

***STATE OF LOUISIANA  
LEGISLATIVE AUDITOR***

**Efforts in Louisiana to Reduce  
Losses From Road Hazards**

October 1996



***Performance Audit***

***Daniel G. Kyle, Ph.D., CPA, CFE  
Legislative Auditor***

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**October 1996**



**Performance Audit Division  
Office of Legislative Auditor  
State of Louisiana**

**Daniel G. Kyle, Ph.D., CPA, CFE  
Legislative Auditor**

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LEGISLATIVE AUDITOR

October 4, 1996

The Honorable Randy L. Ewing,  
President of the Senate  
Honorable H. B. "Hunt" Downer, Jr.,  
Speaker of the House of Representatives  
and  
Members of the Legislative Audit Advisory Council

Dear Legislators:

This is our performance audit titled "Efforts in Louisiana to Reduce Losses From Road Hazards." The study was conducted under provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended.

The report presents our findings, conclusions, and recommendations. We have also identified matters for legislative consideration. Included as Appendix D are the responses from the Office of Risk Management; Department of Transportation and Development; Department of Public Safety and Corrections, Public Safety Services; Louisiana Highway Safety Commission; and Office of Attorney General.

Sincerely,

A handwritten signature in black ink that reads "Daniel G. Kyle". The signature is written in a cursive, flowing style.

Daniel G. Kyle, CPA, CFE  
Legislative Auditor

DGK/jl

[ROADHAZ]



# Office of Legislative Auditor

## Executive Summary

### Performance Audit

### Efforts in Louisiana to Reduce Losses From Road Hazards

Losses from road and bridge hazard claims occur when individuals are injured in vehicle accidents that are attributed to roadway deficiencies. We found that:

- ◆ Over the last four and a half fiscal years, the state has paid over \$160 million for road hazard claims. Problems exist with the coordination and communication among the involved agencies.
- ◆ Improvement is needed in the initial investigation and communication of alleged roadway deficiencies causing vehicle accidents and those not yet resulting in an accident.
- ◆ More coordination is needed to reduce the state's liability when a road hazard claim has been filed. Coordination is also needed for loss prevention, claims investigation, and communication of claims outcome. Once such coordination is in place, the Department of Transportation and Development can establish procedures to address road hazards cited in specific claims.
- ◆ The Department of Transportation and Development's programs that identify unsafe roads do not ensure that all roadway deficiencies will be detected and repaired in a timely manner.
- ◆ The Department of Transportation and Development should redirect some highway funds to the district offices and reorganize some or all of the districts' operations. In addition, the department needs to consider road conditions that have resulted in losses to the state in the prioritization process for major projects.
- ◆ Tort laws and provisions need reforms to reduce the amount Louisiana pays when it is found negligent. Laws governing the Department of Transportation and Development may increase liability for accidents that are a result of road hazards.

*Daniel G. Kyle, Ph.D., CPA, CFE, Legislative Auditor*  
*Phone No. (504) 339-3800*

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## **Audit Initiation and Objectives**

The Legislative Audit Advisory Council authorized us to conduct a performance audit of Louisiana's efforts to reduce losses to the state as a result of claims against the state. We focused on losses relating to road and bridge hazard claims because this is where the state suffers the greatest losses.

Road hazard losses are the result of damages sustained by individuals who are injured in vehicle accidents that are attributed to roadway deficiencies. This issue involves the Office of Risk Management, Department of Transportation and Development, Louisiana Highway Safety Commission, Office of Attorney General, and state and local law enforcement agencies.

The primary objectives of this audit were to:

- ◆ Determine how the Office of Risk Management and the Department of Transportation and Development work together to reduce road hazards.
- ◆ Identify laws that impact Louisiana's liability as well as look at how other states minimize their tort liability.
- ◆ Examine the Department of Transportation and Development's funding structure as it relates to repairing hazardous roadway conditions.
- ◆ Study the programs within the Department of Transportation and Development and the other state agencies that identify and/or repair hazardous roadway conditions.

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## **Measures Needed Before a Claim Is Filed**

The accident report is the state's first line of defense for road hazard claims. The state uses these reports in building its defense against claims and lawsuits as well as to identify hazardous road conditions. However, the various branches of law enforcement are not properly completing and submitting accident reports in all cases. In addition, the Department of Transportation and Development cannot identify high risk locations when the accident reports are not submitted in accordance with state law. As a result, these high risk locations may not be considered for correction. (pages 15 thru 20)



The current processing of accident reports results in duplication of effort and backlog problems. Louisiana's current traffic records system requires multiple entry of the same data to update the statewide system, and it also does not permit linkage of the data files. Presently, in Louisiana, the Louisiana Highway Safety Commission, the central repository for all accident reports, has a six to eight month backlog of accident report data to enter.

Other states are using new state-of-the-art computer technology to complete and process accident reports. Such technology could lead to more efficiency, economy, and effectiveness. It could also help the Department of Transportation and Development identify hazardous road conditions for correction by providing more timely and accurate accident data. (pages 20 thru 24)

The accident reconstruction program agreement, between the Office of Risk Management and the Louisiana State Police, is a proactive approach to defending potential claims against the state. However, it is not operating effectively to ensure that evidence is preserved at the time of the accident. This flaw can be attributed to unclear program guidelines, a lack of coordination and communication between the Office of Risk Management and state police, and exclusion of the Department of Transportation and Development from the program. (pages 24 thru 27)

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### **Matter for Legislative Consideration One**

The legislature may wish to consider amending Louisiana Revised Statutes 398D(3) to clarify the time period for submitting accident reports to the Department of Public Safety and Corrections - Louisiana Highway Safety Commission. Also, amend the law to provide repercussions for failure to comply.

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## Agency Recommendations

- 2.1. All branches of law enforcement should work together to implement a statewide training program for all law enforcement officials to address uniform methods of completing the accident report.
- 2.2. The Department of Public Safety and Corrections should consider investing in technology that will aid in accident reporting, data collection, and analysis. In addition, this technology should include linking agencies together to provide a better coordination of information relating to traffic accidents and highway improvement programs.
- 2.3. The Office of Risk Management, the Department of Public Safety and Corrections, and the Department of Transportation and Development should formalize and implement policies and procedures to revise the Accident Reconstruction Program. The policies and procedures should specify criteria for accident reconstruction. The complete process for contact among the agencies at the time of an accident involving a potential road hazard should be specified.

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### Need for Coordination After a Claim Is Filed

The Office of Risk Management's Loss Prevention Unit has made some efforts to assist the Department of Transportation and Development in developing a road hazard loss prevention program. Nevertheless, these efforts have been mostly unsuccessful because the Department of Transportation and Development does not stress loss prevention measures. The Loss Prevention Unit was created to assist each state agency in designing and implementing a loss prevention program to meet its specific operational needs. However, the Loss Prevention Unit does not have the authority to enforce implementation.

For the most part, the Office of Risk Management's loss prevention efforts for road hazard claims have been limited to investigation of some road hazard claims after they have been filed. An effective loss prevention program identifies and categorizes all losses, and then develops a program to eliminate or reduce the areas of highest risk. (pages 29 thru 30)

A well-coordinated program has not been established to inform the Department of Transportation and Development of the results of all claims. Because of this fault, the Department of Transportation and Development is not able to relate claims data to possible roadway deficiencies. Such procedures are necessary so that the highway department can change standards and procedures, which may prevent similar incidents in the future. (pages 31 thru 33)

A good working relationship should be established among all the involved parties in a claims investigation process from initial filing of the claim to final payment. However, the Department of Transportation and Development does not actively participate in the road hazard claims investigation process. This non-participation may impact the outcome of the claim or lawsuit. The department's limited participation can be partly attributed to the lack of clearly defined responsibilities and coordination within and among all affected departments. (pages 33 thru 35)

The responsibility for reducing road hazards and ensuring general roadway safety in Louisiana is shared by the various agencies discussed in this report. The Safety Management System is a federal effort to improve the coordination among the agencies involved in roadway safety. Accordingly, the Safety Management System effort could provide the coordination necessary to address road hazards. However, since the Safety Management System is no longer a federally mandated program, it may not be implemented. (pages 36 thru 39)

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## Agency Recommendations

- 3.1.** The Department of Transportation and Development, Office of Risk Management, and other involved agencies should improve coordination in the following areas:
- ◆ Implement an effective loss prevention program for road hazard claims.
  - ◆ Communicate the outcome of road hazard claims from the Office of Risk Management to the Department of Transportation and Development.
  - ◆ Investigate road hazard claims.
- 3.2.** The Department of Transportation and Development should enhance its road hazard investigation function and establish uniform procedures for providing such information. This function should:
- ◆ Obtain road hazard claims information from the Office of Risk Management.
  - ◆ Analyze road hazard claims information to determine the categories in which the losses occur.
  - ◆ Analyze the road hazard cited in the claim to determine if the location is actually hazardous from an engineering or highway safety perspective, and also giving consideration to the outcome of prior claims for that particular location.
  - ◆ Use the results of the analysis in planning, budgeting, and policy-making, for all department operations, so that roadway deficiencies cited in specific claims can be addressed.

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### Agency Recommendations (Cont.)

- Coordinate with the Office of Risk Management in providing all information on road hazard claims to help with the investigation of claims.

- 3.3. The Department of Transportation and Development should complete the Louisiana Safety Management System as planned before the repeal of the federal mandate in order to help improve coordination among the agencies involved in highway safety.

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### DOTD's Efforts at Identifying and Repairing Unsafe Roads

The Department of Transportation and Development has established at least five department-wide procedures to identify unsafe roads, according to the Department of Transportation and Development officials. However, the highway department does not have a procedure to assure that road deficiencies cited in specific claims and lawsuits are addressed. This deficiency arises because of a lack of coordination between the Department of Transportation and Development and the Office of Risk Management.

Improvements are needed in the application of each of the five methods to identify unsafe roads. Without such improvements, some high risk areas and situations may not be identified. The identification of high risk areas and situations is a basic element of an accident reduction program for effective risk management. Not identifying unsafe roads increases the risk that the state may be held liable in the event an accident occurs. (pages 41 thru 50)

For the most part, the nine Department of Transportation and Development district offices are responsible for carrying out the procedures to identify unsafe roads. Many types of road hazards can be remedied with maintenance actions at the district level. However, according to department officials, there is insufficient funding in the nine district offices. There is also little oversight by headquarters and a lack of coordination among the districts. This has led to some inefficiency and ineffectiveness. (pages 50 thru 54)

The highway department must prioritize projects (non-routine maintenance) in greatest need of major reconstruction and overlay in accordance with state law. Prioritization is necessary because there is insufficient funding to correct all the unsafe roads identified. However, the prioritization process does not consider many high risk locations and none of the hazardous road conditions cited in claims and lawsuits. (pages 55 thru 58)

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## **Matter for Legislative Consideration Two**

The legislature may wish to consider redirecting some of the funds that are used for non-routine maintenance projects, such as reconstruction and overlay, to routine maintenance projects completed by the district offices.

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## **Agency Recommendations**

- 4.1. The Department of Transportation and Development should review its methods used to identify unsafe roads and address the deficiencies discussed in Chapter Four.
- 4.2. The Department of Transportation and Development should review the organization of the district offices and coordinate resources among the districts to assure that they operate in an efficient and economical manner.
- 4.3. The Department of Transportation and Development should revise the prioritization process so that hazardous road conditions cited in claims are given more emphasis in the highway priority program. This can only be done after the following actions have been taken as recommended in 3.2:

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### Agency Recommendations (Cont.)

- ◆ The Office of Risk Management and the Department of Transportation and Development have established a means to provide the Department of Transportation and Development with usable information on road hazard claims.
  - ◆ The Department of Transportation and Development has taken steps to analyze the claim to determine if the road hazard cited in the claim is actually hazardous from an engineering or highway safety perspective. Nevertheless, such an analysis should not be based on measurements alone, but the analysis should also consider the outcome of prior claims for that particular location.
- 4.4. In the event the Department of Transportation and Development cannot immediately correct road defects cited in claims, the highway department should warn motorists of defects until they are repaired or take action to improve safety at these sites.

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### Determining the Amount of Liability

Louisiana's liability laws, pertaining to lawsuits against the state, have undergone several changes in the past 20 years. For several years, Louisiana had potentially unlimited liability for injury to person or property because the doctrine of sovereign immunity was abolished in 1974. Over the years, several changes were made to the liability laws that will reduce the amount the state has to pay when it is found negligent. Additional efforts are being made to further limit Louisiana's liability. (pages 59 thru 63)

There are other measures, relating to tort liability claims for road hazards, that can help reduce the state's liability. According to an official with the Attorney General's office, other areas that could be altered include:

1. Interest calculation
2. Notice to file lawsuit
3. Design immunity

In addition, the Department of Transportation and Development has initiated a research project to address the vehicle accident-related tort liability suits issue. The project will be completed in September 1996, and will include recommendations for future legislation. (pages 63 thru 64)

Some legal provisions can potentially increase the state's tort liability. Two such laws are:

1. Comparative negligence
2. Collateral source rule

These provisions can be altered with tort reform measures, so that Louisiana will pay less when it is found to be negligent. Many other states have enacted tort reform measures in one form or another relating to these laws. (pages 65 thru 66)

By basing the maintenance and repair of roads and bridges on the amount of money available instead of the highway needs, the state may be increasing its liability for accidents that are a result of road hazards. Half of the state's roads are rated as fair to poor. However, the state does not have the funds to bring all roads up to current standards. This insufficient funding may partially result because the Transportation Trust Fund, the highway department's main source of revenue, is based on a flat tax that does not increase with inflation. (pages 66 thru 68)



**Matters for Legislative Consideration**

3. The legislature may wish to consider legislation that limits any and all damages, including medical care expenses and loss of earnings, paid by the state as a result of lawsuits against the state.
4. The legislature may also wish to consider other proposals relating to tort laws and provisions as follows:
  - ♦ Comparative negligence
  - ♦ Collateral source rule
  - ♦ Interest calculation
  - ♦ Notice to file lawsuit
  - ♦ Design immunity

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# Chapter One: Introduction

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## **Audit Initiation and Objectives**

The Legislative Audit Advisory Council authorized us to conduct a performance audit of Louisiana's efforts to reduce losses to the state as a result of claims against the state. We focused on losses relating to road and bridge hazard claims because this is where the state suffers the greatest losses. Our audit objectives were to:

- ♦ Determine how the Office of Risk Management (ORM) and the Department of Transportation and Development (DOTD) work together to reduce road hazards.
- ♦ Identify laws that impact Louisiana's liability as well as look at how other states minimize their tort liability.
- ♦ Examine the DOTD's funding structure as it relates to repairing hazardous roadway conditions.
- ♦ Study the programs within the DOTD and the other state agencies that identify and/or repair hazardous roadway conditions.

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## **Report Conclusions**

Each year, the state of Louisiana, through the ORM, pays out millions of dollars as a result of claims for injuries and damages relating to hazardous roadway conditions. Over the last four and a half years, Louisiana has paid over \$160 million for claims and lawsuits in this area. As of December 1995, an additional \$401 million may be paid for more than 2,500 pending claims against the state.

Managing the various aspects of road hazards and the claims that result requires a multi-agency approach. However, problems exist with coordination and communication among the involved agencies, which include the following:

- ♦ **Department of Transportation and Development (DOTD)**
- ♦ **Office of Risk Management (ORM)**
- ♦ **Office of Attorney General (AG)**
- ♦ **Louisiana Highway Safety Commission (LHSC)**
- ♦ **State and local law enforcement**

To better defend a potential road hazard claim or suit, the state could improve procedures for accident report completion and processing. In addition, investing in new state-of-the-art technology to upgrade the traffic records capabilities will provide accurate and timely data that can be used to determine the road conditions when the accident occurred. Furthermore, accident investigation procedures, which preserve evidence at the scene, need improvement.

Both agencies involved in road hazard claims lack incentive to implement an effective loss prevention program. The ORM cannot require the DOTD to institute preventive measures. In addition, loss prevention, relating to road hazards, is not a priority with the highway department, according to ORM officials. Furthermore, this department is not held accountable for these losses. As a result, efforts to minimize road hazard claims have not been successful.

Furthermore, DOTD officials say the ORM does not provide the DOTD with usable information that clearly identifies the hazardous conditions and locations that result in claims. The DOTD is not included in the final disposition of the claim, except in those rare occasions when representatives of the Attorney General's office may contact them. Instead, DOTD's primary role has been to provide information throughout the claims investigation process. Although an attempt at improved coordination, relating to general roadway safety, has been launched by DOTD, its goals may not be achieved.

The DOTD keeps roadways safe by identifying high risk road conditions using varied techniques. However, none of these techniques address roadways revealed in specific claims or lawsuits. In addition, improvements are needed in each of the techniques so that road defects can be discovered and corrected.

Many roadway deficiencies can be solved with routine maintenance at the district level. However, according to department officials, there is insufficient funding in the nine district offices of the DOTD. In addition, the districts are not organized in an efficient and economical manner so that resources are coordinated among and within the districts.

Other unsafe roads require major reconstruction or overlay to correct. The department prioritizes those projects in greatest need of major correction because there is insufficient funding to correct all unsafe roads. In the prioritization process, high risk locations receive minimal consideration and road hazards cited in claims receive none.

Realizing the effect these judgments have on the state's budget, the legislature recently adopted constitutional and statutory changes to minimize future liability. Nevertheless, some other legal provisions potentially increase the state's exposure to liability or the amount of money the state may ultimately have to pay.

State law requires the highway department to base the maintenance and repair of roads and bridges on the amount of money available instead of highway needs. However, the Transportation Trust Fund, the department's primary source of revenue, is funded by a flat tax that does not increase with inflation. This may be one reason why there is not enough revenue to address the state's roads rated fair or poor.

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### **Millions Spent Each Year for Road Hazards**

According to researchers, three major factors cause highway accidents: the driver, the vehicle, or the roadway. While the roadway is estimated to be the cause in only 10 percent of accidents, the state of Louisiana pays millions of dollars each year in claims and judgments resulting from accidents occurring on state roads determined to be defective. The state has a legal duty to maintain its roadways in a reasonably safe manner for non-negligent motorists. Accordingly, a breach of this duty is deemed negligence on the part of the state and could result in a tort liability case against the state.

In recent years, changes in the law and judicial interpretation have made it much easier to successfully sue state governments. Consequently, there has been a growth in the number and size of judgments rendered in tort cases across the nation. Thus, to reduce losses from road hazards, efforts should be made by the agencies involved to prevent accidents and to aggressively defend suits when they occur.

### **Road Hazard Claims Have Cost Over \$160 Million in Four and a Half Years**

Since the adoption of the 1974 Constitution, the state of Louisiana has paid out millions of dollars for losses sustained by individuals who were injured or killed in motor vehicle accidents while using the state's roadways and bridges. These accidents have been attributed to poor or inadequate roadway conditions.

#### **Exhibit 1-1**

#### **Road Hazard Claims and Judgments Paid for Fiscal Years Ended 1992 through 1996**

Fiscal Year Ended June 30	Paid by Risk Management	Legislatively Appropriated	Total
1992	\$12,583,204		\$ 12,583,204
1993	34,736,119		34,736,119
1994	1,345,310	\$11,263,709	12,609,019
1995	2,366,802	69,728,453	72,095,255
*1996	16,647,873	11,621,113	28,268,986
<b>Total</b>	<b>\$67,679,308</b>	<b>\$92,613,275</b>	<b>\$160,292,583</b>

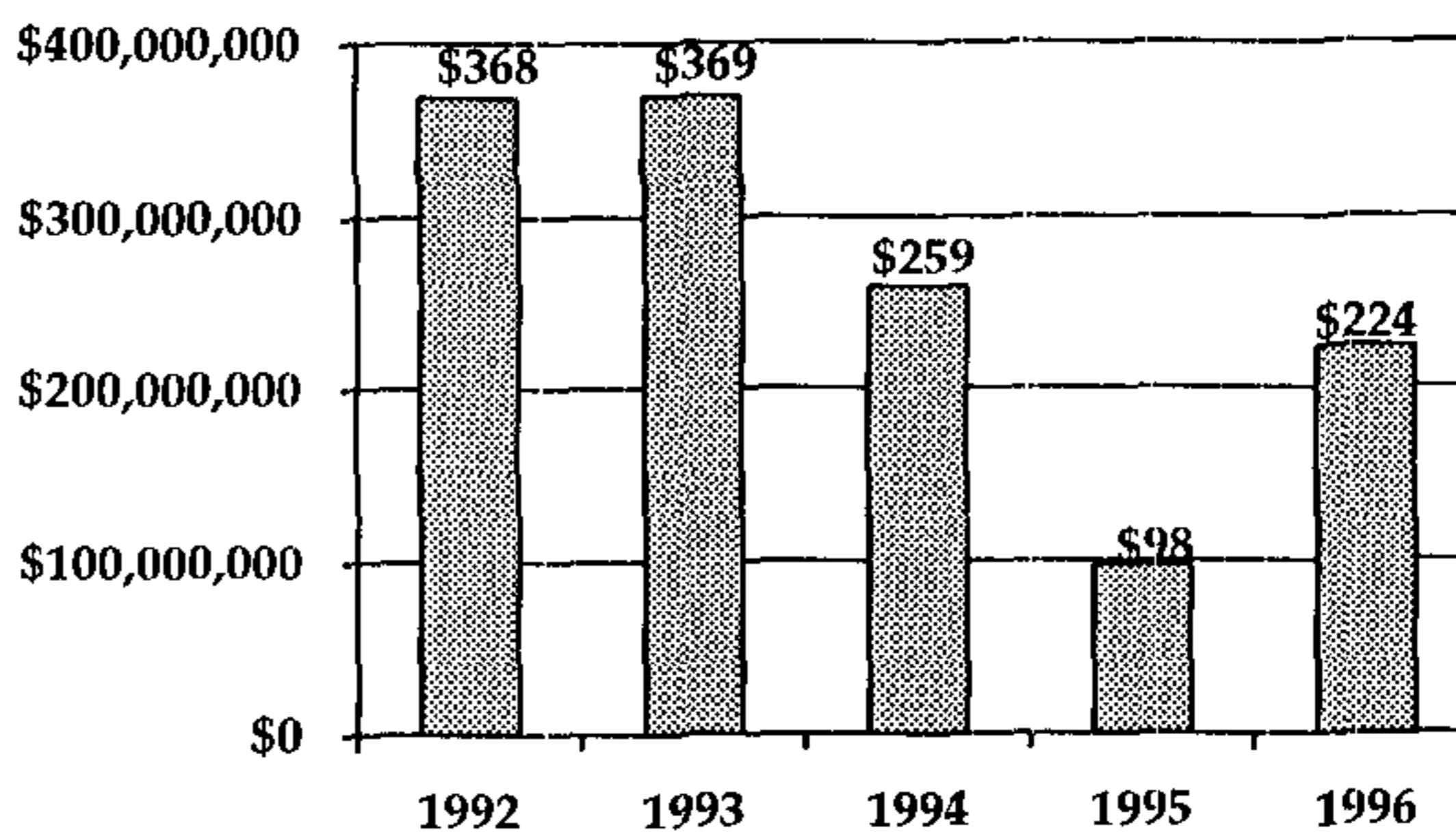
\* Fiscal year 1995-1996 figures are as of December 31, 1995.

Source: Prepared by legislative auditor's staff from an ORM report.

From July 1991 to December 1995, the state of Louisiana paid over \$160 million in road hazard claims and suits, as shown in Exhibit 1-1 above. In addition, as of December 20, 1995, the ORM estimates an additional \$401 million may be payable for 2,571 pending claims. For fiscal year 1996, DOTD will pay \$36 million to ORM in premiums for road and bridge hazard coverage. This money comes from a general fund appropriation and not the Transportation Trust Fund.

On July 1, 1988, the legislature transferred the responsibility for road hazard uninsured claims to ORM from DOTD. From 1988 to 1994, all road hazard losses were paid through ORM. During those years, ORM experienced increases in losses paid, for the most part, but a decrease in budget for the fiscal years 1994 and 1995. The legislature decreased the ORM budget, so that losses could be paid by legislative appropriation. Exhibit 1-2 below presents ORM's budget information for fiscal years 1992 through 1996.

**Exhibit 1-2**  
**Amounts Appropriated to Risk Management**  
**for Fiscal Years 1992 through 1996**



**Note:** ORM officials say ORM actually received less than \$4 million for both fiscal years 1992 and 1993. State agencies were not budgeted the premium amounts owed to ORM. Thus, ORM operated with close to \$250 million of its cash reserves. The legislative auditor's staff has not verified this information.

**Source:** Prepared by legislative auditor's staff from the budget information provided by ORM.

In Louisiana, judgments are considered an expenditure mandate. Expenditure mandates commit the state in one form or another to pay certain costs from the general fund. However, under the state constitution, when to pay such judgments is up to the legislature. These expenditure mandates are also referred to as non-discretionary expenditures. Therefore, if revenues are not sufficient to fully fund the judgments, then the legislature may choose to reduce appropriations for such discretionary items as education and health care. Nevertheless, interest continues to accrue on unpaid judgments.

Appendixes A and B include the amount of claims ORM paid for accidents on roads in each DOTD district and ORM's classification of payments for road hazard claims for the last four fiscal years, respectively.

### **Constitutional Provision Allows State to Be Sued**

The Louisiana constitution abolished the doctrine of sovereign immunity in the state. In essence, the state's constitution allows the state, its agencies, and political subdivisions to be sued for damages resulting from injuries incurred while using defective state facilities. Specifically, Article XII, Section 10 of the Louisiana Constitution of 1974 says:

Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability . . . for injury to person or property.

Generally, this involves the concept of tort liability. This concept allows a person who has been injured to seek to regain previous status through a lawsuit. Likewise, the person or entity causing the injury may be liable for repayment for injuries or damages to property if it can be proven that this person or entity was negligent.

The Louisiana Supreme Court has held that the DOTD has a duty to maintain the state's highways and bridges in a reasonably safe condition. The Supreme Court has also ruled that the department does not have to guarantee the safety of travelers, but must keep the highways and shoulders reasonably safe for non-negligent motorists. Therefore, if the DOTD actually knows or should know of a road defect and does not correct it in a timely manner, the department could be deemed negligent in performing its duties. Accordingly, the state can be held liable for damages when an individual is injured or killed on the state's roadways.

### **Risk Management Needed for Road Hazards Liability**

Various publications say that risk management is the best way to manage tort liability. Risk management is the minimization of the adverse effects of risk at minimum cost through its identification, measurement, and control. Thus, a good risk management system applicable to a highway agency should be a program to reduce roadway accidents, and ultimately injuries and fatalities. Current literature on effective risk management for highway agencies suggests that the establishment of an accident reduction program should include at least six basic elements:

1. Maintain a good accident reporting and filing system.
2. Perform periodic reviews of accident data and identify high risk areas and situations.
3. Develop alternative corrective measures for each site where they will do the most good.
4. Develop a priority list among competing sites, and schedule corrective actions based upon the list. Periodically reassess the priority list and evaluate projects after completion.
5. Warn motorists of known defects until they are repaired, or take routine maintenance actions to improve safety at these sites.
6. Keep good records of all portions of the program.



Cooperation among entities involved in highway safety is another necessity in risk management. A model highway safety program includes the identification and correction of hazards within the highway right-of-way. Recent information relating to good highway safety practices says that all agencies that have major highway safety roles and responsibilities must be coordinated to assure cooperation and efficiency.

### **Highway Safety Management in Louisiana Is a Multi-Agency Effort**

Although Louisiana's approach to risk management relative to road hazards contains the basic elements of an accident reduction program, it is a fragmented approach. Like many other states, Louisiana's approach to highway safety does not include coordination among the agencies that have major highway safety roles and responsibilities.

In Louisiana, the primary agencies involved in the road hazards issue are ORM, Office of Attorney General, DOTD, Louisiana Highway Safety Commission, and state and local law enforcement agencies. Each of these agencies plays a major role in preventing and reducing the risk of vehicle accidents involving road hazards resulting in claims and lawsuits against the state.

#### **Office of Risk Management**

ORM serves as the state's insurance company and handles all state insurance covering property and liability exposure, through commercial underwriters or by self-insuring. Act 520 of 1980 established ORM within the Division of Administration. This office manages several lines of coverage for the state including worker's compensation, auto liability, medical malpractice, and road and bridge hazards. Personnel benefits and group health and life insurance are not included.

Among the many duties of the ORM program is its responsibility for the investigation and adjustment of claims against the state through either its employees or contractual services. This office may negotiate, compromise, and settle claims covered by self-insurance and all tort claims against the state or its agencies. Compromises and settlements require a complete release and waiver of further liability of the state, state

agencies, and of its officers, officials, and employees. The approval of the attorney general is required for compromises and settlements over \$25,000. Compromises or settlements of \$500,000 or more require the approval of a subcommittee of the Joint Legislative Committee on the Budget.

ORM also provides loss control services to all agencies through its Unit of Risk Analysis and Loss Prevention. This unit assists all state agencies in the prevention and reduction of employee job related accidents, injuries, and loss of state property. The purpose of the unit is to reduce direct and indirect losses to the state. While the Loss Prevention unit has made attempts to develop a plan to minimize road hazard claims, no definitive plan currently exists. The Loss Prevention unit will be discussed further in Chapter Three.

### **Office of Attorney General**

The Office of Attorney General, Litigation Division, provides legal representation for the state and its agencies in all claims covered by self-insurance, and in all tort claims whether or not covered by self-insurance. In lieu of using in-house staff, the attorney general may appoint a private legal counsel, with concurrence from the commissioner of administration, to help defend the state in road hazard claims. ORM reimburses the attorney general for all reasonable costs incurred when providing necessary legal services.

### **Department of Transportation and Development**

State law charges the DOTD to study, administer, construct, improve, maintain, repair, and regulate the public highways, roads, and other transportation related facilities. This includes 16,873 miles of highways plus bridges, ferry operations, ports, and airports. The department is composed of six operational directorates, six special staff divisions, nine district offices, and seven boards and authorities. An overview of the DOTD organization is presented as supplementary information in Appendix C.

Furthermore, state law requires the DOTD to adopt minimum safety standards with respect to highway and bridge design, construction, and maintenance. The law requires the minimum safety standards to correlate and conform to the current system approved by the American Association of State Highway and Transportation Officials.

DOTD receives the majority of its funding from the Transportation Trust Fund, which was created by constitutional amendment in 1989. The trust fund was proposed as a way to ensure a stable and dedicated revenue source for road and bridge maintenance and construction, statewide flood control, ports, airports, transit, and state police traffic control. It also provides funding for the parish transportation program. The trust fund derives its funding from state fuels taxes, motor vehicle license taxes, federal highway funds, and the fund's interest earnings.

For fiscal year 1996, the legislature appropriated approximately \$320 million to DOTD for operations. The federal government will provide \$35 million of this total. The department employs over 5500 permanent staff and also contracts with engineering and construction firms.

Funding from the state's capital outlay appropriation is used for the department's construction and overlay programs. The department's appropriated capital outlay funding for fiscal year 1996 is \$417 million. This amount includes only *Transportation Trust Fund receipts and not additional amounts* appropriated from the Transportation Infrastructure Model for Economic Development (TIMED), general obligation bonds, and other sources. Federal funding for capital outlay is \$252 million of the total capital outlay funding.

As mentioned previously, the DOTD has a duty to maintain the state's highways and bridges in a reasonably safe condition for non-negligent motorists. While most of the basic elements of an accident reduction program exist within the department, a concerted effort has not been made to address the road hazard claims issue. The department's programs and funding relating to highway safety are discussed further in Chapter Four.

#### **Louisiana Highway Safety Commission**

State law requires the Louisiana Highway Safety Commission (LHSC) to increase highway safety by preparing comprehensive, long-range highway safety programs for Louisiana. According to commission officials, their major focus on highway safety relates to the vehicle and the driver, and DOTD's major focus is the roadway environment. In addition, the LHSC is the central repository for all accident reports from state, parish, and local law enforcement jurisdictions.

## Law Enforcement

In addition to their law enforcement function, state law requires state, parish, and local law enforcement to investigate vehicle accidents within their respective jurisdictions when notified of such accidents. In particular, law enforcement officers are to immediately investigate vehicle accidents resulting in injury to or death of any person, or property damage in excess of five hundred dollars. After the investigation, the law enforcement agency is to forward a written report of the accident to the Department of Public Safety within specified time periods.

## Scope and Methodology

This audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. All performance audits are conducted in accordance with generally accepted government auditing standards as promulgated by the Comptroller General of the United States. Preliminary audit work began in June 1994, but was suspended in November 1994. Fieldwork resumed in December 1995 and was completed in April 1996.

To address the audit objectives, we reviewed textbooks, studies, publications, and other materials on risk management, tort liability, accident investigation, and highway maintenance. We also reviewed state and federal laws and regulations, financial information, and current policies and procedures relating to ORM's and DOTD's roles in road and bridge hazard claims.

We obtained data about how liability is handled in other states. We reviewed these data to determine what protections these states have from large financial losses.

We interviewed various staff, including those of legislative committees, Legislative Fiscal Office, Division of Administration, Office of Attorney General, ORM, LHSC, Louisiana State Police (LSP), and Federal Highway Administration.

At DOTD, we interviewed the Chief of Staff, Director of Management and Finance, General Counsel, and many other officials who work at headquarters and the district offices. We obtained data on the condition of the state's highway system and the department's equipment for maintaining the state's highways.

We obtained and summarized listings of claims paid by ORM. In this audit report, if ORM has an established claim number, then it is considered a claim against the state, regardless of whether it is filed by a claim form, lawsuit, demand, or other legal document. ORM reviewed our summary of claims paid and made adjustments. Therefore, the amounts shown on Exhibit 1-1 on page 4 are ORM's adjusted figures. We have not tested these amounts to assure their reliability and validity.

**Review of Road and Bridge Hazard Claims.** To gather information about specific cases, we selected a random sample of 50 cases for review from the population of road and bridge hazard claims closed by ORM during fiscal years 1992, 1993, and 1994. The purpose of reviewing the 50 cases was to gather descriptive information relating to communications between ORM and DOTD regarding road hazard claims. We did not attempt to project the results of our review to the entire population of road and bridge hazard claims.

We also judgmentally selected an additional 15 claims to assess the accident information available and the extent of use of the accident reconstruction program discussed further in Chapter Two. We also reviewed the instructions given to the LSP for the completion of the report. This was to determine if the accident report, the original source documentation of the facts surrounding the accident, was properly completed.

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## **Report Organization**

The remainder of this report is organized into four additional chapters and four appendixes as follows:

- ♦ **Chapter Two** addresses accident report completion, accident investigation efforts, contact with DOTD, and emerging technology in this area.
- ♦ **Chapter Three** examines the involved agencies' coordination for loss prevention efforts, investigation of the claims, communication of claims outcome, and other efforts to coordinate.

- ♦ **Chapter Four** describes improvements needed in DOTD's programs that identify and/or repair hazardous roadway conditions and problems with funding.
- ♦ **Chapter Five** reviews changes to tort reform laws to reduce Louisiana's liability when the state is negligent.
- ♦ **Appendix A** includes amounts ORM paid for road hazard claims in each DOTD district for the last four fiscal years.
- ♦ **Appendix B** includes ORM's classification of payments for road hazard claims for the last four fiscal years.
- ♦ **Appendix C** consists of an overview of DOTD's organization.
- ♦ **Appendix D** contains agency responses to this report.



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# Chapter Two: Preventive Measures

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## Chapter Conclusions

By improving procedures for accident report completion and processing, the state could better identify and correct potential road hazards. In addition, investing in new state-of-the-art technology to upgrade the traffic records capabilities will provide accurate and timely data that can be used to determine the road conditions when the accident occurred. Improvements are also needed in the program designed to preserve evidence at the time of an accident, potentially due to a road hazard.

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## The Accident Report: The First Line of Defense

The accident report is the state's first line of defense for road hazard claims. Accident reports are also used by DOTD to identify unsafe roads, as discussed in more detail in Chapter Four. However, the various branches of law enforcement are not properly completing and submitting accident reports in all cases. This could result in increased liability to the state because high risk locations are not promptly identified and corrected.

### **Improperly Completed Accident Reports Can Increase the State's Liability**

Improperly completed accident reports could result in increased liability to the state. All law enforcement agencies in Louisiana complete the Uniform Accident Report when investigating accidents. The state uses these reports to identify hazardous road conditions and defend against lawsuits. However, problems have been noted with the proper completion of the accident report. This may be attributed to the lack of statewide formal training for completing the report, especially for complex accidents.



All branches of law enforcement in Louisiana jointly developed the accident report. The Department of Public Safety and Corrections (DPSC) distributes the forms to all law enforcement agencies in the state. DPSC also provides all law enforcement agencies with a training manual, the basic instructions for completing the accident report. The manual instructs law enforcement officials to only note road defects in the road condition section of the report when, in the investigator's opinion, the road defect was a contributing factor to the accident.

Proper completion of the accident report is important, according to the DPSC training manual, because the determination of road condition is the most contested item of any vehicle accident investigation. Officials from the various agencies involved say that law enforcement officials often increase the exposure of the state in lawsuits by the wording used in accident reports. Although the intent is to have a uniform accident report, DOTD officials say that the quality of the accident reports is not uniform and varies throughout all levels of law enforcement. For example, 2 of 15 (13 percent) road hazard claims that we reviewed contained comments from adjusters about the poor accident reporting done by the initial accident investigator.

State police officials say their supervisors review the accident reports for proper completion. However, the supervisory review is done after the fact and not at the scene of the accident. State police officials also say that many troopers do not possess the skills for completing complex accident reports, such as those involving fatalities or serious injuries.

City police or sheriff officers sometimes investigate accidents on state maintained roads because of overlapping jurisdictions of law enforcement agencies. Therefore, implementing a statewide training program for completing accident reports could increase the consistency of reporting by all law enforcement officials and decrease the exposure of the state to road hazard liability lawsuits. Other states, such as Pennsylvania and New York, publish newsletters and conduct training workshops to help improve accident reporting. In addition, Michigan plans to distribute a training video statewide.

In addition to being used in claims cases against the state, DOTD district offices rely on the accident report as their first notification of hazardous road conditions in need of correction. Officials from three of the nine state police troops said that some DOTD district offices obtain accident reports from them each week to identify accidents involving hazardous roadway conditions.

In Alabama, a highly successful risk management plan to keep highways from causing budget crashes is often promoted as a model for other states to follow. Under the Alabama program, highway officials receive a computer listing within two weeks of an accident of accident reports containing the road defect notation. Highway officials investigate the accident site and if a defect is found, the site is scheduled for maintenance. If a defect is not found, law enforcement officials are contacted to determine the reason for the incorrect report. According to program representatives, the program has increased cooperation between the highway department and law enforcement, improved the quality of collision data, and reduced liability.

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### **Agency Recommendation 2.1**

The DOTD and all branches of law enforcement should work together to implement a statewide training program for all law enforcement officials to address uniform methods of completing the accident report.

### **Accident Reports Aid Detection and Defense of Road Hazards**

All law enforcement officials are not submitting all accident data to the LHSC. State law mandates the submission of accident reports to DPSC, but does not provide an enforcement mechanism that ensures the accident reports are submitted in a timely manner. As a result, DOTD is not aware of unsafe road conditions that may cause accidents and thus cannot address them.

State law requires all police departments to forward accident reports to DPSC within six days of the date of the accident, if the accident occurred within the corporate limits of a city or town. For accidents occurring outside the corporate limits of a city or town, the law enforcement officers are to forward accident reports to DPSC within 48 hours after completing the accident investigation. However, the law does not specify a penalty for law enforcement officials who fail to meet these statutory time limits for submission of accident reports to DPSC.

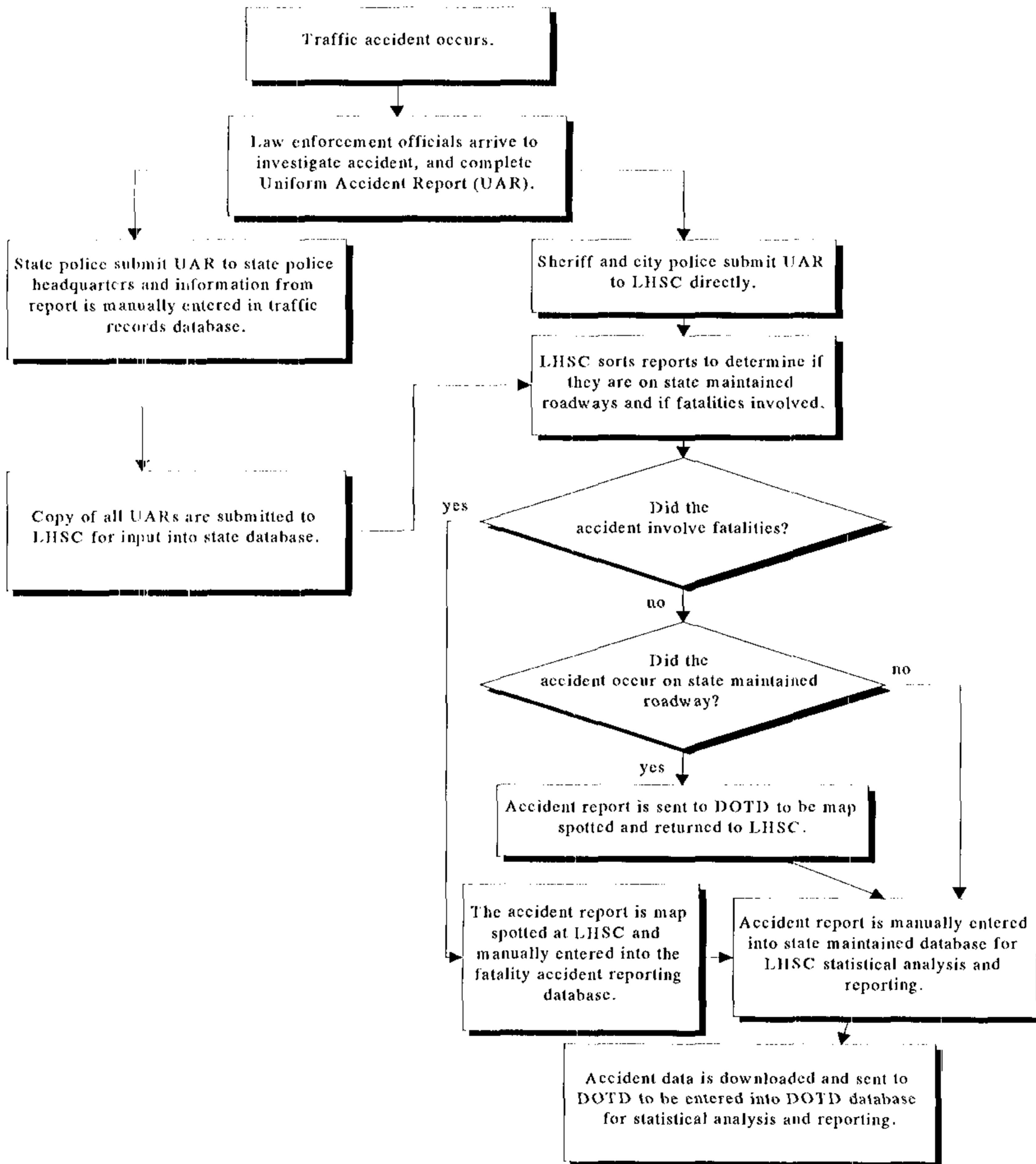
LHSC, which is a part of the DPSC, maintains a computerized database of all vehicle accidents in Louisiana. LHSC staff receives accident reports and DOTD's staff codes the reports to assign the specific route and milepost within the state road system where the accident occurred. DOTD refers to this coding process as map spotting.

After the accident location is map spotted, the reports are then manually keyed to the database by LHSC. LHSC analyzes the accident data and prepares various reports requested by the federal government and others. DOTD also receives this accident data from the LHSC to use in its work, discussed further in Chapter Four. A flowchart detailing the accident data collection and analysis process appears in Exhibit 2-1 on page 19.

LSP troops currently send accident reports to state police headquarters within 7 to 15 working days. The state police reports are then routed to LHSC three times a week. State law enforcement officials say that because both the LSP and LHSC are part of the DPSC, there is some uncertainty in complying with the current statute's time requirements.

In addition, some local law enforcement agencies do not always submit accident reports in compliance with the law. LHSC officials say that some municipalities have not submitted any accident data or the information was incomplete. For example, the City of New Orleans has not submitted any accident reports since 1994. LHSC and DOTD officials say the only repercussions associated with noncompliance is the hazardous state roadways within these cities or towns may not receive attention by DOTD.

**Exhibit 2-1  
Accident Data Collection and Analysis Process**



Source: Prepared by legislative auditor's staff from interviews with LHSC, DOTD, and LSP.

Consequently, DOTD may not detect road hazards without the accident reports. In addition, missing accident reports cause problems in defending road hazard cases. LHSC officials say they are often contacted by the ORM and the Attorney General's office to provide accident reports in preparation of a defense for the state. However, in instances where the reports have not been submitted, LHSC cannot provide timely information to the state's defense attorneys and claim adjusters.

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### **Matter for Legislative Consideration One**

The legislature may wish to consider amending Louisiana Revised Statutes (LSA-R.S.) 398D(3) to clarify the time period for submitting accident reports to DPSC - LHSC. Also, amend the law to provide repercussions for failure to comply.

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### **Technological Advances Could Mean More Efficiency**

The expedient collection and processing of accident data may be a way to reduce road hazard liability against the state. New state-of-the-art computer technology could increase the efficiency and effectiveness of gathering and processing accident report data. Law enforcement agencies in other states have implemented such technologies.

### **Latest Technology Can Improve Quality and Timeliness of Data Collection**

As noted in the prior section of this chapter, there are problems with the accident report completion and submission. According to our research, the implementation of emerging technologies can substantially improve Louisiana's current manual accident data collection process. For collection of data at the accident scene, the following technological options are currently available:

- ◆ Laptop computers
- ◆ Notebook computers
- ◆ Pen-based computers
- ◆ Palmtop computers

In addition, DOTD officials say that map spotting is sometimes a problem because law enforcement officers incorrectly mark the location of the accident. The Global Positioning System and several other types of location technologies are emerging technological tools that have the potential to improve the quality of accident location data and reduce the demands and costs associated with coding, keypunching, and processing accident location information for police accident reports.

The implementation of such technology to collect accident data at the scene is efficient, economical, and can lead to more effectiveness. Electronically capturing the information from these devices should reduce the time it takes law enforcement officials to complete an accident report and should also improve the quality of driver and vehicle information included in the accident database record. In addition, the amount of effort to process the data is also reduced.

Law enforcement agencies in California, Alaska, and Florida are currently implementing this new technology in their accident reporting, data collection and reporting processes. For instance, the California Highway Patrol is using state-of-the-art information technology that allows them to perform many applications including completing traffic accident reports.

### **New Technology Can Lead to More Timely Detection of Road Hazards**

Currently, LHSC manually enters most accident reports into its database. There is a six to eight month backlog of accident reports to be entered, according to both LHSC and DOTD officials. However, the National Highway Traffic and Safety Administration advises that accident data should be entered no later than two to three months after the accident.

LHSC officials attribute the current backlog to the lack of personnel available to handle the volume of reports. There are four data entry positions to input an average of 90,000-100,000 accident reports a year, according to a 1994 peer review study of Louisiana's traffic records system. In addition, each report requires at least 96 manual entries and even more when the accident involves additional vehicles, occupants, and pedestrians.

However, according to our research, optical scanners and form readers could significantly reduce the amount of manual entry needed for processing accident report data. The expected benefits of this new technology, according to current literature, include:

- ◆ Improved timeliness of reports
- ◆ Reduced data input errors and omissions
- ◆ Reduced data entry
- ◆ Improved information management

Accordingly, such technology could speed up the analysis of the accident report data by DOTD to identify unsafe roads. According to commission officials, LHSC is currently using \$70,000 in grant funds, awarded from the 1994 peer review study of Louisiana's traffic records, to implement an on-line system for entering accident report information.

### **Traffic Records System Is Inefficient and Fragmented**

The 1994 peer review study of Louisiana's traffic records system recommends the development of procedures to eliminate multiple manual entry of data throughout the statewide system. This is because the overall traffic records systems in Louisiana are inefficient and fragmented. There is no linkage of data files among the agencies which make up the system. As a result, there is multiple data entry and lack of communication among LSP, LHSC, DOTD, and local agencies.

One example of the multiple entry of data occurs when the state police Traffic Records Division enters basic information relating to the vehicle and accident from the accident report into an accident inquiry database. State police officials say their primary purpose for this database is to locate reports to provide to the public. However, LHSC receives the same accident reports from all law enforcement officials in the state, including the state police, and manually enters all the information from these reports into another database.

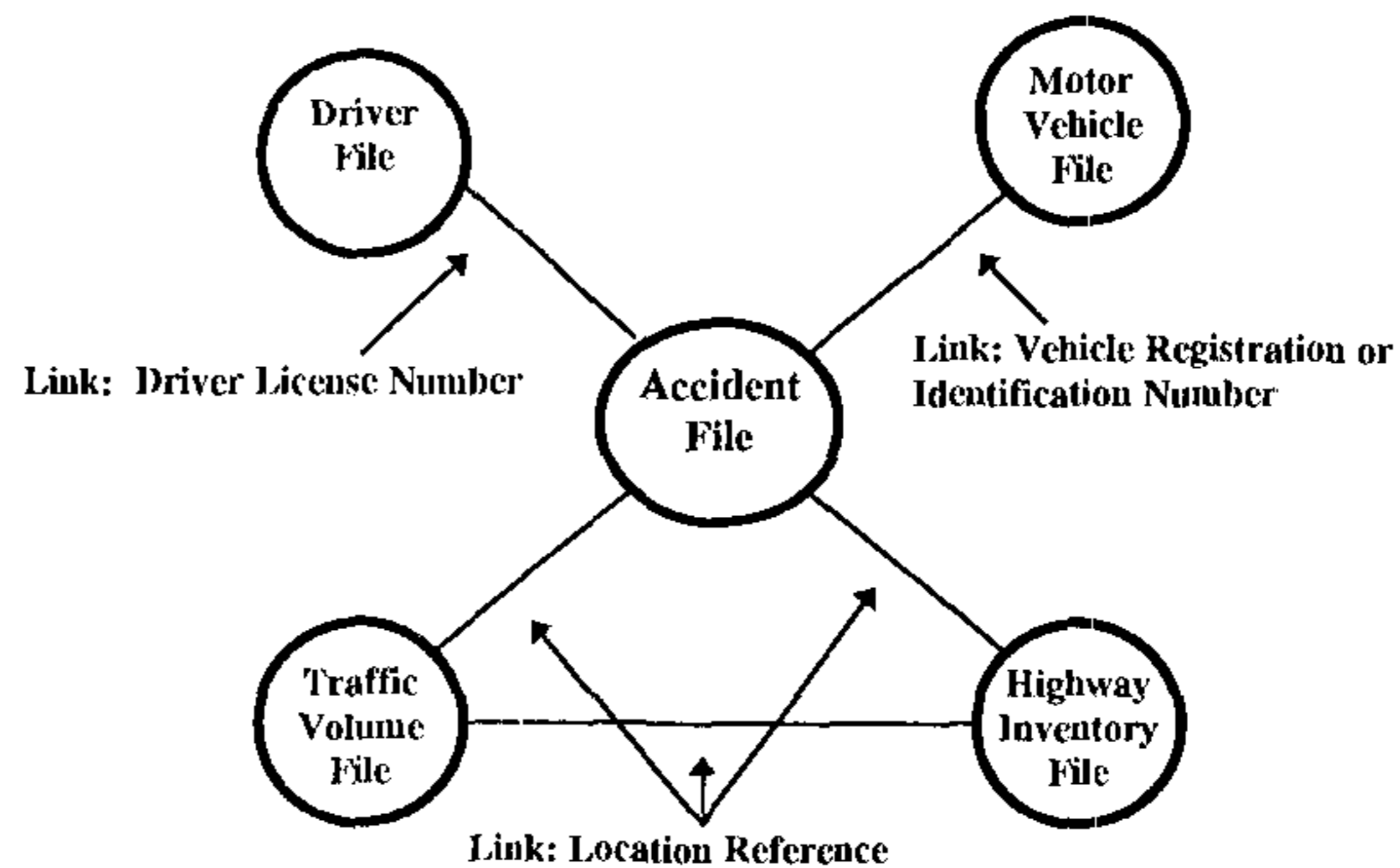
According to the 1994 traffic records study, components of the Louisiana traffic records system are maintained by three state agencies with little routine linkage provided. The basic components of a traffic records system include the accident file, vehicle file, driver file, and roadway file. The accident file is maintained by LHSC. The vehicle and driver file are maintained by DPSC - Office of Motor Vehicles. The roadway file, which encompasses both highway inventory and traffic volume, is maintained by DOTD. Although individual studies can be conducted using key field pointers from each of the files, there is generally no mechanism or environment that permits data from the separate files to be combined.

Implementation of a linked computerized traffic records system could greatly enhance coordination and communication among agencies involved in efforts to reduce road hazards liability in Louisiana. In addition, this linkage can eliminate the need to duplicate data collection and processing costs, thus reducing such costs. Exhibit 2-2 below illustrates the common reference items that could be used to link data files and share information.

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**Exhibit 2-2**  
**Data Links in a Basic Traffic Record**

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Source: Prepared by legislative auditor's staff from a similar diagram provided by the Transportation Research Board.

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## **Agency Recommendation 2.2**

The DPSC should consider investing in technology that will aid in accident reporting, data collection, and analysis. In addition, this technology should include linking agencies together to provide a better coordination of information relating to traffic accidents and highway improvement programs.

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### **Accident Reconstruction Program Not Operating Effectively**

The formalized accident reconstruction program agreement, between ORM and LSP, is a proactive approach to defending potential claims against the state. However, the program has not always ensured that evidence is preserved at the time of the accident. This can be partially attributed to unclear program guidelines, a lack of coordination and communication between ORM and state police, and the omission of DOTD from the program. However, revamping the program and including DOTD could strengthen the state's defense against road hazards lawsuits.

In July 1991, ORM initiated an accident reconstruction program. This program is the result of an interagency agreement signed by officials from ORM, DPSC, and the Commissioner of Administration. Total funding for the program has been \$45,000 since inception and it terminates on June 30, 1996.

The program's intent is to enable the state to preserve valuable evidence, at the time of the accident or as soon thereafter as possible, that might not be available after a road hazard claim is received by ORM. State law allows a claim to be filed up to a year after the accident. Therefore, to strengthen the state's defense, it is important to preserve the scene as soon as possible after the accident.

The agreement formalizes procedures for the state police to furnish ORM with accident reconstruction services. The agreement allows the state police to perform these services for all highway fatalities and serious injuries on state and interstate roads, regardless of the affiliation of the officer on the scene whether state, parish, or city. ORM authorizes the performance of the services when notified of such accidents by state police on the accident date or next business day.

Although the program has been available for the last four and a half years, it has scarcely been used. We examined a sample of 15 road hazard cases to review the accident data provided as it relates to the program. Eight of the 15 cases (53 percent) reviewed involved fatality or serious injury accidents. However, none of the eight fatality or serious injury cases reviewed had evidence of the accident reconstruction services being performed. ORM officials say that there is poor response from troopers in contacting ORM about accidents that meet the criteria for reconstruction.

We conducted a phone survey of Louisiana's nine state police troops to obtain additional information regarding the use of the accident reconstruction services. The following is a summary of the results of this survey:

- ◆ Eight troops said they were familiar with the ORM agreement.
- ◆ All nine troops said there were at least two, with some troops having as many as six, certified accident reconstructionist in the troop.
- ◆ Two troops said they were providing the services for ORM in accordance with the agreement.
- ◆ Three troops said they worked with ORM, but after a claim had been filed.
- ◆ One troop said they perform reconstruction type services, but not in association with ORM.

The reasons given for not performing the services, in accordance with the agreement, mainly related to lack of communication and coordination with ORM about the program. In addition to the lack of communication and coordination, other problems with the current process, according to the state police troops, include:

- ♦ Eight troops said there is no clear cut definition of what the program entails. These officials say that more detail needs to be given to the criteria for reconstruction of accidents because it is not feasible to reconstruct every fatality and serious injury and the troopers are not familiar with the types of claims being filed.
- ♦ Three troops said there is a lack of resources as far as quantity of certified reconstructionists, and one of these troops said expensive equipment is needed to do the job.

A coordinated effort, with involvement of DOTD, could enhance the effectiveness of the Accident Reconstruction Program. For instance, the Safety Section of DOTD, whose main emphasis is to handle safety issues relating to DOTD employees, is moving into the road hazards area according to DOTD officials. These officials also say that safety officers have attended accident investigation courses at the Traffic Institute of Northwestern University in Illinois, an institution which is nationally known for its curriculum in traffic investigation and reconstruction. There are plans for the safety officers to eventually attend classes in accident reconstruction.

In addition, either the DOTD Safety Section or district personnel investigates certain roadway accidents, as soon after the accident as possible. These investigations document the circumstances and conditions surrounding the accident. The DOTD Legal Division developed an investigation report guide to:

- ♦ Assist in investigating fatal and serious injury accidents
- ♦ Supplement the police accident report
- ♦ Reduce the number and amounts of awards

The districts or the legal section forwards these reports to the ORM. ORM officials said that when they receive these reports, they establish a file and enter it on their computer system as a prospective claim. The information is kept for a year. If a claim is filed for the accident, they then locate the information on the system by accident date and location.

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### **Agency Recommendation 2.3**

The ORM, DPSC, and DOTD should formalize and implement policies and procedures to revise the Accident Reconstruction Program. The policies and procedures should specify criteria for accident reconstruction. The complete process for contact among the agencies, at the time of an accident involving a potential road hazard, should be specified.



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# Chapter Three: Need for Coordination After a Claim Is Filed

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## Chapter Conclusion

Current efforts at loss prevention for road hazards are not successful. This may be due to a lack of coordination between ORM and the DOTD to institute preventive measures. In addition, ORM officials say the highway department has not made loss prevention a priority. Furthermore, DOTD officials say ORM does not provide the DOTD with useful information that clearly identifies the hazardous conditions and locations that result in claims.

DOTD's primary role in building a defense for the state has been to provide information throughout the claims investigation process. However, that role should be modified to include the department in the final disposition of the claim. Within DOTD, little effort is made to centrally gather and analyze information relating to road hazard claims. Although an attempt at improved coordination, relating to general roadway safety, has been launched by DOTD, its goals may not be achieved.

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## Futile Efforts at Loss Prevention

Even though the ORM's Loss Prevention Unit has made efforts to develop an effective loss prevention program to reduce losses from road hazards, it does not have the authority to enforce implementation. ORM's assistance to DOTD has been limited to investigation of selected road hazard claims. An effective loss prevention program is vital to road hazards because it could reduce the number and severity of losses.

The ORM's Loss Prevention Unit's purpose is to develop and implement a loss prevention program for state government. In doing so, the Loss Prevention Unit assists each department in designing and implementing a loss prevention program to meet its specific operational needs. According to current literature, an effective loss prevention program for road hazard claims should

identify the number, type, and severity of previous road hazard losses in a timely manner. Once these losses have been identified, a loss prevention program should be developed to eliminate or reduce the areas of highest risk.

Instead of developing a loss prevention program aimed at all road hazard losses, ORM officials say the Loss Prevention Unit's assistance to DOTD consists mainly of investigating some judgmentally selected claims requested by the ORM's director or the Claims Unit. ORM attributes this selective process to the lack of Loss Prevention personnel to handle the volume of road hazard claims. The established procedures do not contain specific criteria on when the risk director or the claims adjuster should request an investigation. However, according to Claims Unit personnel, they request an investigation for losses that meet one of the following criteria:

- (1) large dollar amounts;
- (2) fatalities; or
- (3) if it was determined that the accident or loss could have been prevented.

When an investigation has been requested, the Loss Prevention Unit performs an in-depth investigation of the claim. However, the unit cannot mandate that DOTD correct road hazards cited in the claims. According to officials in the Loss Prevention Unit, the investigation identifies any hazards and their causes and then recommends corrective action to DOTD to prevent other accidents from occurring at that location. The Loss Prevention Unit later conducts a follow-up visit with the DOTD to determine if the hazard was corrected. They also prepare a written report on some of the investigations.

Officials of the Loss Prevention Unit say they realize that there is a need to develop a program to reduce road hazard losses and some efforts have been made to address that need. In addition, staff from the Loss Prevention Unit and DOTD's Safety Section say they have met recently to discuss preventive measures. However, according to ORM officials, DOTD management has not emphasized prevention. As a result, loss prevention efforts have been mostly unsuccessful. In the meantime, road hazard losses have continued to grow.

## **Ineffective Communication on Outcome of Claims**

A well-coordinated program has not been established to inform DOTD of the results of all road hazard claims. As a result, DOTD may not be able to relate claims data to possible roadway deficiencies. Such a program is necessary so that DOTD can change standards, procedures, and priorities to prevent similar incidents from occurring in the future. An effective risk management program relating to tort liability cases for road hazards should include a mechanism to categorize and analyze road problems likely to generate lawsuits and then communicate this to the highway department.

## **Improved Feedback Could Help DOTD Better Manage Hazardous Road Conditions**

Current risk management literature suggests having a good communication system to help reduce losses related to road hazards. It also suggests that court proceedings should be analyzed to see if a problem area has been identified that has the potential for additional future liability against the government.

In addition, it is important to collect data on the number of claims and losses and the categories in which the losses occur. The objective is to classify functional areas, such as edge drop-offs, and geographic locations that are most likely to generate lawsuits and large judgments. Accordingly, such information should be used to target resources to areas and locations for which the agency is most vulnerable.

Our research shows that ORM collects data on losses and has the capability to categorize losses by type and location. ORM officials say that they send DOTD the following data relating to claims:

1. ORM's list of claims are sent quarterly to all districts and several divisions at headquarters, as designated by DOTD.
2. Copies of non-lawsuit claims, checks or denial letters, and periodic printouts of the status of lawsuits are sent only to the districts. (Districts also receive copies of lawsuits served on DOTD from its Legal Division.)



Our review of ORM's report distribution list disclosed that each of the designated DOTD personnel receive a list of claims only for their location. However, DOTD has not designated anyone at headquarters, such as the Secretary, General Counsel, or Chief of Maintenance, to receive comprehensive reports of all road hazard claims for the department. Such comprehensive reporting is necessary to analyze claims in total to effect changes in policy, planning, budgeting, and other top management functions.

DOTD personnel acknowledge receipt of the management reports, but contend they are not useful for the following reasons:

- ◆ The reports contain only basic information on road hazard claims and not the reason for the loss or information on whether the roadway caused the accident.
- ◆ The reports are not always received in a timely manner.
- ◆ The format of the reports needs to be changed.

The lack of a coordination on the outcome of claims was revealed in another study, "Investigation of Legal Claims Against the Department of Transportation and Development." The Louisiana State University - Department of Civil Engineering conducted this study, which concluded that although ORM and DOTD interact on an informal basis, there is no formal mechanism in place to provide feedback. The study also recommended that ORM regularly supply DOTD with formal management reports. Such reports should include both closed and pending cases and be coded for location, so that DOTD can identify areas with poor maintenance or substandard facilities.

### **Categories of Losses Disclose Need for Effective Communication of Claims Outcome**

An analysis of the road hazard claims could assist DOTD in many ways. We summarized a sample of 50 road hazard claims from the fiscal years 1992-1994 as shown in Exhibit 3-1 on the following page. The largest category, in terms of number of claims, related to improperly maintained roads. Twenty-one or 42 percent of the claims resulted from potholes, ruts, and other defects in the roadway. The second

largest group of claims, in terms of dollars, was for shoulder defects. ORM paid out \$345,960 in one case where a shoulder drop-off of 4½ inches was found to be the cause of the accident. However, shoulder drop-offs are not made first priority, according to DOTD procedures, until they are five inches in depth. A similar, more sophisticated analysis of the cause, location, and outcome of these cases could cause DOTD to reconsider its policies.

**Exhibit 3-1**  
**Types of Road Conditions Which Led to 50 Claims/Lawsuits**  
**for Fiscal Years 1992 through 1994**

Roadway Condition	Number of Incidents	Total Amount Paid in this Category
Improperly Maintained Road	21	\$ 43,332
Damage to Others	5	870
Bridge Accident	5	44,737
Improper Design	4	611,500
Improper Sign/Controls	4	97,000
Shoulder Defect	3	400,960
Failure to Maintain Right-of-Way	2	1,300
Improperly Maintained Traffic Control	2	6,500
Accident in Construction Area	1	15,000
Foreign Object in Road	1	2,000
Railroad Crossing	1	1,000
Pedestrian Slip and Fall	1	500
<b>TOTALS</b>	<b>50</b>	<b>\$1,224,699</b>

Source: Prepared by legislative auditor's staff from a non-statistical sample of 50 randomly selected claims reviewed at ORM.

### **DOTD's Role in Claims Process Should Be Expanded**

A good working relationship should be established among all the involved parties in a claims investigation process from initial filing of the claim to final payment. DOTD only passively participates in the claims investigation process. This can be partly attributed to the lack of clearly defined responsibilities and coordination within and among all affected departments. DOTD's lack of involvement at certain points in the process may impact the outcome of the claim or lawsuit. Defending claims require careful preparation and close coordination among all the parties involved.

The road hazard claims investigation process involves, at a minimum, the use of the accident information, witness statements, and a review of DOTD records to see if the state was at fault. According to current literature, highway records that could be reviewed include correspondence, logs, diaries, inspection sheets, plans, drawings, maps, photographs, and other data.

Currently, the road hazard claims investigation process is coordinated between the ORM Claims Unit and the Attorney General. However, DOTD only provides requested information and does not have any input into the final claims determination. During the investigation of the claim, ORM requires DOTD's district offices to verify the following information:

1. *The alleged accident occurred on a state maintained highway or road*
2. *Existence of the damage*
3. *Whether the state had knowledge of the defect before the alleged accident*
4. *The existence of any contract which may exist between the state and any municipality, contractor or other party*

The DOTD has recognized the need for a central point of contact, by employing a legal investigator, but this effort has not been adequate. According to DOTD's legal investigator, he is to work as a liaison between ORM and the Attorney General's office. He locates documents, answers interrogatories, or tells ORM or the Attorney General's office where they can find the information. However, because of the volume of cases, the investigator says he is not able to provide all the information. As a result, ORM usually goes directly to the districts for information.

In our review of 50 randomly selected claims, at least half showed evidence that ORM or its contracted investigators contacted the individual DOTD district offices directly to obtain information regarding the road hazard claims. According to DOTD Legal Division personnel, they tell both defense and

plaintiff's attorneys to contact the district offices directly for information. A central point of contact could ensure that all necessary information is obtained by the defense attorneys. At the same time, a central point of contact could ensure the plaintiff's attorneys receive only accurate and required information.

Furthermore, according to DOTD officials, DOTD personnel are not included in any reviews of the claim before determination of future action on the claim, such as settlement or court action. The ORM adjusters develop the claim and review them with their supervisor. If the claim will be paid or settled for over \$12,500, the claim also receives a review by the claims council. The claims council is composed of only the ORM Claims Unit State Risk Claims officer and two ORM supervisors. According to ORM officials, the claims council process is a quality review of the ORM adjusters' recommendation. Depending on the amount of the claim, the following additional reviews take place:

1. Over \$25,000, Attorney General's office
2. Over \$200,000, Commissioner of Administration
3. Over \$500,000, Joint Legislative Committee on the Budget

The DOTD Safety Section has recognized that claims should be validated through proper investigation. In a presentation to the DOTD engineering conference in February 1995, the safety administrator recommended the development of a task force approach to accident investigation and other strategies relating to road hazards.

The presentation centered on developing an accident reduction program that would include all the involved agencies. According to the presentation, to be effective, the accident reduction program should have coordination and clearly defined responsibilities within and among all the affected departments. However, the accident reduction program is in the early planning stages and it has not received the needed resources or official approval from DOTD upper management.

## **Effort to Improve Coordination May Not Be Implemented**

One statewide effort that could improve coordination among the agencies involved in highway safety issues, which would include road hazards, may never be established. The Louisiana Safety Management System (LSMS) is a comprehensive effort by the state to gather safety related state agencies and organizations together to make the state highways safer to the public. LSMS was required under the federal Intermodal Surface Transportation Act of 1991. However, the requirements of the ISTEA have since been repealed by the National Highway System Designation Act of 1995.

LSMS is a strategic planning and program evaluation process to assist decision makers in the selection of cost-effective strategies and actions to improve the safety and efficiency of travel on all public roads in the state. LSMS, if implemented, may provide more of a coordinated effort among all of the agencies that identify the risks relating to road hazards. The basic goals of LSMS are:

1. Prevent and reduce the number and severity of traffic accidents.
2. Ensure that all opportunities to improve highway safety are considered.
3. Provide a focal point for a cooperative effort for state, local, and regional agencies, and citizens groups in selecting and implementing an effective Safety Management System.

DOTD is the focal point of LSMS. LHSC is working very closely with DOTD in this effort. DOTD submitted an LSMS work plan to the Federal Highway Administration for approval in December 1994. The work plan was approved with recommendations. In February 1996, DOTD officials said the LSMS is in the early planning stages and it has not received official approval from DOTD's new administration. Although LSMS is no longer federally required, the LSMS organizers say they would like to implement a Safety Management System for Louisiana.

The organization of LSMS is shown on Exhibit 3-2 on page 39. The steering committee of LSMS consist of DOTD, LHSC, LSP, the Department of Public Health, and the Louisiana Planning Commission. The basic structure consists of five technical support committees. DOTD also has five in-house subcommittees with the task of updating manuals, programs, and other procedures, as necessary, to ensure safety is of utmost importance in all DOTD activities. As programs develop, an evaluation committee consisting of DOTD, LHSC, FHWA, and the National Highway Traffic Safety Administration review and evaluate LSMS activity.

According to both LHSC and DOTD officials, all of the LSMS committees either have been or will be established. In addition to DOTD and LHSC, there are many other agencies participating in the LSMS. Among these agencies are the ORM and DPSC.

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## **Agency Recommendations**

**3.1.** DOTD, ORM, and other involved agencies should improve coordination in the following areas:

- ◆ Implement an effective loss prevention program for road hazard claims.
- ◆ Communicate the outcome of road hazard claims.
- ◆ Investigate road hazard claims.

**3.2.** DOTD should enhance its road hazard investigation function and establish uniform procedures for providing information. This function should:

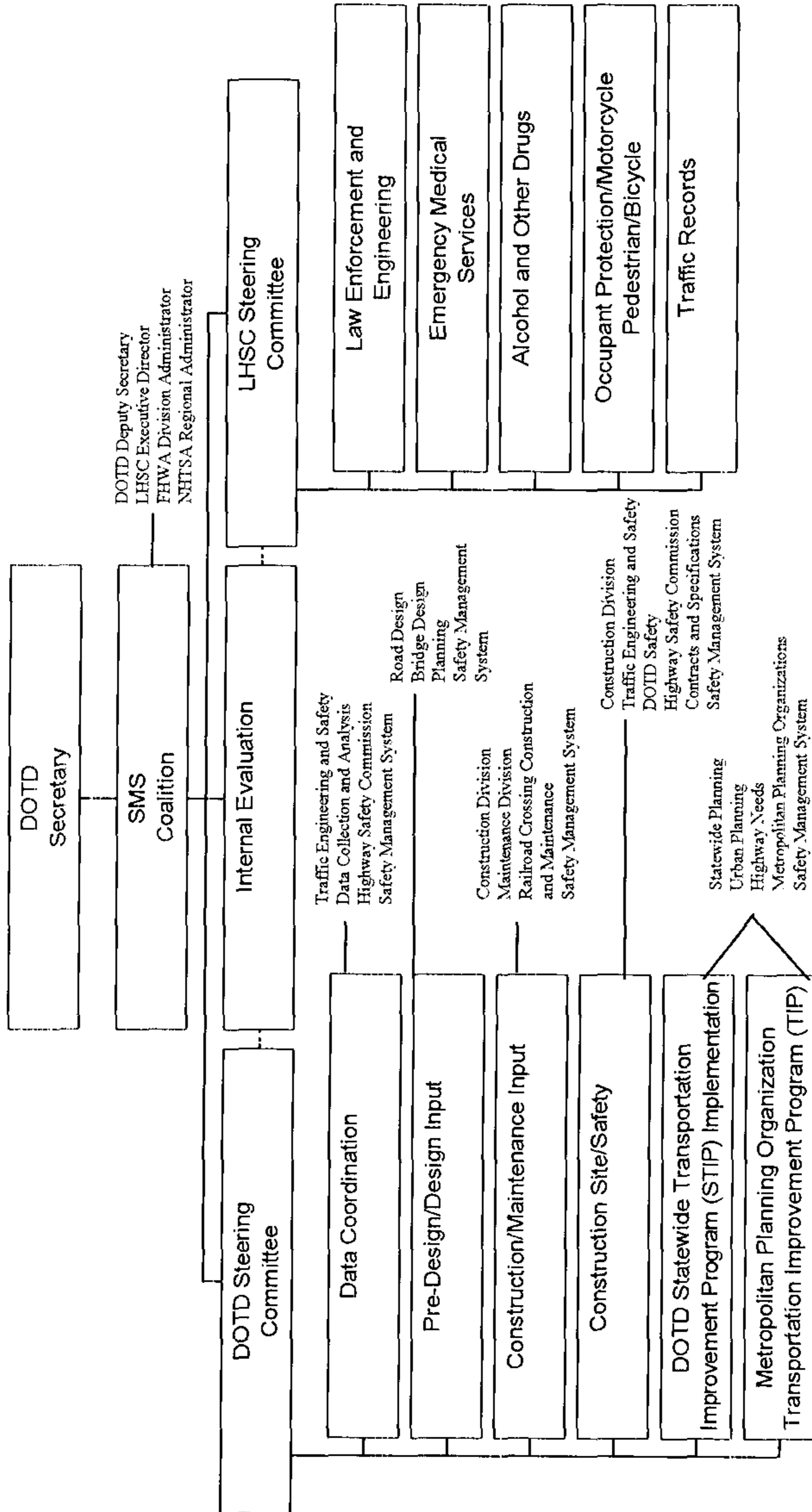
- ◆ Obtain road hazard claims information from ORM.
- ◆ Analyze road hazard claims information to determine the categories in which the losses occur.

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### **Agency Recommendations (Cont.)**

- ♦ Analyze the road hazard cited in the claim to determine if the location is actually hazardous from an engineering or highway safety perspective and also giving consideration to the outcome of prior claims for that particular location.
  - ♦ Use the results of the analysis in planning, budgeting, and policy-making, for all department operations, so that roadway deficiencies cited in specific claims can be addressed.
  - ♦ Coordinate with ORM in providing all information on road hazard claims to help with the investigation of claims.
- 3.3. DOTD should complete the LSMS as planned before the repeal of the federal mandate to help improve coordination among the agencies involved in highway safety.

**Exhibit 3-2**  
**State of Louisiana**  
**Safety Management System**  
**Organization Chart**



Source: Prepared by legislative auditor's staff from a similar flowchart in the Safety Management System work plan provided by the Louisiana Highway Safety Commission.





# Chapter Four: Identifying and Repairing Unsafe Roads

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## Chapter Conclusions

DOTD has several programs aimed at keeping roadways safe by identifying high risk conditions. However, none of the programs specifically address areas that have been the subject of claims or lawsuits. Also, improvements are needed in each of the programs so that roadway deficiencies do not go undetected and unrepaired.

According to department officials, there is insufficient funding in the nine district offices of DOTD, even though the districts are responsible for carrying out the programs to identify unsafe roads. Many unsafe roadway deficiencies can be remedied with routine maintenance at the district level.

The districts are also not organized in an efficient and economical manner. Thus, the department cannot coordinate the resources among and within the districts. As a result, resources may not be allocated where they will give the most benefit.

Furthermore, there is insufficient funding to correct all the unsafe roads. Accordingly, the department must prioritize those projects with the greatest need of major correction. However, the prioritization process does not specifically consider many high risk accident locations as well as road hazards cited in claims and lawsuits. It may be years before new projects can be added to the program because of fiscal constraints.

## Programs to Identify Unsafe Roads Need Improvement

According to DOTD officials, the department has established at least five department-wide procedures to identify unsafe roads. However, DOTD does not have a procedure to ensure road deficiencies cited in specific claims and lawsuits are addressed, as discussed in Chapter Three. The five procedures that the department identified are:

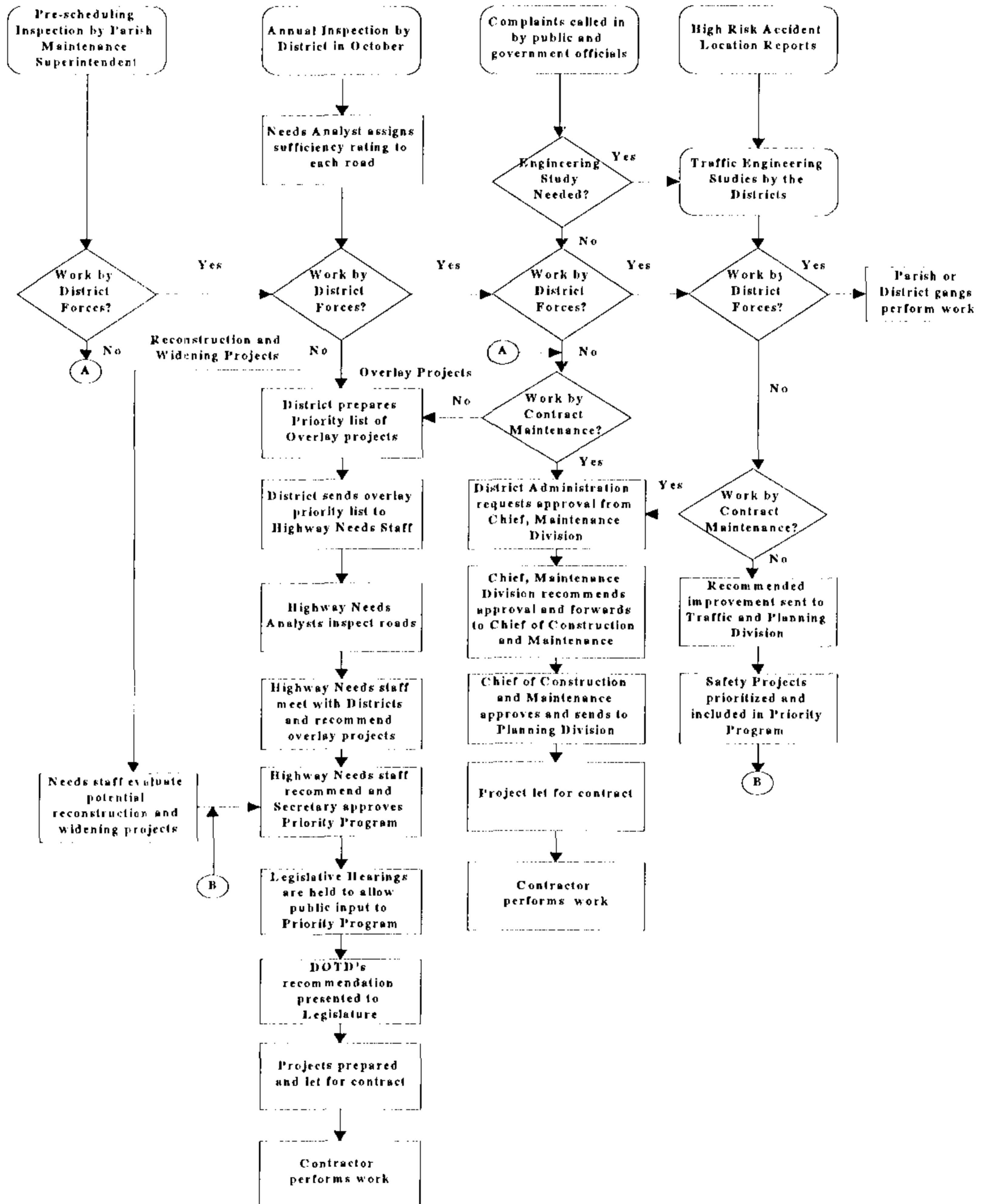
1. Prescheduling inspections
2. Annual needs study
3. Complaints system
4. Traffic studies
5. High risk accident location analysis

Improvements are needed in the application of each of these methods. Without these procedural improvements, some high risk areas and situations may not be identified. This increases the risk that the state may be held liable in the event an accident occurs.

The identification of high risk areas and situations is a basic element of an accident reduction program for effective risk management. DOTD employees or the general public can identify unsafe roads using the above listed methods. For the most part, the nine DOTD district offices are responsible for carrying out these procedures.

Exhibit 4-1, on the following page, summarizes the processes for identifying and repairing unsafe roads. Repairs can be made by DOTD staff, construction contract, or maintenance contract. Project duration can be from one year for overlay to eight years for major reconstruction, according to DOTD data. The term "highway priority program," included in Exhibit 4-1, is a listing of highway projects on which construction is to begin within the subsequent fiscal year and projects in various preconstruction stages.

**Exhibit 4-1**  
**Summary of DOTD Processes for Identifying**  
**and Repairing Unsafe Roads**



Source: Prepared by legislative auditor's staff from interviews and other data gathered from various divisions of Department of Transportation and Development.

## **Prescheduling Inspection Not Always Conducted in Accordance With Policies and Procedures**

Prescheduling inspections may not be documented in all cases at the time of inspection. Department procedures strongly suggest documenting roadway problems during inspection. Without documentation, a potentially hazardous condition could be observed, but not recorded and scheduled for repair. This could increase the risk of accidents resulting from a road hazard and the state being held liable.

Each DOTD district has a parish highway maintenance superintendent assigned to each parish within the district. The parish superintendent supervises all routine maintenance of highways, roads, and bridges in the parish. The maintenance superintendent also inspects each state road in his parish to have first-hand knowledge of the condition of the roads. DOTD's procedures for planning maintenance work requires the parish maintenance superintendent to inspect the roads once a week. However, for larger parishes, the inspection should occur once every two weeks.

This informal inspection allows the parish superintendent to schedule work and make work assignments to the parish workers or gangs. Department officials say the bulk of the detection of road defects is found with these inspections and most of the districts' work is currently based on these inspections.

DOTD's procedures require that the parish maintenance superintendent use the Prescheduling Inspection Form during his weekly/bi-weekly inspection to list the conditions that need repair. Furthermore, the procedures suggest using this list to prepare the weekly schedule and to note when repairs are completed. One parish superintendent that we interviewed said he did not keep a written log of his inspections, but relied on his memory. However, the district maintenance engineer provided an example of a completed prescheduling inspection form for that parish. Therefore, the parish superintendent is relying on his memory to complete the Prescheduling Inspection Form instead of completing it during his inspection.

## **Annual Needs Study Inspection Is Presently a Subjective Process**

Currently, the method used for the annual needs study for the highway priority program, which is discussed later in this chapter, is based on an inspector's subjective evaluation of the "feel" of the road. Department officials say the evaluation of road conditions should be done in a consistent and coordinated manner so that unsafe roads can be prioritized for repairs.

In the fall of each year, the parish maintenance specialist and the parish superintendent jointly inspect all state roads in each parish. This formal inspection provides road condition information for the annual needs study for the highway priority program. It also provides an inventory of the work to be done for the coming year and helps the district prioritize its work.

The specialists and the superintendents ride each road and assign each one a sufficiency rating. The sufficiency rating is a formula that compares road standards to various factors about the road condition. The sufficiency rating also considers the volume of traffic and safety features, such as shoulder and surface width.

In 1994, DOTD contracted for the services of an automated road analyzer vehicle to help collect data for the annual inspection. The machine collects information about the smoothness of the ride and the amount of cracking and other pavement problems that are present on each road. Department officials say the data collected by the machine coupled with other DOTD data will allow engineers to identify a statewide course of action of what should be done to each pavement and when it should be done.

Department officials also say that the road analyzer will provide more consistency and may eventually eliminate some of the subjectivity in the inspection process. The machine will also provide more support. Furthermore, the road analyzer process will optimize funds and result in real improvement over the current process.

However, it will take almost four years to fully implement this new data collection system. The road analyzer must ride all the roads twice to collect the data, but it takes almost two years for the machine to ride all the roads once. According to department officials, as of February 1996, DOTD has finished the first ride and is about to start the second ride. By the time this process is completed, the condition of roads may further deteriorate.

### **Complaints System Procedure Not Followed, Monitored, or Publicized**

DOTD's formal complaint procedure may not be followed in all instances by employees who handle complaints. There is also no headquarters oversight of this area, according to DOTD officials. In addition, it is not a well-known fact that citizens can call in complaints. However, current literature suggests when such procedures are not followed, it can demonstrate a negligent and uncaring attitude on the part of the highway department. Accordingly, unsafe road conditions are not addressed and the state's defense against road hazard claims is diminished.

DOTD has a uniform policy and procedure to record and respond to notification of highway conditions requiring investigation or repair. DOTD provides a toll free telephone number that citizens can use to make complaints. However, the phone number is not well publicized, according to ORM and LSP officials. The complaint procedure is a way for government officials and the general public to submit complaints relating to unsafe roadway conditions.

LSP and other law enforcement agencies could use the complaint system to report hazardous road conditions at the time an accident occurs or otherwise. State police headquarters officials say they have not established a statewide procedure for the troops to notify DOTD of road hazards. However, in our phone survey, all nine troops say they notify DOTD immediately when accidents occur that involve roadway conditions. One third of the troops also say they have implemented their own troop-specific report that documents the hazardous condition and details of contact with DOTD.

According to our research, the complaint system can be an excellent defense if it can be demonstrated in court that complaints were received, investigated, and properly treated. On the other hand, if the plaintiff can show that complaints are not properly received, investigated, and treated, defense of road hazard claims is more difficult.

In February 1995, DOTD updated its complaint procedure. The prior policy required the districts to prepare a complaint form and enter such on the district's personal computer. The districts then transmitted the information monthly to headquarters on computer media to establish a central history file. Under the new policy, notice and resolution of the complaint can be input directly into a subsystem of the DOTD mainframe computer upon receipt of the complaint. The new procedure provides more control in that pending complaints can be tracked.

In February 1996, department officials at headquarters in the Maintenance Unit said that headquarters does not currently monitor the complaint system, but makes it available to the districts. These officials also said they do not know the extent of the district's use of the on-line complaint system and that on any given date the system may not work. Furthermore, these officials said that the complaint form is not always used.

### **Problems Identified But Limited Resources to Address Them**

Traffic studies are a method that DOTD uses to investigate some complaints. These studies can identify potentially unsafe road conditions, especially relating to traffic signals, signs, and speed limits. However, there is a backlog in various sections of the department responsible for correcting these problems, especially relating to the installation of traffic signals. In addition, there is no follow-up to determine if the corrective action addressed the problem. These weaknesses can increase the state's liability for road hazards, especially if a problem has been identified and action has not been taken in a timely manner.



Annually, DOTD districts' traffic operations engineers investigate approximately 1,200 requests statewide from citizens or government officials for traffic control measures. Examples of typical studies requested are the need for additions of stop signs and traffic signals or changes in speed limits.

DOTD's general instructions to the district traffic operations engineers say that the public should be encouraged to request traffic studies in writing. The department's 1993 Highway Safety report noted the response to these requests are generally immediate and the corrective action, if within DOTD's capability, is also likely to be immediate. District traffic operations engineers study the request and send the requester a copy of the recommendation. A department official said that because of insufficient resources they are not able to do follow-up studies on locations after they are corrected, even though it would be beneficial.

According to a department official, approximately two thirds of the modifications recommended can be authorized by the district. The other one third of the modifications are sent to the Traffic and Planning Section at headquarters for authorization. According to this official, headquarters approves nearly all of the districts' recommendations.

Once problems are identified by a traffic study, then corrective action is taken by the appropriate section. However, various department officials say that backlog problems exist in some districts and at headquarters. These officials attribute these backlog problems to a lack of manpower. They also say there is a two-year backlog in the Traffic Signalization Unit of the Traffic Services Section at headquarters that installs traffic signals statewide.

The Louisiana Transportation Research Center contracted with Louisiana State University's Engineering Department to evaluate the operations of the Traffic Signalization Unit. According to the report, issued in October 1995, the backlog in this unit was approximately two years or 530 work orders for 22 employees and two supervisors to handle statewide. The report found that the unit was well managed under the limitations of manpower, material, and equipment with which it works. The report recommended an additional \$4 million in funding for three years to eliminate the backlog.

The LSU report also noted that the backlog of work orders is potentially a source of tremendous legal liability for the state. Once documentation has been completed and approved justifying the request for signal installation, and a reasonable amount of time has passed for the installation, there is little legal defense available. This is especially true if the damages occurred because of the lack of a traffic signal.

### **High Risk Locations Not Promptly Identified and Repaired**

Another DOTD method that identifies unsafe roads and locations, by analyzing those with an abnormal number of accidents, does so nearly a year and a half or more after the accidents occur. Several problems exist with this process: outdated and incomplete accident data, excessive work load of the districts, and limited funding. This method, if administered in an effective manner, could be an effective way to identify high risk areas and situations that have a higher probability of losses.

DOTD Planning Section receives accident data from the LHSC. Using these data, this section determines high risk accident locations for each major roadway classification. However, as discussed in Chapter Two, the accident data entry at LHSC is six to eight months backlogged and the data are sometimes incomplete. As of February 1996, a section official said they completed analyzing 1994 accident data and are in the process of mailing listings of high risk accident locations to the respective DOTD districts.

Through the Highway Safety Improvement Program, DOTD administers hazard elimination projects. Louisiana receives only \$3 million annually in federal hazard elimination funds to fund a few projects aimed at reducing the number and severity of accidents. Consequently, the remainder of the safety improvement projects are funded by other means based on the availability of funds and overall departmental work priorities.

To select hazard elimination projects, DOTD conducts a statistical analysis of high risk accident locations. To be considered a high risk accident site, a location must have a minimum of five accidents per year and have an accident rate twice the state average for that location. There are some exceptions for other locations exhibiting safety deficiencies.

Each district evaluates the top five locations for each roadway classification. The districts usually study these locations within six to eight months, depending on how much work they have, according to DOTD officials. Therefore, because of the time it takes to receive data from the LHSC and the time it takes to initiate a study, high risk accident locations are studied a year and a half or more after the accidents occur.

The district traffic engineer's evaluation of the high risk accident locations can result in several different solutions for correcting the location. However, those locations correctable with a construction contract are the only ones considered as safety projects. A cost/benefit ratio analysis is then conducted to prioritize the projects. Highest priority is given to those projects that will reduce the number and severity of accidents for the lowest cost.

Because of funding limitations, some safety projects may not be considered in the priority list of safety projects. The rejected projects are then submitted for inclusion in the highway priority program. Furthermore, those projects on the priority list of safety projects still might not be done if no funding is available in the highway priority program. If the safety improvement is made, DOTD later conducts an evaluation to determine the effectiveness of the improvement.

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**District  
Operations Need  
Funding,  
Coordination,  
and Oversight**

According to DOTD officials, there is insufficient funding of the nine district offices. Many types of road hazards can be remedied with district maintenance. In some instances, this is an interim solution until the project is included in the highway priority program for major reconstruction or overlay. In addition, redirecting some highway funds to the districts could help to mitigate or correct these highway deficiencies. Furthermore, DOTD headquarters has not exercised much oversight of the nine districts. This has led to some inefficiency and ineffectiveness.

## **District Funding May Be Insufficient to Identify and Repair Unsafe Road Conditions**

The nine DOTD district offices identify unsafe roads and repair a majority of the road hazards. However, according to department officials, the districts have not been adequately funded. As a result, the department has not been able to keep up with its work load and replace obsolete equipment used in the maintenance activities.

As discussed in the prior section, the districts carry out the majority of the department's methods for identifying unsafe road conditions. In addition, department officials and the Attorney General's office say the majority of road hazard claims and lawsuits relate to potholes, shoulder defects, signage, signalization, construction zones, and design problems. According to department officials, these types of problems can be corrected by the district forces and are considered routine maintenance. They also say most of these types of defects are discovered during the weekly pre-scheduling inspection.

However, several department officials say that the districts do not get enough funding and cannot keep up with these roadway deficiencies. A department official says that all the districts receive a certain amount of money that is proportionately distributed to each district based on roadway mileage in the district and other factors. The district funds are used for salaries, supplies, minor equipment, and operational services, such as rent, utilities, and contractual services. Larger equipment is purchased by headquarters.

Several department officials also said that much of the equipment used to perform maintenance activities is outdated or broken, takes months to get repairs, and is, thus, expensive to operate. In 1995, DOTD determined that 41 percent of its equipment needed to be replaced at a cost of \$63 million. The department receives \$7-8 million a year for replacement of equipment, according to department officials. DOTD informed the House Transportation Committee in February 1996, that the department needs a revolving fund to provide for future equipment replacement.

DOTD may have some flexibility to redirect more funds to the districts for routine maintenance. The department has a way to determine what the maintenance needs actually are, but *this procedure has not been updated for some time*. However, department officials say since maintenance has become budget driven and not needs driven for the last 16 years, this procedure has not been used by this department. According to an official with DOTD, limited state funds are available for non-routine maintenance (reconstruction and overlay) after all other allocations of annual appropriations. Between \$15-\$20 million is available each year for state funded construction, which is actually non-routine maintenance to existing roads. This money could be redirected to some extent to routine maintenance until maintenance needs are more in line with the budget.

As reported in the Legislative Auditor's Infrastructure Staff Study in February 1995, it is impossible to determine from the budget how much money is being allocated to routine maintenance and what priority it has among the department's other functions. Highway maintenance was not budgeted separately within the department. In the fiscal year 1994-1995 General Appropriations Act, the legislature attempted to address this problem by separating the district offices from the rest of the highway program because the district offices perform most of the maintenance activities.

The report further states that although the districts have primary responsibility for maintenance, they perform several other activities as well. According to department policy, the districts are also responsible for the construction, traffic engineering, and design work of the roads and bridges in the district. Furthermore, the districts do not perform all *maintenance functions*. Some maintenance functions are conducted at the headquarters level. However, department officials recently reported that in fiscal year 1996-1997, maintenance functions previously budgeted at the headquarters level are now budgeted to the districts in an effort to combine all maintenance activities.

## **More Coordination Needed Among and Within Districts**

There is little headquarters oversight of the districts. Districts operate in a decentralized fashion. As a result, there is little coordination among the districts so that resources will be allocated where they will do the most good. In addition, there is little coordination of resources among parishes within the districts.

The nine DOTD districts operate independently of each other in many ways. Each manages its own resources and provides highway related services. Each district administrator reports directly to the DOTD Secretary. Although the Chief of the Maintenance Division is part of the operations staff at headquarters, this position has no line authority over district staff who carry out routine maintenance and oversee construction contractors.

Our research reveals that while decentralization ensures the availability of some resources, it can be extremely costly. For instance, decentralization can result in a lack of equipment and materials standardization in the overall organization, low usage rates, and unnecessary duplication of these resources. If properly designed, a more centralized system can be responsive to users while achieving greater control of these resources.

Furthermore, our literature research revealed equipment management is an essential function. It involves deciding when to replace worn-out, inefficient, or obsolete equipment. This is important due to the rapid change in technology and the growing reliance on equipment to displace human resources and increase productivity.

Officials throughout the department say that more coordination is needed within the department. One department official said there needs to be more emphasis on formalized communication between headquarters and districts. Another department official said that some districts have extra supplies and/or equipment, whereas some districts lack supplies and/or equipment. However, there is no process to balance these inequities.

An ORM official suggested that districts could realign assets according to need. In addition, a parish superintendent said that he could borrow equipment from other parishes within his district, but other parish superintendents do not like to loan equipment because of the difficulty of getting repairs and replacements. With more headquarters oversight and coordination, district assets could be redirected to the areas where they are needed most.

The primary headquarters oversight consists of quarterly performance appraisals conducted by the Maintenance Division. According to Maintenance Division officials, the performance appraisals began in 1993. This division randomly selects three different types of roads in a district and inspects them from different aspects. District officials are not notified of when the inspections will be made. The districts' performances are then ranked.

Maintenance Division officials said they basically use this quality assurance procedure in a positive manner to recognize the district and parish gang with the best ratings. These officials say that they do not have the resources to look at every road in the state system. Although this process recognizes the "best" district, it does not take into consideration other factors that may affect performance, such as the amount of broken equipment.

This process enhances DOTD's district oversight by measuring individual district performance. Districts that are ranked low alert the department to where problems exist. In addition, the department can use this information to determine whether these problems result from poor management, lack of funds, or some other condition. Furthermore, the department can use this information to develop the necessary corrective action, which, in turn, could improve the overall condition of the state's roads.

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## **Highway Priority Program Does Not Stress Road Hazards**

Since there is insufficient funding to correct all unsafe roads, the department prioritizes those projects in greatest need of major repair. These projects are determined based solely on an engineering or highway safety perspective. Furthermore, it may be years before new projects can be added to the program because of fiscal constraints. As explained previously, the prioritization process does not include many projects determined by the high risk accident location analysis. Furthermore, although elements of safety and the accident rate are considered, the prioritization process does not necessarily consider road conditions cited in claims and lawsuits as a component of safety.

As explained in Chapter Three, this condition can be partly attributed to the lack of communication of claims outcome and the need for a DOTD process to analyze the claims. More importantly, DOTD officials say that claims data should not be used to set program or project priorities because, regardless of the ORM or judicial ruling, the road condition may not be hazardous from an engineering or highway safety perspective.

State law requires DOTD to undertake a continuing needs study of the various highways to bring them up to current standards or to replace them. In the effort known as the annual highway needs study, mentioned earlier, DOTD compares current road conditions to established criteria. The criteria are based solely on an engineering or highway safety analysis and do not necessarily consider claims data. Current and projected road conditions that do not meet desired criteria are identified, with a recommendation for the type of action required and a time frame for completion. Typically, the needs study may recommend reconstruction, widening, or resurfacing (overlaying) either now, in one to five years, or later.

The highway needs data is used as a basis for recommendations for new projects to be included in the highway priority program. New projects are added to the program only if there is a reasonable expectation that funds will be available to implement the pre-construction phases and begin the projects.



Over the years, the highway priority program accumulated more projects than could be funded. The legislature adopted Senate Concurrent Resolution No. 49 in the Third Extraordinary Session of 1994 to authorize DOTD to purge the program of projects considered low priority or that did not have specified beginning dates. This way only those projects that can be funded are included in highway priority program. DOTD recommended to the legislature in March 1995 that almost \$1 billion in projects be purged from the program in accordance with this resolution. In February 1996, DOTD reported to the legislature a reduction in the number of projects in the highway priority program.

Additional new projects are selected based on various engineering and highway safety analyses conducted and a prioritization process. LSA-R.S.48:229 lists some factors that should be considered such as:

1. Alignment of existing roads
2. Width and/or elevation of the existing roadway and shoulder surfaces
3. Width of the rights-of-way
4. Cost of construction
5. Type and volume of traffic
6. Condition of structures and drainage
7. Accident rate
8. Geographical distribution of the roadways to be constructed or reconstructed

Therefore, elements of safety and the accident rate are listed above as considerations in the prioritization process. However, specific locations or conditions that have resulted in claims and judgments, but have not been identified by other DOTD methods, are not explicitly considered when selecting new projects for the program. DOTD officials say regardless of the ORM or judicial ruling the road condition may not be hazardous from an engineering or highway safety perspective. Accordingly, a roadway deficiency cited in a claim or judgment is not considered unless one of the following conditions exist:

- ◆ The accident location, derived in the high risk accident location analysis, happens to be the same location where a loss occurred from a claim against the state.
- ◆ An exception is made and the claim is brought to the highway needs staffs' attention.

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## **Matters for Legislative Consideration Two**

The legislature may wish to consider redirecting some of the funds that are used for non-routine maintenance projects, such as reconstruction and overlay, to routine maintenance projects completed by the district offices.

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## **Agency Recommendations**

- 4.1. DOTD should review its methods used to identify unsafe roads and address the deficiencies that are discussed in this chapter.
- 4.2. DOTD should review the organization of the district offices and coordinate resources among the districts to assure that they operate in an efficient and economical manner.
- 4.3. DOTD should revise the prioritization process so that hazardous road conditions cited in claims are given more emphasis in the highway priority program. This can only be done after the following actions have been taken as recommended in 3.2:
  - ◆ ORM and DOTD have established a means to provide DOTD with usable information on road hazard claims.

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### Agency Recommendations (Cont.)

- ◆ DOTD has taken steps to analyze the claim to determine if the road hazard cited in the claim is actually hazardous from an engineering or highway safety perspective. Nevertheless, such an analysis should not be based on measurements alone, but the analysis should also consider the outcome of prior claims for that particular location.
- 4.4.** In the event DOTD cannot immediately correct road defects cited in claims, the highway department should warn motorists of defects until they are repaired or take action to improve safety at these sites.

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# Chapter Five: Determining the Amount of Liability

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## Chapter Conclusions

A recent constitutional change and several recent statutory changes could lower the state's future liability in lawsuits for road hazards. Nevertheless, some other Louisiana legal provisions potentially increase the state's exposure to liability or the amount of money the state may ultimately have to pay in judgments. Reforms can be made to tort laws and other legal provisions to decrease the state's exposure to liability.

Despite any changes made to tort laws, there are still some laws governing DOTD that may increase liability for accidents resulting from road hazards. State law requires DOTD to base the maintenance and repair of roads and bridges on the amount of money available instead of the highway needs. However, the amount of money available is not sufficient to repair the state's roads that are rated fair or poor. DOTD's main source of revenue, the Transportation Trust Fund, is funded by a flat tax that does not increase with inflation.

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## Some of Louisiana's Liability Laws Recently Amended

Louisiana's liability laws pertaining to lawsuits against the state have undergone several changes in the past 20 years. For several years, Louisiana had potentially unlimited liability for injury to person or property because the doctrine of sovereign immunity was abolished in 1974. Over the years, several changes were made to the liability and tort laws that will reduce the amount the state has to pay when it is found negligent. Additional efforts are being made to further limit Louisiana's liability.

## Damages Cap Has Undergone Many Revisions

As mentioned in Chapter One, Louisiana once enjoyed sovereign immunity from its tort liability, but it no longer does. Recognizing judgments against the state had exceeded its ability to pay them, the legislature passed Act 452 of 1985, amending LSA-R.S. 13:5106. This act limited the state's liability and that of its political subdivisions by placing a \$500,000 cap on general damages recoverable in any suit for personal injury or wrongful death.

However, in 1993, the Louisiana Supreme Court, in *Chamberlain v. State of Louisiana, through DOTD*, 624 So.2d 874 (La. 1993), held that the \$500,000 cap was unconstitutional because it violated the constitutional prohibition against sovereign immunity in tort and contract suits. Thus, elimination of the cap on damages for personal injury or wrongful death left the state once again with potentially unlimited liability.

A study published in 1994 in Public Finance Quarterly found that unlimited government liability has a significantly negative effect on the state's quality of highway maintenance. According to the study, states that waive sovereign immunity and do not expressly limit the dollar amount of judgments against the state tend to have a lower quality of road surface. This study points out that money spent on paying judgments could be redirected to better maintaining the state's highways.

The Martindale-Hubbell Law Digest (1994) showed that only seven states, excluding Louisiana, had no immunity from suit. The other 42 states had either partial or total immunity. Six of the states with partial immunity limit the amount of non-economic damages that can be recovered against the state.

Because of the excessive amounts of liability the state was incurring and trends in other states, the legislature approved a proposed constitutional amendment in the 1995 Regular Session. This amendment authorized the legislature to limit the amount of liability of the state, its agencies, and political subdivisions. Voters adopted the amendment in October 1995.

In conjunction with adoption of the constitutional amendment, the legislature also passed Act 828 of 1995 to amend and reenact several provisions relating to public liability limits. This provision amended LSA-R.S. 13:5106, which had been ruled unconstitutional.

LSA-R.S. 13:5106 then provided for a limit of \$750,000 for damages in any suit for personal injury or wrongful death, excluding damages for medical care expenses and loss of earnings (present and future). It also provided that limit of liability could be adjusted annually based on the consumer price index.

Since the passage of the amendment and the companion legislation, the Attorney General's office has filed a supplemental brief for the retroactive application of the liability cap. The brief will assist the Supreme Court in determining the effect of the recent passage of amendments to Article 12, Section 10 to the Louisiana Constitution of 1974. An affirmative decision would allow pending judgments to be governed by the 1985 statutes (\$500,000 limit) unless they fall under the new 1995 constitutional amendment effective November 23, 1995 (\$750,000 limit). This decision is still pending according to officials at the Attorney General's office.

According to an official at the Attorney General's office, the governor organized the Governmental Tort Reform Committee in early 1996, to address the tort liability laws affecting all governmental entities. This is because the parish and local governments have also incurred significant amounts of liability. The committee is composed of representatives from the Attorney General's office, the Louisiana Municipal Association, the District Attorney Association, the Sheriff's Association, the Division of Administration - Office of Risk Management, and the Governor's office. The committee's tort reform proposals were presented in the First Extraordinary Session of 1996.

An official at the Attorney General's office said one of the Governmental Tort Reform Committee's key proposals is to limit all damages. The committee's proposal would limit medical and lost income damages and general damages. However, this proposal was not adopted in the First Extraordinary Session of 1996.

Although the proposed changes to limit all damages were not adopted, the legislature made several other changes in the First Extraordinary Session of 1996. First, the legislature designated the primary laws governing suits against the state, as the "Louisiana Governmental Claims Act."

Second, the legislature amended LSA-R.S. 13:5106 to reduce the amount Louisiana has to pay from \$750,000 to \$500,000 for damages in all suits for personal injury or wrongful death to any one person, excluding damages for medical care expenses and loss of earnings (present and future). The amendment also repealed the provision that required the limit of liability to be adjusted annually based on the consumer price index. In addition, the amendment also limits the damages recoverable to \$500,000 per incident of serious or fatal injury rather than per claimant.

Third, the legislature inserted a provision in LSA-R.S. 13:5106 that ensures that the funds are used for the designated purpose. This new provision requires the court to order the governmental entity to establish a reversionary trust for the benefit of the claimant. All medical care and related benefits incurred subsequent to judgment are to be paid by the reversionary trust. This amendment also provides for any funds remaining in the trust to revert to the governmental entity upon death of the claimant or termination of the trust.

Finally, the legislature added a requirement that the suit must be served within 90 days of the pleading's initial filing. Prior law allowed the plaintiff's attorney to have the lawsuit served at any time after filing. According to an official with the Attorney General's office, some plaintiff's attorneys held the lawsuits for years before they had them served. This situation tended to weaken the state's case because the state's evidence was dated. This measure will help the state build a better case in a more timely manner.

### **Recent Change to Joint and Several Liability Law Will Reduce Amount the State Pays**

Louisiana Civil Code Article 2324, commonly known as "joint and several liability," at one time potentially increased the state's liability. Generally, the rule of joint and several liability makes each party liable for the entire amount of damages regardless of its responsibility.

In Louisiana, a plaintiff was allowed to recover 50 percent of recoverable damages even if one of the responsible parties is insolvent, unable to pay, or immune from suit. For example, if the plaintiff's damages are \$1 million and DOTD is found to be 10 percent at fault and another defendant, which is insolvent, is 90 percent at fault, DOTD will be liable for \$500,000 (50 percent) rather than the \$100,000 that corresponds to its degree of fault.

According to a survey conducted by the American Tort Reform Association (ATRA), several states have implemented reforms of their joint and several liability law. According to ATRA, the rule often has the unintended effect of turning a lawsuit into a search for a marginally involved party (for example, the state of Louisiana) whose pockets are deep enough to pay a sizable award.

ATRA's survey says that since 1985, 32 states have reformed their joint and several liability law by abolishing it completely or by limiting it to cases involving intentional torts, hazardous wastes, non-economic damages, or other limits. ATRA's survey also says that four states do not apply the doctrine of joint and several liability.

In keeping with the trend in other states, the legislature amended Civil Code Article 2324 with the adoption of Act 3 of the First Extraordinary Session of 1996. This amendment provides that when the state is only partially at fault in an accident, it cannot be made to pay all the damages when other parties at fault are unable to pay or cannot be found.

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### **Other Measures That Could Reduce Louisiana's Liability**

There are other measures, relating to tort liability claims for road hazards, that can help reduce the state's liability. An official with the Attorney General's office mentioned several areas that could be altered:

1. Interest calculation
2. Notice to file lawsuit
3. Design immunity



In addition, DOTD has initiated a research project to address the vehicle accident-related tort liability suits issue. The project will be completed in September 1996, and will include recommendations for future legislation.

**Interest calculation.** The statutory provision relative to the interest due on any claim for personal injury or wrongful death could be amended. Currently, LSA-R.S. 13:5112 says that interest shall accrue at 6 percent per annum. The Governmental Tort Reform Committee proposed amending the provision to accrue interest at 6 percent per annum or the legal interest, whichever is lower. This would allow the state to reduce the amount of interest to the lowest rate at the time.

**Notice to file lawsuit.** According to officials with the Attorney General's office and the ORM, the plaintiff now has a year to file a lawsuit. The governor's committee proposed establishing a procedure to put the state agency on notice within a certain amount of time that a suit will be filed. For instance, a plaintiff may have 180 days after the incident to notify the state agency that a suit will be filed. This measure gives the state more timely notice of a potential lawsuit. This allows the state to take measures to build a defense by collecting evidence while it is still available.

**Design immunity.** Several of the road hazard claims cases cited the road's design as the reason why the state was held liable, according to the official with the Attorney General's office. The governor's committee was considering recommending that the design of the road cannot make the state liable. This proposal would prevent claims against the state when the issue involves the road's design. As was illustrated in Exhibit 3-1 on page 33, more than \$600,000 was paid for four such claims between fiscal years 1992 and 1994.

**DOTD research project.** The DOTD has initiated a research project to address the vehicle accident-related tort liability suits issue. DOTD through the Louisiana Transportation Research Center (LTRC) is currently conducting a research project titled "Vehicle Accident-Related Tort Liability Suits in Louisiana." The proposed completion date for the project is September 30, 1996. According to data from the LTRC dated October 1995, the research will statistically analyze the accident history in Louisiana and propose remedial measures to reduce tort liability, including other necessary changes in the legal system.

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**Other Legal Provisions Increase the State's Liability**

Some legal provisions can potentially increase the state's tort liability. Two such provisions are:

1. Comparative negligence
2. Collateral source rule

These provisions can be altered with tort reform measures, so that Louisiana will pay less when it is found to be negligent. Many other states have enacted tort reform measures in one form or another relating to these provisions.

**Comparative Negligence Laws Increase the Amount Louisiana Pays, Even Though the Plaintiff Is Negligent**

Act 431 of 1979 amended Louisiana Civil Code Article 2323 to eliminate the doctrine of contributory negligence. Under the doctrine of contributory negligence, a plaintiff who was partially at fault in causing his injuries was completely barred from recovering any damages from the defendant.

However, the amendment to Louisiana Civil Code Article 2323, referred to as comparative negligence, now allows a plaintiff to recover damages, reduced by the percentage of negligence attributable to that plaintiff. For example, if a plaintiff is 90 percent at fault for injuries sustained in an accident and is awarded a judgment of \$1 million against the state, the state must pay \$100,000 or 10 percent to the plaintiff even though he or she bears the majority of fault. As a result, Louisiana went from no liability to some liability when this law was amended in 1979.

**Collateral Source Rule Can Result in Double Recoveries**

Louisiana follows the collateral source rule, which states that compensation for injuries received from a source wholly independent of the defendant should not be deducted from the damages that the plaintiff would otherwise receive from the defendant. For example, if the plaintiff receives payment from a health insurance policy, a judgment against the state cannot be reduced by the amount of that payment.

The ATRA believes that double recoveries should not be tolerated and that justice may be best served by permitting evidence of collateral source payments to be presented to the jury. ATRA found that since 1986, 21 states have reformed the collateral source rule. For example, some states permit evidence of collateral source payments to be admitted at trial for consideration by the jury while others require the court to reduce the jury verdict by the amount of such payments.

### **Laws Governing DOTD May Increase Liability**

By basing the maintenance and repair of roads and bridges on the amount of money available instead of the highway needs, the state may be increasing its liability for accidents that are a result of road hazards. Half of the state's roads are rated as fair to poor. However, the state does not have sufficient funds to bring all roads up to current standards.

According to state law, DOTD has a duty to maintain the roads and bridges in a reasonably safe condition. In 1980, the Louisiana Supreme Court held in *Sinitiere v. Lavergne* that the DOTD does not have to guarantee the safety of travelers, but it does owe a duty to keep the highways and shoulders in a reasonably safe condition for non-negligent motorists.

DOTD breaches its duty when it has actual notice (direct notification from the public, police, or one of its own employees) or constructive notice (defect existed long enough for DOTD to be aware of it) of a defect and does not correct the condition in a reasonable amount of time.

When DOTD breaches this duty, it may be found liable for injuries or loss associated with the hazardous condition. A motorist was killed in 1989 when his vehicle was rear-ended while attempting a left turn on Highway 190 west of Baton Rouge. This section of highway lacked left turn lanes at that time. As a result, in 1993, in the case of *Hunter v. DOTD*, the Louisiana Supreme Court held that this five-mile stretch of Highway 190 west of Baton Rouge containing a narrow median was unreasonably dangerous. Based on this court ruling, the state could now be liable for any accident that occurs along this five-mile stretch of road, according to an official with the Attorney General's office.

Because there is no systematic process to analyze the outcome of claims and lawsuits, roads and bridges that the judicial system considers to be unreasonably dangerous continue to generate losses for the state. In one road hazard case the court held:

that the State was negligent is [*sic*] not having a system of allocation of repairs that would have lead to the repair of this obviously defective roadway.

One statute governing DOTD requires the department to maintain the state's highways based on the amount of funds the agency receives rather than based on the amount of maintenance needed to keep the state's roadways in a reasonably safe condition. LSA R.S. 48:259 states:

The department shall maintain the highways forming the state highway system . . . **to the extent that the revenues of the department permit . . .** --LSA R.S. 48:259 [Emphasis added]

According to LSA-R.S. 48:192, DOTD shall set standards for roads and bridges, study the condition of the roads and bridges, prioritize the need for repairs, and bring all inadequate roads up to the established standards with funds that are available. The statute further requires that once these roads and bridges are brought up to standard, the roads should be regularly maintained.

However, according to a DOTD presentation to the Joint Legislative Committee on Transportation, Highways, and Public Works in January 1996, the cost to meet current roadway needs is approximately \$1.95 billion. Approximately 50 percent of the roads are rated as fair or poor, as shown in Exhibit 5-1 on the following page. In addition to roadway conditions, the DOTD also showed 5,160 deficient bridges. For all bridges that qualify for federal bridge replacement funds, DOTD estimates the replacement cost is \$1.05 billion. Accordingly, DOTD needs \$3 billion to address all the current needs. However, the department only receives \$300 million, or 10 percent, annually for road and bridge maintenance and repairs.

A DOTD official also said that 700-800 more miles of roads deteriorate each year, but the department can only repair about 450 miles of roads each year. This is partially because DOTD's main source of funding, the Transportation Trust Fund, is based on a flat tax. The Legislative Auditor conducted a performance audit of the Transportation Trust Fund in April 1992. This report concluded that because the gasoline tax is a flat tax, it does not increase when the price of fuel increases, whereas construction and operating costs increase with inflation. Thus, the statutory goal of all roads being brought up to standards and then receiving regular maintenance cannot be achieved under present conditions.

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**Exhibit 5-1**

**Highway Needs Analysis Summary**

Roadway Condition	Number of Miles	Percent of Total Miles
Poor	3,300	19.6%
Fair	5,170	30.6%
Good	6,387	37.9%
Very Good	2,016	11.9%
<b>Total</b>	<b>16,873</b>	<b>100.0%</b>

**Source:** Prepared by legislative auditor's staff using Summary of Highway Needs Analysis received from highway needs analyst, as presented to the Joint Legislative Committee on Transportation, Highways, and Public Works on January 31, 1996.

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### **Matters for Legislative Consideration**

3. The legislature may wish to consider legislation that limits any and all damages, including medical care expenses and loss of earnings, paid by the state as a result of lawsuits.
4. The legislature may also wish to consider other proposals relating to tort laws and provisions discussed in this chapter. These include:
  - ♦ Comparative negligence
  - ♦ Collateral source rule
  - ♦ Interest calculation
  - ♦ Notice to file lawsuit
  - ♦ Design immunity

# Appendix A

Amount Paid for Road Hazard Claims  
in Each DOTD District  
For Fiscal Years 1992 through 1995  
and in Total

# Appendix A: Amount Paid for Road Hazard Claims in Each DOTD District by Fiscal Year and in Total

Department of Transportation and Development District	1992	Percentage	1993	Percentage	1994	Percentage	1995	Percentage	Total for All Fiscal Years	Percentage for all Fiscal Years
District 61 - Baton Rouge	\$ 2,491,789	19.75%	\$ 6,721,562	19.44%	\$ 1,941,043	15.51%	\$ 18,552,871	25.77%	\$ 29,707,265	22.56%
District 02 - Bridge City	3,349,345	26.55%	4,669,409	13.51%	2,462,403	19.67%	15,364,751	21.34%	25,845,908	19.62%
District 08 - Alexandria	1,008,658	7.99%	11,910,487	34.45%	2,268,404	18.12%	9,328,466	12.96%	24,516,015	18.62%
District 62 - Hammond	1,834,746	14.54%	2,150,601	6.22%	1,659,217	13.26%	17,283,592	24.01%	22,928,156	17.40%
District 03 - Lafayette	531,543	4.21%	6,091,471	17.62%	2,865,587	22.89%	5,469,509	7.60%	14,958,110	11.36%
District 05 - Monroe	72,187	.58%	1,270,200	3.67%	504,333	4.03%	3,047,915	4.23%	4,894,635	3.72%
District 07 - Lake Charles	161,952	1.28%	1,627,495	4.71%	630,873	5.04%	1,735,334	2.41%	4,155,654	3.16%
District 04 - Bossier/Shreveport	2,984,924	23.66%	32,750	.09%	143,847	1.15%	881,880	1.23%	4,043,401	3.07%
District 58 - Chase	181,500	1.44%	101,000	.29%	41,332	.33%	325,095	.45%	648,927	.49%
<b>Total</b>	<b>\$12,616,644</b>	<b>100.00%</b>	<b>\$34,574,975</b>	<b>100.00%</b>	<b>\$12,517,039</b>	<b>100.00%</b>	<b>\$71,989,413</b>	<b>100.00%</b>	<b>\$131,698,071</b>	<b>100.00%</b>

Source: Prepared by legislative auditor's staff using unaudited information provided by the ORM. The totals for each year vary slightly from Exhibit 1-1 because district information was not available when ORM compiled Exhibit 1-1. In addition, there have been some minor adjustments made since the time the ORM compiled the totals for Exhibit 1-1. Also, according to ORM officials, small claims for property damage are not included in these amounts. This information does not include the fiscal year 1996, shown in Exhibit 1-1. It should be noted that the Crescent City Connection Division is included in District 02 - Bridge City.





# Appendix B

Payment Classification for Road  
Hazard Claims  
For Fiscal Years 1992 Through 1995  
and in Total

## Appendix B: Payment Classification for Road Hazard Claims by Fiscal Year and in Total

Payment Classification	1992	1993	1994	1995	Total	Percent of Total
Satisfaction of Judgment - District Court		\$1,000	\$162,680		\$163,680	0.12%
Satisfaction of Judgment - Appeals Court				\$209,071	209,071	0.16%
Settlement Prior to Trial - Bodily Injury			504,969	1,852,978	2,357,947	1.79%
Settlement Prior to Trial - Property Injury			27,619	5,906	33,525	0.03%
Settlement of Plaintiff's Attorney Fees				2,000	2,000	0.00%
Claims Not Involving Lawsuits - Bodily Injury	\$9,997,112	28,744,603	463,290	83,537	39,288,542	29.83%
Claims Not Involving Lawsuits - Medical Expenses	22,517	1,511,314		994	1,534,825	1.17%
Claims Not Involving Lawsuits - Past Medical			1,331		1,331	0.00%
Interest	2,028,843	1,307,058	52,370	62,444	3,450,715	2.62%
Annuity - Structured Settlement for Loss Wages	568,172	2,686,545	41,070	68,537	3,364,324	2.55%
Structured Future Medical Expenses		324,455			324,455	0.25%
Payment by Legislative Appropriation			11,035,819	50,548,703	61,584,522	46.76%
Interest on Legislative Appropriation Payment			227,891	19,155,243	19,383,134	14.72%
<b>Total</b>	<b>\$12,616,644</b>	<b>\$34,574,975</b>	<b>\$12,517,039</b>	<b>\$71,989,413</b>	<b>\$131,698,071</b>	<b>100.00%</b>

**Source:** Prepared by legislative auditor's staff using unaudited information obtained from the ORM. The totals vary slightly from Exhibit 1-1. This is because information in this format was not available at the time and there have been some minor adjustments made since the ORM compiled the totals for Exhibit 1-1. This information does not include the fiscal year 1996, shown in Exhibit 1-1. Also, according to ORM officials, small claims for property damage are not included in these amounts.

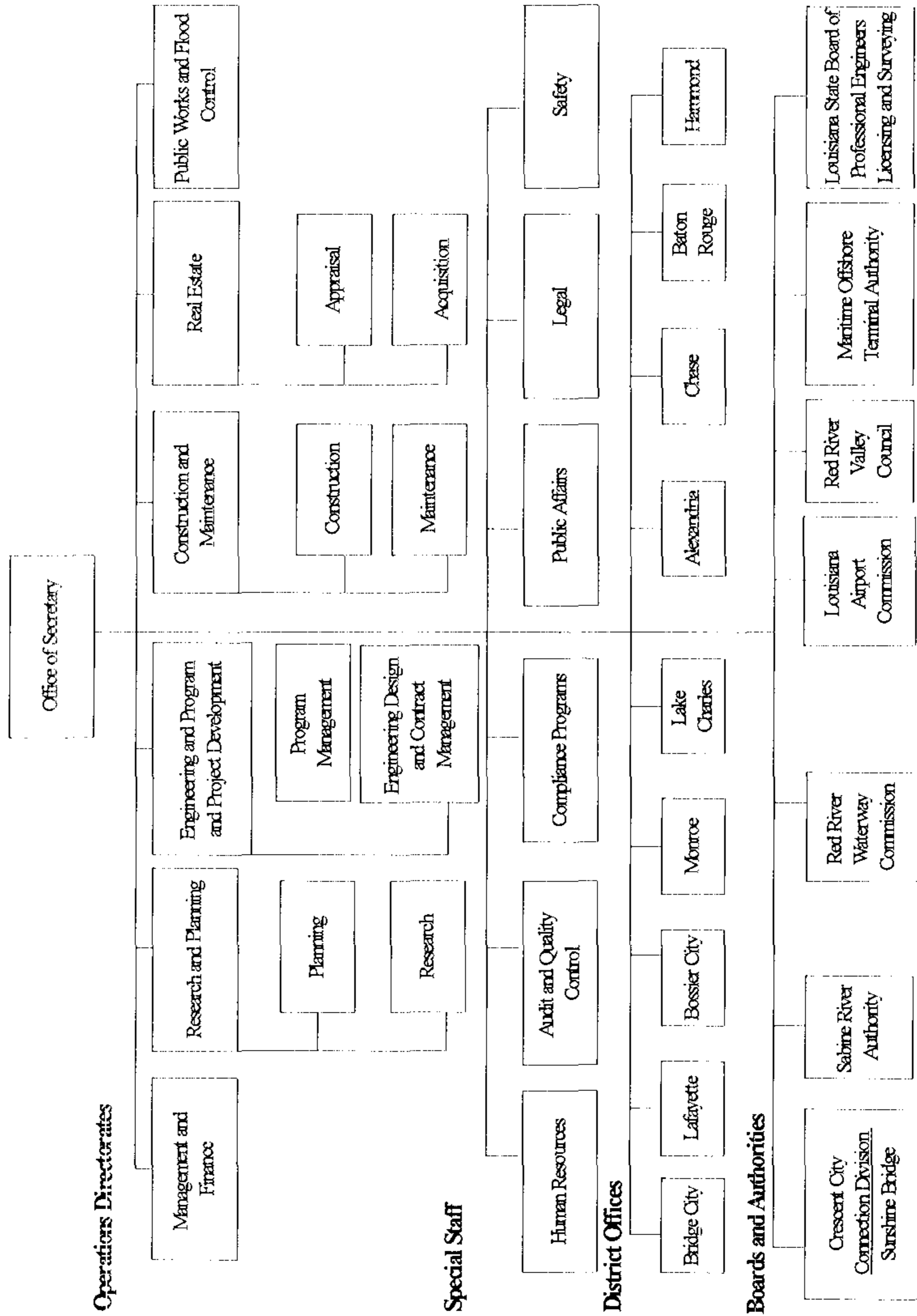


# Appendix C

## Louisiana Department of Transportation and Development Organization Chart and Districts

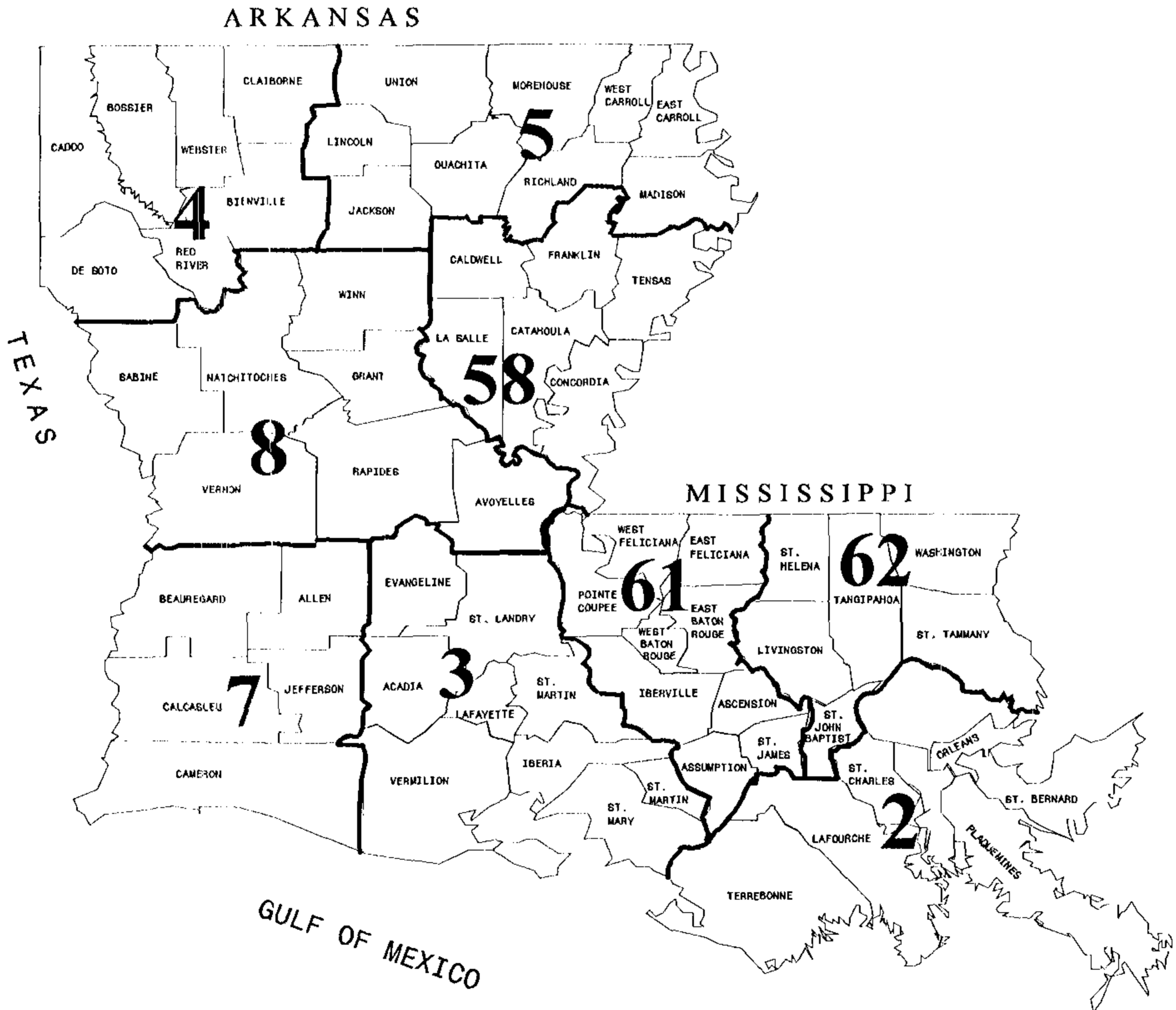
# Appendix C-1: Louisiana Department of Transportation and Development

## Organization Chart



Source: Prepared by legislative auditor's staff from a similar organization chart provided by the DOTD Secretary in a Transportation Overview presented to the House of Representatives Transportation Committee in February 1996.

APPENDIX C-2  
 DISTRICTS  
 Louisiana  
 Department of Transportation  
 and Development



Source: Prepared by Legislative Auditor's staff using information obtained from Louisiana Department of Transportation and Development, Traffic and Planning Division, July 1987.

# Appendix D

## Agency Responses

Office of  
Risk Management's  
Response





State of Louisiana  
DIVISION OF ADMINISTRATION  
OFFICE OF THE COMMISSIONER

M. J. "MIKE" FOSTER, JR.  
GOVERNOR

MARK C. DRENNEN  
COMMISSIONER OF ADMINISTRATION

September 10, 1996

Dr. Daniel G. Kyle  
Office of Legislative Auditor  
1600 North Third Street  
P. O. Box 94397  
Baton Rouge, LA 70804-9397

Re: Response to Performance Audit

Dear Sir:

Attached as requested, is the Office of Risk Management's response to the preliminary draft copy of the Performance Audit on "Efforts in Louisiana to Reduce Losses from Road Hazards." This response is to the revised copy of the draft dated September 6, 1996.

ORM has carefully reviewed the entire audit package and has responded to items in the audit that relate to ORM.

We wish to compliment the Legislative Auditor's office on the quality of the performance audit. The audit result is an indication of the dedicated research that went into the preparation of it. We think it is significant in its focus toward cooperation between several different entities of the State. It is certainly the desire of the Office of Risk Management to cooperate with respect to the betterment of the State.

Sincerely,

Seth E. Keener, Jr.  
State Risk Director

SEK, JR./ELW/jfl

Attachments

c: Commissioner Mark Drennen

**OFFICE OF RISK MANAGEMENT**

**RESPONSE TO PERFORMANCE AUDIT TITLED**

**“EFFORTS IN LOUISIANA TO REDUCE LOSSES FROM ROAD HAZARDS”**

**SEPTEMBER 10, 1996**

**PREPARED BY:**

**EVON L. WISE  
STATE RISK ASSISTANT DIRECTOR  
FOR THE OFFICE OF RISK MANAGEMENT**

## **Response to Performance Audit Draft of September 10, 1996**

The Office of Risk Management agrees in general with the scope and substance of the entire Performance Audit Report on "Efforts in Louisiana to Reduce Losses from Road Hazards."

Some issues require further comment and they are reviewed in this response.

The issue of road hazards is so significant with regard to the financial health of the State, that every little step toward improving the status of road hazards, is a step forward to a better future for Louisiana. Some of the ways it can be improved: a) improved defense of claims, b) better maintenance of roads and bridges, c) improved loss prevention programs stressing early investigation of incidents, and d) legislative efforts toward tort reform.

The report as presented stresses better cooperation between departments and agencies. The Office of Risk Management agrees with this premiss. Several comments made throughout the report (comments by the Department of Transportation and Development and/or the Legislative Auditors) indicate that the Office of Risk Management does not provide the Department of Transportation and Development with information on claims. The Office of Risk Management wishes to point out that a quarterly claims edit listing is sent to every office. This listing provides information on the dollar cost of every individual claim by location and a brief explanation of the incident. If there are some things the report does not give the agency the Office of Risk Management will be happy to review this and modify the report if possible. It is recommended that all agencies make use of this report. The Office of Risk Management expects to include an analysis of this report as part of its Strategic Plan for 1997.

The Office of Risk Management agrees that the accident reconstruction program is a proactive program. There are guidelines for the program, but the program must be actively supported from the top down in the Department of Public Safety and Corrections. This accident reconstruction should be carefully executed by the Department of Public Safety and Corrections at the time of the accident. The program guidelines include some criteria as to when to investigate. The Office of Risk Management believes that the Department of Transportation and Development should not be involved in accident reconstruction. The Department of Transportation and Development receives notice of the accident, should visit the site, review the road conditions, and perform maintenance if required. A report of this analysis should be sent to the Office of Risk Management.

The Office of Risk Management perceives a new attitude in the Department of Transportation and Development and is encouraged by recent events that have taken place that show a more positive viewpoint by the Department of Transportation and Development in reducing the State's losses from road hazards. It is important to note that the Office of Risk Management and the Attorney General's office may not receive constructive notice of a road hazard claim until a year or more after it happens. Therefore, it is important that the Department of Transportation and Development establishes its own program to investigate and correct road problems at the site of each major accident as soon as possible after the accident occurs.

The Office of Risk Management has been informed that the Supervisor of Road Hazards in the Division of Risk Litigation is to begin sending notice to Larry Durant of the Department of Transportation and Development on every litigated case that is lost and reasons why lost. A copy of this notice will be sent to the appropriate Office of Risk Management adjuster.

As stated elsewhere in this response, the Office of Risk Management recommends that the administrators of the Department of Transportation and Development establish procedures to make an initial investigation of accidents. The Office of Risk Management does not receive early notice of accidents. Most often, the Office of Risk Management does not receive notice until a year or so later when a suit is filed.

The Office of Risk Management recommends that the Department of Transportation and Development establish an effective loss prevention program with emphasis on early examination of road and maintenance conditions at accident sites and prioritizing required repairs at these sites.

Throughout the report reference is made several times as to the effectiveness of the Claims Edit Listing Report sent to Agencies by the Office of Risk Management on a quarterly basis.

The Office of Risk Management recognizes the need for an effective report as a proactive measure. It plans to implement an analytical review of the report. In the course of this review, all agencies will be contacted for recommendations as to information to be included in the report. The Loss Prevention and Audit and Statistics Units will coordinate this effort.

Reference to page 65 of the draft. The Office of Risk Management strongly recommends that under the heading **Comparative Negligence Laws Increase the Amount Louisiana Pays, Even though the Plaintiff is Negligent** the following paragraphs be added to the report.

In the event that the plaintiff is proven to be driving while intoxicated (DWI), the law would provide that the State of Louisiana would have zero liability.

In addition, if the plaintiff is proven to be 51% at fault, the State will have zero liability for damages.

Department of  
Transportation and Development's  
Response



STATE OF LOUISIANA RECEIVED  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
P. O. Box 94245  
Baton Rouge, Louisiana 70804-9245  
504/379-1200



M. J. "MIKE" FOSTER, JR.  
GOVERNOR

September 12, 1996

FRANK M. DENTON  
SECRETARY

Dr. Daniel G. Kyle, CPA  
Legislative Auditor  
Office of the Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

Dear Dr. Kyle:

We have received a copy of the performance audit report titled "Efforts in Louisiana to Reduce Losses From Road Hazards." The aspects and recommendations of the report that pertain to the DOTD have been reviewed. The following is in response to the premises and recommendations of the report. It has to be stated that the Department has been, is, and will continue to be, concerned with the safety of the roads of the state.

The Department of Transportation and Development is charged with providing and maintaining reasonably safe roadways; we are not the absolute insurers of safety for the highway user. Our goal is to reduce the number and severity of accidents and provide for the safe and efficient movement of goods and people within reasonable fiscal restraints.

Accidents are complex events caused by many different factors. This report focuses only on the roadway environment, and fails to address the human or vehicle elements. Researchers estimate that 85% of all causative factors involve the driver, 10% involve the highway, and 5% involve the vehicle. This report also advocates utilizing road hazard claim information to drive project selection as opposed to accident information. This is not reasonable, since the type, number, and amount of claims may not be related to the roadway at all, but instead on the preferences of plaintiffs' attorneys. An adverse court decision does not mean that the location is hazardous from an engineering or highway safety perspective. Lower court decisions can be appealed to the appellate court, which may overturn or uphold the decision. Regardless of the ruling, the road condition may not be hazardous. While claim information could be considered, it should not be the controlling factor in setting program or project priorities. The current DOTD method of using accident data instead of claim data to set program or project priorities results in better engineering decisions that enhance highway safety.

Dr. Daniel G. Kyle  
September 12, 1996  
Page 2

The heart of any good risk management program is having timely and accurate accident data to review. The Department's Planning Division is working closely with the Louisiana Highway Safety Commission (LHSC) to implement a state-of-the-art accident reporting system. The proposed system will automate the process of handling police accident reports by reducing the steps involved in the input, processing, and output, and will create a paperless environment. The system takes advantage of technical advances in the use of character recognition (machine printed or hand written). It is estimated that 60%-90% of the data contained in the police accident report will be input from scanning the form. The remaining information will be entered during the editing phase. DOTD will be linked to the LHSC and provide the accident location information directly into the accident records file. Additionally, DOTD will have access to all accident reports that are scanned into the system. Implementation of this system will result in accident data that is accurate, timely, available, and accessible. Many of the findings in the audit report will be addressed by implementation of this system.

The DOTD utilizes STP-Hazard Elimination funds for planning and programming roadway safety improvements which are identified through the identification of high accident locations. The DOTD also considers safety as a component in its Highway Needs and Priorities evaluation of potential highway improvement projects. The safety consideration in the Needs process is engineering based, while safety improvements are accounted for in the prioritization process through a combination of engineering-based and economic-based evaluations. The current economic accident analysis is limited to those projects that result in a change in facility type, i.e., when a project adds travel lanes, controls access through adding interchanges, etc. This procedure does not consider potential accident savings for improvements that do not result in change of facility type, such as two-lane reconstruction, adding a center turn lane, etc. Since it is desirable to have predicted accident rates associated with the various type of improvements that are generated by the Needs analysis, the Highway Needs, Priorities, and Programs Section and Planning Division is developing a procedure to consider projects with the highest benefit/cost ratios for accident savings. This procedure will be based on accident history, and not on road hazard claims.

Many of the other audit findings will be addressed through the full implementation of the Safety Management System (SMS). This comprehensive and coordinated management system should serve to improve decisions impacting safety, resulting in the reduction of the frequency and severity of accidents, thus reducing claims

Dr. Daniel G. Kyle  
September 12, 1996  
Page 3

against the State. The SMS is a coalition of all the major agencies and organizations in the State that impact highway safety. Formalized communication, coordination, and cooperation will be established among all the participants of the SMS. In this manner, highway safety is assured of being considered and implemented, as appropriate, in all phases of highway planning, design, construction, maintenance, and operations.

In the matter of headquarters oversight over districts and the coordination of resources, DOTD headquarters provides much more oversight than the quarterly performance appraisals mentioned in the report.

The total budget allotted for each district is decided at headquarters and, as additional funds become available, distribution is decided through a formula developed at headquarters. All contract maintenance projects are sent to headquarters for review and approval. Decisions on new equipment are also made at headquarters. Policy and procedures for engineering activities and human resource activities originate from DOTD headquarters. Districts report all maintenance activities and expenditures to headquarters through the DOTD mainframe computer.

Resources have been coordinated by having the district offices prepare and circulate lists of needed equipment so that other districts may utilize this equipment to partially satisfy their needs. Large, heavy equipment and very specialized equipment are moved between districts as needs dictate. Construction gangs and survey gangs have been moved across district lines on a temporary basis to resolve manpower shortages. Maintenance crews have been moved between parishes on a temporary basis to accomplish repair work in a timely manner.

With the exception of having accident claims dictate the planning, budget, and policy making for the Department, and the relationship of headquarters to the districts, we agree with the report.

If I can be of further assistance, please contact me or Mr. Lacey Glascock at 379-1233.

Sincerely,



Frank M. Denton  
Secretary



# Louisiana State Police's Response



# Department of Public Safety and Corrections

## Public Safety Services

August 19, 1996  
0120/217/DAH/0433  
HQ-1-0435

M. J. "MIKE" FOSTER, JR.  
GOVERNOR

W. R. "RUT" WHITTINGTON, COLONEL  
DEPUTY SECRETARY

Dr. Daniel G. Kyle  
Legislative Auditor  
P. O. Box 94397  
Baton Rouge, La. 70804-9397

RECEIVED  
LEGISLATIVE AUDITOR  
95 AUG 26 AM 11:20

Dear Mr. Kyle:

I have reviewed a draft copy of the performance audit report on "Efforts in Louisiana to Reduce Losses from Road Hazards". Thank you and your staff for the opportunity to participate in the audit.

I find the audit report to be comprehensive and accurate in its findings and recommendations. I pledge to continue to support the Highway Safety Commission as it develops and implements an efficient, technologically advanced mechanism to collect and analyze traffic accident data. Accurate, timely data is necessary, not only for hazard identification, but for efficient manpower allocation. It is important to recognize that all agencies must participate in this endeavor for it to be successful.

We are currently studying and evaluating available technology for data collection at the accident scene as an integral part of our digital 800 MHz radio system. Computer based reporting is expensive and the devices currently on the market are fragile. The computer industry is taking steps to make the devices more rugged and cost effective. We will continue to monitor advancements in technology and programs utilized in other states and will be seeking to make use of some form of this technology in the future.

The ORM accident reconstruction program is not organized or structured in a manner to identify those accidents that warrant reconstruction. While reconstruction of accidents where the state has a potential liability is necessary, it may be more efficient to improve data collection techniques to provide sufficient information to accurately reconstruct conditions that existed at the time of an accident. Those accidents that result in a potential civil liability for the state could then be reconstructed.

The Louisiana State Police recognizes its position and will continue to offer assistance and support to reduce losses from road hazards. If you have any questions or comments, please contact me.

Sincerely;

W. R. "Rut" Whittington, Colonel  
Deputy Secretary  
Public Safety Services

P.O. BOX 66614, BATON ROUGE, LA 70896-6614  
(504) 925-6117

Louisiana  
Highway Safety Commission's  
Response

*Department of Public Safety and Corrections*  
*Public Safety Services*

M. J. "MIKE" FOSTER, JR.  
GOVERNOR

JAMES E. CHAMPAGNE  
EXECUTIVE DIRECTOR

August 2, 1996

Dr. Daniel G. Kyle  
Legislative Auditor  
State of Louisiana  
Post Office Box 94397  
Baton Rouge, LA 70804-9397

RECEIVED  
LEGISLATIVE AUDITOR  
AUG 2 2 41 PM '96

Dear Dr. Kyle:

The Louisiana Highway Safety Commission (LHSC) was pleased to participate in the performance audit of Louisiana's efforts to reduce losses to the state as a result of claims against the state.

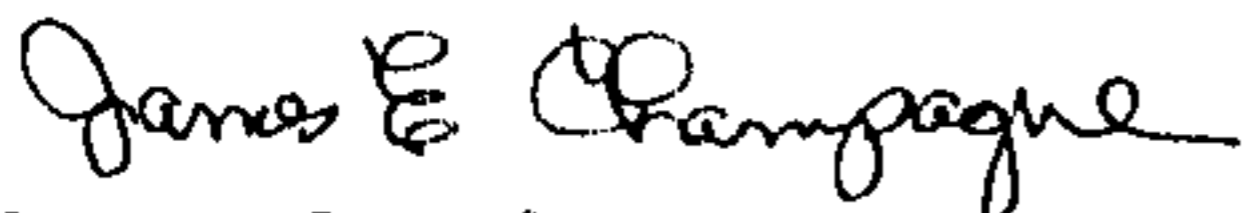
As the central repository for all traffic accident reports, we recognize the need for coordination between state agencies and state/local law enforcement to insure that our state reduces its liability for road hazards.

The audit addresses a number of legislative considerations, makes agency recommendations and specifically recommends the implementation of technology to assist in the timely collection of traffic accident data.

The LHSC, in our continuing effort to process traffic accident data expediently, is negotiating with IBM to implement an on-line system for entering traffic accident report information. When finalized, the LHSC will be able to process accident data on a schedule compatible with the needs of all concerned agencies.

The LHSC supports the recommendations contained in the performance audit. We will diligently pursue those matters we can address directly and will support legislation designed to remedy problems which we lack the resources to rectify.

Sincerely,



James E. Champagne  
Executive Director  
Governor's Highway Safety Representative

JEC:vls

Office of  
Attorney General's  
Response



RICHARD P. IEYOUB  
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

LITIGATION DIVISION

Baton Rouge

70804-9095

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September 19, 1996

Dr. Daniel G. Kyle, Ph.D  
Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana

RE: EFFORTS IN LOUISIANA TO REDUCE LOSSES FROM ROAD HAZARDS

Dear Dr. Kyle:

I have reviewed the revised draft of the above referenced document which was submitted to the Litigation Division.

Some of the revisions incorporated recommendations made by this office pursuant to the exit conference that we had regarding the preliminary draft.

This office concurs in the report as revised.

On a personal note, I would like to commend you and your staff on the thorough, comprehensive efforts they put forth. This document certainly is indicative of the professional manner in which they went about their tasks.

If there is anything else I can do, please contact me.

Very truly yours,

RICHARD P. IEYOUB  
ATTORNEY GENERAL

BY:

  
JOHN CLAIBORNE YOUNG  
Assistant Attorney General

JCY/tps