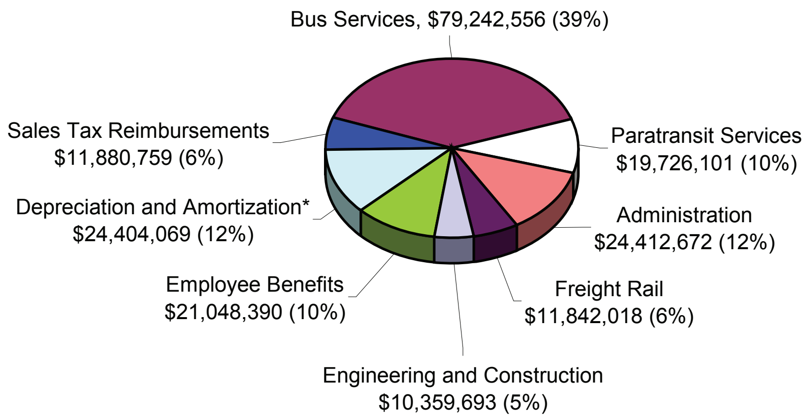
Capital Metro Sources of Revenue FY 2009



Total: $204,125,899

Capital Metro's expenditures for fiscal year 2009 totaled $202.9 million. The Authority spends the majority of its funding on bus services, about $79.2 million, or 39 percent; with another $19.7 million, or 10 percent, devoted to paratransit services. Expenditures also included about $11.8 million in sales tax reimbursements, primarily to the City of Austin, for transportation-related capital projects. The pie chart, *Capital Metro Expenditures*, details what the Authority's money paid for in fiscal year 2009.

Capital Metro Expenditures
FY 2009



Total: $202,916,258

* Not an expenditure, but expensed across departments.

- **Staff.** To administer the Authority, Capital Metro employs about 200 staff. StarTran, Capital Metro's in-house service provider, employs 926 people, including about 620 drivers and 120 mechanics to operate and maintain bus and paratransit services.

- **Bus service.** Capital Metro provides fixed route bus services on 85 routes using about 400 buses, all of which are wheelchair accessible. StarTran operates the majority of buses, with two other contracted companies providing the UT-Austin shuttle service and selected other bus routes. Capital Metro makes about 32 million trips annually putting about 21.5 million miles on its vehicles.

- **Paratransit service.** StarTran provides door-to-door paratransit services for persons with disabilities that exceed the minimum service requirements of the Americans with Disabilities Act. Paratransit operates 66 vans and 52 sedans, using 167 drivers. In fiscal year 2009, paratransit served about 7,000 clients with 622,310 trips.

- **Commuter rail.** In November 2004, voters approved construction of the first phase of a larger commuter rail system. Initially planned for 2008, commuter rail started service in March 2010. The commuter rail runs four trains on 32 miles of freight tracks between Leander and central Austin. Capital Metro entered into contracts for the operation and maintenance of commuter rail service.

- **Freight rail.** Capital Metro took ownership of a 162-mile freight line in 1998 with the intention of using part of the tracks to develop a passenger rail system. The freight line shares 32 miles of tracks with the commuter rail system, with commuter service running in the day and freight at night. Capital Metro contracts for regular freight operations on the line, with freight revenues currently covering the cost of operations.

Issues

Issue 1

Capital Metro Has Failed to Responsibly Manage Its Finances.

Background

Created in 1985, Capital Metro is a public entity charged with providing public transportation in Central Texas. A newly configured eight-member Board governs the Authority, as shown in the textbox, *Board Composition*. By statute, the Board is responsible for the management, operation, and control of Capital Metro and its property. The Board operates based on by-laws and a code of ethics that applies to the Board and all Capital Metro employees. Statute authorizes the Board to employ a General Manager and adopt rules for the safe and efficient operation and maintenance of the transit system. Capital Metro's key services include bus transit, door-to-door rides for persons with disabilities, commuter rail, and freight rail.

Board Composition

Senate Bill 1263, by Senator Watson, 81st Session, increased the Board from seven to eight members, added accounting and management experience requirements for two members, and reduced the number of elected officials from four to three. The Board includes the following members:

- two members appointed by the City of Austin – one must be an elected official;
- one member appointed by Travis County;
- one member appointed by Williamson County;
- one member appointed by small city mayors in the service area who must be an elected official; and
- three members appointed by the Capital Area Metropolitan Planning Organization – one must be an elected official, one must have 10 years of finance or accounting experience, and one must have 10 years of executive management experience.

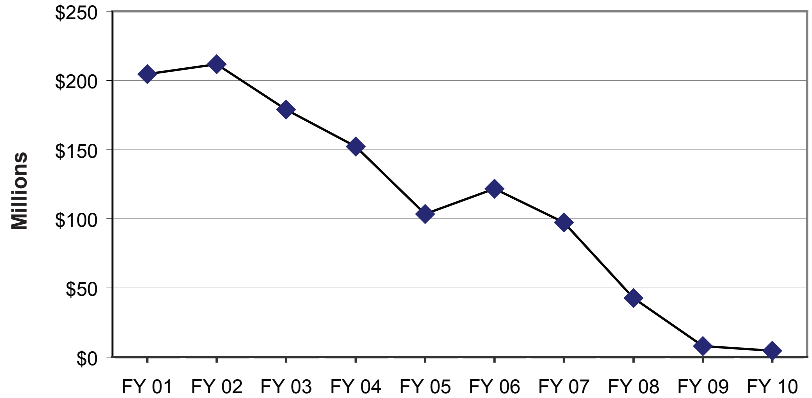
State law requires the Board to adopt an annual operating budget of all major expenditures by type and amount. Statute also provides that Capital Metro adhere to a balanced operating budget. In fiscal year 2009, the Board oversaw expenditures of about $203 million, including operating and capital expenses. In that same year, Capital Metro received about $140 million in sales tax revenues, making up 69 percent of its overall revenues. A 1 percent sales tax originally approved by voters in 1985 funds the Authority. The Board also uses sales tax revenues to reimburse local communities for certain transportation-related construction projects. Capital Metro receives no state appropriations.

Findings

The Board has failed to responsibly manage Capital Metro's reserve funds, jeopardizing the Authority's long-term financial stability.

Capital Metro's Code of Conduct requires the Board to administer funds "for the public to be assured that the actions of Capital Metro serve only the Authority's best interests."[1] Beginning in 2002, the Board spent down its sales-tax-funded operating reserves dramatically, placing Capital Metro's long-term financial viability at risk. The graph on the following page, *Capital Metro Reserves*, shows how reserves plunged from $204.5 million in fiscal year 2002 to only $4.6 million at the start of fiscal year 2010.

Capital Metro Reserves*
FYs 2001 – 2010



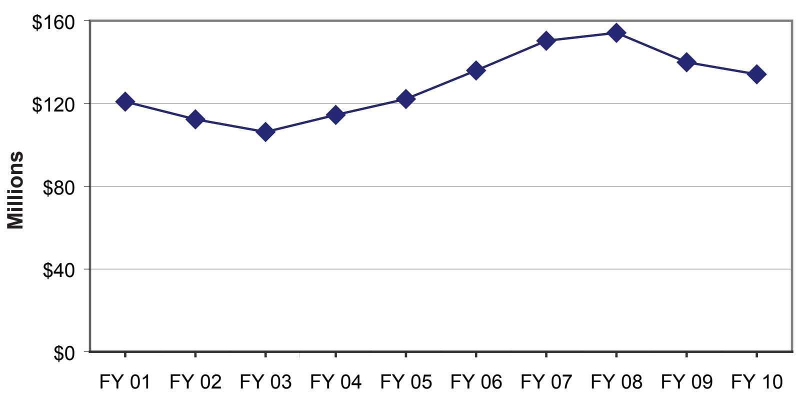
* Includes cash and investments.

Capital Metro's reserve balances have plunged.

While the Board needed to determine other uses for this money when voters rejected its initial rail plan in 2000, it failed to responsibly manage these expenditures. The Board entered into long-term commitments to return significant portions of its sales tax revenues to its member cities. The Board also continued plans to use the reserve for its ongoing desire to build a rail system, which voters ultimately approved in 2004. In addition, the Board committed to other significant capital projects such as park and ride facilities.

Despite warnings from staff as early as 2006 that Capital Metro could reach a structural revenue deficit by 2011, the Board failed to take action to maintain a minimum reserve balance to avoid a possible deficit. By 2009, sales tax revenues also began to decline, as shown in the graph, *Sales Tax Revenues*. Without sufficient reserve funds on hand, Capital Metro has no cushion to ensure it can continue operations in the face of unanticipated changes, such as a drop in sales tax revenues or increasing fuel prices.

Sales Tax Revenues
FYs 2001 – 2010



* Estimated amount based on Capital Metro's approved budget and business plan, fiscal year 2010.

As of October 2009, the Authority had just \$4.6 million in reserves, far below the Federal Transit Administration's recommended three months operating expenses.[2] For Capital Metro, this recommendation would require reserves of \$41.3 million based on fiscal year 2010 operating expenses. In April 2009, the Board adopted a goal of two months of reserves, or \$27.5 million, a goal Capital Metro is far from reaching.[3]

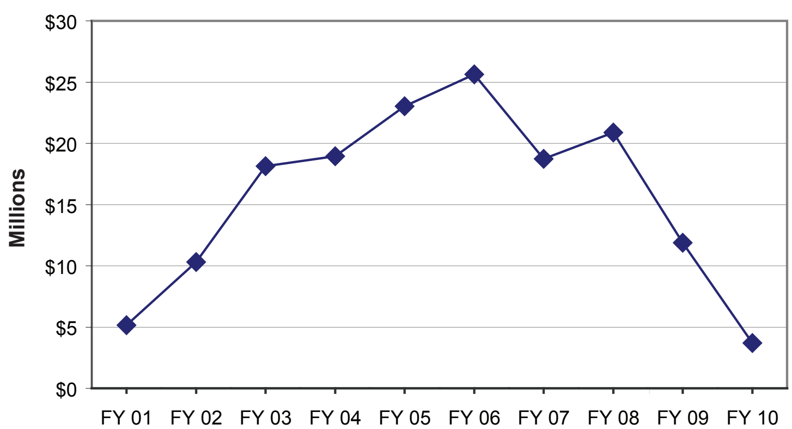
While using reserve funds for operations and capital expenses, Capital Metro does not clearly account for its reserve funds, limiting the Board's ability to track these expenditures and reducing public confidence in Capital Metro's handling of its fiscal matters. Other than information on annual reserve balances, Capital Metro could not provide Sunset staff with a detailed accounting of reserve spending. Despite the use of reserves as a source of funding in the budget, Capital Metro's annual budget does not provide any accounting of reserve deposits, expenditures by type, or balances.

The Authority does not clearly account for reserve spending.

The Board committed to returning tax revenues to local communities without setting aside sufficient reserve funding, recently driving Capital Metro close to financial insolvency.

In 2000, after voters rejected a light rail system, the Board faced pressure to return a portion of accumulated sales tax revenues back to local communities for transportation projects. The Board, using inter-local agreements, obligated about $204.5 million from 2001 to 2013 to pay for local projects to enhance local mobility, such as road repairs and bike trails. However, the Board did not count these obligations as liabilities and failed to set aside funds to cover these costs. From fiscal years 2001 to 2010, the Board paid out about $153.7 million for these projects, mostly to the City of Austin. The graph, *Sales Tax Payments to Local Cities*, shows how these payments have ranged from $3.7 million to $25 million per year.

Sales Tax Payments to Local Cities
FYs 2001 – 2010



* Fiscal year 2010 budgeted payment.

As of April 2010, Capital Metro still has about $65.5 million in total outstanding obligations for mobility projects it committed to fund through inter-local agreements. In January 2010, Capital Metro informed the City of Austin, after receiving $5 million in payment requests, that the Authority could not pay these amounts until its finances improved. Since January, reimbursement requests have grown to about $7 million as the City of Austin continues to complete mobility projects. According to Capital Metro staff, these outstanding obligations prompted Capital Metro's auditor, as part of its annual financial audit, to consider issuing a qualified opinion that the Authority may not remain financially viable over the next year because it cannot pay these obligations. [4]

Capital Metro recently negotiated with the City of Austin to temporarily suspend $51.5 million in mobility payments, thus postponing consideration of the payments. However, at the time of this report, the City of Austin had not officially approved this agreement.

Capital Metro has a history of uncontrolled costs and overspending that cannot be sustained.

- **The costs of StarTran bus service continues to grow, and without a performance-based contract for these services, the Board cannot effectively control these costs.** StarTran is a nonprofit corporation serving as Capital Metro's in-house provider for most of the Authority's bus services and all paratransit services. As discussed in Issue 2 of this report, Capital Metro's cost of operating StarTran grew by 27 percent over six years, from about $62.8 million in fiscal year 2003 to about $80 million in fiscal year 2009. StarTran pays about four dollars an hour more in labor costs for its highest paid drivers, compared to the same unionized drivers working for other contractors. Without a performance-based contract in place for StarTran services, Capital Metro has no mechanism to control these costs or ensure accountability for these services.

- **Capital Metro did not control the costs of developing commuter rail, which climbed from $60 million to almost $140 million.** As discussed in Issue 3 of this report, Capital Metro did not adequately plan for, and control, commuter rail capital costs. The three primary causes of the increase were higher costs for the rail cars and moving these costs into the capital budget, technical problems with the signal system that prevents collisions, and failure to include significant expenditures needed to improve the existing freight rail system to safely allow for freight and commuter service on the same tracks. The Authority also did not clearly track all spending while completing the project, and could not provide detail on all rail-related capital expenditures.

- **The Board awarded lavish compensation to its General Manager behind closed doors.** In 2009, the Board awarded the General Manager an early retirement package and other payments totaling $298,808 with little regard for the ongoing costs to Capital Metro. While employed by Capital Metro for only eight years, the Board vested the General Manager with 35 years of service. This additional vesting, combined with the retirement package, increased the General Manager's monthly retirement payments from $2,668 to $7,500 for life. The Board approved these pension increases without consulting Capital Metro's pension staff about the long-term implications of these decisions, creating an ongoing liability of about $88,000 per year to Capital Metro. The Board also awarded the General Manager about $500,000 in 401(k) and 457 contributions over his eight years with the Authority, the maximum allowed under federal law, with no employee contributions.

  Except for smaller annual bonuses awarded to the General Manager during public meetings, the Board made these compensation awards in executive session, often with no staff or legal counsel present to provide guidance. By not publicly discussing the General Manager's compensation and bonuses, the Board undermined the public's confidence that the

The Board awarded the General Manager 35 years of service for eight years of work.

General Manager was being appropriately rewarded for performance. While the General Manager provided annual self-evaluations to the Board from 2006 to 2008, the Board conducted no formal evaluations of its own to document the merit of these compensation increases.

- **Capital Metro pays all the costs for its pension plan for administrative employees.** Capital Metro created a defined benefit pension plan for its 350 Capital Metro and StarTran administrative employees in 2005. However, employees do not contribute any wages to help offset the plan's cost. While pension benefits vary, other transit authorities, such as those in Houston and San Antonio, require their employees to pay about 3 percent to 6 percent of wages to help fund their pension plans. While currently adequately funded, in 2008 the plan took a $1.3 million loss due to a 19 percent negative return, instead of an expected 7.5 percent positive return.[5] Should the economy take further downturns, Capital Metro may have to further subsidize the plan, which could be difficult due to a lack of reserve funds.

- **Capital Metro provides a high level of paratransit services that are extremely costly and may not be sustainable under current financial constraints.** As discussed in Issue 2 of this report, the Board faces challenges in continuing to subsidize the cost of paratransit services at current levels.[6] Capital Metro provides numerous paratransit services that go beyond Americans with Disabilities Act requirements, such as door-to-door rides, open-ended returns, and taxi vouchers. In fiscal year 2009, Capital Metro spent about $28.9 million, including administrative and maintenance costs, to serve about 7,000 paratransit clients, or about 2 percent of Capital Metro's total ridership.

The Board has not maximized potential revenues to help offset expenses.

- **Capital Metro's fare recovery rate remains low, with 30 percent of its riders not paying a fare at all.** Despite significantly increasing its fares recently, Capital Metro's fares only cover about 10 percent of its operating costs. This 10-percent fare recovery rate falls far below the 18-percent average rate of its peer transit authorities.[7] Capital Metro's first service plan in 1984 anticipated reaching a fare recovery rate of 30 percent over time; however, the Board has not gradually increased fares to help achieve a recovery rate closer to its peers. Instead, the Board increased fares for the first time in over 20 years in 2008, and again in 2010. By delaying needed fare increases, Capital Metro lost a stable source of revenues that could have helped offset variable tax revenues.

  In the last two years, the Board doubled the basic bus fare from 50 cents to $1, with monthly passes going from $10 to $30. However, the Board has not spread fare recovery equitably across its riders, with 30 percent of Capital Metro's passengers riding for free. Before the downturn in the economy in 2008, the Board did propose a half fare for individuals riding

Capital Metro's 10-percent fare recovery falls far below the 18-percent average of its peers.

free. However a committee of local government officials, authorized at the time to approve fare changes, rejected the increase.[8] Then in 2009, as part of its recent fare increases, Capital Metro staff proposed a 25-cent fare to cover riders that do not pay any fare, including seniors and persons with disabilities. Capital Metro's Board rejected this proposal. While fare increases are difficult, requiring only a portion of its ridership to bear the burden of these increases is not equitable or sustainable, especially in bad financial times.

Thirty percent of Capital Metro's passengers ride for free.

Another area where Capital Metro has limited fares is for its door-to-door paratransit services. Capital Metro's fare recovery for paratransit services is less than 2 percent, with each shared ride costing Capital Metro about $41, yet riders pay only $1.20, while federal law allows this fare to be up to double the regular bus fare, or $2. When Capital Metro raised its base fare to $1, it could have raised the paratransit fare to $2, but opted not to change this fare.

- **Capital Metro's contract to provide University of Texas-Austin shuttle services does not cover its costs, resulting in local taxpayers subsidizing a significant portion of this cost for the University.** Since 1989, Capital Metro has provided shuttle services for UT-Austin, greatly increasing Capital Metro's overall ridership. In fiscal year 2009, Capital Metro spent $13.4 million in fully allocated costs, including administration, operations, and maintenance, to provide this service. Per its contract, UT-Austin paid $5.4 million, based on paying 65 percent of select Capital Metro costs, including hourly labor, maintenance, fuel, tires, and radio costs. If instead, UT-Austin paid 65 percent of the fully allocated costs, this would result in an additional $3.3 million in revenues.

- **The Board heavily subsidized private freight operations with tax revenues before recently breaking even on these operations.** Capital Metro purchased the 162-mile Giddings-Llano freight rail line with the intention of using a portion of these tracks for passenger rail. However, freight operations sustained losses of more than $29.2 million from fiscal years 2001 to 2008. In any given month, freight revenues covered only about 44 percent to 80 percent of operating costs. Capital Metro used local tax revenues to cover these losses. According to staff, the Board did not initially have expectations that freight operations would break even or make a profit. Only recently did Capital Metro re-negotiate rates with its major customer, resulting in freight operations breaking even in fiscal year 2009.

Taxpayers subsidized $29.2 million in freight costs from 2001 to 2008.

Capital Metro lacks basic management tools needed to control spending and adhere to a budget.

- **The Board has not adopted a clear strategic plan that is tied to the budget and guides financial planning.** Reviews of Capital Metro's budget by the Government Finance Officers Association noted concerns about the budget not adequately explaining how strategic goals shaped the budget, how performance measures tied to strategic goals, or how department activities support strategic goals.[9] In addition, Capital Metro's capital budgeting processes and spending do not link to any strategic goals. An effective strategic plan sets long-term goals, keeps the overall needs of the transit system in the forefront, ensures a fair balance of competing service needs, and guides business activities and spending to support the plan's goals. However, Capital Metro does not have such a plan.

Capital Metro lacks a plan for fairly balancing competing service needs.

The goal of Capital Metro's 2007 strategic plan, *Route 2025*, is to double ridership by 2025, which is a worthy goal but does not set the overall strategic direction for Capital Metro. *Route 2025* has broad themes such as improving customer satisfaction, service delivery, environmental stewardship, and increasing employee empowerment. Capital Metro has not completed business plans or linked key performance measures to departmental activities that support the themes of *Route 2025* and its overall ridership goal. In fact, Capital Metro's ridership has remained relatively level, ranging from 32.7 to 35.3 million trips over the last five fiscal years.

- **Capital Metro does not have adequate capital budgeting processes, making it difficult for the Board to make informed decisions about these major expenditures.** Over the last five fiscal years, Capital Metro spent more than $287 million, or an average of $57.4 million annually, on capital expenditures such as commuter rail cars, buses, and construction. However, Capital Metro has no five-year Capital Improvement Plan (CIP) to ensure proper planning, budgeting, and implementation of capital projects. A recent Capital Metro audit found planning, prioritization, and oversight of capital projects severely lacking.[10] Without a CIP, both the Board and the public lack information needed to understand prioritization of projects, costs of projects over time, types of funding available, and if projects are completed on time and on budget. Also, the Board cannot fully understand, and plan for, how capital projects will affect future operational costs.

Capital Metro spends an average of $57.4 million a year on capital projects with no clear plan.

Statute requires Capital Metro to adopt a balanced operating budget, but does not specifically address its capital budget, and Sunset staff found that the Authority does not adequately explain its capital spending in its annual budget. The fiscal year 2010 budget shows only $27.6 million allocated for capital spending, but lacks any detailed information on specific projects. Major departments for bus services, paratransit, commuter rail, freight rail, and construction do not provide detailed annual capital spending plans for the budget. In addition, the budget does not include all available funds for the year, such as capital funds carried over from previous years.

- **Capital Metro's Board and management do not hold departments accountable for accurately budgeting for expenses and minimizing significant budget variances.** Sunset staff reviewed department expenditures and found persistent overspending and reliance on making up the differences in other areas of the budget. While financial staff periodically review department budgets, variances are not consistently explained to the Board. This lack of sufficient budgetary oversight contributes to overspending. For example, in fiscal year 2008, the freight rail department went about $1.2 million over budget mostly due to spending more on rail maintenance than budgeted. In fiscal year 2009, the commuter rail department went over budget by about $1 million. The department spent about $5.1 million more on maintenance than budgeted, but relied on about $4.1 million in unspent operational funds to cover the balance of maintenance spending. However, these funds were only available because of commuter rail start up delays.

  Capital Metro also often relies on budget variances within departments to absorb unanticipated costs. While a limited degree of budget variance is normal, in some cases these variances were large and resulted from inadequate planning. In fiscal year 2009, the UT-Austin shuttle service went $442,203 over budget, tied to a mistake in calculating service hours, costs of commuter rail connector service, and bus repairs. These costs were covered by funds from other line items in the contracted services budget. While the contracted services budget was not exceeded, Capital Metro cannot always rely on covering large variances with funds from other budget line items.

Recommendations

Change in Statute

1.1 Require the Board to maintain a reserve equal to at least two months of operating expenses, and define criteria for its use.

This recommendation would require the Board to maintain a minimum reserve equal to at least two months of operating expenses, or currently about $27.5 million. Under this recommendation, the Board would have three years to initially establish this reserve. While a two-month operating reserve is the minimum, the Board should strive to establish a three-month reserve if possible. This recommendation would not preclude the Board from establishing other reserves if needed, such as reserves for capital spending and self-insurance. In re-building the reserves, the Board should also:

- establish criteria for spending any amount in the core balance of the reserve fund, limited to emergency circumstances that could not have been planned for or anticipated;
- plan to replenish reserve amounts as quickly as possible should any of the core balance be spent;
- maintain reserves in a segregated account; and
- account for, and post on its website, annual year-end reserve balances, deposits, expenditures, and interest income.

1.2 Require the Board to adopt, and annually reevaluate, a five-year strategic plan that clearly links to, and drives, the budget.

This recommendation would require Capital Metro to develop a new strategic plan that establishes its mission and goals, and the business activities that support achieving this mission. The strategic plan would set policy and service priorities that drive development of the operating and capital budgets, and allocate resources based on strategic priorities. The strategic plan should align with, and support, the regional metropolitan planning organization's long-range transportation plan where appropriate. Capital Metro departments should develop business plans, with performance measures, that support the strategic plan. To support implementation of the strategic plan, the Board could create an annual work plan with monthly timeframes for addressing key priorities such as budget development, financial policies, service delivery issues, and fare recovery.

1.3 Require the Board to annually adopt a balanced budget that includes operating and capital spending.

The current statutory requirement to adopt an annual balanced operating budget would be modified to include capital spending planned for that year. The budget should clearly account for amounts budgeted for each of Capital Metro's major departments, including sources of funding. Each department, in addition to detailed information on budget needs, should provide information on any proposed capital project for the year, including purpose, benefits, funding sources, implementation costs, and any resulting operational costs. Staff should seek Board approval for additional funding for projects projected to exceed their annual budget by 10 percent or more, and for any proposed shifting of funds between budget line items. Staff should regularly report budget variances to the Board.

Staff should provide the Board with quarterly status reports on actual operations and capital expenditures, in comparison to amounts budgeted. These reports should include updates on all key capital projects, including information on project completion, work completed compared to budget spent, and any contract management concerns. To assist with reporting on capital projects, Capital Metro should also develop a consistent method for tracking capital project costs, to include, at a minimum, tracking the baseline budget, contract awards, contract changes, and expenditures to date.

1.4 Require the Board to adopt an ongoing five-year capital improvement plan.

The Board should develop and annually approve a five-year capital improvement plan that links to Capital Metro's strategic goals. The Board should base the plan on transit industry best practices, and consider recommendations included in the Authority's recent capital planning audit.[11] Capital Metro should give the public the opportunity to review and comment on the capital plan before the Board adopts it. The plan should align with, and support, the regional metropolitan planning organization's long-range transportation plan where appropriate. The capital plan should include, at a minimum, the following elements:

- prioritization of capital projects anticipated over a five-year period;
- description of planned capital projects, including project category and scope;
- financing of capital projects, including implications for ongoing operational costs;
- sources of funding for projects including local and federal funds; and
- policies for capital planning, estimating costs, tracking spending, approving capital projects, and reporting on projects.

1.5 Require the Board to adopt a clear and open policy for evaluating and compensating its General Manager.

The Board should conduct regular performance evaluations of the General Manager, holding this top official accountable for the overall efficiency and effectiveness of the Authority and its staff. The Board should adopt policies for discussion of General Manager compensation and bonuses in open meetings. While the Board could discuss the details of the General Manager's performance in executive session, any raises, bonuses, or other compensation should be granted in public by Board vote.

Management Action

1.6 The Board should evaluate, and take action on, measures to reduce costs and increase revenues.

To help attain a baseline operating reserve, Sunset staff identified a number of areas the Board should review to reduce costs and increase revenues. If appropriate, the Board should incorporate these changes in its fiscal year 2011 budget, or implement sooner where feasible. After Capital Metro establishes the minimum reserve amount, it could reconsider these measures as appropriate. The chart, *Recommendations for Savings, Revenue Increases, and Cost Avoidance*, shows areas the Board could act on to help Capital Metro rebuild its reserves.

Recommendations for Savings, Revenue Increases, and Cost Avoidance

Recommendation	Fiscal Estimate
1. Adopt a 5-percent across-the-board reduction in costs, based on the fiscal year 2010 operating and capital budget of $206.2 million.	$10.3 million in annual savings
2. Require Capital Metro and StarTran administrative employees to contribute 4 percent of wages to their pension plan.	$770,000 in annual savings
3. Increase paratransit productivity to achieve a 10-percent reduction in costs by revising policies that exceed Americans with Disabilities Act requirements, including taxi vouchers, open returns, door-to-door services, and reservations.	$3 million in annual savings
4. Charge a bus fare of 50 cents for groups currently riding free ($1.7 million in revenues) and charge $2 for paratransit rides ($155,600 in revenues).	$1.8 million in annual revenue gains
5. Renegotiate the UT-Austin contract to cover 65 percent of Capital Metro's fully allocated costs of providing shuttle services.	$3.3 million in annual revenue gains
6. Freeze capital spending on expansions of commuter rail that use tax revenues as a source of funding, including extra sidings ($5 million) or double-tracking ($48 million), as long as safety is not compromised.	$53 million in one-time avoided costs
7. Review all capital spending projects and put on hold any not immediately needed to ensure public safety or that would not jeopardize federal funding if not completed. For example, discontinue bus stop upgrades not required by the Americans with Disabilities Act.	$1.5 million in one-time avoided costs

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State, since Capital Metro receives no state appropriations. Capital Metro could realize estimated savings of up to $14 million annually, revenue gains of up to $5.1 million annually, and one-time avoided costs of about $54.5 million. However, the exact fiscal impact would depend on the specific actions the Board takes on these recommendations. Capital Metro would also need two budget analysts to assist with developing the capital budget and CIP, at a cost of approximately $156,000 annually, including benefits. However, Capital Metro can cover these costs with existing resources.

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1 Capital Metropolitan Transportation Authority, *Code of Conduct Section I, Declaration of Policy*. January 2000.

2 Federal Transit Administration, United States Department of Transportation, *Project and Construction – Management Guidelines* (Washington D.C., 2003). Online. Available: http://www.fta.dot.gov/publications/reports/other_reports/publications_1482.html. Accessed: February 4, 2010.

3 Capital Metropolitan Transportation Authority, *Budget Guidelines Resolution*, no. CMTA-2009-33 (Austin, Texas, April 27, 2009).

4 Auditors may express a qualified opinion when the auditor finds that financial statements contain a material departure from generally accepted accounting principles. Auditors have a responsibility to evaluate if there is substantial doubt about an entity's ability to continue as an ongoing concern for a one year beyond the date that financial statements are audited. American Institute of Certified Public Accountants, *Codification of Statements on Auditing Standards*, (January, 2009) AU Section 341.02 and 508.20.

5 Capital Metropolitan Transportation Authority, *Retirement Plan for Administrative Employees, Actuarial Report as of January 1, 2009* (March 25, 2009) p. 2.

6 Capital Metropolitan Transportation Authority, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (September 2009) p. 185.

7 Capital Area Metropolitan Planning Organization, *Capital Metro Peer Review Quadrennial Performance Audit* (Austin, Texas, December 31, 2008) sec. 2, p. 47.

8 Senate Bill 1263, by Senator Watson, 81st Session, exempted Capital Metro from requirements that a committee of local government officials approve fare increases. Instead, the bill allows Capital Metro's Board to approve fare increases, with the exception that the local metropolitan planning organization has 60 days to disapprove changes to the single-ride base fare.

9 Government Finance Officers Association, *Distinguished Budget Presentation Awards Program Budget Reviewers Comments and Suggestions*, Fiscal Years 2007-08, and 2009.

10 Capital Metropolitan Transportation Authority, *Capital Planning and Management Performance Audit*, report no. 09-06 (Austin, Texas, March 2010) p. 4.

11 Ibid. p. 12.

Issue 2

Costs for Capital Metro's In-house Transit Services Are Excessive and Not Sustainable.

Background

When Capital Metro was first created in 1985, it took over transit services from the City of Austin's contractor, Austin Transit Corporation. Under federal requirements, the Authority had to continue to recognize the labor protections of the employees of this company or risk losing federal funding.[1] These protections, at the time, included the right to collectively bargain and the right to strike. However, under state law Capital Metro, as a public entity, cannot enter into a collective bargaining agreement with a union. State law also prohibits public employees from striking.[2]

Initially, Capital Metro resolved this conflict between federal and state requirements by hiring a management company to conduct labor negotiations. Due to concerns that this arrangement did not adequately separate Capital Metro and its unionized employees, Capital Metro decided to organize a private nonprofit corporation, known as StarTran, to negotiate with the union and operate most of its services.[3] This structure was intended to provide more separation of Capital Metro from union activities without having to contract out services to a private for-profit provider. In addition, workers maintained their right to collectively bargain and strike.

StarTran now provides two-thirds of Capital Metro's bus services, and all of its paratransit services for people with disabilities. In fiscal year 2009, Capital Metro paid StarTran $80 million to operate 226 buses on 85 regular routes and to drive 118 vehicles providing paratransit services. As of September 30, 2009, StarTran had 926 employees, including 620 drivers, 120 mechanics, 150 administrative staff, and 36 maintenance staff. For the other third of its bus services, Capital Metro contracts with two private for-profit providers, First Transit with a $9.6 million contract and Veolia with a $10.5 million contract.

Capital Metro has an open-ended service agreement with StarTran to provide bus services that either entity can cancel with 180-days notice. As part of this agreement, StarTran hires, fires, and manages its employees, and negotiates with two unions representing StarTran workers. The primary union, the Amalgamated Transit Union Local 1091, represents 500 of 800 union-eligible workers; with a smaller union representing 13 employees.[4]

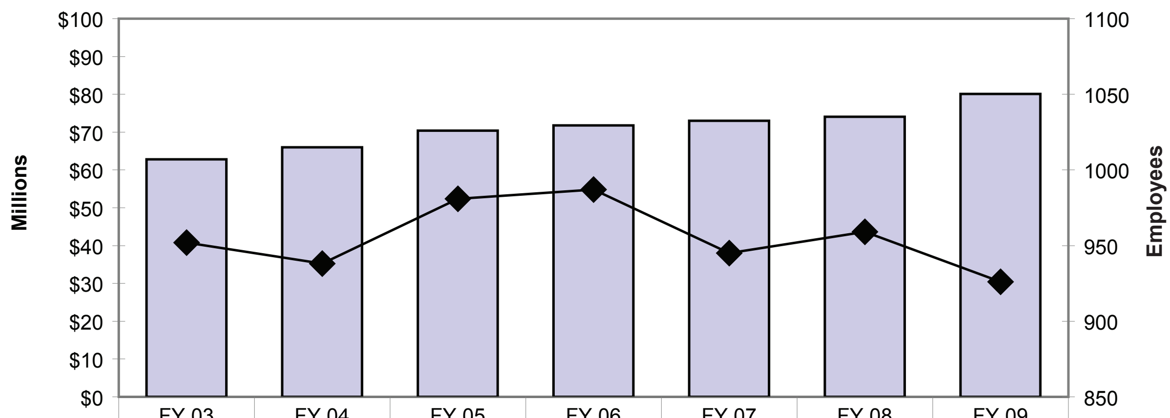
Other Texas transit authorities vary in how they deal with federal labor requirements. In general, the workers in these other areas did not have the same rights to collectively bargain or strike as Austin did when they took over bus services, and thus, operate under different circumstances. For example, the transit authorities in Dallas, San Antonio, Corpus Christi, and Houston directly employ their workers. Union representatives and transit authority management engage in "meet and confer" discussions to negotiate wages and benefits, but employees do not have the right to collectively bargain or strike. In contrast, the Fort Worth transit authority contracts out all of its transit services and workers have the right to strike.

Findings

Capital Metro's costs to provide services through StarTran are growing rapidly, and are significantly higher than Capital Metro's competitively contracted services.

Over the last six years, StarTran's annual expenditures have grown by 27 percent, or about $17 million, as shown in the graph, *StarTran Expenditures and Employees*. This increase occurred despite the level of service remaining relatively constant. During this same period, the number of employees declined by 6 percent – from a high of 987 in fiscal year 2006 to a low of 926 in fiscal year 2009. However, high fixed costs and increased overtime wages contributed to driving up overall costs even as the number of employees decreased.

StarTran Expenditures and Employees*
FYs 2003 – 2009

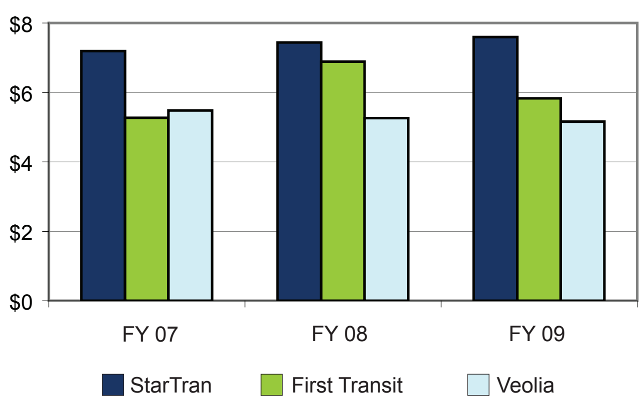


	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Expenditures	$62,804,784	$65,984,973	$70,406,565	$71,817,842	$73,033,704	$74,084,192	$80,091,457
Employees	952	938	981	987	945	959	926

* Expenditures do not include the cost of fuel, as Capital Metro pays this cost for StarTran and all contract providers.

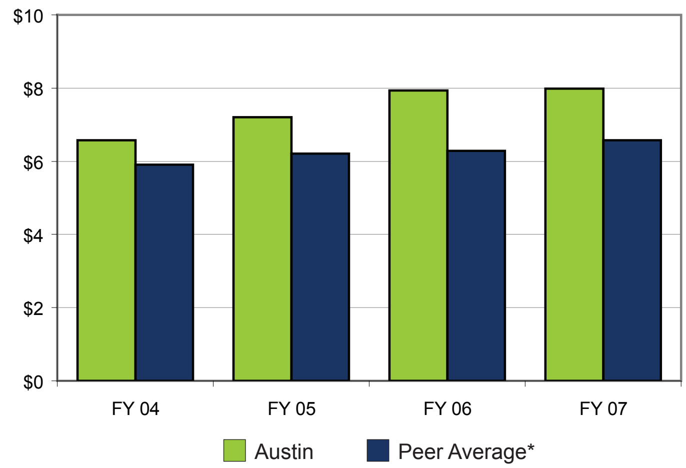
- **Comparison to contracted providers.** StarTran's fixed route bus services cost more than similar services provided by Capital Metro's two contracted service providers. According to Capital Metro, based on a cost per mile comparison, StarTran's fixed route costs in fiscal year 2009 were 23 percent higher than First Transit's and 32 percent higher than Veolia's costs. These costs are calculated by dividing operating costs by the total distance traveled for the same period. The graph, *Cost per Mile – Fixed Route*, shows StarTran's consistently higher costs for fiscal years 2007-2009.

Cost per Mile – Fixed Route
FYs 2007 – 2009



- **Peer comparison.** A 2008 peer review found that services provided by StarTran cost 32 percent more per mile than services operated by Capital Metro's contract providers.[5] These higher costs for StarTran contribute significantly to Capital Metro's overall higher costs when compared to peer transit systems.[6] For example, for 2007, the peer review found that Capital Metro's fixed route costs per mile are 37 percent higher than those of a select group of peer cities, as shown in the graph, *Peer Comparison – Cost per Mile for Fixed Route*. In addition, over the four years studied, Capital Metro's costs have increased 22 percent, while peer costs, on average, have only increased by 14 percent.[7]

Peer Comparison – Cost per Mile for Fixed Route, FYs 2004 – 2007



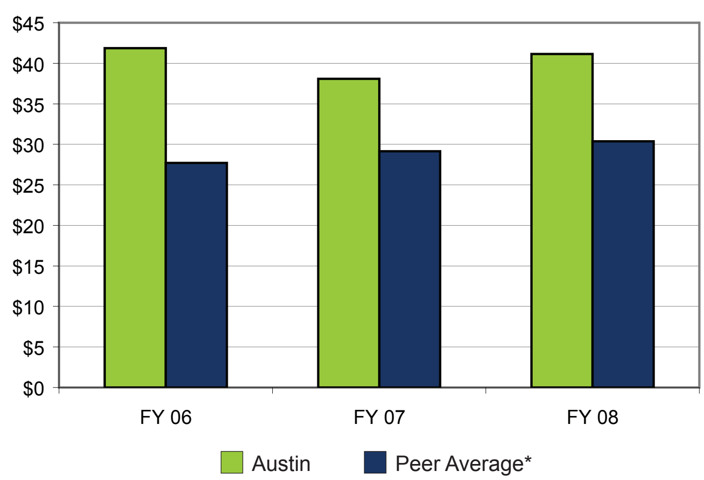
* Peer average amount includes eight cities: Charlotte, Columbus, Indianapolis, Kansas City, Louisville, Memphis, Orlando, and Tampa.

Source: Capital Area Metropolitan Planning Organization, *Capital Metro Peer Review*, (December 31, 2008) sec. 2, p. 34.

- **Paratransit cost comparison.** Capital Metro's cost of paratransit services is excessively high, resulting in the Authority spending about $28.9 million, or more than 17 percent of its operating budget to serve about 7,000 clients. Capital Metro spends on average about $41 per passenger trip, or about 35 percent more than the average of peer transit authorities, as shown in the graph, *Peer Comparison – Cost per Passenger for Paratransit*. While exact service levels vary, the transit authorities in these peer cities, like Capital Metro, offer a mix of services beyond Americans with Disabilities Act minimums such as door-to-door trips, taxi services, and subscription services.

  Sunset staff also found that contracted paratransit providers can deliver services at lower costs than in-house employees. For example, both Fort Worth's and San Antonio's transit authorities use in-house employees and contracted providers for paratransit services. Fort Worth's and San Antonio's contracted providers' cost-per-passenger for paratransit services is 33 percent less, on average, than that of in-house employees.

Peer Comparison – Cost per Passenger for Paratransit, FYs 2006 – 2008



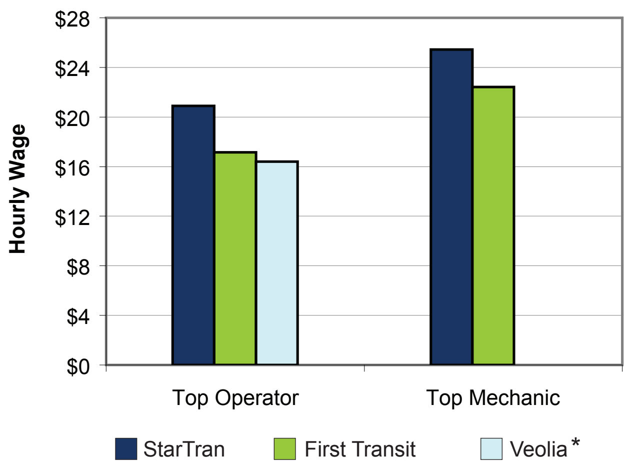
* Peer average amount includes six cities: Charlotte, Columbus, Indianapolis, Kansas City, Portland, and Tampa.

Source: Federal Transit Administration, National Transit Database, Agency Profiles.

- **Comparisons of labor costs and benefits.** In a comparison of labor contracts, Sunset staff found that StarTran's hourly labor rates are higher than First Transit and Veolia, as shown in the graph *Comparison of Labor Costs – Fixed Route and Paratransit*. StarTran's highest labor rate for an operator is 23 percent higher than First Transit's and 27 percent higher than Veolia's rates. Top pay for StarTran's mechanics is 13 percent higher than First Transit's, but information on Veolia's mechanic labor rate was not available.

  In addition, the 2008 peer review found that wages, when adjusted to reflect Austin's cost of living, are higher for StarTran than for peer systems, with StarTran's top paid bus operators earning 4 percent more than the peer average, and its top paid mechanics earning 9.2 percent more than the peer average.[8] While these salary differences are not large, the peer review also found that StarTran's average health care costs per employee in 2007 was $16,248 compared to $7,800 for the health care plan that covers City of Austin employees.[9] While StarTran's health benefits recently decreased slightly, overall benefit levels remain comparatively high.

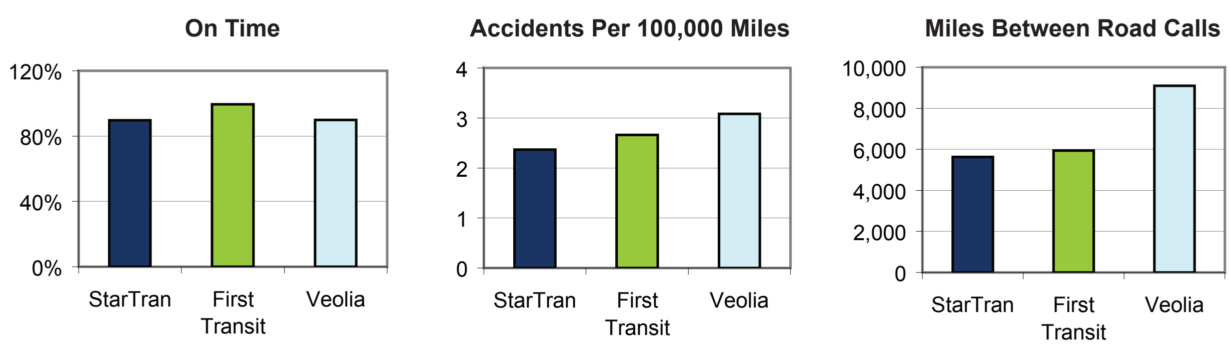
Comparison of Labor Costs – Fixed Route and Paratransit, FY 2009



* Data not available for mechanic wage.

- **Performance comparison.** Sunset staff questioned whether StarTran's higher costs led to higher performance; however, key performance measurements tracked through monthly reports indicate that StarTran's performance is not significantly different than that of Capital Metro's contract providers. The graphs, *Key Performance Measures – Fixed Route*, compare StarTran to First Transit and Veolia in the areas of on-time performance, accidents per 100,000 miles, and number of miles between vehicle repair road calls.

Key Performance Measures – Fixed Route FY 2009

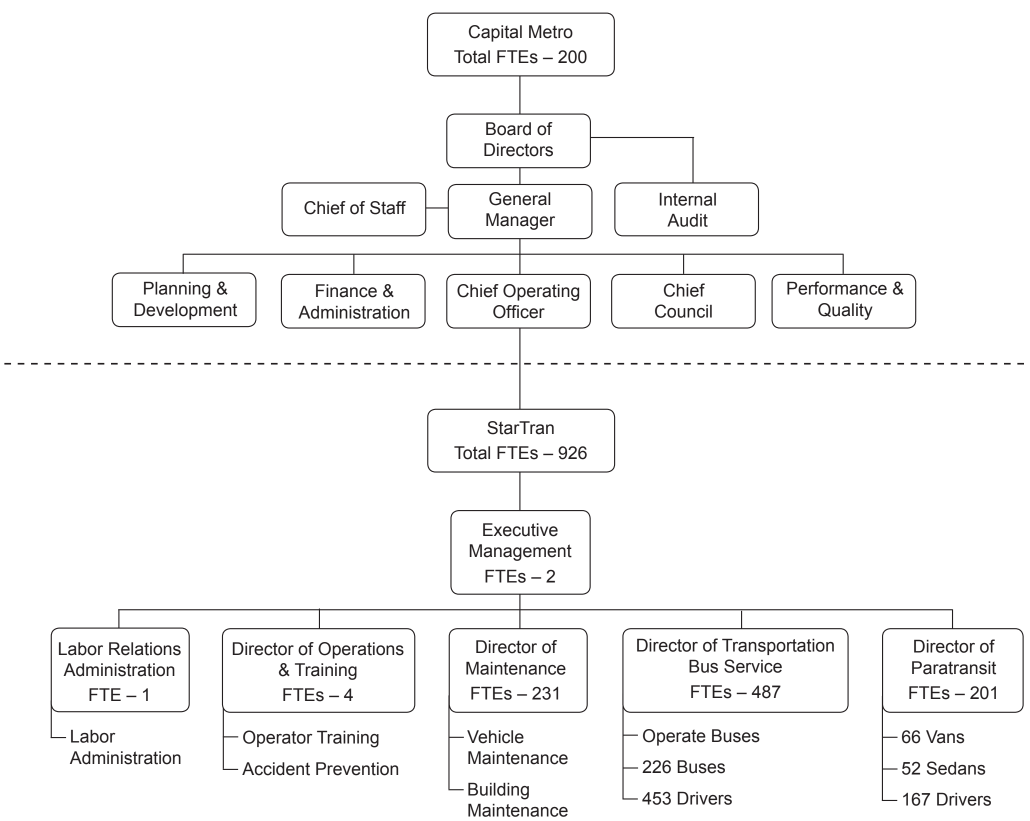


As these graphs show, each entity performed slightly better on one of the performance measures. For example, First Transit's on-time performance was the best; StarTran had fewer accidents per 100,000 miles; and Veolia had significantly more miles between vehicle repair road calls. However, for the higher costs Capital Metro pays, StarTran does not clearly or consistently outperform these other providers.

The unclear organizational relationship between Capital Metro and StarTran results in confusion and no clear control by Capital Metro over these services.

As shown in the organizational chart below, StarTran comprises the most significant portion of staff providing Capital Metro's services. The Authority provides the majority of administrative support for StarTran, including finance, accounting, payroll, auditing, and human resource services. However, StarTran's 926 employees exist separately from Capital Metro staff, with several layers of management but no clear link to Capital Metro's Board. As a nonprofit corporation with its own Board, StarTran appears as a separate organization, but, in fact, no true line exists between the two organizations, contributing to unclear and confusing relationships between the two entities.

Capital Metro and StarTran Organizational Chart As of October 2009



Many staff, when asked, say that they work for Capital Metro, even though they are actually employed by StarTran. Company cars and uniforms display both Capital Metro and StarTran insignias. Capital Metro processes the payroll, but the checks say StarTran. Staff wastes time and resources negotiating through this ambiguity, but more importantly, this organizational structure makes it difficult for Capital Metro to efficiently manage and control the significant portion of its services provided by employees working under StarTran.

Capital Metro cannot control StarTran's labor costs.

- **Unclear budgeting and cost controls.** Capital Metro's budget arrangement with StarTran contributes to higher costs than necessary because the Authority can do little to actively control these costs as these costs depend largely on the result of labor negotiations between StarTran and the union. Because state law prohibits Capital Metro's Board from negotiating wages and benefits with the union, it has no effective mechanism for controlling these significant labor costs, and instead must rely on StarTran's management to negotiate labor costs. StarTran estimates its annual costs and submits its budget request to Capital Metro, which it typically approves with few changes.

  Co-mingling of Capital Metro's and StarTran's budgets makes it difficult to clearly understand, and account for, costs that are solely StarTran's and those that are solely Capital Metro's. Capital Metro accounts for StarTran's budget as departments within the Authority's budget, and not as a separate entity, complicating evaluation of StarTran's budget as a whole.

- **Unbudgeted labor costs.** The unclear budgeting arrangement also results in Capital Metro absorbing certain unbudgeted and unanticipated costs related to StarTran. According to Capital Metro, in fiscal year 2009 it paid more than $1 million in unbudgeted StarTran costs. This included $634,200 to pay for StarTran employees to receive $1,200 signing bonuses, and $457,000 to pay for incentives for StarTran employees to reduce work absences. Capital Metro also paid $322,000 in costs related to the 2008 labor strike against StarTran, one of two times in the last five years that StarTran employees have gone out on strike during labor negotiations. While StarTran also negotiated certain other concessions that helped slow increases in health care, these unbudgeted and unanticipated labor costs introduce significant uncertainty into Capital Metro's budgeting process.

Capital Metro took on StarTran's severely underfunded pension plan.

- **Pension liabilities.** Capital Metro took on significant pension liabilities on behalf of StarTran with little regard for the long-term financial consequences for the Authority. In 2002, Capital Metro assumed sponsorship of the Amalgamated Transit Union's defined benefit pension fund for StarTran's bargaining workers due to severe underfunding of the plan. This underfunding stemmed in part from changes to the benefits formula made during labor negotiations between StarTran and the union that led to increased pension obligations. While the plan is currently adequately funded, poor market conditions have increased the plan's unfunded liability to $18 million, which is now Capital Metro's long-term problem instead of StarTran's or the union's responsibility.

Capital Metro also provides a separate defined benefit pension plan for StarTran's administrative employees, just as it does for its own administrative staff. About 150 StarTran employees participate in this plan, with Capital Metro paying all contributions for the employees.

Capital Metro cannot hold StarTran accountable for performance because its service agreement is not a contract with measures and goals.

StarTran does not have to compete for Capital Metro's business.

Lack of a performance-based contract keeps Capital Metro's Board and management from holding StarTran clearly accountable for performance, as it can with First Transit and Veolia. These two performance-based contracts include measures for on-time performance, customer complaints, accidents, and miles between road service calls, which providers must meet as contractual terms.

StarTran manages 82 percent of Capital Metro's workforce, but the Authority does not regularly measure StarTran's performance against goals. Although StarTran maintains performance data on its activities, until October 2009, when Sunset staff requested this data, Capital Metro management did not actively collect and review it. StarTran, not Capital Metro, compiled this data for Sunset staff.

Capital Metro also has no means to penalize StarTran for underperforming. In contrast, the two contracts with Veolia and First Transit include financial incentives for exceeding monthly goals and penalties for underperforming. Also, Capital Metro can file a "notice to cure" for First Transit or Veolia to take immediate action on serious unresolved issues. As an incentive for receiving future work, when bidding for contracts, contractors must report any past notices to cure.

StarTran has no incentive to operate cost effectively.

The contracts with First Transit and Veolia also have specific end dates, allowing Capital Metro to regularly place these services out for bid and contract with the most competitive provider. In contrast, absent any actions otherwise, StarTran's open-ended agreement turns it into a perpetual sole-source provider. Since StarTran does not have to compete for Capital Metro's business or compete in other transit markets, it has no incentive to operate cost effectively or improve performance.

StarTran confusingly presents itself as both a private and a public entity, thus making StarTran's true status unclear.

To comply with state law, Capital Metro set StarTran up as a private nonprofit corporation to handle labor issues. StarTran operates as a private entity when representing Capital Metro on union matters, such as negotiating with the labor union or resolving labor grievances with the National Labor Relations Board.

However, in many respects, StarTran functions as a public entity housed within Capital Metro. In fact, the Federal Transit Administration exempts Capital Metro from having to competitively bid federal grant funding awarded to StarTran because it views StarTran as a directly operated unit of Capital Metro.[10] StarTran also claims to be a public entity within Capital Metro in its legal argument for why it should not be subject to regulation by the Occupational Safety and Health Administration. This matter has gone to court, but is still unresolved.[11] This ambiguity, embracing both public and private characteristics as needed, makes StarTran's true status confusing and unclear.

Recommendations

Change in Statute

2.1 Require Capital Metro to competitively bid all transit services not directly provided by its own employees.

Under this recommendation, Capital Metro would be required to use a competitive bidding process to contract out for any transit services not provided directly by Capital Metro employees, including bus and paratransit services currently provided by StarTran. Under this recommendation, StarTran would be dissolved as part of any plan to competitively contract out for these services. When implementing this recommendation, Capital Metro should ensure these contracts include performance and cost control measures, incentives for performance, penalties for non-compliance, contract end dates, and consideration for hiring current StarTran employees. Because this recommendation involves significant changes to Capital Metro's business operations, the Authority could need as much as a year to effectively implement this recommendation. Thus, this requirement should not go into effect until September 1, 2012.

Alternatively, this recommendation would allow for Capital Metro to directly provide transit services should the Authority work out an agreement with union employees that does not include collective bargaining or the right to strike. For example, several other Texas transit authorities engage in a meet and confer process with union employees.

Management Action

2.2 Capital Metro should develop a competitive procurement plan for transit services.

Under this recommendation, Capital Metro should identify organizational efficiencies and cost savings resulting from competitively procuring these services, as well as any potential costs. In particular, the plan should address how to effectively resolve any issues tied to the unfunded liability of the pension plan for StarTran's bargaining workers.

The plan should include a target date for having competitive contracts in place, and procedures for overseeing these contracts, including clear expectations for monitoring activities, procedures for holding contractors accountable for performance and contract terms, and a division of monitoring responsibilities between Capital Metro's contract administration and program management staff. Capital Metro should develop and begin to implement this plan by June 30, 2011, the date that StarTran's current labor agreement with the union expires. Capital Metro could continue operations without signing a new labor agreement until these changes have been implemented.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State, since Capital Metro receives no state appropriations. Sunset staff estimates that Capital Metro could save a potential $22.2 million per year by competitively contracting for fixed route and paratransit services currently provided by StarTran. This estimate includes savings of $15 million per year for fixed route services based on reducing Capital Metro's costs per mile by $1.10, from $7.60 to the peer city average of $6.50. Next, this estimate includes savings of $7.2 million per year for paratransit services. While StarTran's paratransit costs average 35 percent over its peers, Sunset staff conservatively estimate a reduction of 25 percent, bringing StarTran's costs per passenger closer to those of its peers. The actual savings would depend on the results of competitively bidding these services.

These savings to Capital Metro could be potentially reduced by about $18 million spread out over three years to cover the unfunded liabilities of StarTran's pension plan, and about $4.4 million in costs associated with paying out vacation and sick leave pay for StarTran employees. However, both of these costs could be reduced based on the results of contract negotiations with a new provider that could assume a portion of these obligations. Capital Metro would also need four staff for contract administration and oversight at a cost of about $300,000; however, these costs would be covered by savings associated with eliminating StarTran management and administrative staff. The Authority could also incur some additional costs should there be any legal challenges to these recommendations, but these costs cannot be estimated.

Finally, this estimate does not assume any fiscal impact until fiscal year 2013 to give the Authority adequate time to effectively implement these changes.

The table below summarizes the potential costs and savings to Capital Metro from these recommendations over a five-year period. Capital Metro's fiscal year starts October 1 of each year.

Capital Metropolitan Transportation Authority

Fiscal Year	Savings to Capital Metro	Costs to Capital Metro	Net Savings to Capital Metro
2012	$0	$0	$0
2013	$22,200,000	$10,400,000	$11,800,000
2014	$22,200,000	$6,000,000	$16,200,000
2015	$22,200,000	$6,000,000	$16,200,000
2016	$22,200,000	$0	$22,200,000

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[1] Originally codified in the Urban Mass Transportation Act of 1964, and later incorporated into United States Transportation Code, Title 49, Sec. 5333(b), U.S.C. (1997).

[2] Texas Government Code, Ch. 617.

[3] Memorandum from Capital Metro General Manager to Capital Metro Board of Directors, November 25, 1991.

[4] The International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers represents 13 StarTran reservationists, schedulers, and clerical employees.

[5] Capital Area Metropolitan Planning Organization, *Capital Metro Peer Review Quadrennial Performance Audit*, (Austin, Texas, 2008) sec. 2, p. 29.

[6] Ibid. p. ES-3.

[7] Ibid. sec. 2, p. 31.

[8] Ibid. sec. 5, p. 22.

[9] Ibid. sec. 5, p. 20.

[10] Federal Transit Administration, *FY 2009 Triennial Review of the Capital Metropolitan Transportation Authority*, (Fort Worth, Texas, June 2009) p. 4.

[11] StarTran Inc., Dec. & Orders Occ. Safety and Health Rev. Comm'n No. 02-1140 (Feb. 17, 2009).

Issue 3

Capital Metro Must Enhance Commuter Rail Safety Before Expanding Its Rail System.

Background

In November 2004, voters authorized Capital Metro to design, construct, and operate the first phase of a commuter rail system in Central Texas. In March 2010, Capital Metro started operating this first line, providing service between Leander and downtown Austin.

The rail line runs on 32 miles of the 162-mile Giddings-Llano freight tracks, which Capital Metro fully acquired from the City of Austin in 1998 for the purpose of eventually providing passenger rail service. Using Swiss diesel-powered rail cars, the rail line operates during morning and evening peak periods, Monday through Friday. Capital Metro estimates the service will generate about 2,000 passenger trips per day within six months of opening and carry about 565,000 passengers annually.

Contracted employees perform most rail-related functions, with Capital Metro staff in charge of managing and overseeing these contracts. Capital Metro's engineering and construction department, with five staff, oversees all activities related to rail design and construction, including the management of outside contracts. The rail operations department, with three staff, oversees contracts for track maintenance and commuter and freight rail operations.

Capital Metro's commuter rail system falls under the Federal Railroad Administration's (FRA) jurisdiction, but the Federal Transit Administration (FTA) provides funding for numerous transit projects. At the state level, the Texas Department of Transportation's (TxDOT) Rail Division assists both FRA and FTA in overseeing passenger and freight rail operations in Texas.[1]

Findings

While approved for service, several bridges on Capital Metro's rail system are in need of major repair or replacement.

Most of the 200 bridges on Capital Metro's 162 miles of tracks are timber, and many are more than 100 years old. According to Capital Metro, of the 42 bridges on the 32-mile corridor commuter and freight operations share, experts have determined that, in the near future, 10 bridges need major repairs and three must be replaced altogether.[2] In terms of current safety, however, an FRA railroad bridge expert in March 2010 found no immediate danger sufficient to delay opening the commuter rail line.

Ten commuter rail bridges need major repairs and three must be replaced.

Knowledge of bridge problems by Capital Metro staff dates back several years. An engineering firm studied the railroad bridges in 2007-2008, and a Capital Metro contractor conducted a full bridge assessment in 2009. These studies found that many bridges have problems with important structural components – such as guard timbers, deck hardware, bents, piles, and stringers – that are dry, split, sinking, crooked, or completely missing. Further, operating freight and commuter trains simultaneously will only accelerate the need for maintenance and major repairs to railroad tracks and infrastructure, including bridges.

Bridge repairs must take precedence over other capital projects.

For two railroad bridges outside the 32-mile shared corridor that require complete replacement, Capital Metro has budgeted for and initiated work. The Authority has also performed maintenance to make railroad bridges on the shared corridor safe to operate for the time being. However, in its push to complete the commuter rail project, Capital Metro has yet to budget for major repairs, namely the rebuilding and complete replacement of some bridges, that will be needed in the near future. Capital Metro also has not completed a cost estimate and prioritization of all necessary bridge repairs on the shared corridor. Without this information, the Board cannot make informed decisions on needed repairs and the public cannot understand the problem and costs. Even with its current financial constraints these repairs will need to take precedence over other capital projects, particularly any further rail system expansion.

Capital Metro has no state oversight and cannot rely on federal oversight to continue to directly inspect and oversee the ongoing safety of commuter rail operations.

Due to limited resources, Federal Railroad Administration inspects less than 1 percent of the railroad industry.

Despite extensive involvement of FRA in testing and evaluating Capital Metro's commuter railroad for initial service, FRA's ongoing ability to directly inspect and oversee the system is limited. In fact, FRA inspects less than 1 percent of the railroad industry due to limited resources.[3] In addition, while FRA has produced safety advisories, the agency is still in the process of codifying its first railroad bridge regulations.

Given the ongoing risks associated with operating rail, Capital Metro must maintain a clear vigilance to ensure its safe operations. As part of FRA's conditional approval for Capital Metro to provide commuter rail service, the Authority conducts many activities related to ensuring the safety of its commuter rail system. Capital Metro has developed and submitted to FRA a comprehensive rail system safety plan in accordance with industry standards – though not currently a federal requirement – and conducted a detailed collision hazard analysis. FRA also recommended that Capital Metro participate in a widely practiced safety management program, to which Capital Metro agreed.[4]

Maintaining this high level of activity and focus on safety is critical. However, Capital Metro and its Board bear this responsibility with little oversight at the state or local level. No specific provisions in state law address Capital Metro's ongoing, day-to-day responsibilities for providing the safe operations of the rail system. In addition, TxDOT has a new rail division authorized to assist FRA with oversight and inspections of freight and passenger railroads in Texas, but FRA has not specified TxDOT's role in overseeing Capital Metro's commuter rail system at this time.

Capital Metro's major delays and cost overruns in developing commuter rail must be corrected for future projects.

Development of its first commuter rail line has taken longer and cost more than Capital Metro projected, tied to a seemingly endless number and variety of problems. Sunset staff explored the factors contributing to these issues with two key purposes. First, to ensure against their recurrence on any future rail development, but more importantly, that these problems not impact safety. The following material summarizes key problems in Capital Metro's difficult, but ultimately successful, path to launching its first rail line.

- **Significant cost overruns.** Capital Metro originally informed voters in 2004 that the capital cost of the commuter rail line would be $60 million, with $5 million in operating costs including the cost of the lease of rail vehicles.[5] However, the Authority now indicates the commuter rail line's capital cost is actually $139.8 million, with annual operating costs of $6.6 million. The three primary causes of the increase were higher costs for the rail cars and moving these costs into the capital budget, technical problems with the signal system, and failure to include significant expenditures needed to improve the existing freight rail system to safely allow for freight and commuter service on the same tracks.

  Actual costs of commuter rail are more than double what Capital Metro first told the public.

  Initially, Capital Metro underestimated the rail cars' cost and then decided to move these costs from the operating budget to the capital budget, adding $36.7 million. Because of lengthy, significant problems with design and implementation of the signal system that controls crossing guards and prevents collisions, Capital Metro added another $12.7 million in costs. Finally, inclusion of costs related to improvements needed for safe operation of passenger traffic on a freight line added another $30.4 million, thereby increasing the project's total to $139.8 million in capital costs. In addition to this total, Capital Metro will pay another $8 million in interest for the rail cars by the time the lease-purchase period ends in 2016. However, Capital Metro does not include this cost for interest in either its capital or operating costs for the project.

  While these costs significantly exceeded initial estimates, the costs of building a commuter rail system on existing freight tracks were likely much lower than if Capital Metro had constructed a light rail system for the same corridor. However, Capital Metro faces the need to make significant ongoing investments in the tracks and bridges to ensure safety. In addition, Capital Metro is already planning ways to increase the frequency of service to build ridership. Additional changes, such as purchasing more cars and double tracking the line, would continue to add to the overall costs to provide service for a limited number of riders on this single corridor.

  Capital Metro needs to make significant ongoing investments to ensure continuing safety.

- **Insufficient planning.** From the beginning, Capital Metro rushed into commuter rail, bringing to the voters a project without sufficient planning, or contingency funding, to deliver the project on time. After millions of dollars and decades of time spent on studying light rail, Capital Metro changed direction to pursue commuter rail based on just one year's planning and analysis. After a failed referendum for a light rail proposal in 2000, Capital Metro continued to pursue light rail as a transit option until 2003. That summer, the Authority abandoned plans for light rail and shifted gears to push for a less expensive, scaled-down commuter rail system, winning voter approval after only little more than a year of analysis.

Capital Metro failed to plan and fully account for problems involved with unique aspects of the commuter rail project. Once construction began, the lack of sufficient planning resulted in a variety of problems, as shown in the textbox, *Commuter Rail Planning Problems*.

Commuter Rail Planning Problems

Capital Metro's poor planning created numerous problems for developing commuter rail, as detailed below.

- Repeatedly realigning and relocating crossovers, tracks, switches, and signals for the portion of tracks located at Robinson Ranch.
- Purchasing insulators for, and removing, many steel ties from the shared rail line after the ties rusted and caused problems for the electronic signal system.
- Purchasing non-compliant rail cars that needed retrofitting.
- Installing a supplementary radio system to augment the unreliable cellular communication system already purchased.
- Performing engineering four times for the Howard station, and three times for the Kramer station.

- **Lack of clarity on federal oversight and requirements.** While the Federal Railroad Administration regulates all commuter railroads, Capital Metro planned from 2004 for a system that would operate under the Federal Transit Administration's jurisdiction. Capital Metro did not petition FRA to place its commuter railroad under FTA jurisdiction until 2006, when the Authority was already well into construction. During this same time, several high profile passenger train crashes occurred, which may have prompted federal regulators to tighten their approach to rail oversight.[6]

  In February 2008, FRA provided conditional approval for Capital Metro's commuter railroad to operate but denied 16 regulatory waiver requests, and Capital Metro's request to operate under FTA.[7] Making the commuter rail system – the cars and several other items, such as signals, tracks, and crossings – compliant with FRA regulations at this late stage largely contributed to delaying the start of commuter rail service by two years. Capital Metro also purchased rail cars that were not compliant with FRA safety requirements resulting in the need for many last-minute, timeconsuming, and costly modifications. At the time of this report, FRA has yet to approve of the final design of Capital Metro's required fuel tank guards. The Federal Railroad Administration allowed Capital Metro to begin service without the guards in place, but Capital Metro will have to complete these modifications during operations.

- **Persistent technical problems.** Capital Metro's most recurring technical problem throughout the construction process involved the electronic signaling system which controls crossing gates and also prevents collisions. Problems with the signal system caused Capital Metro to cancel the March 2009 start of service, and took a year to correct. While Capital Metro spent millions of dollars on its signal system, it also lacked expertise on using the technology. As a result, Capital Metro needed to hire numerous contractors to reprogram, re-install, and test the system, as well as train dispatchers to make the system operable. Capital Metro struggled to make the signal system fully operational, having problems such as crossing gates malfunctioning right up to the commuter rail opening in March 2010. The FRA's initial determination that Capital Metro's signal system compromised safety caused the Authority to spend an additional $1 million to bring the system in line with industry standards.

Technical problems with signals delayed the start of rail service by a year.

- **Poor contract management and oversight.** Whether a rail system falls under FRA or FTA jurisdiction affects overall system costs because these agencies have differing oversight approaches, with FRA's more stringent regulations and enforcement powers generally being more costly.[8] Capital Metro awarded the original rail operation and maintenance contract to a company assuming that commuter rail would come under FTA regulation. Instead, commuter rail remained under FRA jurisdiction, requiring Capital Metro and the operator to spend considerable time and resources renegotiating the contract to determine what additional activities and costs would be associated with meeting FRA regulations. Also, Capital Metro and the contractor struggled to define and separate the contractor's maintenance responsibilities for minor repairs to bridges from Capital Metro's responsibilities to pay for major bridge construction and repair.

  In addition, Capital Metro did not consistently monitor the contractor's field work, resulting in deterioration of track conditions, and causing Capital Metro to spend an additional $2.2 million in immediately needed maintenance just before opening commuter rail.

  Failure of the contract renegotiations, coupled with disputes over insurance, resulted in Capital Metro terminating the original contract and hiring a new operator in December 2009, just three months before starting service. Terminating this contract could result in the Authority paying millions of dollars in settlement costs; the exact amount of any settlement is still in negotiations. In addition, Capital Metro and the

Capital Metro fired its rail operator just three months before starting service.

new operator did not sign a final contract until three weeks into the start of commuter rail service.

- **Poor coordination and no accountability across multiple departments.** During the commuter rail project's design and construction, Capital Metro spread responsibilities across multiple departments and contractors, leaving no one person or even department responsible for ensuring the timing and workability of systems. Capital Metro devoted one department to civil infrastructure; one to design and implementation of the signal system; and another to information technology and radio communications. Within the departments, staff struggled to adequately manage and monitor multiple contractors responsible for different components of the project.

  For example, Capital Metro relied on various engineering contractors on its signal system for construction management, design and programming, field validation, and verification. However, lack of effective oversight and management resulted in these components not working together at the time of installation, forcing Capital Metro, as explained earlier, to delay the start of service for a year and spend millions of dollars to fix.

  Capital Metro did not consistently track rail expenditures.

  Tracking of costs also suffered from a lack of clear accountability. For example, centralized and continuous tracking of the overall commuter rail project budget and expenditures ceased when a key staff member left and Capital Metro did not refill the position.[9] Instead, staff in various departments authorized expenditures, greatly complicating tracking the project's true costs. Further, the review uncovered several master budget documents that Capital Metro did not follow or consistently use and maintain. Consequently, Sunset staff had difficulty verifying the total costs of the commuter rail project.

  Capital Metro still lacks a single staff member with overall management of, and accountability for, its rail system. Instead, several individuals across multiple departments perform different rail-related functions with no consistent executive-level oversight. This situation will only lead to ongoing problems of miscommunication and disconnected work.

Recommendations

Change in Statute

3.1 Require Capital Metro to maintain a comprehensive rail safety plan and to regularly report on the ongoing safety of the system.

This recommendation would require a comprehensive rail safety plan, in accordance with federal and industry standards, that covers all aspects of the Authority's rail activities, including both commuter and freight. The plan should address specifics, such as hazard analyses, risk assessments, and audits to ensure rail contractors are fulfilling their safety obligations. Capital Metro should also place particular focus on ensuring the ongoing safety and maintenance of its railroad bridges.

Under this recommendation, Capital Metro should report on the safety of its system to the Board and to TxDOT's Rail Division on a quarterly basis or upon request. Reporting to the Board will ensure regular disclosure of any safety issues or concerns. TxDOT's role would be to review these safety reports and, if necessary, provide comments or technical assistance needed to help ensure Capital Metro takes any needed actions based on these reports. Under its existing regulatory authority, TxDOT should coordinate with FRA to conduct any needed inspections.

3.2 Require Capital Metro to employ a Rail Director to oversee and be accountable for all rail system development, operations, maintenance, and safety.

This recommendation would create a single-top-level position dedicated exclusively to and accountable for overseeing rail development, operations, maintenance, and safety. The Rail Director would be authorized to halt rail operations at any time based on the need to protect public safety. The Rail Director would be responsible for, at a minimum, the following activities.

- Overseeing all personnel and contractors responsible for operating and maintaining the commuter and freight rail systems and equipment.
- Overseeing rail safety activities, including testing needed to ensure a safe signal system and effective operations control center.
- Developing a plan specifying a division of responsibilities between maintenance and capital projects activities, including ensuring the safety of railroad bridges.
- Acting as the key point of contact for ensuring compliance with any applicable federal, state, and local regulations or requirements.
- Coordinating with Capital Metro's engineering and construction department on the design and construction of any new rail projects.
- Reporting to the General Manager and Board on the safety, performance, and financial status of the rail system.

Management Action

3.3 Capital Metro's Board should take immediate action to prioritize needed replacement, repair, and maintenance of its railroad bridges.

This recommendation would direct Capital Metro's Board to prioritize needed bridge replacements and repairs, with a focus on those with the most potential for risks to public safety, such as those on the commuter rail corridor. Any critical repairs should take clear precedence over other projects to expand the system, such as improvements or upgrades for the rail line currently in operation. The Rail Director should coordinate these efforts, and involve engineering and construction, rail operations, and contract staff in determining projects needing maintenance and those requiring extensive repair, or replacement.

Capital Metro should include bridge-related capital projects in its five-year capital improvement plan and accurately identify costs, timelines, and divisions of responsibilities for needed replacement and rehabilitation of bridges. The plan should also take into consideration any federal railroad bridge guidelines and regulations.

3.4 Capital Metro should develop a contract monitoring plan for major rail projects to ensure accountability for the cost-effective delivery of services.

This recommendation would direct Capital Metro to develop plans for overseeing and monitoring major rail contracts to ensure the Authority receives what it pays for, and that contractors comply with their contracts. The plans should cover contracts for operations and maintenance, and engineering and construction. Contract administration and program staff should develop these plans jointly and should regularly report the status of the contracts, once active, to the Rail Director. For each of its major rail contracts Capital Metro should tailor a plan to include items such as the following.

- Establish a clear division of monitoring responsibilities and tasks for contract administration and program management staff, including how program staff will report monitoring activities and coordinate with contract administration for any needed remedies.
- Set clear expectations for monitoring activities, including items such as developing a risk assessment, conducting desk audits and site visits, reviewing expenditures, tracking deliverables, and reviewing status reports from the contractor.
- Monitor contract changes, including full documentation, analysis, and written approval of changes. Capital Metro staff should evaluate contract changes to determine their impact on deliverables, costs, and the overall progress of the project.

3.5 Capital Metro should develop a clear approach for planning, developing, and implementing any future rail-related projects.

To ensure against a recurrence of problems encountered with its first commuter rail line, for any rail-related capital project development and implementation, Capital Metro should formulate a clear approach that addresses the following components.

- Develop more accurate and conservative timelines, including appropriate time for front-end planning.
- Acquire experts with knowledge of, and experience with, all aspects of the project, including federal rail standards and processes, to ensure safety.
- Determine any applicable regulatory structure in the preliminary phases of project development and properly engage with regulators early on and throughout the process.
- Ensure frequent communication among Board members, staff, contractors, and the public throughout all phases of the capital project, from initial design to final construction.
- Use established project management techniques, such as those FTA recommends, and controls for tracking the project's completion costs and timeliness.
- Develop more accurate and conservative capital and operating budgets that adequately account for all costs, including any cost allocations between commuter and freight operations.

In addition, as covered in Recommendations 3.1 – 3.4, Capital Metro's approach to rail projects should establish clear accountability, safe operations, solid infrastructure, and consistent contract management and oversight.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State because Capital Metro does not receive state appropriations. However, Capital Metro will incur costs to ensure a safe rail system. Clearly, appropriately developing and monitoring contracts, and ensuring taxpayer funds are well spent, requires significant expenditures. However, failure to properly implement projects and contracts can have a far greater cost. Fixing bridges to ensure that rail operations remain safe in the future will have a significant cost, but the cost of failure would be incalculable.

Recommendation 3.2, creating a new Rail Director position, would involve costs of about $195,000 annually based on the average cost of salaries and benefits for Capital Metro executive staff. However, Capital Metro can cover these costs using currently budgeted and unfilled executive positions.

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[1] Capital Metropolitan Transportation Authority, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (September, 2009) pp. 127, 132, and Texas Department of Transportation, Rail Division, http://www.dot.state.tx.us/about_us/administration/divisions/rail.htm. Accessed: April 16, 2010.

[2] HNTB Inspection of Capital Metro railroad bridges, October 2007 – July 2008.

[3] Federal Railroad Administration – Office of Railroad Safety, *General Manual*, (Washington D.C., August 2009), p. 21.

[4] Letter from the Federal Railroad Administration to the Capital Metropolitan Transportation Authority, Number FRA-2006-25040, (February 19, 2008), p. 10.

[5] Capital Metro Board of Directors, *All Systems Go, Long-Range Transit Plan*, August 30, 2004 (PowerPoint presentation).

[6] Lloyd de Vries, "Train Wreck An Attention Grab?" http://www.cbsnews.com/stories/2005/01/26/national/main669449.shtml, (January 26, 2005), Accessed April 7, 2010; Erin O'Hearn, "Nearly Three Dozen Hurt in SEPTA Accident," http://wbztv.com/local/Commuter.Rail.Train.2.584395.html, (May 14, 2007), Accessed April 2, 2010; "Two Killed In Woburn Commuter Rail Accident," http://wbztv.com/local/Commuter.Rail.Train.2.584395.html (Jan 9, 2007). Accessed: April 2, 2010.

[7] Letter from FRA to Capital Metro, (February 19, 2008), pp. 4-10.

[8] The Honorable Ray LaHood, Secretary of Transportation, testimony to the Committee on Transportation and Infrastructure – Subcommittee on Highways and Transit, U.S. House of Representatives, Hearing on Public Transit Safety: Examining the Federal Role (Washington, D.C., December 8, 2009).

[9] Internal Audit Report, Capital Metropolitan Transportation Authority, *Capital Planning and Management Performance Audit*, no. 09-06, (Austin, Texas, March 2010).

Issue 4

The Board Has Not Effectively Engaged Stakeholders, Eroding Public Trust in Its Decisions.

Background

Transit authorities regularly face difficult tradeoffs between pursuing ridership and serving those dependent on public transportation. Information resulting from open public participation provides critical perspectives needed for balancing competing transit needs and making key planning, budgeting, and service delivery decisions.[1]

Capital Metro's Board meets regularly to take public input on transit-related policy issues. The Board met 15 times in fiscal year 2009, including 11 regular meetings and four public hearings on budget and service changes. Capital Metro also makes extensive efforts to gather public input, including holding neighborhood meetings, using passenger surveys, and reviewing customer complaints.

Statute authorizes the Board to create advisory committees, providing for the Board to select the members and prescribe the committee's purpose, powers, duties, and method of reporting to the Board. The Board has two advisory committees, as shown in the textbox, *Capital Metro Advisory Committees*. The committees report to the Board at monthly meetings and provide recommendations on various transit-related issues. Capital Metro provides administrative support to the advisory committees.

Capital Metro Advisory Committees

Access Advisory Committee

- Promotes cooperation between the disability community and transit industry.
- Promotes implementation of Americans with Disabilities Act required paratransit services.
- Pursues full access to services and makes recommendations for improving services.
- Composed of 10 members, at least six must be people with disabilities.

Customer Satisfaction Advisory Committee

- Reviews and make recommendations on operations, customer service, routes, budgeting, marketing, and facilities.

Findings

The Board's process for discussing major issues in work sessions and voting on them as part of a consent agenda has not allowed for effective public input.

Until recently, the Board made extensive use of a consent agenda to decide important policy and fiscal issues. The Board met in an open work session to discuss issues ahead of each of its meetings. Issues the members agreed on were placed on the consent agenda. The Board voted on the consent agenda at the main meeting, with little or no discussion, before taking up any other business, including public testimony. As a result, opportunity for public testimony occurred after the Board made most of its decisions.

The public lacked meaningful input on decisions involving millions of dollars.

Sunset staff reviewed voting records from 2007 and 2008, and found that 80 percent of the votes were consent items.[2] These consent items involved major decisions such as approving multi-million dollar construction contracts and real estate purchases, opening a line of credit, and returning tax revenues to local cities. This order of business gave no clear opportunity for the public to present concerns on key matters before the vote.

As a consequence, stakeholders have felt that the Board was not responsive to their issues and concerns. A 2008 peer review noted problems with Capital Metro not being responsive to stakeholder input, with some feeling Capital Metro is "tone deaf," and takes a defensive posture towards public concerns.[3] In addition, a recent internal audit found that Capital Metro lacks a meaningful opportunity for public input on capital projects.[4]

Capital Metro's newly appointed Board, which first met in January 2010, is taking steps to change how it carries out its business, including suspending use of the consent agenda, taking public testimony at the start of meetings, setting meetings at more convenient times, and using subcommittees instead of working groups. While very positive steps, these recent changes have not been in place long enough for Sunset staff to evaluate their impact.

The Federal Transit Administration (FTA) emphasizes public involvement in transportation decision making. According to the FTA, meaningful public participation should include focusing on decisions, rather than conducting participation activities as a formality; and involve continuous contact between the transit authority and the public throughout decision making, from identifying needs to implementing decisions.[5]

Meeting materials provided to the Board are inadequate and not developed far enough in advance to effectively inform Board decisions.

The Board often does not see voting items until just before meetings.

Capital Metro staff do not provide the Board with sufficiently developed material well in advance of meetings to help them make more informed decisions. Staff typically develop meeting materials only a few days before the Board meets. As a result, Board members often see the resolutions they vote on, and any associated materials, for the first time just before Board meetings. Without developing materials far enough in advance of meetings, the Board lacks sufficient opportunity to question staff, explore alternatives, provide direction, and ensure updating of materials based on Board direction.

For example, in one work session, staff proposed taking on a $10 million line of credit. However, Board members expressed frustration over being asked to vote on this immediately while lacking enough information to make an informed choice.[6] Also, Capital Metro lacks a sufficient planning, budgeting, and reporting process for capital projects resulting in the Board not having consistent, quality information to guide decisions on these important projects.[7]

Capital Metro does not make productive use of advisory committee recommendations and input.

Capital Metro staff and advisory committees dedicate significant time and resources towards gathering input for the Board, but few concrete results come from these efforts. In fiscal year 2009, Capital Metro staff attended 46 advisory committee and related meetings, taking more than seven weeks of staff time. This staff time does not include additional activities such as writing minutes, work plans, and conducting research for the committees. Staff produce a work plan for the Customer Satisfaction committee; however, this plan only loosely reflects issues the Board may take up during the year and is not tied to Board priorities established in advance.

While advisory committees issue resolutions, and comment at public meetings, these efforts are not clearly tied to Board decision making. Capital Metro does not consistently summarize advisory committee recommendations and provide these to the Board before it makes decisions. Also, the Board has not adopted a policy on advisory committee issue development and reporting to ensure useful, productive committee input on proposed policy changes.

Capital Metro's relationship with the disability community lacks the dialog and trust needed to effectively resolve longstanding issues.

One of the Access Advisory Committee's key duties is to promote cooperation between the disability community and the transportation industry. However, interviews show that the working relationship between the Committee and Capital Metro is fraught with contentiousness, hindering the parties' ability to come to consensus on key issues. This unproductive relationship between the parties is especially troublesome because the committee represents one of Capital Metro's key service constituents.

Capital Metro's relationship with the disability community is strained.

While Capital Metro has not kept some promises to the disability community, such as not fully funding bus stop improvements, the advisory committee has also not fully recognized Capital Metro's difficulties in continuing to afford a high level of paratransit door-to-door services.[8] The advisory committee has not successfully worked to arrive at consensus with Capital Metro on how to best reduce costs for the very heavily subsidized paratransit services.

An outgrowth of the contentious relationship between Capital Metro and paratransit clients is the Metro Mobility Working Group. Created in 2008, the working group is the result of mediation after dismissal of a lawsuit alleging Capital Metro tried to make changes to paratransit services without holding required public hearings. The textbox, *Metro Mobility Working Group*, details its purpose and membership.

Metro Mobility Working Group

- Makes recommendations on proposed changes to paratransit policies and services.
- Composed of seven persons, including three Capital Metro staff, three Access Committee members, and one person with an interest in paratransit services.

Participation in the working group by Access Advisory Committee members and Capital Metro staff results in duplication of effort and wasted resources, since the Access Advisory Committee itself performs essentially the same function. Despite extensive efforts, the Access Advisory Committee, the Metro Mobility Working Group, and the Board have not resolved longstanding paratransit issues. The Board only recently made smaller changes to paratransit services in November 2009, despite consultant reports from 2003 and 2006 that provided numerous recommendations for the Board to consider.[9] While the parties have agreed on smaller issues such as expanding the ride pick-up time window from 15 to 30 minutes, and establishing a new policy for no-shows; large issues remain unresolved, including the use of open return trips, use of taxi vouchers, and changes in eligibility determination.

Recommendations

Change in Statute

4.1 Require Capital Metro to develop and implement a policy that guides and encourages more meaningful public involvement efforts.

This recommendation builds on the current Board's efforts to improve public participation. This recommendation would require Capital Metro to develop a public involvement policy that ensures the public has the full opportunity to help shape decisions on Capital Metro's plans and transportation projects. The public should be aware of timeframes for addressing issues based on a work plan as discussed in Issue 1 of this report. The policy should include, at a minimum, the following elements:

- assurance that the public has the opportunity to comment on issues in advance of Board decisions, and that the consent agenda is used for routine, non-controversial items only;
- time frames and an approach for obtaining input throughout the year, particularly in regards to strategic planning, budgeting, capital planning, transit initiatives, and service changes; and
- information on how the public can be involved, including attending Board meetings and neighborhood meetings, participating in surveys, submitting comments by Internet, and joining an email contact list to receive information on upcoming meetings and discussion topics.

In developing the policy, the Board should make a commitment to promoting constructive public participation in all decision making. Capital Metro should regularly update the public involvement policy and post the policy on its website. The regional metropolitan planning organization's public participation plan could serve as a model for this policy.[10]

Management Action

4.2 Capital Metro should provide sufficiently developed materials to Board members well in advance of meetings.

Capital Metro staff should work with the Board to ensure that materials meet the needs of Board members and support informed decision making. These materials should include, at a minimum, the proposed motion, short- and long-range budgetary impacts, summary of the issue, summary of any public or advisory committee input, and any alternative proposals for consideration. Staff should ensure development and presentation of draft materials to the Board or its subcommittees well in advance of decision making. The Board should have sufficient opportunity to direct staff on issues and have their questions addressed.

4.3 The Board should develop a policy for advisory committee reporting to ensure consideration of committee input in advance of Board decisions.

This policy should address, at a minimum, the following:

- providing advisory committees specific charges;
- seeking advisory committee comments and recommendations in advance of Board decisions; and
- tracking Board adoption, rejection, or modification of advisory committee recommendations.

The timing for taking advisory committee input should be tied to the work plan discussed in Issue 1 of this report.

4.4 The Board should assess its overall process for receiving input on paratransit issues, including evaluating the size and composition of the Access Advisory Committee.

The Board should evaluate all of its procedures for taking public input on paratransit issues to determine how these could be restructured to most effectively receive, and consider, input on paratransit service and policy issues. The new Board should take this opportunity to be actively involved and assess if the current size and composition of the Access Advisory Committee is adequate or if another approach is warranted. The Board and advisory committee should make a renewed commitment to resolving longstanding paratransit issues, balancing the need for accessible transit services with the reality of Capital Metro's financial constraints.

Fiscal Implication Summary

These recommendations would not have a fiscal impact to the State or Capital Metro.

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[1] Transportation Research Board, *Measuring the Effectiveness of Public Involvement*. Online. Available: http://rns.trb.org/dproject.asp?n=24369 (November, 2009). Accessed: March 22, 2010.

[2] Capital Metropolitan Transportation Authority, Sunset staff review of Board of Directors meeting minutes, 2007 to 2008. Online. Available: http://www.capmetro.org/news/minutes.asp. Accessed: February 15, 2009.

[3] Capital Area Metropolitan Planning Organization, *Capital Metro Peer Review Quadrennial Performance Audit* (Austin, Texas, 2008), sec. 4, p. 11.

[4] Capital Metropolitan Transportation Authority, *Capital Planning and Management Performance Audit*, report no. 09-06 (Austin, Texas, March 2010) p. 5.

[5] Federal Transit Administration, *Public Involvement Techniques for Transportation Decision-Making*. p. iii-iv. Online. Available: http://www.planning.dot.gov/PublicInvolvement/pi_documents/toc-foreword.asp (August 2002). Accessed: March 22, 2010.

[6] Capital Metropolitan Transportation Authority, Board Work Session (Austin, Texas, May 18, 2009) Sunset staff review of work session recordings.

[7] *Capital Planning and Management Performance Audit*, p. 5.

[8] Capital Metropolitan Transportation Authority, *Bus Stop Improvement Program* (Austin, Texas, May 2008).

[9] STS Improvement Review: *Briefing to Access Advisory Committee*, Feb. 1, 2006 and *Capital Metro STS Review: Findings and Recommendations*, Feb. 22, 2006.

[10] Capital Area Metropolitan Planning Organization, *Public Participation Program*, Online. Available: http://www.campotexas.org/pdfs/CAMPO_Public_Participation_07-0820.pdf (June, 2007). Accessed: March 23, 2010.

Appendix

Appendix A

Staff Review Activities

During the review of Capital Metro, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with Capital Metro personnel; attended Board meetings; spoke with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed Capital Metro documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar entities; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to Capital Metro.

- Toured Capital Metro bus, paratransit, and commuter rail maintenance facilities; examined railroad tracks and bridges; and visited a mixed commercial/residential development located near a commuter rail stop.
- Rode select fixed route buses, paratransit, and the commuter rail.
- Interviewed members of Capital Metro's Customer Satisfaction and Access Advisory Committees.
- Interviewed staff from StarTran, the Amalgamated Transit Union Local 1091 in Austin and the national office, Capital Area Metropolitan Planning Organization, City of Austin Transportation Department, Texas Department of Transportation Rail Division, Federal Railroad Administration, Federal Transit Administration, and the U.S. Department of Labor.
- Interviewed staff from transit authorities in other cities, such as Dallas and Fort Worth, Texas, and Colorado Springs, Colorado.
- Interviewed staff of contracted transit providers.
- Attended meetings of the Access Advisory Committee, Capital Area Metropolitan Planning Organization, and Austin City Council.
- Participated in Internet-based seminars on high-speed and commuter rail.
- Worked with staff from the Texas State Auditor's Office in reviewing Capital Metro's financial audits and budget documents.
- Worked with staff from the Texas Pension Review Board in reviewing Capital Metro's pension plans.
- Reviewed federal statutes, rules, and policies related to passenger and freight rail, and transit labor.
- Reviewed minutes, audio tapes, and video of past Capital Metro Board meetings.

Sunset Staff Review of the
Capital Metropolitan Transportation Authority

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