

Appendix V

Texas Department of Transportation

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SECTION 1: Purchasing Insurance for the Texas Department of Transportation

The Texas Department of Transportation (TxDOT) is primarily self-insured in all areas, except for Auto and General Liability. The Risk Management Program is tailor made for TxDOT's high risk operations. It benefits our employees as well as the citizens of Texas. A part of that program is providing liability insurance for the officers and employees of TxDOT, while they operate motorized equipment.

TxDOT has had liability insurance for our officers and employees since 1970. The Texas Business Auto Policy covers employees who operate trucks, cars and vans. The Commercial General Liability Policy covers employees who operate ferries, rollers, graders, weed-eaters and other road building/maintenance equipment. TxDOT purchases this insurance through the established bid process.

The advantages for purchasing Liability Insurance are as follows.

1. Under the existing coverage, employees are protected up to the limits of liability of the State (TxDOT) which are \$250,000 per person/\$500,000 per occurrence with up to \$100,000 for property damage. If TxDOT was self-insured, the law permits the State (TxDOT) to indemnify individual employees only up to \$100,000 per person/\$300,000 per occurrence/\$10,000 property damage.
2. Insurance coverage provides more financial protection for the employee, because an insurance carrier is legally obligated to protect the employee's interest.
3. Having a carrier resolve claims against TxDOT is probably the fairest and least controversial method of handling claims. The public gets prompt payment. The carrier has twelve claims offices around the state.
4. Coverage provides for parties who use our motorized equipment with our permission, for example inmates using weed-eaters.
5. If TxDOT were self-insured, payments would be made under the Tort Claims Act. All tort payments go through the Governor's office. It usually takes six weeks to get a check issued. Slow payments will result in a number of complaints to TxDOT. A citizen may need to have his windshield repaired immediately and not wait six weeks to have the windshield paid for.

SECTION 2: How TxDOT Handles the Liability Insurance Program

TxDOT has over 14,000 employees. 6,400 are routine maintenance workers and 2,000 are inspectors/engineers working on the roadways everyday. In addition, we have over 8,000 vehicles and several thousand pieces of heavy equipment, that are on the state's highways in all weather and traffic conditions. We also have 12 ferries, 3 barges and 13 boats. There is no other state agency with this kind of exposure.

TxDOT is accountable for all expenditures as they are charged directly against the budget. Occupational Safety Division personnel overseeing the program are licensed casualty adjusters. The insurance carrier has to get concurrence on all claims over \$2,000. The carrier must provide duplicate claim files for monitoring purposes. The initial investigative report should be received within 12 days, with progress reports following at 30-day intervals.

TxDOT currently averages around 700 claims a year that involve third parties. Every accident, whether we're at fault or not, is reported to the carrier. They, in turn, handle the claim just as your personal insurance company would handle them. About 95% of the claims are resolved without involvement of attorneys from our side. Five percent develop into lawsuits. These are handled by law firms that our carrier hires to defend our department drivers. On the average our carrier is involved in 10 to 30 liability insurance lawsuits at any given time. As of this date, there are 15 active lawsuits.

A few statistics will give a better picture of the program.

◆ In 1997, TxDOT paid \$2.09 million in premiums; in 1998 \$2.19 million; and, in 1999 \$2.38 million.

◆ The average claim's value is \$1869.00. We get this figure by taking the total incurred losses for the last five years and dividing it by the total number of claims submitted to the carrier.

◆ During the last five years, our carrier has tried or settled on the average, 13 lawsuits per year. The total payout each year for these 13 lawsuits, has been approximately \$45,532.00.

As part of our safety program, we initiated a Vehicle Safety Bonus Program to reduce the number of claims reported to the insurance carrier. Monetary awards were added to the maintenance budgets of the top six TxDOT districts, who achieved the lowest loss ratio. The program started in May of 1997. During FY '97 there were 1,022 claims reported. During FY'98 there were 772 and FY'99 there were 752 claims reported. For FY '99 the TxDOT recorded its lowest liability insurance loss ratio in the history of TxDOT, at 40%.

SECTION 3: Other Risk Management Program Elements

Tort Claims

As just discussed, bodily injury and property damage claims arising out of the use of motor-driven equipment are covered by liability insurance. Claims not involving motor-driven equipment are the responsibility of TxDOT's Occupational Safety Division. All claims of this sort are directed to the division. The claims ~~are~~ investigated by the division's field representatives. When the investigation reaches the point where TxDOT's liability is established, the case is reviewed with the Attorney General's Office. If there is no apparent department negligence, the claim is denied. In claims of this type governmental agencies have limited immunity which eliminates property damage claims. If our negligence has caused bodily injury, TxDOT attempts to arrive at a fair settlement with the claimant through the Assistant Attorney General assigned to the case. If that fails, the case goes on into the courts. TxDOT has resolved tort claims in this manner since 1970. We have experienced claims managers looking out for the state's interests. TxDOT's record has been far better than was expected when the Tort Claims Act went into effect in 1970. For example, during the past 10 years ending this last September, a total of 2393 bodily injury claims had been filed against TxDOT. Of these, 910 have turned into lawsuits. The total amount paid out in the past 10 years, due to a settlement or judgement in lawsuits is \$3,657,537 or an average of \$4,019 per lawsuit filed. TxDOT feels that the investigation conducted by our field representatives, coupled with a division at the Attorney General's Office that only handles TxDOT lawsuits, has enabled us to maintain this fine record.

Self-Insured Workers' Compensation Coverage

Under Chapter 505 of the Texas Labor Code, the Texas Department of Transportation provides workers' compensation coverage for over 14,000 employees under a totally self-insured program. TxDOT has been self-insured since first authorized by the legislature in 1938.

In 1994, a study was done to explore the options of buying a workers' compensation policy for TxDOT's employees and the cost was estimated to be in excess of \$25 million. TxDOT at that time was expending less than \$7 million for total expenses to run its self-insured program.

Recent figures have indicated that insurance premiums for workers' compensation have been decreasing at a rate of approximately 8% per year. Even though we have not received any recent quotes, this large decrease in premiums would still indicate a cost of \$10 to \$16 million to purchase coverage from an outside source. TxDOT's total cost has remained around \$7 million or less, even though there has been a large increase in the state wide average for medical cost.

TxDOT is able to control its cost through the work of highly experienced insurance adjusters working in the office in Austin and by the use of field representatives that live and work in the districts where the injuries are more likely to occur. When an employee is injured, the field representative will make contact with the injured employee within 24 hours. We are able to control costs by maintaining this relationship with the employee through his recovery and return to work.

It is our opinion that TxDOT's self-insured program for workers' compensation is working and providing the best service to our employees, at the most reasonable cost possible.

Safety Program

The Texas Department of Transportation first implemented a safety program in 1938. The program was implemented along with its self-insured workers' compensation program.

The safety program has evolved over the years and includes two primarily document sources. The Occupational Safety Manual and Handbook of Safe Practices. The manual is a single-source publication for all aspects of the employees' safety program. Included in this manual are TxDOT's internal safety rules and standards. Federal (OSHA) and state health and safety standards, and nationally recognized safety/health standards (ANSI, NFPA) are used as guidelines in developing TxDOT's internal rules. The Occupational Safety Manual is required to be in all department offices. All employees are issued a personal copy of the Handbook of Safe Practices.

Major elements of the Division Safety Management System include:

- ◆ The division performs at least 11 district safety and hazardous materials surveys each year.
- ◆ Safety accomplishment/recognition program.
- ◆ Safety-responsibility training provided at all levels.
- ◆ On-site safety and industrial hygiene consultative services provided as needed.

- ◆ Proactive fleet safety initiatives that include driver orientation, equipment training, defensive driving, truck roadeo, and driver record checks (pre-employment/annual).
- ◆ Annual accident/injury rate goals are established for all districts.
- ◆ District Safety Committees are required to meet and provide a written report every 45 days.
- ◆ Individual district payroll units (non-office) are required to have safety meetings on a monthly basis. Documentation is maintained.
- ◆ First Aid training is provided to employees.
- ◆ The Occupational Safety Division maintains a safety and hazardous materials video library for resource information.
- ◆ Bi-monthly safety newsletter is published.
- ◆ Weekly safety bulletins are published during the summer months.
- ◆ The Occupational Safety Division coordinates the right-to-know program required under the Texas Hazard Communication Act.
- ◆ Through the emphasis of the above initiatives, TxDOT has achieved a steady reduction in workers' compensation claims. For three consecutive years, TxDOT has set all time lows in recordable injuries. In comparison to 1991, TxDOT achieved a 52% reduction in workers' compensation claims in Fiscal Year 1999.

LIABILITY INSURANCE STATISTICAL SUMMARY

POLICY PERIOD	CLAIMS	AUTO PREM	CGL PREM	TOTAL PREM	AUTO LOSSES	CGL LOSSES	TOTAL LOSSES	LOSS RATIO
FY-99	752	\$ 1,850,828	\$ 531,048	\$ 2,381,676	\$ 832,801	\$ 113,905	\$ 946,706	40%
FY-98	772	\$ 1,787,513	\$ 410,165	\$ 2,197,678	\$ 1,570,212	\$ 205,861	\$ 1,776,073	81%
FY-97	1,022	\$ 1,563,428	\$ 529,612	\$ 2,093,040	\$ 1,594,979	\$ 155,681	\$ 1,750,660	84%
FY-96	935	\$ 1,280,710	\$ 514,110	\$ 1,794,820	\$ 1,992,286	\$ 59,288	\$ 2,051,574	114%
FY-95	935	\$ 1,287,647	\$ 485,880	\$ 1,773,527	\$ 1,439,102	\$ 287,475	\$ 1,726,576	97%
FY-94	1,005	\$ 1,143,668	\$ 848,100	\$ 1,991,768	\$ 1,562,463	\$ 306,645	\$ 1,869,109	94%
FY-93	951	\$ 1,220,419	\$ 798,690	\$ 2,019,109	\$ 1,126,700	\$ 402,301	\$ 1,529,001	76%
FY-92	847	\$ 1,256,064	\$ 807,087	\$ 2,063,151	\$ 1,081,112	\$ 266,089	\$ 1,347,201	65%
FY-91	924	\$ 855,809	\$ 1,486,810	\$ 2,342,619	\$ 1,045,588	\$ 110,704	\$ 1,156,292	49%
FY-90	960	\$ 1,034,098	\$ 623,751	\$ 1,657,849	\$ 649,365	\$ 130,776	\$ 780,141	47%
FY-89	1,079	\$ 856,470	\$ 689,690	\$ 1,546,160	\$ 1,413,560	\$ 152,283	\$ 1,565,843	101%
FY-88	1,255	\$ 940,017	\$ 534,563	\$ 1,474,580	\$ 1,356,672	\$ 345,170	\$ 1,701,842	115%
FY-87	1,267	\$ 1,016,902	\$ 672,839	\$ 1,689,741	\$ 785,835	\$ 416,919	\$ 1,202,754	71%
FY-86	1,138	\$ 1,172,039	\$ 455,321	\$ 1,627,360	\$ 1,300,770	\$ 217,260	\$ 1,518,030	93%
FY-85	1,181	\$ 840,592	\$ 444,308	\$ 1,284,900	\$ 545,255	\$ 235,536	\$ 780,791	61%
FY-84	1,143	\$ 733,000	\$ 302,000	\$ 1,035,000	\$ 535,831	\$ 159,898	\$ 695,729	67%
FY-83	1,063	\$ 580,936	\$ 222,611	\$ 803,547	\$ 1,327,484	\$ 415,293	\$ 1,742,777	217%
FY-82	1,053	\$ 489,331	\$ 197,889	\$ 687,220	\$ 715,061	\$ 103,666	\$ 818,727	119%
FY-81	967	\$ 484,056	\$ 209,507	\$ 693,563	\$ 374,089	\$ 66,693	\$ 440,782	64%
FY-80	908	\$ 425,905	\$ 239,126	\$ 665,031	\$ 546,521	\$ 58,325	\$ 604,846	91%
FY-79	989	\$ 383,395	\$ 258,309	\$ 641,704	\$ 266,738	\$ 71,592	\$ 338,330	53%
FY-78	899	\$ 323,654	\$ 119,587	\$ 443,241	\$ 294,198	\$ 89,028	\$ 383,224	86%
FY-77	720	\$ 273,461	\$ 75,633	\$ 349,094	\$ 318,419	\$ 72,879	\$ 391,298	112%
FY-76	699	\$ 205,807	\$ 114,136	\$ 319,943	\$ 265,006	\$ 41,834	\$ 306,840	96%
FY-75	716	NA	NA	\$ 349,130	\$ 203,278	\$ 64,132	\$ 267,410	77%
FY-74	614	NA	NA	\$ 348,592	\$ 304,751	\$ 36,247	\$ 340,998	98%
FY-73	843	NA	NA	\$ 317,199	\$ 140,917	\$ 25,491	\$ 166,408	52%
FY-72-1MO	85	NA	NA	\$ 35,015	\$ 31,255	\$ 3,957	\$ 35,212	101%
FY-72-12MO	705	NA	NA	\$ 262,072	\$ 100,515	\$ 204,207	\$ 304,722	116%
FY-71	669	NA	NA	\$ 498,980	\$ 404,784	\$ 51,371	\$ 456,155	91%
FY-70-7MO	433	NA	NA	\$ 307,352	\$ 90,516	\$ 20,708	\$ 111,224	36%
TOTALS	27,529			\$ 35,694,661			\$29,107,275	82%

Art. 6674s-1 ROADS, BRIDGES, AND FERRIES Title 116

Art. 6674s-1. Liability insurance for highway department employees

Section 1. The State Highway Commission¹ shall have the power and authority to insure the officers and employees of the Texas Highway Department² from liability arising out of the use, operation, and maintenance of equipment, including but not limited to, automobiles, motor trucks, trailers, aircraft, motor graders, rollers, tractors, tractor power mowers, and other power equipment used or which may be used in connection with the laying out, construction, or maintenance of the roads, highways, rest areas, and other public grounds in the State of Texas. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some reliable insurance company or companies authorized to transact such business in this state. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the attorney general as to liability.

Sec. 2. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts or negligence of the officers or employees of the state.

Acts 1969, 61st Leg., p. 617, ch. 212, eff. Sept. 1, 1969.

¹ Name changed to State Highway and Public Transportation Commission; see art. 6663.

² Name changed to State Department of Highways and Public Transportation; see art. 6663.

Historical Note

Title of Act:

An Act authorizing the State Highway Commission to insure officers and employees from liability arising out of use, operation, and maintenance of equipment; and declaring an emergency. Acts 1969, 61st Leg., p. 617, ch. 212.

Cross References

Liability insurance for state departments generally, see art. 6252-19a.
Tort Claims Act, see art. 6252-19.

Library References

States §-112 et seq.

C.J.S. States § 123 et seq.

Notes of Decisions

1. Construction and application

The highway department may purchase personal injury and property damage insurance coverage for its employees, within the limitations established in art. 6252-19a and the comptroller may legally pay the premiums for such coverage. Op. Atty. Gen. 1969, No. M-601.

The state highway department may purchase personal injury and property damage insurance coverage for its employees under

H.B. 378 (Acts 1969, 61st Leg., p. 617, ch. 212; codified as this article), within the limits of coverage discussed in Op. Atty. Gen. 1969, No. M-601, and the Comptroller may legally pay the premiums for such coverage. Op. Atty. Gen. 1969, No. M-616.

Section 1 of art. 6252-19a and § 1 of this article impose no obligation upon the State Board of Insurance other than the approval of policy forms. Op. Atty. Gen. 1970, No. M-646.

Notes of Decisions

Liability insurance 2
School districts 1

1. School districts

Section 19A of this article limits school district tort liability to acts of negligence involving motor vehicles, and a "motor vehicle" at least includes any vehicle coming

within the definition set forth in article 6071a-1, Op. Atty. Gen. 1977, No. 31-471.

2. Liability insurance

The presence of liability insurance has no bearing upon the matter of the imposition of damages against a governmental employee. Op. Atty. Gen. 1977, No. 31-473.

Art. 6252-19a. Automobile liability insurance; state departments; allowance to employees

Section 1. The state departments who now own and operate motor vehicles shall have the power and authority to insure the officers and employees from liability arising out of the use, operation and maintenance of automobiles, trucks, tractors and other power equipment used or which may be used in the operation of such department. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some liability insurance company or companies authorized to transact business in the State of Texas. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the Attorney General as to liability.

Sec. 2. In case said department elects not to so insure its employees against liability as above mentioned:

An employee of the State of Texas, in addition to any compensation provided in the General Appropriations Act, shall receive as compensation any sum of money expended by such employee for automobile liability insurance required of such employee by the department, agency, commission, or other branch of the state government for which such employee is employed.

Sec. 3. The state comptroller shall provide the necessary forms to make such claims which shall require a certification from the head of the department, agency, commission, or other branch of the state government that such employee is employed; that as a regular part of such employee's duties such employee is required to operate a state-owned motor vehicle; and that such department, agency, commission, or other branch of the state government requires such employee to maintain liability insurance as a prerequisite to the operation of the state-owned motor vehicle.

Sec. 4. Such payments are to be charged against the maintenance fund of the department for which such employee is employed.

Sec. 5. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts of negligence of the officers or employees of the state.

Acts 1969, 61st Leg., p. 2367 ch. 797, emerg. eff. June 14, 1969.

Historical Note

Title of Act

An Act relating to insurance of officers and employees from liability arising out of the use and operation of motor vehicles owned by the State of Texas or its departments; relating to compensation of employees for purchase of additional personal liability insurance to cover use of state-owned motor vehicles; and declaring an emergency. Acts 1967, 61st Leg., p. 2322, ch. 337.

Cross References

Highway department provisions, see art. 6071a-1.

Library References

States Com.

C.J.S. States § 111.

Art. 6252-20. Complaints against law enforcement officers; writing; signature

In order that a complaint against a law enforcement officer of the State of Texas, including but not limited to officers of the Department of Public Safety and the Liquor Control Board, or against a fireman or policeman may be considered by the head of a state agency or by a chief or head of a fire department or police department, neither of which is under the protection of a civil service statute, the complaint must be placed in writing and signed by the person making the complaint. A copy of the signed complaint must be presented to the affected officer or employee within a reasonable amount of time after the complaint is filed and before any disciplinary action may be taken against the affected employee.

Acts 1969, 61st Leg., p. 1333, ch. 407, § 1, emerg. eff. June 2, 1969.

Historical Note

Title of Act

An Act relating to a requirement that all complaints made against a law enforcement officer of the State of Texas or firemen and policemen be made in writing and signed by the person making the complaint and declaring an emergency. Acts 1977, 61st Leg., p. 1271, ch. 477.

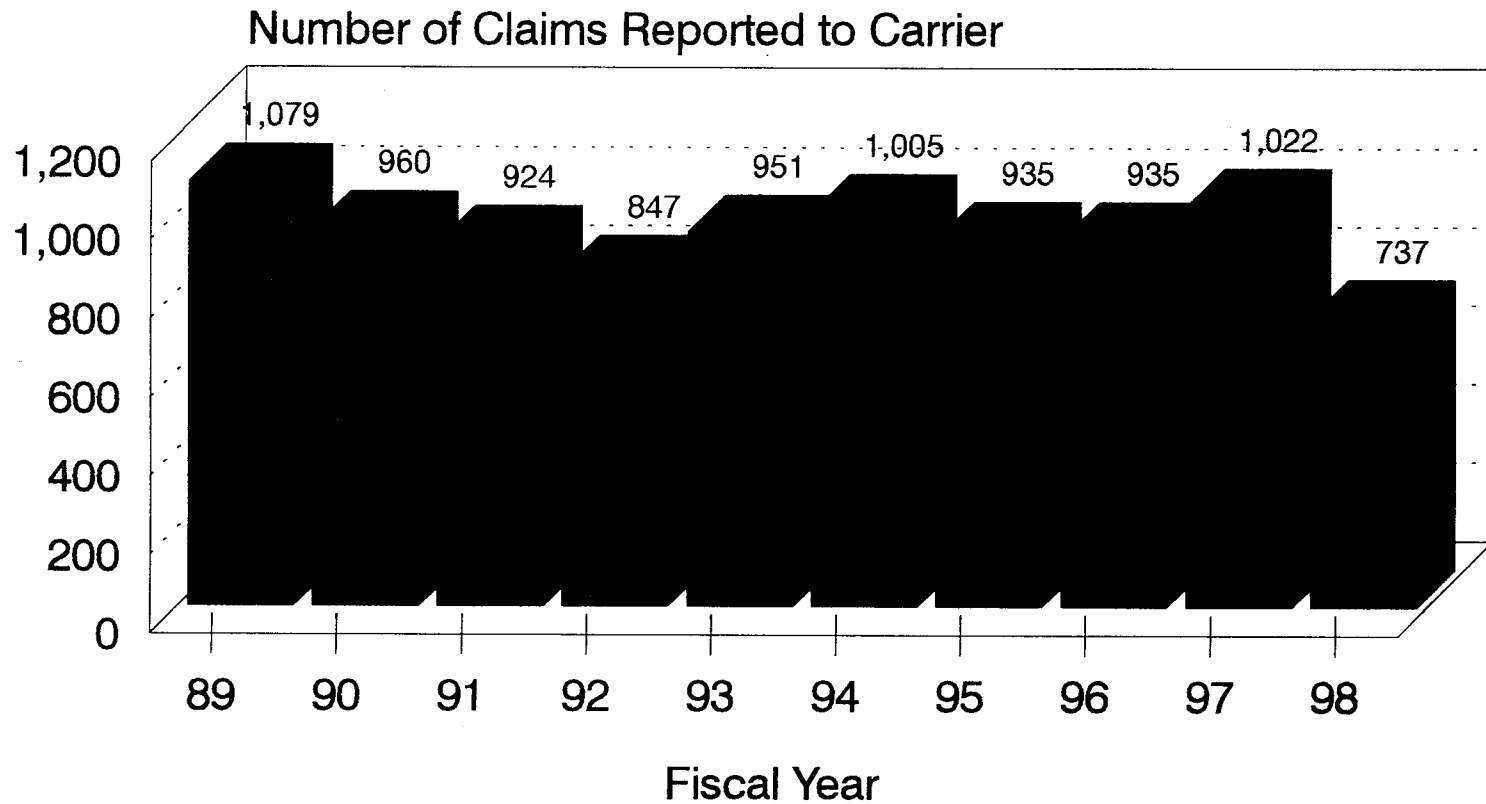
Library References

Municipal Corporations Com. 1957(2), 292(2).
States Com. 2.

C.J.S. Municipal Corporations § 571 et seq., 591, 607.
C.J.S. States § 47, 52, 53, 54, 74, 77, 78.

Number Of Liability Claims

Reported To Department's Insurance Carrier

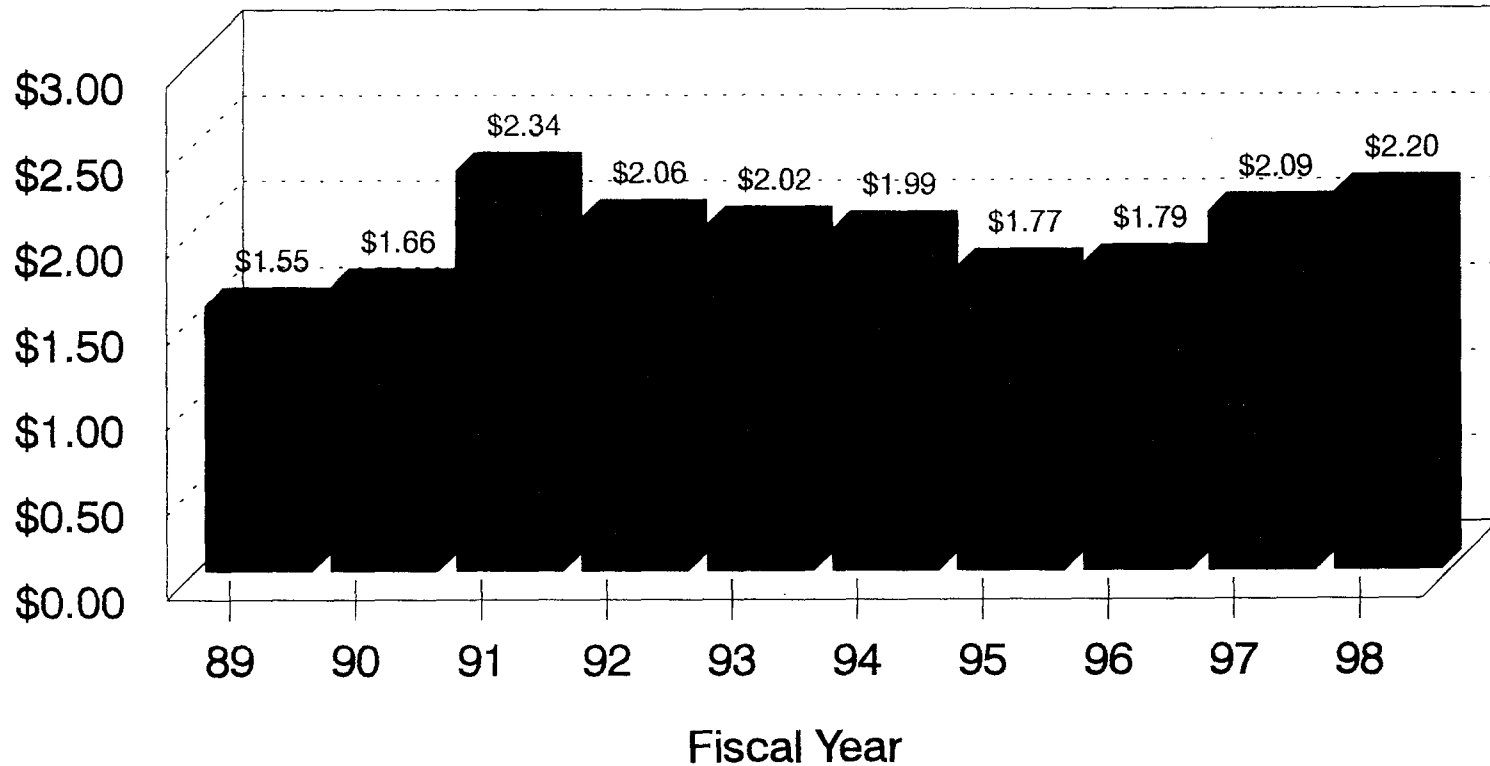


Occupational Safety Division, Texas Department of Transportation

Liability Insurance Net Premium Costs

By Fiscal Year

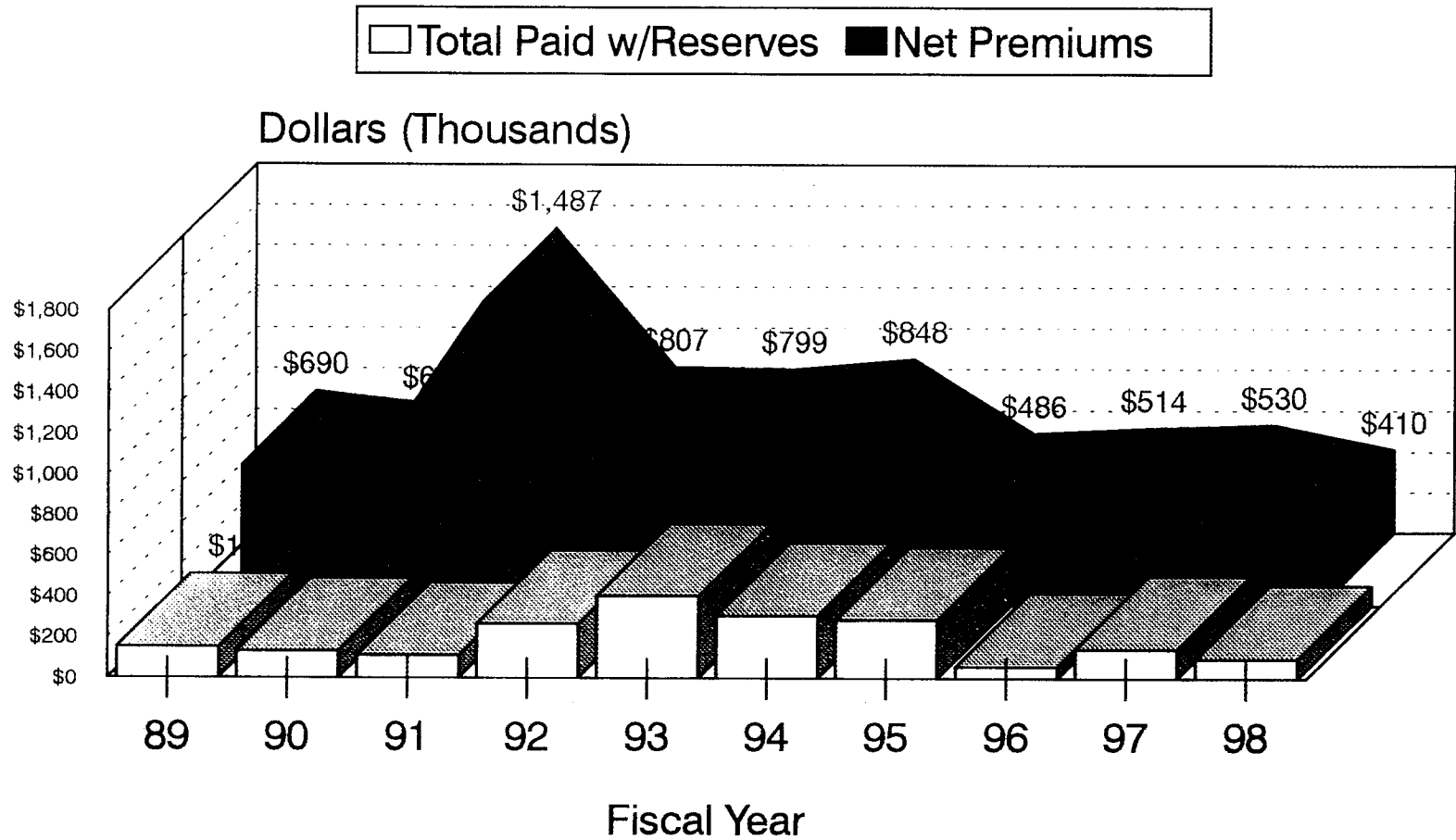
Annual Net Premium Costs in Dollars (Millions)



Occupational Safety Division, Texas Department of Transportation

General Liability Policy

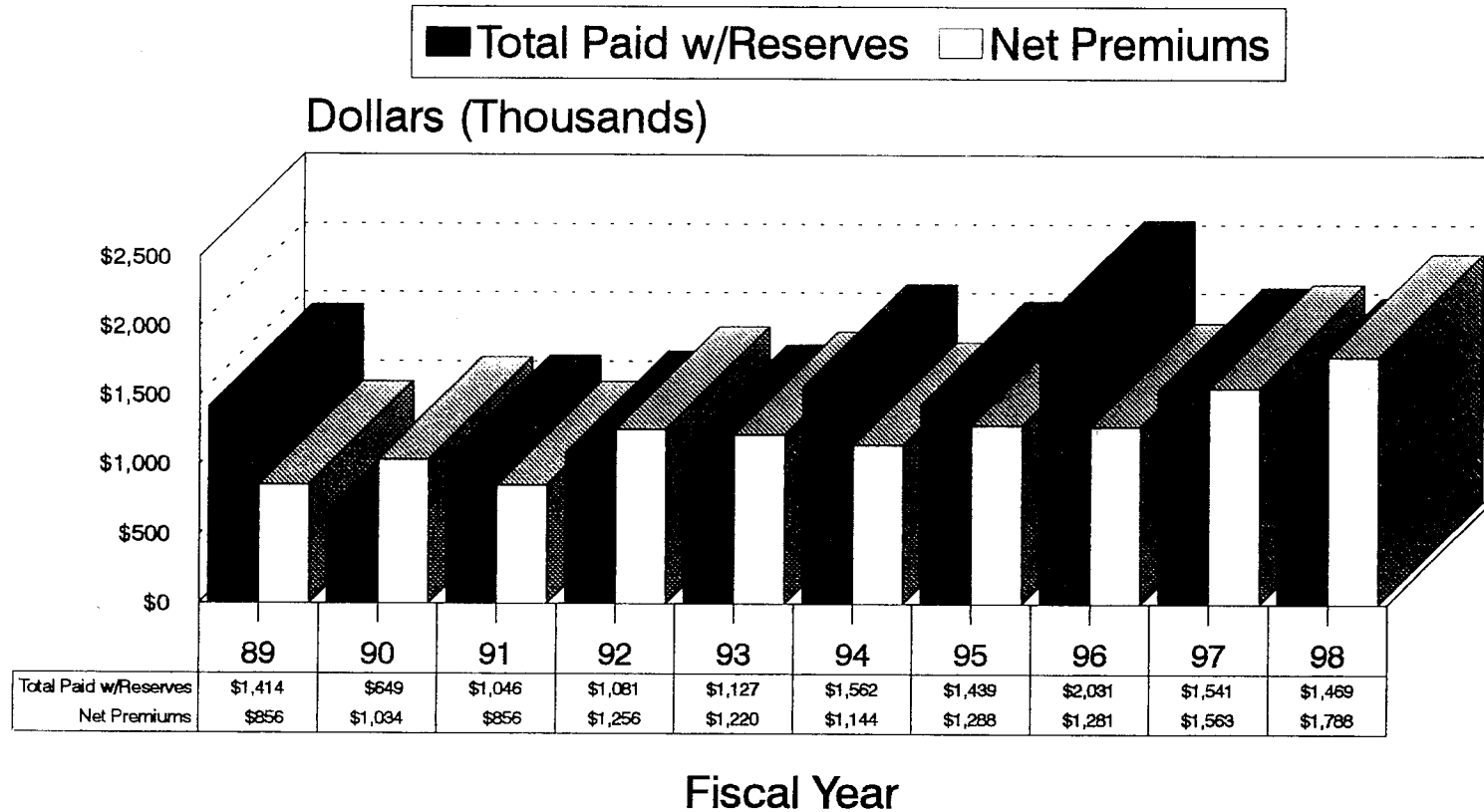
Net Premium Costs vs. Total Claims Paid Plus Reserves



Occupational Safety Division, Texas Department of Transportation

Automobile Policy

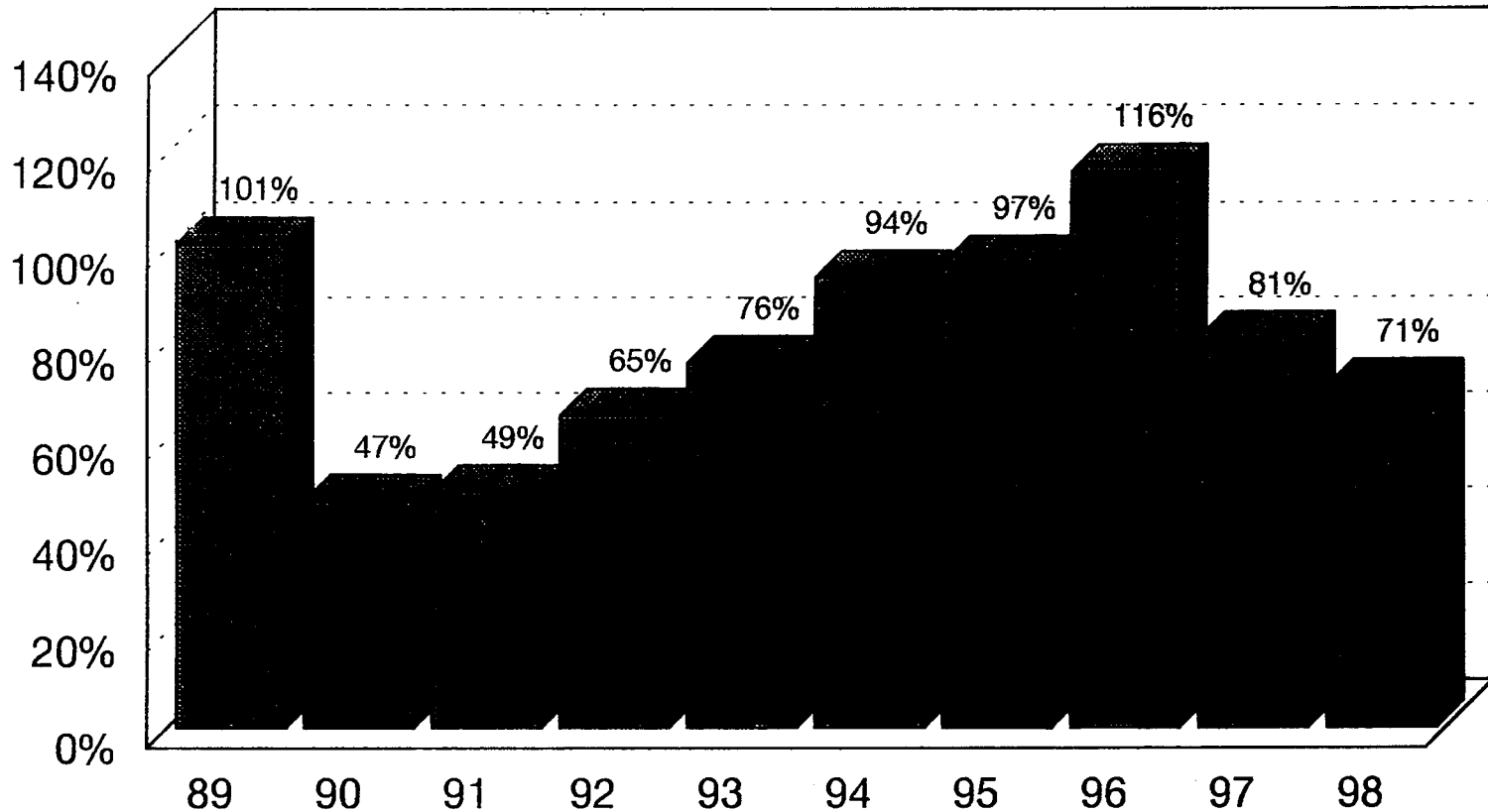
Net Premium Costs vs. Total Claims Paid Plus Reserves



Occupational Safety Division, Texas Department of Transportation

Liability Insurance Policies Loss Ratio

Loss Ratio = Total Claims Paid Plus Reserves Divided by Total Net Premiums



Occupational Safety Division, Texas Department of Transportation

Note: Additional adjustments are expected for FY 94-98.

[No. E-5]

09/98