



**REPORT OF  
THE  
STATE AUDITOR**

**Division of Aeronautics  
Department of Transportation**

**Performance Audit  
February 2009**

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Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Department of Transportation, Division of Aeronautics. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Transportation, Division of Aeronautics, Colorado Aeronautical Board, Transportation Commission, and Department of Revenue.

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**Division of Aeronautics  
Department of Transportation  
Performance Audit  
February 2009**

**Authority, Purpose, and Scope**

This audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit reviewed the activities of the Division of Aeronautics and oversight provided by the Aeronautical Board. We assessed the State Aviation System Grant Program, disbursements of formula aviation fuel tax reimbursements to airports, State Infrastructure Bank aviation loans, and controls over Division expenditures and resources. We also conducted a limited review of Department of Revenue processes for collecting aviation fuel taxes and depositing them to the Aviation Fund. We acknowledge the cooperation and assistance extended by management and staff at the Department of Transportation, the Division of Aeronautics, the Aeronautical Board, the Transportation Commission, and the Department of Revenue.

**Overview**

The Division of Aeronautics (Division) and Aeronautical Board (Board) are responsible for: (1) promoting safe and accessible general and intrastate commercial aviation in Colorado, and (2) ensuring that the State has an aviation system that can support the needs of its residents, visitors, and businesses [Section 43-10-101, C.R.S.]. The Division's key duties include disbursing aviation fuel tax reimbursements, overseeing grants and loans to airports, conducting airport pavement and safety inspections, and providing planning and technical advice to airports. The Board is primarily responsible for overseeing Division operations and managing the Aviation Fund. The Board and Division do not regulate the State's airports or oversee the airline industry. Rather, airport and airline regulation is the responsibility of the Federal Aviation Administration (FAA).

As of June 30, 2008 Colorado had 75 public-use airports, or airports open to the general public, excluding Denver International Airport (DIA). The Division estimated that these 75 airports provided about \$14 billion in economic benefits to Colorado in 2007.

*For further information on this report, contact the Office of the State Auditor at 303.869.2800.*

The Board, Division, and Division Director have Type 1 authority as defined in the Administrative Organization Act of 1968 [Section 24-1-105(1), C.R.S.]. As Type I entities, each has the autonomy to exercise prescribed statutory powers and duties independent of the Department of Transportation (Department). The Department is responsible for overseeing functions not statutorily assigned to the Division or Board, such as accounting, human resources, and procurement.

The Division's primary sources of revenue are aviation fuel sales and excise taxes deposited into the Aviation Fund. During Fiscal Years 2004 through 2008, the Aviation Fund received a total of about \$125.6 million in revenue and Division expenditures and disbursements totaled about \$117.3 million.

## Key Findings

### State Aviation System Grants

The State Aviation System Grant Program (Grant Program) plays an important role in Colorado's aviation system by helping support and improve airports (excluding DIA) and other facilities that support aviation in the State. In Fiscal Year 2008 the Board awarded 86 aviation grants totaling about \$8.4 million. We identified weaknesses throughout the Grant Program, including:

**Grant application and award process.** The Division has not implemented an adequate process to evaluate grant applications that fulfills its grantmaking responsibilities. Specifically, the Division has not developed standardized criteria, as required by statute, or a uniform scoring system to support its grant recommendations to the Board. Establishing criteria and scoring procedures would promote a consistent and fair grant award process. This is particularly important because the Division also requests and receives grant awards from the Board.

**Supplemental and out-of-cycle grants.** Two grantees provided no written justification for supplemental requests totaling about \$39,000, and the Division did not amend existing grant contracts for two supplementals totaling about \$188,000 that were approved by the Board. The Division and Board have not defined conditions for approving grant requests outside the regular grant cycle. In Fiscal Years 2005 through 2008 the Board approved 11 supplementals totaling \$243,000 and 20 out-of-cycle grants totaling about \$1.2 million.

**Controls over grant projects.** Out of the 20 grant contracts we reviewed totaling \$3.2 million, none included detailed project budgets or schedules or provisions to terminate the contract for noncompliance. In addition, the Division reimbursed three grantees a combined total of about \$30,500 more than it had intended because the Division did not specifically limit its grant commitment to a percentage of project costs. Finally, two grant projects in our sample totaling about \$122,000 started at least 14 months late and another two totaling about \$102,000 were completed at least 11 months late. The Division and Board do not have adequate controls or monitoring procedures to contain project costs or ensure timely project completion.

**Board grant and loan procedures.** We identified six instances between Fiscal Years 2006 and 2008 where Board members had potential conflicts of interest, yet they voted to approve a total of about \$1.3 million in aviation grants and loans to airports or other entities.

**Strategic grantmaking.** The 2000 State Aviation System Plan identified 294 unmet airport objectives related to areas such as the adequacy of runway lighting and strength. We found that 83 percent of these unmet objectives still existed when the next System Plan was completed in 2005, even though the Board awarded about \$10.6 million in grants to airports between 2000 and 2005. The System Plan identifies goals, performance measures, and specific objectives that each airport should meet to improve the aviation system. The Board and Division have not developed strategic grantmaking goals, priorities, and outcomes for the State Aviation System Grant Program or targeted grant funding to meet critical aviation needs identified in the System Plan.

### **Non-Grant Distributions of Aviation Fund Monies**

A primary statutory responsibility of the Board is to manage the disbursement of monies from the Aviation Fund. In Fiscal Year 2008 the Division and Board distributed about \$40.7 million in aviation formula fuel sales and excise tax reimbursements to airports, transferred \$10 million from the Aviation Fund to the Transportation Infrastructure Revolving Fund for use in making aviation loans, and recommended about \$9.3 million in aviation loans. The Department of Revenue (Revenue) collected and deposited about \$35.8 million to the Aviation Fund in Fiscal Year 2008. We identified weaknesses related to the management of aviation fuel taxes and reimbursements and aviation loans.

**Fuel sales tax collections and deposits.** Weaknesses in Revenue's oversight of vendor reporting of aviation fuel taxes resulted in Revenue depositing about \$349,400 less to the Aviation Fund than it should have between Fiscal Years 2004 and 2008.

**Fuel tax reimbursement process.** The Division disbursed about \$9,000 in formula fuel tax reimbursements to privately owned, publicly accessible airports, which may not be allowed by statute. In addition, as of June 2008 the Division was holding about \$220,000 in reimbursements that were owed to nine airports for aviation fuel sales between 2004 and 2007 because the airports had not yet submitted excise tax reports to the Division.

**Airport use of fuel tax reimbursements.** The Division and Board have not developed a mechanism to ensure that airports use aviation formula fuel tax reimbursements for aviation purposes, as required by statute, nor have they communicated to airports the statutory restrictions on the use of the funds. All of the 13 airports we contacted that receive reimbursements reported that expenditures of the reimbursements are not tracked separately from other expenditures. Some airports engage in operations that are not related to aviation, such as operating recreational facilities. As a result, there is a risk that these entities could use their fuel tax reimbursements to help support their nonaviation operations.

**State Infrastructure Bank aviation loans.** For five loans totaling \$14 million, the loan applications indicated the applicants were at risk of default. Further, two borrowers were late in making a total of \$993,300 in payments. The Transportation Commission and Department do not have sufficient financial review procedures for loan applications to fully protect the State. For three loans totaling \$5.1 million the Department was unable to verify that the funds were used for aviation purposes, as required by statute.

### **Division Administration**

In Fiscal Years 2005 through 2008 the Division recorded about \$2.1 million in administrative costs and spent about \$5.1 million in grants to the Division. We identified numerous weaknesses in controls which point to an overall lack of accountability for the Division's use of state resources.

**Controls over expenditures.** We identified exceptions for 29 of our sample of 74 expenditures (39 percent) tested from Fiscal Years 2005 through 2008. Exceptions totaled about \$139,400 and included expenditures that did not appear reasonable or necessary; lacked supporting documentation, such as invoices and receipts, or required approvals; and/or were improperly recorded.

**Division budgeting and reporting.** The Board does not approve or monitor the Division's budget, as required by statute. The Division does not prepare an annual budget request for Board approval or report budget-to-actual expenditures. The Board does not review Division grant spending and outcomes to ensure Division expenditures are appropriate and in compliance with the statutory 5 percent cap on administrative costs.

**Controls over nonmonetary state resources.** The Division has inadequate controls over nonmonetary state resources. The Division lacked documentation to show that fleet vehicles, fuel cards, and vehicle toll transponders were only used for state purposes. Further, one Division employee engaged in outside employment that created a conflict with the employee's state job duties and had used state resources in violation of statutes, executive directives, and rules.

**Governance and accountability.** The Aeronautical Board lacks effective governance practices, including: (1) bylaws, policies, or procedures to address how it will meet its statutory responsibilities and comply with Colorado's Open Meetings Law; (2) adequate procedures for administering monies in the Aviation Fund, as required by statute; and (3) accountability mechanisms to ensure the Division complies with statutes, rules, and policies.

Our recommendations and the responses of the Department of Transportation, Division of Aeronautics, Aeronautical Board, Transportation Commission, and Department of Revenue can be found in the Recommendation Locator and in the body of the report.

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## RECOMMENDATION LOCATOR

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Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date	
1	23	Evaluate grant applications in accordance with statutes by: (a) developing standardized evaluation criteria, (b) guiding staff and Board members on applying the criteria, (c) developing a uniform scoring system for evaluating grant applications, (d) maintaining a current grant manual, and (e) maintaining documentation of discussions between the Division and potential applicants.	Division of Aeronautics	Agree	January 2010	
			Aeronautical Board	Agree	January 2010	
2	26	Develop policies and procedures for managing supplemental and out-of-cycle grant requests including: (a) using standardized application forms, (b) executing contract amendments as appropriate (c) defining conditions for considering grant requests outside the normal grant cycle, and (d) applying uniform criteria to evaluate supplemental and out-of-cycle grant requests.	Division of Aeronautics	a. Agree b. Agree c. Agree d. Agree	a. January 2010 b. Implemented c. January 2010 d. January 2010	
			Aeronautical Board	a. Agree b. Agree c. Agree d. Agree	a. January 2010 b. Implemented c. January 2010 d. January 2010	
3	33		Strengthen grantmaking by: (a) including detailed project budgets and schedules in grant applications and contracts, (b) including the percentage of total project costs covered by the grant, up to the total award, in grant contracts, (c) including compliance requirements, penalties, and termination provisions for noncompliance in contracts, (d) enforcing contract budgets, schedules, and compliance requirements through penalties, and (e) implementing a comprehensive grant monitoring program.	Division of Aeronautics	a. Agree b. Agree c. Partially Agree d. Partially Agree e. Agree	a. January 2010 b. January 2010 c. January 2010 d. January 2010 e. January 2010

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**RECOMMENDATION LOCATOR**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Addressed</b>	<b>Agency Response</b>	<b>Implementation Date</b>
4	35	Work with the City and County of Denver on a statutory change to eliminate the conflict between state statute and federal regulations regarding airport-related surplus equipment.	Division of Aeronautics	Agree	Implemented
			Aeronautical Board	Agree	Implemented
5	38	Expand the Board Code of Conduct to require annual conflict of interest disclosures, make the disclosures accessible to the Board and public, avoid conflicts when voting on funding requests, and undertake periodic training on statutes and policies.	Aeronautical Board	Agree	January 2010
6	42	Develop a strategic grantmaking approach by: (a) using the State Aviation System Plan to establish grantmaking goals, priorities, and outcomes, (b) expanding the use of funding initiatives to target grants, (c) evaluating statewide grant outcomes, and (d) implementing systematic method to establish a target uncommitted fund balance in the Aviation Fund, monitor the fund balance, and take action when the fund balance is outside the target.	Division of Aeronautics	a. Agree b. Agree c. Agree d. Agree	a. July 2011 b. July 2009 c. July 2011 d. July 2009
			Aeronautical Board	a. Agree b. Agree c. Agree d. Agree	a. July 2011 b. July 2009 c. July 2011 d. July 2009
7	47	Develop and implement a sales tax form that separately identifies aviation fuel sales and related taxes and develop documented processes to resolve problems with aviation fuel tax reporting in a timely way.	Department of Revenue	Agree	September 2009

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**RECOMMENDATION LOCATOR**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Addressed</b>	<b>Agency Response</b>	<b>Implementation Date</b>
8	51	Improve the formula fuel tax reimbursement process by: (a) obtaining legal guidance on whether reimbursements to privately owned airports are allowed by statute and seeking recovery if not allowed, (b) setting a deadline for airports to file excise tax reports and seeking statutory authority to impose penalties for noncompliance, and (c) updating the tax procedure manual and cross training staff on reimbursement processes.	Division of Aeronautics  Aeronautical Board	a. Partially Agree b. Partially Agree c. Agree  a. Partially Agree b. Partially Agree c. Agree	a. July 2009 b. July 2009 c. July 2009  a. July 2009 b. July 2009 c. July 2009
9	54	Ensure airports use aviation formula fuel tax reimbursements for aviation purposes, as required by statute by: (a) implementing processes to verify how the funds are used, (b) requiring airports to account for the reimbursements separately from other funds, and (c) considering seeking statutory authority to sanction airports for noncompliance.	Division of Aeronautics  Aeronautical Board	a. Agree b. Agree c. Partially Agree  Partially Agree	a. July 2009 b. July 2009 c. July 2009  July 2009
10	57	Notify local governments of the method by which they may access Federal Aviation Administration information on changes in aircraft ownership by Colorado residents.	Division of Aeronautics	Agree	February 2009

## RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
11	60	Improve the State Infrastructure Bank Loan Program by: (a) requiring applicants to submit documentation to substantiate the loan amount and ensuring the loan is appropriate for the purpose requested, (b) implementing loan review and approval procedures that ensure borrowers' ability to pay, (c) developing rules, policies, and procedures for enforcing and changing loan agreements, (d) approving past changes to loan agreements, and (e) modifying rules and loan agreements to define delinquency and default, and consider applying statutory remedies for noncompliance.	Department of Transportation	Agree	June 2009
			Transportation Commission	Agree	June 2009
			Division of Aeronautics	Agree	June 2009
			Aeronautical Board	Agree	June 2009
12	64	Adopt policies and procedures for Aviation Fund transfers to the Transportation Infrastructure Revolving Fund, including defining when transfers are allowed, analyzing the need for transfers, implementing approval procedures and criteria for transfers.	Division of Aeronautics	Agree	January 2010
			Aeronautical Board	Agree	January 2010
13	71	Improve internal controls by: (a) discontinuing payments for other entities or executing agreements for repayment, (b) requiring documentation of business purpose and approvals of expenses, (c) ensuring staff follow proper accounting and fiscal procedures, and (d) obtaining Department approval for all Division Director expenses.	Division of Aeronautics	a. Agree b. Agree c. Agree d. Agree	a. September 2009 b. February 2009 c. September 2009 d. February 2009
			Aeronautical Board	Agree	September 2009
14	73	Improve oversight over Division expenditures by implementing Departmental approval of Division Director expenses and reinstating regular reviews of Division payments to ensure the Division follows proper accounting controls.	Department of Transportation	Agree	February 2009

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## RECOMMENDATION LOCATOR

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Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
15	77	Strengthen oversight of Division grants by requiring that the Division: (a) submit grant requests during an annual budget process, (b) provide detailed justifications for all grant requests that are evaluated against established criteria; and (c) routinely report to the Board on the progress, costs, and outcomes of Division grants.	Aeronautical Board	Agree	January 2010
16	80	Improve oversight of the Division budget by requiring: (a) a detailed annual budget request each fiscal year, (b) a definition of administrative costs that accounts for all ongoing Division expenses, and (c) an ongoing budget reporting process.	Aeronautical Board  Division of Aeronautics	a. Agree b. Agree c. Agree  a. & b. Agree c. Agree	a. July 2009 b. July 2009 c. Implemented  a. & b. July 2009 c. Implemented
17	84	Implement controls to prevent misuse of state resources and employee conflicts of interest by: (a) requiring staff to accurately complete vehicle logs, (b) acquiring regular conflict of interest and ethics training, (c) not allowing employees to engage in outside employment that represents a conflict, (d) implementing annual conflict disclosures for employees, and (e) implementing Division Director reviews of employee activities.	Division of Aeronautics	a. Agree b. Agree c. Agree d. Agree e. Agree	a. February 2009 b. July 2009 c. July 2009 d. July 2009 e. February 2009
18	88	Improve oversight of the Division by (a) developing self-governance policies that ensure compliance with applicable statutes, rules, policies, and procedures, (b) monitoring Division activities, (c) ensuring that internal and external audit recommendations are implemented, and (d) ensuring all votes occur in a public meeting.	Aeronautical Board	Agree	January 2010

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# Overview of Colorado's Aviation System and Division of Aeronautics

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The General Assembly established the Colorado Aeronautical Board (Board) and the Division of Aeronautics (Division) effective in January 1989. The Board and Division are responsible for promoting safe and accessible general and intrastate commercial aviation in Colorado. Statute also charges the Division with ensuring that Colorado has an aviation system that can support the needs of its residents, visitors, and businesses [Section 43-10-101, C.R.S.].

Although the Board and Division have specific responsibilities for supporting and promoting Colorado's aviation system, the Board and Division do not regulate the State's airports or oversee the airline industry. Rather, airport and airline regulation is the responsibility of the Federal Aviation Administration (FAA). Additionally, statute limits the Board's and Division's authority with respect to Denver International Airport (DIA), which is part of the City and County of Denver. Specifically, the Board and Division reimburse aviation fuel taxes to DIA and coordinate the distribution of surplus equipment from DIA. General oversight of DIA is provided by the City and County of Denver and the FAA. Thus, information and statistics related to DIA are excluded from our description of Colorado's aviation system, below.

## The Colorado Aviation System

Colorado's aviation system is an important component of the State's multimodal transportation system. As of June 30, 2008 Colorado's aviation system included 75 public-use airports, or airports open to the general public, excluding DIA. These 75 airports fall into two general categories, as defined by the FAA:

- **Commercial service airports** have regularly scheduled passenger service through commercial airlines and at least 2,500 passenger boardings per year. Colorado has 13 commercial service airports. According to statistics maintained by the FAA, these 13 airports had about 6.1 million passenger boardings in Calendar Years 2005 through 2007. Additionally, takeoffs and landings at the five commercial service airports with air traffic control towers totaled more than 1.3 million over the same period.
- **General aviation airports** provide noncommercial service, such as charter flights, and support other aviation needs, such as emergency medical flights and agricultural spraying. Colorado has 62 general aviation airports—51 publicly owned and 11 privately owned.



## State Oversight of the Aviation System

The Aeronautical Board and the Division of Aeronautics are responsible for oversight of the State's aviation system. Both the Board and the Division were transferred to the Department of Transportation (Department) from the Department of Military Affairs in 1991. The Board, Division, and Division Director have Type 1 authority as defined in the Administrative Organization Act of 1968 [Section 24-1-105(1), C.R.S.]. According to statute, Type 1 authority gives the Board, Division, and Director the autonomy to exercise their prescribed statutory powers, duties, and functions, independent of the Department. However, any powers, duties, and functions not specifically given to the Board, Division, and Director in statute are to be performed under the direction and supervision of the Department. Descriptions of the duties of the Board, Division, and Department are detailed below.

### Colorado Aeronautical Board

The Board is responsible for overseeing and advising the Division, establishing policies for the growth and development of aviation in the State, setting the budget for the Division, acquiring land that might be needed to prevent hazards or detriments to the safe operation of airports or aircraft, adopting and annually reviewing the State's Aviation System Plan, and managing the State Aviation System Grant Program with the assistance of the Division. The Board consists of seven members, each appointed by the Governor and confirmed by the Senate, and serving a three-year term. By statute, two of the members represent west-slope governments, two others represent east-slope governments, one represents a statewide association of airport managers, one represents a statewide pilots association, and one represents statewide aviation interests.

### Division of Aeronautics

The Division is charged by statute with supporting and assisting the aviation system. The Division's stated mission is to "promote partnering with its public and private constituents to enhance aviation safety, aviation education, and the development of an effective air transportation system through the efficient administration of the Aviation Fund." The Aviation Fund, discussed later in the Overview, was established by the General Assembly to provide funding for airports and to support the Division's activities. The Division has eight FTE who are responsible for carrying out the duties described below.

**Disbursing Funds to Airports.** The Division distributes monies to Colorado airports through several mechanisms, as follows:

- **Formula Aviation Fuel Tax Reimbursements.** Statute [Section 43-10-110, C.R.S.] requires the Division, at the direction of the Board, to transfer to airports a proportion of the taxes charged on aviation fuel sold at the airports. As discussed in greater detail later in the Overview, taxes are charged on the sale of aviation and jet fuel and remitted to the Department of Revenue by aviation fuel vendors. In Fiscal Year 2008 the Division reimbursed a total of about \$40.7 million in fuel sales and excise taxes to Colorado airports. This figure is considerably higher than in prior years because a sales tax audit conducted by the Department of Revenue (Revenue) identified fuel taxes that had been collected by Revenue but, due to reporting problems, were not properly deposited to the Aviation Fund in Fiscal Years 2004 through 2007. In Fiscal Year 2008, Revenue transferred the improperly deposited taxes, totaling about \$22.8 million, to the Aviation Fund, and the Division reimbursed a portion of the taxes to airports in accordance with the statutory formula. Aviation fuel tax reimbursements are discussed in Chapter 2.
- **State Aviation System Grant Program Awards.** Statute [Section 43-10-108.5, C.R.S.] requires the Division and Board to manage the State Aviation System Grant Program (Grant Program) to support and improve Colorado's aviation system. Funding for the Grant Program comes from a portion of the fuel taxes deposited to the Aviation Fund. The Division and Board award aviation grants to entities providing publicly accessible aviation services in Colorado. Grants are awarded for a variety of purposes, including to: (1) provide matching funds so airports may receive federal grants; (2) implement safety/security projects, such as fencing, land acquisition, lighting, and markings; (3) install weather/navigation systems, including weather reporting facilities and beacons; and (4) make general facility enhancements, such as improving or maintaining terminals, parking, and pavement. In Fiscal Year 2008 the Division and Board awarded 86 grants totaling about \$8.4 million to airports and other entities. The State Aviation System Grant Program is discussed in Chapter 1.
- **Aviation Loans.** The Transportation Commission (discussed below) offers low-interest revolving loans through the State Infrastructure Bank Loan Program to public and private entities to help them acquire, improve, or construct aviation facilities in Colorado. The Division reviews and makes recommendations on loan applications from airports and/or their sponsors (i.e., the airport's governing body, such as a local government or airport authority). The Loan Program was established in 1998 and the first aviation loans were made in 2002. For Fiscal Year 2008 the Division recommended and the Commission approved aviation loans totaling \$9.3 million for three airports. Aviation loans are discussed in Chapter 2.

**Promoting Airport Safety.** The Division carries out a variety of duties related to aviation safety. The Division receives an annual grant from the FAA to conduct airport pavement inspections in accordance with federal standards. It also promotes aviation safety by working with the FAA and local governments to identify and control obstructions that pose a potential hazard to aviation. In addition, the Division conducts airport safety inspections and manages projects to help pilots safely navigate over Colorado. For example, the Division is responsible for deploying and maintaining, in coordination with the FAA, a system of automated weather observing stations that collect and broadcast near-real-time meteorological information to aircraft flying through the State. The Division has also worked with the FAA to develop and utilize a mountain radar system that tracks aircraft at elevations that standard radar is unable to cover.

**Supporting and Promoting Colorado Aviation.** The Division carries out a variety of other duties to support Colorado's aviation system. These functions include developing and maintaining the State's Aviation System Plan; providing technical and planning assistance to publicly accessible airports; and publishing information related to aeronautics in the State, such as aeronautical charts and directories.

## **Transportation Commission and Department of Transportation**

The Transportation Commission (Commission), which oversees the Department of Transportation, has the broad mandate of managing and controlling the State's transportation systems. The Commission's primary responsibility relative to the Division of Aeronautics is to give final approval for aviation loans from the State Infrastructure Bank Loan Program. The Department is responsible for overseeing functions that involve the Division but are not statutorily assigned to the Division or Board, such as accounting, human resources, and procurement.

## **Division Funding**

All the Division's receipts and disbursements are recorded and tracked in the Aviation Fund (Fund) created in Section 43-10-109, C.R.S. The Fund's primary sources of revenue are the following two types of aviation fuel taxes:

- A sales tax of 2.9 percent on retail jet fuel sold in Colorado.
- Excise taxes of 4 cents per gallon on wholesale and noncommercial jet fuel and 6 cents per gallon on gasoline for nonjet aircraft. Excise taxes are established in statute and vary based on the specific good being taxed.

The Department of Revenue collects the aviation fuel sales and excise taxes, which are required to be transferred and deposited into the Aviation Fund. The Division also receives a small amount of federal funding each year through an FAA planning grant. The grant is intended to support specific projects of federal interest, including pavement inspections and land-use assessments, and must be matched with 5 percent state funds. The specific scope and amount of the grant are determined annually. The Division receives no state general fund monies. The following table shows the revenue and expenditures of the Aviation Fund for Fiscal Years 2004 through 2008.

**Colorado Division of Aeronautics**  
**Aviation Fund Revenue, Expenditures, and Fund Balance**  
**Fiscal Years 2004 Through 2008**

	2004	2005	2006	2007	2008	Change: 2004 to 2008
<b>Beginning Fund Balance</b>	<b>\$8,347,800</b>	<b>\$8,763,900</b>	<b>\$11,295,800</b>	<b>\$14,002,300</b>	<b>\$35,979,200</b>	<b>331%</b>
<b>Revenue</b>						
Aviation Fuel Taxes <sup>1</sup>	\$11,573,100	\$16,830,000	\$21,141,900	\$36,257,800 <sup>2</sup>	\$35,828,900	210%
Interest Income <sup>3</sup>	\$292,800	\$327,500	\$512,500	\$689,600	\$792,200	171%
Federal Grant <sup>4</sup>	\$320,200	\$219,600	\$268,700	\$190,300	\$340,900	6%
<b>Total Revenue</b>	<b>\$12,186,100</b>	<b>\$17,377,100</b>	<b>\$21,923,100</b>	<b>\$37,137,700</b>	<b>\$36,962,000</b>	<b>203%</b>
<b>Expenditures/Distributions</b>						
Administration <sup>5</sup>	\$494,900	\$512,400	\$499,800	\$535,800	\$571,300	15%
Fuel Tax Reimbursements <sup>6</sup>	\$8,705,000	\$9,804,900	\$14,766,600	\$9,970,000	\$40,665,600	367%
State Aviation System Grants <sup>7</sup>	\$1,859,300	\$3,221,700	\$2,738,100	\$3,563,300	\$3,578,400	92%
Division Grants and Projects <sup>8</sup>	\$710,800	\$1,306,200	\$1,212,100	\$1,091,700	\$1,527,800	115%
Transfers <sup>9</sup>	\$0	\$0	\$0	\$0	\$10,000,000	NA
<b>Total Expenditures</b>	<b>\$11,770,000</b>	<b>\$14,845,200</b>	<b>\$19,216,600</b>	<b>\$15,160,800</b>	<b>\$56,343,100</b>	<b>379%</b>
<b>Net Income (Loss)</b>	<b>\$416,100</b>	<b>\$2,531,900</b>	<b>\$2,706,500</b>	<b>\$21,976,900</b>	<b>(\$19,381,100)</b>	<b>-4,758%</b>
<b>Ending Fund Balance</b>	<b>\$8,763,900</b>	<b>\$11,295,800</b>	<b>\$14,002,300</b>	<b>\$35,979,200</b>	<b>\$16,598,100</b>	<b>89%</b>

**Source:** Office of the State Auditor's analysis of data from the Fiscal Year 2007 State of Colorado Audited Financial Statements, the Colorado Financial Reporting System (COFRS), and the Division of Aeronautics.

<sup>1</sup> Includes sales taxes of 2.9 percent on all retail jet fuel sold in Colorado and excise taxes of 4 cents per gallon on wholesale and noncommercial jet fuel and 6 cents per gallon on aviation gasoline for nonjet aircraft.

<sup>2</sup> The Aviation Fuel Taxes amount for Fiscal Year 2007 includes \$10.6 million in taxes from prior years. A post-closing adjustment was made to record \$22.8 million (\$10.6 million for Fiscal Years 2004 through 2006 and \$12.2 million for Fiscal Year 2007) in additional aviation fuel taxes deposited to the Fund as a result of a correction by the Department of Revenue. When Aviation Fuel Tax revenue for Fiscal Years 2004 through 2007 are adjusted to reflect the amounts that should have been deposited each year, the increase in Aviation Fuel Tax revenue between Fiscal Years 2004 and 2008 is 188 percent.

<sup>3</sup> Includes interest earned on the Aviation Fund balance.

<sup>4</sup> The Division receives an annual FAA grant to carry out specific federal projects.

<sup>5</sup> Includes staff salaries and benefits, Board expenses, and other general administrative costs.

<sup>6</sup> Includes statutorily required disbursements of aviation fuel taxes to airports. Disbursements to airports in Fiscal Year 2008 were higher due to the correction of an error by the Department of Revenue that was recorded as a post-closing adjustment in Fiscal Year 2007. When reimbursements for Fiscal Years 2004 through 2008 are adjusted to reflect the amounts that were attributable to each year affected by the correction, the increase in Fuel Tax Reimbursements between Fiscal Years 2004 and 2008 is 184 percent.

<sup>7</sup> Includes disbursements of grant funds to Colorado airports and other entities.

<sup>8</sup> Includes expenditures related to Division-administered state and federal grant projects, such as airport inspections, conferences, publications, and contracted duties.

<sup>9</sup> In Fiscal Year 2008 the Division transferred \$10 million in aviation fuel tax revenue to the Transportation Infrastructure Revolving Fund within the Department of Transportation.

As the table above shows, revenue from aviation fuel taxes increased substantially between Fiscal Years 2004 and 2008. According to the Division, this is due primarily to greater activity at DIA over the period, such as a rise in the number of landings and take-offs, and overall increases in aviation fuel prices. The increased revenue provided additional funds for State Aviation System Grants,

Division grants and projects, and reimbursements to airports. The \$40.7 million in fuel tax reimbursements in Fiscal Year 2008 include reimbursements to airports that should have been made in Fiscal Years 2004 through 2007. When reimbursements for Fiscal Years 2004 through 2007 are adjusted to reflect the amounts that were attributable to each year affected by the correction, the reimbursements for the four-year period total \$57.6 million. These reimbursements were made after the Department of Revenue deposited additional monies to the Aviation Fund to correct an error. These disbursements contributed to the net loss in Fiscal Year 2008.

## **Other Funding for the State's Aviation System**

In addition to fuel tax reimbursements and State Aviation System grants, airports may receive direct funding from federal grants or generate revenue from fees. For example, the FAA provides Airport Improvement Program (AIP) grants to certain public-use airports for planning and development. The FAA AIP grant program funds projects at roughly 25 to 30 Colorado airports each year and requires a 5 percent match. In Fiscal Year 2008 Colorado airports received about \$76 million in AIP grants from the FAA. The FAA also allows airports that are open to the public and offering regularly scheduled commercial service to assess a Passenger Facility Charge (PFC) fee of up to \$4.50 per person per boarding. According to the Division, Colorado's 13 commercial service airports excluding DIA currently charge PFC fees and collected about \$4.6 million in PFC fees in Calendar Year 2007. Airports may use these funds to finance airport-related projects.

## **Audit Scope and Methodology**

Our audit reviewed the Board's and Division's processes for administering the State Aviation System Grant Program and other statutory responsibilities, such as reimbursing airports for a portion of the aviation fuel taxes collected, maintaining the State's Aviation System Plan, and other activities to support and promote aviation in Colorado. We assessed the Division's controls over expenditures and the Board's oversight of the Division, as well as the aviation loans made through the State Infrastructure Bank Loan Program. Finally, we conducted a limited review of the Department of Revenue's processes for collecting aviation fuel taxes and depositing them into the Aviation Fund.

As part of the audit, we interviewed Division of Aeronautics and Department of Transportation staff, as well as members of the Colorado Aeronautical Board and Transportation Commission. We also interviewed representatives from a sample of 15 airports.

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# State Aviation System Grants

## Chapter 1

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The State Aviation System Grant Program (Grant Program or Program) plays an important role in Colorado’s aviation system. The Grant Program was established in statute [Section 43-10-108.5, C.R.S.] “to support and improve the state aviation system,” which is the network of airports (excluding DIA) and other facilities that support aviation in Colorado. Funding for the Grant Program is provided by aviation fuel taxes deposited into the Aviation Fund. The Colorado Aeronautical Board (Board) and the Division of Aeronautics (Division) share responsibility for administering the Grant Program. The Board is responsible for approving all grant awards and ensuring that grant funds are used solely for aviation purposes. The Division is responsible for announcing the annual grant cycle to potential applicants, advising applicants regarding potential projects, reviewing grant applications, recommending grant awards to the Board for approval, executing grant contracts, disbursing grant funds to grantees, and monitoring projects.

Between Fiscal Years 2005 and 2008 the Division awarded about \$19.5 million in grants from the Grant Program, as shown in the table below.

<b>Colorado Division of Aeronautics State Aviation System Grant Program Awards Fiscal Years 2005 Through 2008</b>					
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008<sup>1</sup></b>	<b>Total</b>
Number of Grants	43	38	55	86	222
Total Grant Awards (in millions)	\$3.2	\$3.3	\$4.6	\$8.4	\$19.5
<b>Source:</b> Office of the State Auditor's analysis of Division of Aeronautics data.					
<sup>1</sup> In Fiscal Year 2008 the Division awarded an additional \$4.6 million in grants due to the \$22.8 million deposited in the Aviation Fund as a result of a Department of Revenue correction, as discussed in the Overview.					

During Fiscal Years 2005 through 2008 the Board awarded grants to a total of 61 airports and 4 other entities. Grants are awarded for a variety of projects, such as to maintain or repair airport pavements, purchase land for airport expansion, and prepare airport planning studies.

We reviewed the Division’s and Board’s procedures for administering the Grant Program and identified significant weaknesses throughout the grantmaking process which limit the Program’s ability to accomplish its intended purpose of supporting and improving the State’s aviation system. Specifically, we identified weaknesses in the grant application, evaluation, and contracting forms and

procedures; incomplete monitoring of grant projects to ensure compliance with grant contracts and timely progress; inconsistent procedures for managing supplemental and out-of-cycle grant requests; potential Board conflicts of interest in approving grants; and a lack of strategic goals, priorities, and outcomes for the Grant Program. We discuss each of these problems in the following sections.

## Grant Application and Award Process

Statute [Section 43-10-108.5, C.R.S.] assigns specific responsibilities to the Division and the Board related to managing the State Aviation System Grant Program. In particular, the statute requires the Division to determine what information should be contained in grant applications, to establish criteria for evaluating grant applications, and to make grant recommendations to the Board. Statute charges the Board with making final grant award decisions.

During Fiscal Years 2005 through 2008 the Board awarded 222 grants totaling about \$19.5 million to airports and other entities. According to Board meeting minutes, the Board denied nine grant requests over this period. The minutes did not document the amounts requested for three of the denied requests, but the other six denied applications totaled \$551,400.

We reviewed the grant application and award process and examined a sample of 20 grants awarded in Fiscal Years 2005 through 2007 totaling about \$3.2 million, or about 16 percent of all grant funds awarded over the period. We found that the Division has developed a grant application form that asks applicants to provide a variety of information, including the problem to be addressed with the requested funding and a description of the proposed project. However, the Division has not implemented an adequate process for evaluating grant applications that fulfills its grantmaking responsibilities under statute. We identified problems in several areas.

First, we found the Division does not have standardized, written criteria for evaluating grant applications. Standardized criteria, which should be made available to potential applicants in advance of the application process, ensure transparency and establish a level playing field for all applicants. According to the Division, the four staff who review grant applications consider the following factors before making a recommendation to the Board to award a grant:

- Whether the proposed project addresses a deficiency identified through a Division inspection of the airport.
- Whether the proposed project addresses a need identified in the airport's Capital Improvement Plan. Capital Improvement Plans are prepared by

each airport in coordination with the Division and the FAA to prioritize capital projects for the airport.

- Whether the applicant is requesting matching funds to acquire federal grant monies.

For the sample of 20 grants we reviewed, we found that most appear to reflect one or more of these factors. Specifically, according to the inspection and Capital Improvement Plan data we reviewed, it appears that about 80 percent of the grants in our sample addressed one or more of the factors listed above. While the factors the Division considers in evaluating grant applications appear reasonable, these factors are not prioritized or weighted, nor are they part of a written assessment process that is uniformly communicated to all potential applicants.

Second, we found the Division has not developed a uniform, documented system to score grant applications. The only written evidence of the evaluation process is a summary of each grant request prepared by Division staff and provided to the Board. According to our observations of a grant hearing, the Board uses these summaries for discussion and final approval of grant awards. Although these summaries may be helpful for describing proposed grant projects, they do not provide objective scores or rankings of the applications to assist the Board in its decisionmaking. A written scoring tool should be used by Division staff to both assess the extent to which an application aligns with Grant Program priorities and to provide an objective basis to support the Division's recommendations and the Board's grant decisions. For example, if the Board and Division determine that a primary goal of the Grant Program is to fund projects to remediate safety problems, the scoring tool would reflect that priority and give more weight to the criteria that relate to safety projects than to other projects.

Third, the Division does not maintain any documentation of its discussions with potential applicants that are advised by the Division to abandon or change their grant applications. According to the Division, most potential applicants discuss projects with the Division before submitting an application. The Division advises the potential applicant on the feasibility of the project but does not document the proposal or advice. Maintaining documentation of these discussions is important to ensure that appropriate advice is consistently provided to all applicants.

Establishing standardized evaluation criteria that are reflected and documented in a uniform scoring tool would promote consistency in assessing grant applications. Communicating the criteria and scoring method to Division staff, Board members, and potential applicants helps ensure that applicants are aware in advance of the basis for approving grants and that funds are awarded in accordance with the Grant Program's overall direction and goals. Fairness in the grant award process is particularly important because the Division itself regularly requests and

receives grants from the Board. For example, between Fiscal Years 2005 and 2008, the Board awarded the Division a total of 61 grants totaling almost \$6.2 million. Therefore, the Division essentially competes for the same pool of grant funds with other entities. Grants awarded to the Division are discussed in Chapter 3. Further, the Board relies heavily on the Division's recommendations in approving grants. The Board approved over 92 percent of all grant requests recommended by Division staff during Fiscal Years 2005 through 2008.

We identified a number of other state-administered grant programs that can serve as models for the Division with respect to developing standardized grant evaluation criteria and scoring tools. Specifically, the Department of Education's Public School Capital Construction Grant Program, the Great Outdoors Colorado Grant Program, and the State Historical Fund Grant Program are similar to the State Aviation System Grant Program in that they use a combination of program staff and outside parties (e.g., an advisory committee or oversight board) to evaluate and approve grant requests. However, unlike the Board and Division, these programs all have written, defined selection criteria; communicate the criteria to potential applicants; have applications that align with the criteria; and use numeric scoring systems to assess proposed projects, with certain criteria counting for more points than others in terms of the overall project evaluation. Additionally, we found that aviation programs in some other states (California, New York, Arizona, Georgia, and Washington) use formal prioritization or ranking systems for awarding aviation grants.

The Division needs to strengthen the grant application and award process by: (1) developing clearly defined and measurable criteria for awarding grants that reflect the Grant Program's goals and priorities; (2) communicating the grant criteria to all potential applicants, staff, and the Board; and (3) adopting a scoring system that weights the evaluation criteria according to overall funding priorities. Although the Division had a grant manual at the time of our audit, the Division reported that the manual was outdated and was not used to guide the grantmaking process. A manual can serve as a valuable tool for documenting and communicating important information about the Grant Program to all interested parties. The Division should develop and maintain a current grant manual that includes all policies, procedures, and selection criteria pertinent to the Grant Program. The Division should ensure that potential applicants and grantees are aware of and have access to the manual. The Division could disseminate the manual to applicants and grantees, and/or include the manual on the Division's website.

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## **Recommendation No. 1:**

The Aeronautical Board and the Division of Aeronautics should ensure that State Aviation System Grant Program applications are reviewed and scored consistently and uniformly in accordance with best practices and statutes by:

- a. Developing standardized, written criteria for evaluating grant applications.
- b. Providing guidance to staff and Board members on applying the criteria in the evaluation process.
- c. Developing a uniform, documented, scoring system for staff to use in evaluating grant applications and making recommendations for grant approval to the Board. The system should include prioritizing and weighting the established selection criteria.
- d. Maintaining a current grant manual that reflects Grant Program criteria, policies, and procedures that is available to all Division staff, Board members, and potential grant applicants.
- e. Maintaining documentation of the discussions between Division staff and potential applicants regarding possible grant projects.

## **Division of Aeronautics Response:**

Agree. Implementation Date: January 2010.

- a. The Division of Aeronautics will develop standardized written criteria for evaluating grant applications as a part of the Grant Management Manual (Manual).
- b. These criteria will be communicated to grant applicants, Division employees, and the Colorado Aeronautical Board (Board) via correspondence in conjunction with the grant application solicitation, statewide aviation meetings, Board meetings, Aeronautics website, and revised Manual.
- c. The Division will develop and implement a scoring system to rate and prioritize grant applications in preparation for presentation to the Board for discretionary grant consideration. Staff will document the evaluation process for the Board.

- d. The Division will develop, maintain, and distribute the Manual that details the policies and procedures required to participate in the grant program. This Manual will describe the method the staff will use to manage each grant and the overall program.
- e. The Division will document discussions between Division staff and grant applicants regarding possible grant projects.

### **Aeronautical Board Response:**

Agree. Implementation Date: January 2010. The Board will oversee the Division's implementation of parts "a" through "e" of the recommendation, including drafting, development and implementation of the Manual. Updates on the status will be provided at each meeting until the Manual is complete.

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## **Supplemental and Out-of-Cycle Grants**

The Division and Board consider two types of grant requests outside of the regularly scheduled annual grant cycles: (1) supplemental requests, which involve grantees seeking an increase in the amount of a grant already approved by the Board, and (2) out-of-cycle grant requests, which are new applications for projects that have not previously been awarded grants. We reviewed Board meeting minutes, annual reports, and yearly grant data from Fiscal Years 2005 through 2008 and found the Board approved 31 requests for grants totaling about \$1.5 million, or about 8 percent of the grant funds awarded, outside the regular grant cycle, as follows:

- **Supplemental Funding.** According to Board meeting minutes, the Board approved requests for supplemental grant funds totaling about \$243,000 for 11 existing grants totaling about \$803,000 that had previously been awarded in Fiscal Years 2005 through 2008. These approved requests represented a 30 percent increase in the total amounts awarded to the affected grants. The Board minutes provided limited information indicating that the additional monies were needed to help match increased federal funding received by the grantee (for five of the supplemental grants totaling \$34,000) or to address unexpected needs, such as to comply with new federal requirements or cover higher-than-estimated costs (for six of the supplemental grants totaling \$209,000).
- **Out-of-Cycle Grants.** During Fiscal Years 2005 through 2008 the Board awarded 20 out-of-cycle grants totaling about \$1.2 million, representing

more than 9 percent of all grants and 6 percent of all grant dollars awarded during this period. We evaluated the Division's and Board's processes for managing out-of-cycle grant requests by examining Board minutes for Fiscal Years 2005 through 2008 and reviewing the three grants in our sample that were out-of-cycle requests.

Overall, we found the Division does not have standardized, consistent processes for accepting, reviewing, and approving supplemental and out-of-cycle grant requests, as discussed below.

First, the Division has not defined the conditions under which out-of-cycle grants will be accepted or approved and does not require grantees to provide specific justification for requesting funds outside of the normal cycle. Neither the grant files nor the Board meeting minutes we reviewed contained sufficient information to determine whether the grantees had provided reasonable justifications for requesting grant funds outside the normal cycles. Board minutes contained statements such as "the applicant failed to apply during the regular grant cycle" and that the out-of-cycle request was being made in lieu of a regular cycle grant request.

Second, the Division does not require written justification for all supplemental and out-of-cycle grant requests. Out of our sample of 20 grants, 4 received supplemental grant awards but only 2 provided written justification for their requests. The two grantees that did not submit written requests received supplemental funds that increased their original grants by a total of about \$39,000, or about 9 percent. Additionally, for the three grants in our sample that were out of cycle, only one applicant submitted a completed application while the other two submitted letters of request. Although the letters appeared to contain information similar to that requested in a grant application, allowing applicants to request funding using a format of their choice defeats the purpose of having an application form and inhibits consistent and equitable evaluation of requests. By not requiring standardized request forms, the Division does not ensure that it obtains similar and sufficiently detailed information to fully assess the request and make an informed funding recommendation to the Board.

Third, the Division does not always amend existing contracts when supplemental awards are made. We found that the Division prepared contract amendments for two of the four supplemental funding awards in our sample, totaling \$10,000, but not for the other two supplemental awards in our sample, which totaled \$188,000. The two contract amendments reflected the change in the total grant amount and the project's scope of work, and were signed by the same parties that sign the original contract—the grantee, the Division, and a designee of the State Controller. For the two supplemental grant awards for which the Division did not prepare contract amendments, the Division sent letters to the grantees that

indicated the increased grant amount and changes in the project scope of work related to the additional funding. However, the Division's letters are not legally binding and do not identify the additional local commitment to the grant. Formal contract amendments are needed to fully protect the State by binding the grantee to comply with the requirements associated with the additional funds provided.

Finally, awarding out-of-cycle grants hinders the Division's and Board's ability to evaluate and prioritize all applications for funding. In other words, the Division and Board cannot compare supplemental or out-of-cycle grant requests to other applications or rank them in order of funding or project priorities. Awarding grants outside of the normal cycle also gives the appearance of inequitable treatment of applicants and may give the impression that adherence to the regular grant cycle is unnecessary, at least for some applicants. We found that five different airports were awarded multiple out-of-cycle grants during Fiscal Years 2005 through 2008, and one of these airports received three out-of-cycle grants over that period. Because unusual circumstances may arise that warrant out-of-cycle grant requests, the Division and Board need to define the circumstances under which they will consider out-of-cycle grant applications. In addition, the Division should develop and apply consistent and transparent processes for managing supplemental and out-of-cycle grant requests, including the use of standardized request forms, formal contract amendments, and the application of uniform criteria for evaluating the requests, as suggested in Recommendation No. 1.

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## **Recommendation No. 2:**

The Division of Aeronautics and the Aeronautical Board should develop criteria, policies, and procedures for managing supplemental and out-of-cycle grant requests that include:

- a. Requiring applicants to use standardized forms to request supplemental or out-of-cycle funding. For new out-of-cycle requests (i.e., not supplemental requests) the Division should require applicants to use the regular grant application form.
- b. Executing formal contract amendments for any change to an existing grant contract.
- c. Defining the circumstances under which the Division and Board will consider grant requests outside the normal grant cycle.
- d. Applying the uniform criteria developed in response to Recommendation No. 1 to the evaluation of all supplemental and out-of-cycle grant requests.

### **Division of Aeronautics Response:**

- a. Agree. Implementation Date: January 2010. In the re-write of the Manual, policies and procedures will be implemented for out-of-cycle grant requests to include standardized forms for all supplemental and out-of-cycle requests which will be consistent with regular grant application forms.
- b. Agree. Implemented. The Aeronautics Division has implemented a standardized form for all contract amendments that has been approved by the State Controller's Office. This has been used for all contract amendments since January 2009. In addition to the amendment being approved by the State Controller's Office, the Division's Grants Administrator has joined the Colorado Contract Improvement Team in order to stay updated and involved with all contract management changes.
- c. Agree. Implementation Date: January 2010. The Division will define the circumstances that make an out-of-cycle grant request appropriate.
- d. Agree. Implementation Date: January 2010. The Division will apply the uniform criteria that will be developed with the Manual.

### **Aeronautical Board Response:**

Agree. Implementation Date: January 2010. The Board will oversee the Division's implementation of parts "a" through "d" of the recommendation, including drafting, development and implementation of the Manual. Updates on the status will be provided at each meeting until complete.

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## **Controls Over Grant Projects**

The Board and Division have joint responsibility for administering the Grant Program and ensuring that the grant funds awarded are used in a timely and efficient manner to accomplish the purposes of the grant proposals. We reviewed a sample of 20 grants awarded by the Board in Fiscal Years 2005 through 2007; 10 of the grant projects had been completed at the time of our review, while the other 10 were still in process. On the basis of our review, we found the Division and Board do not have adequate controls to ensure that grant projects are completed within anticipated time frames and that project costs are contained.

Specifically, we identified weaknesses in the Division's grant application form and grant contracts, enforcement of grant program requirements, and monitoring of grant projects. The problems we found are described in the following sections.

## Grant Applications and Contracts

As mentioned earlier, the Division has developed a grant application form for the State Aviation System Grant Program. The Division also executes a grant contract with each grantee once the Board has approved a grant award. We identified the following problems with the grant applications and contracts that limit their effectiveness in ensuring accountability for the use of grant funds.

**Grant Project Budgets.** None of the 20 grant applications and contracts we reviewed included detailed project budgets. This is because the Division does not require grant applicants to provide cost details, such as estimates for engineering services, construction services, or materials. The applications also do not identify the specific costs of multiple projects within a single application. Instead, the application asks for the amount requested for each general type of good or service to be purchased (e.g., capital equipment or maintenance services) and the amount and percentage of the proposed project to be covered by local, federal, or other funding sources. Without a detailed budget, the Division cannot evaluate the appropriateness of the applicant's estimates or monitor actual expenses against planned expenses to help identify problems and contain costs.

The grant contracts contain even less detail than the applications and do not incorporate the applications by reference. The contracts include only the total dollar amount of the grant award but do not specifically limit the Division's commitment to paying the lesser of a particular percentage of actual project costs or the full award amount. This lack of detail in the contract can result in the Division's paying more for a grant project than intended. We found 3 projects totaling about \$314,600 in our sample of 20 grants that were completed under budget, but for which the Division's share of costs was not reduced. For these three projects, the Division reimbursed the grantees about \$30,500, or about 11 percent, more than the percentage of costs requested in the applications. Because the grant contracts do not specify that the Division will reimburse a stated percentage of actual project costs up to a specific dollar limit, the contracts do not fully protect the State. Further, the lack of detailed budget information in the grant contracts does not give the Division a mechanism for managing and controlling grant disbursements.

In addition, we found that for two of the grant projects in our sample that were originally awarded a total of \$237,000, the grantees requested additional grant financing from the Division and Board. For one grant project, which originally received a \$176,000 award, the grantee requested and the Board approved an

additional \$5,000 to cover materials cost overruns. For the other project, which was originally awarded a \$61,000 grant, the grantee requested and the Board approved an additional \$5,000 to cover higher-than-estimated construction costs. Although these projects received minimal additional grant funds, requiring detailed budgets that Division staff (1) review as part of the grant review process, and (2) monitor during the course of the project would assist the Division and Board in ensuring that project costs have been fully and accurately estimated and in determining when supplemental grant funding is justified.

**Grant Project Scope of Work and Schedules.** For 13 of the 20 grant contracts we reviewed, the scope of work statements did not clearly and comprehensively describe all of the projects being funded. For example, the scope of work for one grant stated: “maintain various airport pavements,” and for several others: “participate in local match for federally funded airport improvements.” In contrast, the project descriptions in the grant applications were more detailed, stating, for example: “The existing main apron/aircraft tie-down area would be enlarged by adding a 20’ X 110’ additional pavement to the northeast and southwest sides of the existing apron and . . . a 40’ X 250’ pavement expansion to the southeast side. These surface expansions would be accomplished by the lay down of hot mixed bituminous asphalt.” The contracts did not include specific project descriptions from the grant applications or incorporate the applications by reference into the contract. When the detailed scope of work is not included in the contract, the State lacks a mechanism with which to hold grantees accountable for performing the project as intended. Additionally, inadequate scopes of work make it difficult for the Division to monitor grant projects and ensure that funds are used for the project approved in the grant application.

We also found that none of the grant applications or contracts we reviewed included detailed project schedules. The Division does not require grant applicants to provide timelines with intermediate deadlines in their grant applications or include project schedules in the grant contracts. Both the applications and the contracts only identify project begin and end dates. Requiring that grant applications include specific schedules that identify critical dates for steps within each project would provide the Division with a means to measure whether a grant project is progressing as expected.

We found that two grant projects in our sample totaling about \$122,000 began at least 14 months after the start dates cited in their applications and another two grant projects totaling about \$102,000 were completed at least 11 months later than originally planned. Because funds must be encumbered for grant projects at the time the grant contract is executed, significant delays in project start-up or completion may allow funds to remain idle over extended periods. Furthermore, delays increase the risk that supplemental funding will be needed due to rising costs. Although the Division is not able to control all factors contributing to

project delays, obtaining and reviewing detailed information on grant schedules could help the Division better manage projects to promote timely start-up and completion and thereby prevent funds from remaining encumbered but unused for lengthy periods.

**Compliance Requirements.** The Division does not consistently include provisions in its grant contracts that provide adequate accountability for the grants, as follows:

- **Grant Program Requirements.** Although the Division has established a set of conditions (referred to as “compliance requirements”) for grant projects, the Division does not include these requirements in the grant contracts but instead communicates them to grantees in “notice-to-proceed” letters sent out after each grant contract is executed. These requirements include submitting the results of competitive bidding to the Division and providing the Division with quarterly progress reports and final certificates of project completion. According to the Colorado State Controller’s Office, the Division does not have legal authority to enforce the requirements because they are not part of the grant contract. Further, the Division is inconsistent in applying compliance requirements to grantees. For example, of the 20 grants we reviewed, the Division’s notice-to-proceed letters did not require 3 grantees to submit quarterly progress reports and 4 to submit certificates of project completion.
- **Penalties for Noncompliance.** The Division’s grant contracts do not include penalties for noncompliance with any requirements of the Grant Program or other contract breaches. Noncompliance penalties could include withholding a portion of awarded grant funds or denying future grants.
- **Termination for Noncompliance.** The Division’s grant contracts state that a failure of either party to perform in accordance with the terms of the contract shall constitute a breach of the contract. However, the contracts do not contain specific language indicating that the Division has the right to terminate the contract if such a breach occurs. We found a number of contracts for other grant programs in the State that have specific language allowing the State to terminate the contract if the grantee fails to fulfill its obligations under the contract or violates any of the contract provisions. This type of specific provision provides more protection to the State.

We found that grantees did not always comply with the provisions set forth in the notice-to-proceed letters. In particular, grantees did not submit required quarterly reports for 12 of the 18 grants in our sample that were for projects exceeding three months (the Division does not require quarterly reporting for projects that last one

quarter or less). We estimate the Division should have received a total of 65 quarterly reports for these 12 grant projects, which ranged in duration from seven months to more than three years. For another two grants, the Division received only one report each, although the projects lasted nine months and three years, respectively. In addition, grantees did not submit certificates of completion for 5 of the 10 projects in our sample that had been completed by the time of our review.

By failing to establish enforceable contracts, the Division limits its ability to adequately oversee the status of grant projects and ensure that projects are completed timely. The Division should strengthen its controls over grants by modifying the grant application form to require detailed project budgets and schedules and revising the grant contracts to include: (1) itemized project budgets, (2) the specific percentage of project costs the grant will cover, not to exceed the grant award, (3) detailed project schedules, (4) specific and comprehensive scopes of work, (5) all applicable compliance requirements, and (6) penalties and specific termination provisions for noncompliance. One way the Division could strengthen the contracts is by incorporating the grant applications into the contracts by reference, once the application forms have been modified to include all necessary detail.

## **Grant Monitoring**

Effective grant monitoring programs often include components such as: (1) evaluating grant reimbursement requests, (2) reviewing project reporting, and (3) conducting on-site monitoring of grant projects. We found the Division has implemented some elements of grant monitoring but lacks other necessary procedures. Specifically, the Division has a process in place to review standardized claim forms and invoices submitted by grantees before issuing reimbursements to grantees for costs incurred. However, the Division does not have effective project reporting mechanisms or on-site monitoring procedures. As a result, the Division's oversight of grant projects is one-dimensional and does not provide sufficient controls to ensure that grant projects progress in a timely way and that grant funds are used in accordance with the grant contracts.

For example, the Division has not ensured that airports fully comply with their grant purchase agreements when purchasing surplus equipment using grant funds. The Board awards grants to help airports purchase surplus equipment from DIA, as discussed in the next section of this chapter. For each of these grants, the Division executes a grant purchase agreement that requires the airport to use the purchased equipment as specified in the agreement and to maintain it at the respective airport unless approved for disposal by the Division. However, three of the grantees we interviewed stated that equipment they had purchased with such grants was not being used by the airports; the equipment had either been sold

immediately or was being used by another entity. The Division reported that it was not aware that the grantees had disposed of or changed the use of the equipment.

As mentioned earlier, although the Division has quarterly and project-end reporting requirements, it does not enforce the requirements, making the reporting requirements ineffective. We also found that the Division provides no guidance to grantees on the specific types of information they are expected to provide in the quarterly reports. By not specifying the data to be reported each quarter, the Division severely limits the value of the reports. One model program is the State Historical Fund Grant Program (Historical Fund), which outlines grantee reporting expectations in its grant manual. The Historical Fund requires grantees to submit a narrative of their progress to date, a list of tasks completed, and, if no progress has been made, an explanation and an expected commencement date. The Historical Fund also requires a final grantee report describing the public benefit of the completed project, a summary of completed work, and comparison to the original grant budget and scope of work, with an explanation of any variances.

Additionally, the Division has no formal process to conduct on-site monitoring of grant projects. Site visits to grantee locations are an effective way to assess whether a project is progressing timely and incurring costs in accordance with the grant contract. The Division and airport staff we interviewed reported that Division staff sometimes visit grantees to discuss or observe grant projects when time and circumstances permit, such as when staff conduct airport safety inspections in the vicinity of a grantee. However, the Division has no regular schedule for on-site monitoring, no guidelines for staff to follow as to what should occur during such visits—such as observing the project, reviewing project records, or providing technical assistance—and no method to document the visits. The Division should implement formal on-site monitoring to more consistently evaluate grant projects and ensure compliance with grant contracts and applicable laws and regulations. The Division could use a risk-based approach that considers factors such as the size of the grant project, the project timeline, and whether the grantee is having or has had compliance problems. On-site monitoring should be documented and could be coordinated with airport inspections. The results of grant project monitoring, including actual expenditures for each grant and whether grant projects are meeting deadlines, should also be reported to the Board on a regular basis.

To better ensure accountability for the Grant Program, the Division needs to improve controls over grants from application through completion. This should include: (1) strengthening the application form and contracts, (2) enforcing all contract and Grant Program requirements and applying penalties as appropriate, and (3) implementing a comprehensive and documented monitoring process that

assesses grant projects against the specific contract expectations and helps ensure that grant funds are used appropriately and in compliance with requirements.

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### **Recommendation No. 3:**

The Division of Aeronautics should strengthen accountability for the State Aviation System Grant Program by:

- a. Requiring grant applicants to provide detailed grant project budgets and schedules in their grant applications and including the detailed project budgets and schedules in each grant contract, or, at a minimum, referencing the applications in the contracts.
- b. Stating in each grant contract the specific percentage of total project costs to be covered by the grant, up to the total grant award.
- c. Including a consistent set of compliance requirements, as well as penalties and specific termination provisions for noncompliance, in each grant contract.
- d. Enforcing all grant contract budgets, schedules, and compliance requirements through the application of the penalties recommended in part “c” above.
- e. Implementing a comprehensive monitoring program for grants that includes scheduled on-site monitoring, review of grantee reports, and reporting to the Board on the status and expenditures of each grant project. The Division should consider using a risk-based approach for on-site monitoring.

### **Division of Aeronautics Response:**

- a. Agree. Implementation Date: January 2010. The Division will revise the grant application form and require detailed budget estimates and schedules. The Division will include these project budgets and schedules in the grant contract or the contract will reference the application.
- b. Agree. Implementation Date: January 2010. The Division will include verbiage in the contract that states the total project cost percentage and the not-to-exceed amount.

- c. Partially Agree. Implementation Date: January 2010. The Manual will follow the guidelines from Department of Personnel & Administration (DPA) for standard state contract compliance and termination provisions and compliance requirements for grantees will be included in grant contracts. The criteria for evaluating grants, as described in the Manual, will include past performance as a condition for future grant selection. We will not pursue any other penalties.
- d. Partially Agree. Implementation Date: January 2010. The Division has been working with DPA on contract requirements and will enforce grant contract budgets, schedules, and compliance requirements through the application enforcement provisions as recommended by DPA and in accordance with part “c”, above.
- e. Agree. Implementation Date: January 2010. The Division will implement policies and procedures for on-site visits and monitor compliance, review grantee reports, and report to the Board on the status of projects. Policies and procedures will be included in the Manual. The Division will do regular on-site visits dependent upon budget constraints.

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## DIA Surplus Equipment

As mentioned previously, the Division has limited statutory responsibility related to Denver International Airport (DIA), which is owned and operated by the City and County of Denver. The Division does interact with DIA in a number of ways, including through periodic participation in auctions held by DIA to dispose of surplus equipment. Specifically, the Division and Board notice the auctions to airports and award grants to help airports purchase the equipment. The Division distributed about \$101,300 in grants to assist 9 airports to purchase auctioned equipment during the most recent auctions in 2005 and 2006.

The auctioning of surplus equipment by DIA does not comply with the statutory provisions of Section 43-10-110.7, C.R.S., which state that “the City and County of Denver shall convey, without consideration, unneeded airport-related equipment to the Division for equitable distribution to other governmental entities operating airports in this state.” However, federal regulations [49 CFR 18.32] state that when equipment valued at \$5,000 or more is no longer needed, the federal grantee must follow sales procedures that ensure the highest possible return. Further, according to an FAA representative, Denver would violate the FAA’s revenue diversion policy by giving its surplus equipment to the Division for redistribution. This policy requires a local government that receives federal

aviation grant monies, such as Denver, to retain all capital equipment or any revenue generated from the sale of such equipment for use by the airport.

Although the statutory requirement for Denver to give its surplus airport equipment to the Division for redistribution has been in place since 1991, and DIA has been unable to comply with the statute since that time, the Division had not alerted the General Assembly to the conflict with federal regulations or sought a legislative resolution until 2009, when House Bill 09-1066 was introduced. If enacted, this bill would allow Denver to convey unneeded airport equipment to the Division at reasonable cost, rather than free of charge.

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### **Recommendation No. 4:**

The Aeronautical Board and Division of Aeronautics should work with the City and County of Denver in a continuing effort to obtain statutory changes to eliminate the conflict between state statute and federal regulations by removing the requirement for Denver to give airport-related surplus equipment to the Division for redistribution.

#### **Division of Aeronautics Response:**

Agree. Implemented. The statutory change has been initiated under House Bill 09-1066.

#### **Aeronautical Board Response:**

Agree. Implemented. The Board will monitor the progress and provide information and support to House Bill 09-1066 as needed.

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## **Board Grant and Loan Procedures**

Statute [Section 43-10-105, C.R.S. requires the Aeronautical Board to establish and implement procedures to administer and distribute monies in the Aviation Fund, which includes State Aviation System grants and aviation loans. We evaluated the Board's grant and loan review and approval procedures and found that the Board has not adequately ensured that its procedures are transparent.

## Conflicts of Interest

Board members must comply with the code of ethics and standards of conduct contained in Article 18 of Title 24 of the Colorado Revised Statutes, which states that public officials must act impartially and avoid real or perceived conflicts of interest. A conflict of interest is defined as an action of a public official that results in or creates the appearance of (1) using his or her office for personal benefit, (2) giving preferential treatment to any person or entity, (3) losing independence or impartiality, or (4) accepting gifts or favors for performing official duties. We identified instances where Aeronautical Board members voted to approve aviation grants and loans to airports or other entities with which they had some type of fiduciary relationship, as follows:

- In October 2005 two Aeronautical Board members who were also on a grantee's board of directors voted to approve a grant to the entity for \$65,000.
- In March 2006 one Aeronautical Board member who was the registered agent for the company that provided fuel sales and aircraft maintenance at a grantee's airport voted to approve a State Infrastructure Bank loan to that airport for \$557,000. This loan program is discussed in Chapter 2.
- During the 2005, 2006, and 2007 grant cycles, three Board members voted on a consent agenda to approve four grants to airports with which they had professional relationships (one Board member was an airport manager, one was a county official overseeing the airport, and one was a registered agent for a company that provided services to the airport). The four grants ranged in amount from \$136,000 to \$250,000 and, in combination, totaled about \$671,000. During these grant cycles, the Board placed applications recommended for approval on a consent agenda, which required a single vote to give final approval to all of the applications. According to meeting minutes, Board members who had potential conflicts with items on the consent agenda did not recuse themselves from voting on the agenda. Beginning with the 2008 grant cycle, the Board changed some of its voting procedures. First, for the 2008 cycle, members with conflicts of interest did recuse themselves from voting on the consent agenda. Second, for the 2009 grant cycle, the Division did not place any applications that might create a conflict for a Board member on the consent agenda. Instead, Board members voted on such applications individually.

Due to the Board's statutory composition, there is a high likelihood that Board members will have financial or professional interests in airports and other entities

that benefit from the Board's official acts. In accordance with statute [Section 43-10-104(2), C.R.S.], the Aeronautical Board comprises individuals with aviation backgrounds, including four representatives of local governments that operate airports, one representative of a statewide airport managers' association, one representative of a statewide pilots association, and one individual familiar with and supportive of the State's aviation interests. It is imperative that Board members maintain transparency regarding their interests by disclosing real or perceived conflicts and that they refrain from voting on matters that may involve a conflict of interest.

The Board has recognized the importance of having ethical guidelines and in 1999 developed a written Code of Conduct that states "A Board member shall not vote for grants-in-aid to any airport or other entity in which he or she has a substantial current financial interest or is engaged as counsel, consultant, representative, employee or agent. The Board member(s) shall refrain from attempting to influence the decisions of other members in voting on the matter." However, the Code also allows members to vote, regardless of conflicts, if the project involves a statewide program affecting two or more airports, the Board member's vote is necessary to enable the Board to act, and the Board member complies with the voluntary disclosure provisions of Section 24-18-110, C.R.S. The Code does not require members to annually disclose conflicts in writing.

The Aeronautical Board should develop mechanisms to identify and help prevent conflicts of interest, including requiring Board members to: (1) complete annual written disclosures of any financial, professional, or personal interests that may create a real, perceived, or potential conflict of interest; (2) update such disclosures as new interests arise; and (3) review and discuss the disclosures at a meeting at least annually to keep informed of such conflicts. Further, the Division should maintain the disclosure forms, ensuring that all Board members and the public have access to them. The Board should update its Code of Conduct on a regular basis. The Code should include a provision to formalize the practice of excluding from consent agendas any grant applications that could pose conflicts of interest, as well as a provision requiring Board members to recuse themselves from voting when conflicts arise. The Division should also ensure that Board members receive periodic training on the Code of Conduct and relevant statutes and policies.

The lack of adequate policies and procedures governing Board operations creates a risk of misuse of authority and funding and the potential for perception of bias on the part of the Board. Developing and following a comprehensive Code of Conduct that is consistent with applicable laws will help ensure that the Board operates in an accountable manner that is transparent to the airports and the public it serves.

### **Recommendation No. 5:**

The Aeronautical Board should strengthen accountability for its operations by expanding the Board's Code of Conduct to require the completion of conflict of interest disclosures on an annual basis, provide the disclosures to the full Board for review, and maintain the disclosures on file with the Division so they are accessible to all Board members and the public. The Code of Conduct should also require that any grant application or other funding request that may present a conflict of interest be voted on individually rather than being included on a consent agenda and that Board members recuse themselves from discussions and votes in cases where real or potential conflicts exist. Finally, the Board should undertake periodic training on the Code of Conduct and other relevant statutes and policies.

### **Aeronautical Board Response:**

Agree. Implementation Date: January 2010. The Board will draft and complete a comprehensive Code of Conduct. At this time the Board anticipates using a consultant contract and implementation will depend on the Department's ability to contract with a consultant under the current statewide hiring and contract freeze. Guidelines for consent agenda items will be included in the Code of Conduct.

A Conflict of Interest Disclosure form has been completed and was provided to the Board for signature at the January 29, 2009 Board meeting. Beginning with the October 2008 grant hearings, decisions involving a conflict have been removed from the consent agenda for an individual vote. All documentation will be kept on file with the Division and will be accessible to all Board members and the public. Annual orientation will be conducted for all Board members.

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## **Strategic Grantmaking**

According to FAA data, yearly airline passenger totals at Colorado's 13 commercial service airports are expected to rise from about 2.1 million in 2007 to about 2.6 million by 2015, an increase of about 24 percent. This growth indicates that the Division can expect to experience greater demand from airports for its limited grant funding. Strategic grantmaking is a best practice used by grant programs to help manage demands for limited monies while ensuring accountability for public funds. Grant programs develop strategic frameworks for allocating grant monies and evaluating the impact of their grantmaking activities

to maximize the value of the investment of grant funds. We found the Board and Division have not implemented a strategic grantmaking process for the State Aviation System Grant Program, as discussed in the following sections.

**Grant Program Goals and Priorities.** The Division and Board have not established goals and priorities for the Grant Program that are used as a foundation for awarding grant funds. However, the Division and Board have a comprehensive plan that could be used to help set strategic goals, priorities, and outcomes for the Grant Program. Every five years the Division contracts with a transportation and infrastructure consulting firm to develop a State Aviation System Plan (System Plan or Plan) which identifies goals, performance measures, benchmarks, and priorities for Colorado's airport system. The Plan evaluates whether airports are accomplishing specific facility and service objectives to enable the airports to fulfill their roles within the aviation system. For example, the Plan identifies the preferred runway length at each individual airport and determines which airports meet their runway length objectives. Appendix A contains additional detail on the most recent System Plan, which was completed in 2005 at a cost of about \$350,000.

Statutes assign the Division and Board the responsibility for both planning for the state aviation system and granting funds to support and improve the aviation system. First, Sections 43-10-102 and 103, C.R.S., require the Division to develop and maintain a state aviation system plan, which is defined as "a plan . . . which addresses the aviation needs within the state . . . ; identifies and evaluates alternatives to meet those needs; and recommends preferred solutions for the aviation needs of the state." Second, Section 43-10-108.5, C.R.S., creates the State Aviation System Grant Program to "support and improve the state aviation system." Because both the System Plan and the Grant Program have essentially the same purpose—to maintain the State's aviation system by addressing aviation needs—it is reasonable to expect that the System Plan and Grant Program should be related within a strategic grantmaking process.

We reviewed summary information on 33 grants totaling about \$3.9 million awarded to our sample of 20 grantees during the 2007 and 2008 grant cycles, which were the only grant cycles we reviewed that occurred after the 2005 System Plan was completed. We found that the Division and Board did not make strategic use of the System Plan when allocating these grant funds. Specifically, 15 of the 33 grants, totaling about \$1.5 million, did not clearly address unmet objectives identified in the 2005 System Plan. Another 7 grants totaling about \$690,000 were awarded to airports that had no unmet objectives in 2005 System Plan and the remaining 11 grants totaling about \$1.7 million did clearly address problems identified in the Plan. We also reviewed data in the two most recent System Plans (prepared in 2000 and 2005) to evaluate the effect of the grants on the objectives in the Plans. The 2000 Plan identified 294 unmet objectives related

to areas such as the adequacy of runway lighting and runway strength. We found that 83 percent of these unmet objectives still existed in 2005, even though about \$10.6 million in grants had been awarded to airports between 2000 and 2005. By not using the System Plan to set Grant Program goals and priorities, the Division and Board do not target funding toward the State's most critical aviation needs as identified in the System Plan and cannot clearly demonstrate that the Grant Program is being used in a strategic way to support and improve the State's aviation system.

**Funding Initiatives.** One way the Division could use the System Plan to support a strategic grantmaking approach would be to identify specific funding initiatives from the Plan and allocate grant funds in line with these initiatives. The funding initiatives should address the needs, goals, and priorities of the Grant Program. Applications could then be evaluated according to how well the proposed project aligns with the initiatives. The Division and Board have already used this type of approach for funding airport runway pavement repairs. The 2000 and 2005 System Plans both cited runway pavement as an important benchmark for measuring airport performance. In Fiscal Years 2005 through 2008, the Board set aside funds ranging from \$50,000 to \$75,000 annually to be awarded to airports that completed runway pavement repair projects. The Division and Board could expand this concept to a more broad-based strategic approach while continuing to make some funds available for other discretionary projects.

**Evaluation of Outcomes.** A critical component of a comprehensive strategic grantmaking process is to evaluate outcomes and use the results to revise program goals and objectives. Currently the Division lacks data on grant project outcomes, such as what gaps in aviation needs the grants have addressed. Although the individual grants may be beneficial for the airports and other entities that receive them, it is unclear what results the grants have collectively achieved. The lack of clearly specified goals, priorities, and outcomes for the Grant Program prevent a comprehensive assessment of whether the Division has effectively allocated grant funding. The Division should collect specific data from individual grantees and aggregate and analyze the data for the system as a whole to evaluate outcomes. As discussed earlier in the chapter, the Division needs to improve project monitoring and grantee reporting to support this evaluation process.

**Managing the Aviation Fund Balance.** Another element of a strategic grantmaking approach is to consistently monitor and actively manage the amount of funds available for grants. According to the Division, the Board has established a minimum uncommitted fund balance for the Aviation Fund of \$1.5 million. The Division indicated the minimum had been set in approximately 2003 after an airport needed funding to make emergency runway repairs and there were insufficient monies in the Aviation Fund to help cover the costs. According to information from the Division, the uncommitted year-end fund balance

exceeded this minimum significantly in Fiscal Years 2004 through 2008, as shown in the following table.

<b>Colorado Division of Aeronautics Committed and Uncommitted Amounts in the Aviation Fund (in Millions) Fiscal Years 2004 Through 2008</b>						
<b>Fund Balance</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Change: 2004 to 2008</b>
Committed	\$6.1	\$5.9	\$8.4	\$8.5	\$12.5	105%
Uncommitted	\$2.7	\$5.4	\$5.6	\$4.7	\$4.1	52%
Total	\$8.8	\$11.3	\$14.0	\$13.2 <sup>1</sup>	\$16.6	89%
<b>Source:</b> Information from the Division of Aeronautics and COFRS.						
<sup>1</sup> The year-end fund balance for Fiscal Year 2007 shown above is different from the amount in the revenue and expenditure table in the Overview to this report due to a \$22.8 million post-closing adjustment to aviation fuel tax revenue for Fiscal Year 2007. Because the adjustment was made after the end of Fiscal Year 2007, it is not included in the Division's tracking of the fund balance for Fiscal Year 2007. The adjustment reflected additional aviation fuel tax revenue attributable to Fiscal Years 2004 through 2007 that was deposited to the Aviation Fund as a result of a correction by the Department of Revenue, as discussed in the Overview of this report.						

The Division tracks and reports to the Board on the committed and uncommitted portions of the Aviation Fund at various times throughout the year. However, the substantial variations, and the overall increase, in the year-end uncommitted fund balance indicate that the Division and Board should more actively manage the fund balance. Best practices suggest that entities identify uncommitted fund balance target amounts or ranges, monitor the balance for adherence to the target, and take remedial action to adjust the fund balance as needed. This practice is particularly important for the Aviation Fund to ensure that the Division and Board maximize the amount of funds available for aviation grants. To strengthen its management of the Aviation Fund, the Division and Board should periodically assess short- and long-term cash needs to ensure that the fund balance target is appropriate. In addition, the Division and Board should continue monitoring both the committed and uncommitted portions of the fund balance. Finally, whenever the uncommitted fund balance is outside of the target amount or range, the Division and Board should determine the reason and take action, such as allocating additional funds for grants.

Strategic grantmaking can enhance the effectiveness of the Grant Program in achieving desired outcomes, help the Division and Board justify the allocation of limited funds, and maintain flexibility for the Division and Board to determine the best use of grant monies.

### **Recommendation No. 6:**

The Division of Aeronautics and the Aeronautical Board should develop a strategic grantmaking approach for the State Aviation System Grant Program by:

- a. Using the State Aviation System Plan to establish goals, priorities, and outcomes for the Grant Program.
- b. Expanding the use of funding initiatives to allocate grant funds to areas that address a specific need or purpose and relate to Grant Program goals and objectives.
- c. Developing methods to evaluate statewide outcomes for the Grant Program and using the evaluation results to refine and improve the goals and priorities as appropriate.
- d. Implementing a systematic method to evaluate long- and short-term cash needs to establish a target amount or range for the uncommitted fund balance in the Aviation Fund, monitor the fund balance on an ongoing basis, and take appropriate action when the fund balance is outside the target amount or range, as needed.

### **Division of Aeronautics Response:**

- a. Agree. Implementation Date: July 2011. The Division will use the Colorado Aviation System Plan to establish goals and priorities and desired outcomes for the discretionary grant program. The Division will include in its annual report the amount of grants that have addressed the system-wide goals and priorities.
- b. Agree. Implementation Date: July 2009. The Division will continue to look for ways to develop funding initiatives throughout the State in partnership with its constituencies that would further the goals and objectives of the System Plan.
- c. Agree. Implementation Date: July 2011. Based on the goals and priorities developed in Recommendation part “a”, the Division will report and communicate on an annual basis how the grant program has addressed statewide system goals and objectives.
- d. Agree. Implementation Date: July 2009. The Division has implemented a month by month tracking report of the uncommitted

fund balance and will provide recommendations on appropriate action when the balance is outside of the target amount set by the Board. The Division will do an analysis to be presented to the Board based on historical fund balance and industry best practices.

### **Aeronautical Board Response:**

- a. Agree. Implementation Date: July 2011. The Board will review the outcomes of the grant program as it relates to the goals and objectives of the System Plan on an annual basis.
  - b. Agree. Implementation Date: July 2009. The Board will encourage statewide aviation constituents to identify potential funding initiatives for potential grant funding.
  - c. Agree. Implementation Date: July 2011. The Board will review any new funding initiatives to ensure they meet goals and priorities of the system and will evaluate the desired outcomes.
  - d. Agree. Implementation Date: July 2009. The Board will establish a target amount or range for the uncommitted fund balance in the aviation fund at the beginning of each fiscal year and monitor on an on-going basis. The Board will take appropriate action if the fund balance is outside of the target range. Appropriate action may include increasing or decreasing the funds available in the grant program.
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# Nongrant Distributions of Aviation Fund Monies

## Chapter 2

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In addition to awarding State Aviation System Grant Program monies, discussed in the previous chapter, a primary statutory responsibility of the Aeronautical Board (Board) is to reimburse a portion of the aviation fuel sales and excise taxes from the Aviation Fund (Fund) to publicly accessible airports on a formula basis [Section 43-10-110, C.R.S.]. The Division of Aeronautics (Division) and Board have also used some of the funds to provide loans for aviation purposes. In Fiscal Year 2008 the Division and Board distributed about \$40.7 million in formula fuel tax reimbursements to airports; transferred \$10 million from the Aviation Fund to the Transportation Infrastructure Revolving Fund (Revolving Fund), from which State Infrastructure Bank (SIB) aviation loans are made; and disbursed about \$3.6 million in grants.

We reviewed the processes used by the Department of Revenue (Revenue), which collects and deposits aviation fuel taxes to the Aviation Fund, to identify the amount of aviation fuel taxes that should be deposited to the Fund. We found weaknesses that resulted in incorrect deposits between Fiscal Years 2005 and 2008. We also reviewed the processes used by the Board and Division to distribute Aviation Fund monies and ensure that airports use the funds solely for aviation purposes, as required by statute [Sections 43-10-103, 105, and 110, C.R.S.]. We identified deficiencies in controls over aviation fuel tax distributions, transfers to the Revolving Fund, and in the SIB Loan Program. These problems are described in this chapter.

### Fuel Sales Tax Collections and Deposits

The Department of Revenue is responsible for collecting all aviation fuel taxes and depositing 100 percent of them to the Aviation Fund. In Fiscal Years 2007 and 2008, Revenue deposited about \$13.5 million and \$35.8 million in aviation fuel taxes to the Aviation Fund, respectively. Aviation fuel vendors remit their sales taxes using a general sales tax return form that does not identify aviation fuel sales or the taxes owed on these sales separately from other types of sales or taxes owed. Instead, the form combines all types of sales revenue earned by the vendor and the associated taxes owed. To determine the amount of aviation fuel sales taxes a vendor included on its sales tax return form, and the amount that

should be deposited to the Aviation Fund, Revenue requests that the vendors submit a separate monthly reporting form, referred to as a DR1510 form.

To evaluate whether Revenue had deposited the correct amount of aviation fuel taxes to the Aviation Fund, we reviewed Aviation Jet Fuel Sales Tax Reports (sales tax reports) generated by Revenue for the 44-month period of May 2004 through December 2007. Revenue generates these sales tax reports using data from the DR1510 forms submitted each month by aviation fuel vendors. These forms contain: (1) the total gallons of jet fuel sold by the vendor at each airport at which the vendor operates, (2) the total revenue generated by the sales, and (3) the total sales taxes owed on the sales. Revenue uses the sales tax reports to determine the amount of taxes collected from vendors that should be deposited to the Aviation Fund. Revenue also transmits the sales tax reports to the Division of Aeronautics for use in reimbursing fuel taxes to airports in accordance with the statutory formula.

On the basis of our review, we identified two aviation fuel vendors that had misreported on their DR1510 forms their aviation fuel sales and the associated sales taxes they had paid. One vendor had reported incorrectly for the entire 44 months we reviewed and the other for 25 months. We identified the misreporting because these two vendors had reported aviation fuel sales revenue that appeared unreasonably low relative to the number of gallons of aviation fuel they sold. Specifically, the sales tax reports calculate a price per gallon of aviation fuel sold by each vendor at each airport, based on the vendor's reported gallons sold and revenue collected. The two vendors had per-gallon prices of about \$0.06 and \$0.70, compared to an average price per gallon for all other vendors over the period of about \$1.78. Revenue reported that it became aware of problems with the reporting by the two vendors we identified in early Calendar Year 2007 and had been working with the vendors to determine the cause of these discrepancies. Revenue indicated that the correct amount of aviation fuel sales taxes had been paid by the vendors, but that, due to errors in reporting on the DR1510 forms, the amount deposited to the Aviation Fund was about \$349,400 less than it should have been. In turn, the Division reimbursed about \$227,100 less to airports and received about \$122,300 less for other uses than it should have. Revenue reported that both vendors had submitted amended sales tax returns and DR1510 forms in September 2008 reflecting the correct aviation fuel sales taxes paid.

Revenue was already aware of some aviation fuel sales tax reporting problems as a result of its December 2007 audit of fuel vendors at Denver International Airport (DIA). Revenue conducted the audit on the basis of questions raised by the Division of Aeronautics. Specifically, the Division had noted that the sales tax reports for aviation fuel vendors at DIA were showing essentially no increase in aviation fuel sales tax revenue in Fiscal Years 2004 through 2007 despite increasing activity at DIA. Revenue's audit found that while vendors had paid the

correct amount of sales tax, some aviation fuel vendors had not consistently submitted DR1510 forms or had reported information inaccurately on these forms. As a result, Revenue had collected but not deposited about \$22.8 million in aviation fuel taxes to the Aviation Fund for Fiscal Years 2004 through 2007.

Our audit did not include a detailed examination of Revenue's records and procedures related to collecting and depositing aviation fuel sales taxes. However, Revenue reported that it has a process to review reported aviation fuel sales taxes and data on the sales tax reports each month and that staff follow up to try to resolve any inconsistencies or anomalies identified through these reviews. Revenue also indicated that, due to staff turnover in Calendar Year 2008, the follow up on these two vendors had not been consistent, which resulted in delays in resolving the reporting problems. Overall, Revenue did not have documentation of the complete review and follow up process. For example, Revenue did not have documentation of the review that originally indicated reporting problems with the two vendors we identified and does not maintain records of all efforts to contact vendors to resolve problems.

To improve the accuracy of reporting and deposits of aviation fuel sales taxes, Revenue should expedite efforts to implement tax return forms that specifically identify aviation fuel sales and taxes. The implementation of such a form will eliminate the need for the DR1510 form. In addition, Revenue should ensure that it has adequate processes to resolve problems identified through the reviews of aviation fuel tax data in a timely manner. Timely follow-up to resolve concerns would help Revenue correct potential misreporting and ensure the accuracy of deposits to the Aviation Fund. Although Revenue reported that it was aware of the reporting problems with the two aviation fuel vendors we identified as early as January 2007, the vendors did not submit corrected DR1510 forms until September 2008. Revenue should also improve its documentation of the review and follow-up processes.

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### **Recommendation No. 7:**

The Department of Revenue should improve its oversight of aviation fuel sales tax collections and deposits to the Aviation Fund by developing and implementing a sales tax form that separately identifies aviation fuel sales and related taxes as soon as possible. The Department of Revenue should also ensure that it has adequate processes to resolve problems with aviation fuel tax reporting in a timely way and maintains complete documentation of its review and follow-up procedures.

## **Department of Revenue Response:**

Agree. Implementation Date: September 2009. Under current law, taxpayers that timely file a sales tax return and remit the proper total amount of sales tax but do not provide adequate information to the Department for the correct allocation and distribution of the money cannot be penalized for their lack of reporting. Without a penalty to encourage a prompt response to our inquiry, the taxpayers in question took an unacceptably long time to provide the necessary information. The Department of Revenue has begun to change the filing process for retailers of aviation fuel, requiring that a separate aviation fuel sales tax return be filed in addition to any retail sales tax return they must file. The Department also is seeking legislation to impose a penalty on those taxpayers who pay the tax, but fail to provide sufficient detail to allow the Department to distribute the tax properly. Successful passage of the proposed legislation will allow this sales tax penalty to be used to ensure compliance. The Department believes that these changes will enhance the accuracy of reporting and thus the allocation of revenues to the proper funds.

The Department currently conducts reviews of the aviation sales tax information based on the information and resources available. The new reporting and penalty described above will allow for quicker resolution of reporting problems. Documentation of reviews and follow-up has been implemented.

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## **Fuel Tax Reimbursement Process**

According to statute [Section 43-10-110(2)(a)(I), C.R.S.], the Division of Aeronautics and Aeronautical Board are responsible for returning to airports a portion of the revenue deposited into the Aviation Fund. Specifically, the statute requires that 4 cents per gallon of aviation jet fuel, as well as 65 percent of all sales and use taxes paid on aviation fuel sales, be refunded to each airport that sells aviation fuel each month. The 4-cent per gallon refund is referred to as the excise tax reimbursement and the 65 percent refund is referred to as the sales tax reimbursement; in combination, the refunds are referred to as formula fuel tax reimbursements. In Fiscal Years 2007 and 2008 the Division and Board distributed formula fuel tax reimbursements of about \$10 million to 49 airports and \$40.7 million to 51 airports, respectively.

The Division issues monthly sales tax reimbursements to publicly-owned airports based on data provided by Revenue and issues monthly excise tax

reimbursements based on a combination of data from Revenue and excise tax reports submitted to the Division by airports. The Division needs both the reports from Revenue and from the airports to have complete information to determine the amount of excise tax reimbursements owed to each airport. In Fiscal Year 2008, formula fuel tax reimbursements to individual airports ranged from a low of about \$130 to a high of about \$34 million. According to statute, all aviation formula fuel tax reimbursements must be used for aviation purposes, such as maintaining, improving, and ensuring the safety of the aviation system.

We examined the formula fuel tax reimbursements issued by the Division and Board for November and December 2007 and identified no errors in the reimbursement amounts. We also reviewed the Division's processes to identify the airports that should receive formula fuel tax reimbursements and to issue the reimbursements. We identified concerns with these processes, as described below.

**Legality of reimbursements to privately-owned airports.** We found that the Division provides formula fuel tax reimbursements to privately owned, publicly accessible airports, which may not be allowed by statute. Section 43-10-110(2), C.R.S., specifies that formula fuel tax reimbursements are to be transferred "to the airport operating fund of the governmental entity operating the public-accessible airport." It also states, "Moneys in the fund derived from the sale of . . . aviation fuel at airports not qualified to receive revenue pursuant to the provisions of this subsection (2) shall remain in the [Aviation] Fund." Although the statute does not define the term "governmental entity," these provisions appear to indicate that formula fuel tax reimbursements should only be given to airports that are operated by a public governmental entity (e.g., a city or county). In contrast, Section 43-10-108.5(2), C.R.S., states that "*any entity* [emphasis added] operating a public-accessible airport" may apply to the Division for a state aviation system grant.

In Fiscal Year 2008 there were eight privately owned, publicly accessible airports in Colorado that sold aviation fuel. In Fiscal Years 2005 through 2008 the Division issued formula fuel tax reimbursements totaling about \$9,000 to two privately owned, publicly accessible airports. As of June 30, 2008 the Division was holding about \$53,000 in encumbered funds for reimbursements to seven privately owned airports. Of these funds, about \$46,000 were encumbered prior to Fiscal Year 2005 (the Division states that the oldest data it has related to encumbered fuel tax reimbursements for privately owned airports is for Fiscal Year 2005) because the airports have not requested their excise tax reimbursements. The Division processes reimbursements to privately owned airports differently than to publicly owned airports. For privately owned airports, the Division requires the airport to submit to the Board a written request for reimbursement that includes a description of how the reimbursed funds will be used. These requests are in addition to the excise tax reports submitted by all

airports. The Division and Board do not require publicly owned airports to submit requests for their aviation fuel tax reimbursements, or to report how those reimbursements are used, as discussed later in the report.

The Division believes the intent of the statute was to allow for reimbursements to airport governing bodies, including those for airports that are privately owned but accessible to the public, and not to limit reimbursements only to public governmental entities. However, the Division has not sought a legal opinion on its interpretation of the statute. As of the end of our audit, the Division was working with the General Assembly on House Bill 1066, introduced in the 2009 Legislative Session. If enacted, this bill would clearly allow aviation formula fuel tax reimbursements to privately owned, publicly accessible airports. The Division should seek legal guidance on whether the statute currently allows aviation formula fuel tax reimbursements to be issued to privately owned airports. If the Division obtains guidance that indicates reimbursements to privately owned airports are not allowed by current statutes, the Division should seek recovery of such reimbursements.

**Delays in issuing excise tax reimbursements.** During Fiscal Years 2007 and 2008 the Division distributed excise tax reimbursements to airports totaling about \$1.5 million and \$1.3 million, respectively. As of June 30, 2008 the Division was holding about \$220,000 in excise tax refunds that were owed to nine airports for aviation fuel sales that had occurred prior to June 2004 through December 2007. Of this amount, about 1 percent was less than a year old, 97 percent was between one and two years old, and 2 percent was more than two years old. The Division held these reimbursements because the airports had not yet submitted excise tax reports. In the absence of the reports, the Division roughly estimates the amount of excise tax owed to each airport each month based on Revenue's reports and encumbers the amount. The delays in obtaining excise tax reports from some airports postpones the disbursement of excise tax reimbursements and creates an administrative burden for the Division.

The Division stated that it contacts these airports to remind them to submit excise tax reports, but some airports do not respond in a timely manner. The Division and Board should establish a reasonable deadline for the submission of the reports and consider seeking statutory authority to impose sanctions for failing to comply with the deadline, such as charging financial penalties or requiring airports to forfeit a portion of their excise tax refunds. Adopting such measures could help the Division better manage the Aviation Fund.

**Outdated manual.** In conducting our review of the Division's processes for issuing aviation formula fuel tax reimbursements, we found that its fuel tax procedure manual is outdated, having last been updated in 1992. Currently only one Division staff is experienced in processing fuel tax reimbursements, which is

a complex process. An updated manual would help ensure that reimbursements could be processed in a timely and accurate manner by other employees, if needed. The Division should update the manual to reflect current practices and policies, ensure the manual is regularly updated as changes occur in the future, and cross-train staff on the reimbursement process.

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### **Recommendation No. 8:**

The Division of Aeronautics and the Aeronautical Board should ensure that formula fuel tax reimbursements are issued in accordance with statute and in an accurate and timely manner by:

- a. Obtaining legal guidance on whether issuing aviation formula fuel tax reimbursements to privately owned airports is allowed by statute and seeking recovery of the reimbursements paid to privately owned airports if the determination is that such reimbursements were not allowed.
- b. Establishing a reasonable deadline for airports to file excise tax reports and seeking statutory authority to either impose financial penalties or require airports to forfeit a portion of their excise tax reimbursements for failing to comply with the reporting deadline.
- c. Updating the tax procedure manual to reflect current processes, implementing procedures to keep the manual regularly updated in the future, and cross-training staff on the reimbursement process.

### **Division of Aeronautics Response:**

- a. Partially Agree. Implementation Date: July 2009. The Division will seek a legal opinion prior to issuing additional aviation fuel tax reimbursements to privately owned airports. The statutory clarification has been initiated under House Bill 09-1066. If the legal opinion indicates that reimbursements to privately owned airports were not allowed under statute, the Division will not seek the recovery of reimbursements from privately owned airports as it would be financially prohibitive.
- b. Partially Agree. Implementation Date: July 2009. The Division will establish and communicate deadlines to encourage airports to file their excise tax reports in a timely manner. We will not be pursuing financial penalties; however, late filing will be a consideration for future grant funding.

- c. Agree. Implementation Date: July 2009. The Division will update the Tax Procedure Manual to reflect current processes between the Department of Revenue and Division of Aeronautics staff. The Division will coordinate with the Department of Revenue annually and update the Tax Procedure Manual as needed. The Division will continue to cross-train staff on the reimbursement process.

### **Aeronautical Board Response:**

- a. Partially Agree. Implementation Date: July 2009. The Board will monitor the progress and provide information and support for House Bill 09-1066. The Board will seek a legal opinion; however, if the legal opinion indicates that reimbursements to privately owned airports were not allowed under statute, the Board will not seek the recovery of reimbursements from privately owned airports as it would be financially prohibitive.
- b. Partially Agree. Implementation Date: July 2009. The Board will monitor the timely submission of excise tax reports. The Board will not be pursuing financial penalties; however, late filing will be a consideration for future grant funding
- c. Agree. Implementation Date: July 2009. The Board will receive report updates from the Division on the update to the Tax Procedure Manual and cross training on an annual basis.

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## **Airport Use of Fuel Tax Reimbursements**

The Colorado Constitution [Section 18 of Article X] and statute [Section 43-10-110, C.R.S.] require that airports use aviation formula fuel tax reimbursements solely for aviation purposes. According to statute [Section 43-10-102(3), C.R.S.], “aviation purposes” means any objective that provides direct or indirect benefits to the State aviation system and includes: constructing, planning, or repairing a public airport; removing or reducing hazards to the safe operation of aircraft; acquiring navigational aids and safety equipment; acquiring land for airport development or to improve airport safety; conducting studies and/or developing plans related to aviation; promoting economic development related to aviation; and educating the public concerning aviation. Under statute, subsidization of airlines is expressly prohibited as an aviation purpose, although promoting and marketing of air service at airport facilities is allowed.

We found that the Division and Board lack controls to ensure that aviation fuel taxes are used only for aviation purposes. As discussed in Chapter 1, we found weaknesses in the Division's and Board's oversight of the State Aviation System Grant Program. Similarly, we found the Division and Board have not implemented controls over the use of fuel tax reimbursements. Statute [Section 43-10-110(2)(b), C.R.S.] requires that "Each entity operating a public-accessible airport that receives a [fuel tax reimbursement] . . . submit an annual report to the Division providing information concerning the aviation purposes for which the moneys have been used." However, the Division has never developed a reporting format to implement this statutory requirement and therefore does not collect the required reports. In the absence of such reports, we interviewed representatives from a sample of 14 publicly accessible airports that receive fuel tax reimbursements to discuss how they manage fuel tax reimbursements and identified concerns.

First, all of the airports we contacted reported that expenditures of aviation fuel tax reimbursements are not tracked separately from other expenditures. As a result, the airports cannot clearly identify how they have spent their fuel tax reimbursements. Furthermore, one airport representative reported being unaware that there were restrictions on the use of these funds. Some airports engage in operations that are not related to aviation. For example, we found that one airport maintains crops and another operates a recreational facility. As a result, there is a risk that these entities could use their fuel tax reimbursements to help support their nonaviation operations. Without mechanisms to separately account for fuel tax reimbursements, it is possible that the use of these monies will not be restricted to aviation purposes, as required by statute. The Division has not provided guidance or direction to airports on separately accounting for fuel tax reimbursements from other funds to ensure that reimbursements are used only for aviation purposes.

Second, statute is unclear with respect to what uses of the fuel tax reimbursements are prohibited. Section 43-10-102(3)(b), C.R.S., states "Subsidization of airlines is expressly prohibited as an aviation purpose except for the promotion and marketing of air service at airport facilities." The statute does not define "subsidization." Dictionaries define a subsidy broadly as a gift or grant of money. One airport we interviewed reported that it uses its fuel tax reimbursements, at least in part, to offset the fees that airlines would otherwise pay to the airport facility for rent, landing fees, and other charges. The use of fuel tax reimbursements for such offsets could be considered a subsidy. The Division should seek legal clarification of what uses of fuel tax reimbursements would be considered prohibited as subsidization.

We did not identify any instances during the audit that clearly indicate that airports were using their formula fuel tax reimbursements for nonaviation

purposes. However, the Division's failure to provide guidelines to entities on accounting for reimbursements separately and to obtain the statutorily required reports on how airports use the reimbursements makes these funds vulnerable to misuse.

The Division is working with the General Assembly on House Bill 09-1066, which would eliminate the statutory requirement for airports to report to the Division on their use of aviation fuel tax reimbursements. Eliminating this requirement would remove the Division's only statutory mechanism for overseeing how airports use their aviation fuel tax reimbursements. If the proposed legislative change does not occur, the Division should develop means to fulfill its statutory responsibility to ensure that airports use their fuel tax reimbursements solely for aviation purposes. The Division should consider the risks and benefits of different options for monitoring airport use of fuel tax reimbursements. The options could include: (1) establishing a certification process for airports to attest to the Division that they use their fuel tax reimbursements only for aviation purposes, (2) implementing a form for airports to report details on how the funds are used, or (3) conducting on-site reviews of airports to assess how the funds are used. The Division could also use a combination of these verification methods. If the Division considers using a certification process, it should seek legal guidance on such a process would comply with statute.

Under current statutes, the Division and Board do not have authority to sanction airports that do not comply with the statutory reporting and spending provisions. Without penalties for noncompliance, airports may not be motivated to implement changes in their accounting for fuel tax reimbursements or report their use to the Division. The Division and Board should consider the need to seek statutory changes to allow sanctions for airports that do not comply with the reporting requirements and/or do not use formula fuel tax reimbursements in compliance with the Constitution and statute.

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### **Recommendation No. 9:**

The Division of Aeronautics and the Aeronautical Board should develop a mechanism to ensure that airports use aviation fuel tax reimbursements for aviation purposes, as required by statute. The Division and Board should:

- a. Evaluate options for an oversight mechanism, such as requiring airports to certify that they use their fuel tax reimbursements only for aviation purposes, requiring airports to submit detailed reports on their use of the funds, or conducting on-site reviews to verify how the funds are used.

The Division should seek legal guidance on whether a certification process would meet the statutory reporting requirements and implement one or more of these oversight methods.

- b. Establish guidelines and/or directives to airports to account for their aviation fuel tax reimbursements separately from other funds and communicate to airports the statutory restrictions on the use of the reimbursements.
- c. Consider the need to pursue statutory authority to impose sanctions on airports that do not comply with the reporting and/or spending requirements.

### **Division of Aeronautics Response:**

- a. Agree. Implementation Date: July 2009. If House Bill 09-1066 passes, the requirements for tracking fuel tax reimbursement expenditures will no longer apply. If HB 09-1066 is not successful then the Division will evaluate the options for oversight of fuel tax reimbursements being used for aviation purposes such as self certification or annual reporting from airports.
- b. Agree. Implementation Date: July 2009. If House Bill 09-1066 is not successful, the Division will establish guidelines on how airports track and account for fuel reimbursements and communicate these requirements to airports via the grant manual, letter and email correspondence.
- c. Partially Agree. Implementation Date: July 2009. If House Bill 09-1066 is not successful, the Division will not seek statutory changes to impose sanctions, however reporting compliance will be used as a consideration for future grant funding.

### **Aeronautical Board Response:**

Partially Agree. Implementation Date: July 2009. The Board will monitor the progress and provide information and support to House Bill 09-1066. In the event House Bill 09-1066 does not pass, the Board will work with the Division to develop appropriate measures such as considering reporting compliance as a factor in future grant funding. The Board will not seek statutory changes to impose sanctions.

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## Reporting Aircraft Registration and Sales

According to statute [Section 43-10-114(1), C.R.S.], all aircraft owners must register their aircraft with the Federal Aviation Administration (FAA) in compliance with federal regulations. Registration typically occurs at the time an aircraft changes ownership. Statute also requires that the Division provide the Department of Revenue (Revenue) and local governments with information regarding changes in aircraft ownership by Colorado residents using federal aircraft registration records so that applicable local sales and use taxes may be collected [Section 43-10-103(2)(c), C.R.S.]. We found that the Division does not obtain information on aircraft registration changes in Colorado and therefore does not share such information with Revenue or local governments. The FAA currently sends a monthly electronic report directly to Revenue listing each aircraft registration change with a Colorado address. This report serves as a basis for Revenue to assess and collect the appropriate taxes on the change in ownership. Therefore, it is unnecessary for the Division to report FAA data to Revenue.

Further, it is unnecessary for the Division to report FAA data to local governments because the FAA has developed a website that provides information on aircraft registrations by county. Local governments can access the website to obtain data on changes in aircraft registrations in their jurisdictions. Currently the Division has no mechanism to notify local governments that they can access the FAA's aircraft registration data. According to the Colorado Constitution [Section 6 of Article XX], only home-rule municipalities have authority to assess and collect their own use taxes, such as on the purchase of aircraft; all other municipalities are only permitted to collect use taxes on motor vehicles and building materials. As of January 2009, there were 91 home-rule municipalities in Colorado. Home-rule municipalities that do assess a use tax on aircraft purchases face a potential loss of revenue if they cannot determine when a taxable sale of an aircraft has occurred.

The Division is working with the General Assembly on House Bill 09-1066 which would eliminate the requirement that the Division provide aircraft registration information to Revenue and local governments. Until legislative change occurs, the Division should fulfill its statutory responsibility for making information on changes in aircraft ownership by Colorado residents available to local governments by notifying them of the FAA website and the method by which they may access aircraft registration information.

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## **Recommendation No. 10:**

The Division of Aeronautics should notify local governments of the method by which they may access Federal Aviation Administration information on changes in aircraft ownership by Colorado residents.

### **Division of Aeronautics Response:**

Agree. Implementation Date: February 2009. Regardless of whether House Bill 09-1066 passes, links to the aircraft registry reporting information maintained by the FAA will continue to be provided on the Division's website as long as available through the FAA website. The aircraft registration information was added to the Division website in January 2009. Communication to local governments will be accomplished by the Division sending correspondence to the Colorado Municipal League and Colorado Counties Incorporated in February 2009.

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## **State Infrastructure Bank Loans**

The Colorado State Infrastructure Bank (SIB) Loan Program provides loans to public and private entities seeking to fund transportation projects within the State [Section 43-1-113.5(1) and (4), C.R.S]. In 2001, the General Assembly appropriated \$3.2 million to make loans available for aviation projects and the first aviation loan was made in February 2002. The SIB Loan Program is intended to be a revolving loan program, with all interest and principal payments returned to the Program fund to make future loans. The Transportation Commission (Commission), Department, Aeronautical Board, and Division share responsibility for making SIB loans. The Commission promulgates SIB Loan Program rules, including requirements related to eligibility, disbursement, and repayment requirements. The Division solicits aviation loan applications and helps the Board determine the appropriateness of proposed aviation projects, set the loan amounts, and make recommendations to the Commission for final approval. The Department reviews applicants' finances for ability to repay the loans and establishes the terms of loan agreements. Between Fiscal Years 2002 and 2008 the Commission made 16 aviation loans totaling about \$22.8 million to 10 entities; the loans ranged from \$150,000 to \$5.4 million. As of July 2008 the outstanding loan balance on all aviation loans totaled about \$17.1 million. We reviewed a sample of six aviation loans totaling about \$14.6 million made between February 2004 and October 2007 and identified concerns with

application and approval, enforcement of loan agreements, and Loan Program administration as described below.

**Documentation Supporting Loan Requests.** We found that loan applications for the SIB Loan Program do not require applicants to provide documentation substantiating the loan amount requested. For five of the six loans we reviewed, the Division lacked documentation to substantiate estimated project costs, which are important for assessing the reasonableness of the requested loan amount. Specifically, at the time the loans were made, two applicants for land purchase loans did not provide land appraisals, and three other applicants did not provide documentation supporting project cost specifications and contractor estimates. During the audit, the Department obtained substantiating documentation for two of these five loans. As we discuss later in this section, there have been instances where the SIB Loan Program lacked funds to meet loan requests. Without documentation substantiating the requested loan amounts, the Department and Division may be unnecessarily depleting the amount of funds available for other loans.

**Financial Review of Loan Requests.** We found the Department does not have sufficient financial review criteria or procedures to evaluate the ability of aviation loan applicants to repay borrowed funds. The Department has made aviation loans to applicants that appear at higher risk of default without clear criteria for approving such loans and has never turned down an aviation loan despite information in the application indicating that the applicant was at risk of default. Specifically, for five of the six loan applications reviewed, we found:

- Four borrowers with loans totaling about \$8.6 million had operating deficits in one or more years prior to the loan. One of these borrowers received a \$2.5 million loan in August 2004. It has been delinquent in making three of its annual loan payments, one of which was an interest-only payment the borrower was allowed to make in 2007 to avoid defaulting on the loan.
- Two borrowers noted in their applications that they did not have funds, revenue, or securities available to secure or collateralize the loans. One of these borrowers received an \$840,000 loan in April 2005 and is also included in the bullet above; the other borrower received a \$5.4 million loan in October 2007. A third borrower that received a \$3.5 million loan in February 2004 stated on the application that it would use funds from the State Aviation System Grant Program, in part, to repay the loan.

In addition, we found that documentation, including meeting minutes, was lacking to demonstrate that the Division, Department, Board, or Commission had considered the potential risk involved in approving the loans.

Making loans to borrowers that may not have the ability to repay poses a risk to the Loan Program, which is intended to be self-sustaining. The Transportation Commission should work with the Department, Aeronautical Board, and Division to implement rules and procedures to mitigate the risk of default, such as a cap on funds for more risky borrowers and a requirement for borrowers to submit a plan showing funding sources for repayment.

**Oversight of Loans.** Responsibilities for managing the SIB Loan Program have not been clearly assigned among the Division, Board, and Department. As a result, we found that neither the Department nor the Division had procedures to:

- **Obtain documentation on the use of loan monies.** At the time of our review the Department and Division did not have documentation, such as deeds for land purchases and invoices for equipment purchases, to show whether any of the six loans in our sample were used for the purposes outlined in the loan agreements. At our request, the Department obtained documentation from three borrowers for loans totaling about \$9.5 million showing the loans were used for the approved aviation purposes. For the remaining three loans totaling \$5.1 million, the Department was unable to verify how the funds were used. Monitoring, such as obtaining copies of deeds, invoices, or a certificate of project completion, is needed to verify that borrowers use the funds for the loans' stated purposes.
- **Follow-up with borrowers when payments are late.** Two of the six loans we reviewed were delinquent and considered to be in default based on the terms of the SIB loan agreements. One borrower was six months late on a \$68,700 payment, and another borrower was more than three weeks late on three separate payments, ranging in amount from about \$83,000 to \$308,200 each. The Department reported that loan payments are often late. However, the loan agreements do not provide the Department with remedies, such as penalties, if borrowers are delinquent. Further, the loan agreements specify that "borrowers shall be in default if the Department does not receive payments on or before the due date, unless prior written approval is given," and allow the Department to call the loan if default occurs. The Department stated that it needs to better define default and delinquency in loan agreements. The Commission should work with the Department to define delinquency and clarify default in loan agreements and consider imposing a late fee for repeated late payments. Beginning in Fiscal Year 2009 the Department implemented a system to issue annual loan statements with due date and loan status to each borrower. The Department should also notify borrowers when loans are delinquent or in default.

**Loan Policies and Rules.** The Transportation Commission has not promulgated policies or rules setting forth required procedures for amending payment terms for loans, including designating the entity authorized to initiate such changes for the Commission's approval. For two of the six loans we reviewed, changes were made to the terms of the loan without clear authorization by the Commission:

- In 2007 the Aeronautical Board approved one borrower to make an interest-only payment of about \$83,000 to avoid default; the full payment should have been more than \$308,200. The Transportation Commission did not review or approve the payment, and it is not clear whether SIB Loan Program rules allow interest-only payments. Such payments reduce the amount of funds available for making loans to other potential borrowers.
- In 2008 Division staff changed one borrower's agreed-upon loan payment schedule without the review or approval of the Aeronautical Board or Transportation Commission. In this instance, the borrower made two initial payments greater than the annual schedule required and Division staff altered the annual amount due for the succeeding years. While this did not have a negative impact on the SIB account generally, or this loan specifically, staff modified the loan terms without Commission approval.

We question whether these changes to the loan payment terms were valid without Commission approval. The Commission should review changes to the terms of outstanding loan agreements and approve the changes, as needed. In addition, if the Commission chooses to delegate authority to the Department to make changes to loan agreements, the Department should report such changes to the Commission for review and approval.

Adequate controls and clear assignment of responsibility over each part of the loanmaking process are vital to operating a successful loan program. The Transportation Commission should work with the Department, Aeronautical Board, and Division to ensure that borrowers provide documentation supporting the loan amount, demonstrate the ability to repay, and adhere to agreed-upon loan terms. This should include assigning responsibility for each aspect of the loanmaking and monitoring process and implementing rules and procedures to enforce and amend loan agreements.

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### **Recommendation No. 11:**

The Transportation Commission should improve the State Infrastructure Bank Loan Program, working with the Department of Transportation, Aeronautical Board, and Division of Aeronautics as needed, by:

- a. Requiring applicants to submit documentation to substantiate the requested loan amount, ensuring that the loan amount is appropriate for the purpose requested, and documenting the evaluation of each application.
- b. Implementing loan review and approval procedures that ensure borrowers' ability to pay and mitigate the risk of loan defaults, such as placing a cap on the amount that will be loaned to more risky borrowers and requiring applicants to submit plans showing funding sources for loan repayment.
- c. Developing rules, policies, and procedures for enforcing and approving changes to the terms of loan agreements, including procedures for ensuring that loans are used as intended and notifying borrowers of delinquencies or defaults. The policies should clearly assign responsibility for each aspect of the loanmaking and monitoring process and require review and approval by the Transportation Commission for all changes in the terms of loan agreements.
- d. Reviewing changes to the terms of outstanding loan agreements and approving the changes, as needed.
- e. Modifying rules and loan agreements to define delinquency and better define default, and developing a policy to apply statutory remedies when borrowers fail to meet the terms and conditions of loans, as appropriate.

### **Department of Transportation Response:**

Agree. Implementation Date: June 2009. Regarding the implementation of parts "a", "b", "c", and "e" of the recommendation, we will need to do rule making to incorporate some of these changes. The Attorney General representative for the Department and the Transportation Commission has agreed that we can have the Transportation Commission pass a resolution as an interim solution until rule making can be completed. We will present that resolution for approval at the June 2009 Transportation Commission meeting.

- a. The Department's Office of Financial Management and Budget will work with the Division of Aeronautics in developing a more comprehensive application and evaluation process to include those items referenced in the recommendation. We have already begun that process, but it has not yet been completed as we were waiting for rule making to make these changes.

- b. We do currently require repayment sources, but will in the future require a more comprehensive plan providing for contingencies if the primary repayment source does not materialize. For some of the “riskier” borrowers, we have received letters from the county stating that the county would step in and make payment if the airport could not. We will look at expanding that option.
- c. We will develop more specific procedures for amending the loan agreements and repayment terms. We will incorporate these into our application process and rules that will be adopted by the Transportation Commission. We also agree that the roles and responsibilities between the Division of Aeronautics staff, the Aeronautical Board, Office of Financial Management and Budget staff, and the Transportation Commission should be specifically defined. Any changes to the terms of a loan agreement will be taken to the Transportation Commission for approval.
- d. In the case of the loan that was in default and the loan for which a new payment plan was established, we will take these to the Transportation Commission for approval at the March 2009 meeting. We believe that if the roles are better defined as discussed in part “c”, this issue could and will be prevented in the future.
- e. Right now only default is defined in our loan agreements. As currently defined, if a borrower misses one payment or does not pay the full amount the loan is considered to be in default. We agree that default might be extreme in some cases and that adding a provision for delinquency would be appropriate. We will explore what legal and statutory remedies might be available to us.

### **Transportation Commission Response:**

Agree with the Department of Transportation’s response. Implementation Date: June 2009.

### **Division of Aeronautics Response:**

Agree. Implementation Date: June 2009. The Division is in agreement with the response provided by the Department of Transportation. In addition, the Division will maintain copies of the SIB documents and make them available to the Board and the public.

## **Aeronautical Board Response:**

Agree. Implementation Date: June 2009. The Board will monitor and adhere to all policies and procedures developed which address the Department of Transportation State Infrastructure Bank loan program. Once the rulemaking process is complete the Board will review the process and ensure the Division's compliance.

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## **Aviation Fund Transfers**

The Division periodically transfers monies between the Aviation Fund and the Transportation Infrastructure Revolving Fund (Revolving Fund) for the purpose of making aviation loans. The Division made the following transfers from the Aviation Fund to the Transportation Infrastructure Revolving Fund during Fiscal Years 2005 through 2008:

- A permanent transfer of \$63,400 in July 2004 to make an aviation loan to a county.
- A \$4.2 million temporary "bridge loan" transfer in October 2007 to make a \$5.4 million airport loan. The Department transferred the \$4.2 million back to the Aviation Fund in April 2008.
- A permanent transfer of \$10 million in March 2008 to increase the funds available for future loans.

We identified three concerns related to these transfers. First, we found that these transfers lack criteria or consistency. For example, the Division has made transfers to the Revolving Fund specifically for making loans to certain entities but not others. Division documentation shows that in October 2004 one applicant seeking a \$1.7 million loan for a construction project was asked to reduce its loan application to \$840,000 due to a lack of funds in the Revolving Fund; however, as noted above, in October 2007 the Division funded the full amount of one applicant's loan request (\$5.4 million) by making a transfer from the Aviation Fund to the Revolving Fund.

Second, the Division makes transfers to the Revolving Fund without analysis of the amount needed to support the Loan Program or the State Aviation System Grant Program. We found that, after the Division made the \$10 million transfer from the Aviation Fund to the Revolving Fund in March 2008, there were indicators of a high level of interest in aviation grants but limited interest in

aviation loans. Specifically, in the Spring of 2008, the Division and Board opened a second grant cycle (Fiscal Year 2008 grants had already been awarded in the Fall of 2007) and allocated an additional \$4.5 million of Aviation Fund monies for grants. According to Board minutes, the Division and Board either denied funding or asked applicants to reduce the amount of their grant requests to remain within the \$4.5 million allocation. Applicants had submitted grant requests totaling \$6.5 million and the denials and reductions totaled \$2 million. In contrast, the Division reported that it has received only one aviation loan application for \$5 million since it made the \$10 million transfer to the Revolving Fund. The loan request was submitted in January 2009. The disparity in interest in grants and loans highlights the importance of a careful analysis of the needs of both the Grant and Loan Programs before transferring funds between the two.

Third, we could not find any evidence that the July 2004 transfer of \$63,400 or the October 2007 transfer of \$4.2 million were approved by the Board. By statute [Section 43-10-105, C.R.S.] the Board is responsible for managing the Aviation Fund and therefore should pre-approve all transfers from the Fund.

The Aeronautical Board is responsible for administering the Aviation Fund and therefore should work with the Division to develop written policies, standard criteria, and consistent procedures for making and approving transfers from the Aviation Fund. Further, the Board should develop procedures for staff to analyze and determine the amount of funding needed in the Revolving Fund prior to making such transfers and consider the extent to which transfers create barriers to granting Aviation Fund monies.

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## **Recommendation No. 12:**

The Aeronautical Board should work with the Division of Aeronautics to adopt written policies and procedures to ensure that transfers from the Aviation Fund to the Transportation Infrastructure Revolving Fund are consistent and necessary. This should include defining the circumstances under which transfers are allowed, conducting analyses of the need for such transfers, implementing procedures to approve all transfers from the Aviation Fund, and developing criteria regarding the amounts that may be transferred.

## **Aeronautical Board Response:**

Agree. Implementation Date: January 2010. The Board will adopt policies and procedures with respect to transfers from the Aviation Fund to the SIB Revolving Fund. All transfers will be acted on by the Board according to the criteria set forth in the policies and procedures.

### **Division of Aeronautics Response:**

Agree. Implementation Date: January 2010. The Division will develop the background information to define the circumstances in which transfers are allowed, analysis of need for transfers and the criteria regarding the amount to be transferred. This information will be provided to the Board for action.

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# Division Administration

## Chapter 3

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The Division of Aeronautics (Division) carries out a variety of statutory duties and other aviation activities that include developing the State Aviation System Plan, administering the Aviation System Grant Program, disbursing formula fuel tax reimbursements, conducting airport pavement and safety inspections, deploying and maintaining automated weather-observing systems, and publishing information relating to aeronautics. During Fiscal Years 2005 through 2008 the Division recorded about \$2.1 million in administrative costs and spent about \$5.1 million for Division-managed projects related to these duties.

We reviewed the Division's and Aeronautical Board's (Board's) controls over administrative and operating expenditures and functions. We also evaluated the Board's process for reviewing and approving the Division's budget and expenditures and the Division's controls over other state assets. We identified numerous weaknesses in controls which point to an overall lack of accountability for the Division's use of state resources. Our concerns related to Division and Board administration and operations are discussed in this chapter.

### Controls Over Expenditures

Statute [Section 24-17-102(1), C.R.S.] requires state agencies to have internal accounting and administrative control systems that include provisions for adequate authorization and recordkeeping, restrictions on use of state assets, and effective processes of internal review. These provisions are intended to protect state assets and ensure that expenditures are reasonable, appropriate, and for state business.

We evaluated Division controls and compliance with State Fiscal Rules and other applicable requirements by reviewing a sample of 74 transactions totaling about \$456,700 from the approximately \$7.2 million the Division spent in administrative costs and Division grants in Fiscal Years 2005 through 2008. We identified exceptions for 29 of the 74 transactions (39 percent) totaling about \$139,400 (31 percent) of the \$456,700 tested. This is a significant error rate. The exceptions fell into several categories, as discussed below. In eight transactions we identified more than one exception, and these transactions are reflected in more than one category. We found:

- **Expenditures that do not appear reasonable and necessary.** State Fiscal Rules require that all expenditures incurred by state agencies be reasonable and necessary under the circumstances and for official state business purposes only. We identified 10 expenditures totaling about \$60,100 that appear unreasonable and/or unnecessary. These include about \$54,400 the Division paid for airport representatives to attend trainings or establish airport displays at conferences that were not fully reimbursed by the airports. For example, our sample included expenditures totaling about \$12,400 for Fiscal Year 2007 and about \$16,900 for Fiscal Year 2008 to provide furnishings and utilities for airport booths at annual National Business Aviation Association conferences. The Division did not request reimbursement from participating airports for any of these costs. The Division does not allocate these expenditures between its own costs and those associated with participating airports, so it is not possible to determine the proportion of the costs that airports should have reimbursed.

We also identified about \$3,800 in questionable costs in Fiscal Year 2007 for promotional clothing embroidered with the Division's logo. The Division gave about \$2,000 in jackets and shirts to its staff and Board members and distributed the remaining \$1,800 worth of shirts to Colorado airport representatives. The Division believes these expenditures were reasonable and necessary to promote Colorado aviation. Finally, two transactions totaling about \$1,900 were for meal-related expenses that appeared excessive or questionable and lacked documentation showing their business purpose. These expenses involved a meal charge that averaged about \$64 per person and may have included alcohol (the receipt did not specify, but the restaurant reported to us that an unidentified charge of \$417 was either alcohol or appetizers) and a \$461 room-service charge for which the Division had no documentation.

- **Insufficient documentation to support payments.** We found that 6 of the 74 transactions totaling about \$12,400 did not have supporting documentation, such as invoices, receipts, and descriptions of the items or services purchased and/or the business purpose of travel or meals. These included a \$9,300 payment to a Colorado hotel, reportedly for use of a conference room; a reimbursement to a Division staff member for about \$1,060 in personal credit card purchases, reportedly for travel expenses; \$920 for printing services provided by an entity other than the Department's print shop, reportedly for airport charts and directories; a \$200 payment to an airport, reportedly for aircraft hanger rental although Division staff could not recall the reason for renting the hangar; and about \$880 for meals for which the Division had no itemized receipts.

- **Lack of required approvals.** We found 16 transactions totaling about \$75,400 that lacked documentation of required prior approval, did not undergo supervisory review and approval, and/or exceeded the approved amounts. First, the Division made 10 payments totaling about \$51,200 without evidence that it had obtained approval for the expenditures in advance. For example, the Division spent more than \$25,000 on aerial photos without having a purchase order approved in advance. Second, two transactions totaling about \$3,400 were out-of-state travel expenses incurred by the Division Director but paid for using a Division credit card that was issued in the name of another Division employee. These transactions were not reviewed and approved by the Division Director's supervisor. One of these expenses is included in the payments that were made without evidence of approval and included \$461 in room-service charges that appeared unreasonable and unnecessary. Third, for seven transactions the Division spent a total of about \$23,400 (or about 21 percent) more than it was approved to spend. For example, the Division exceeded the Board-approved amount for a maintenance services contract by about \$11,600, or about 19 percent. One of the transactions that exceeded the approved amount is also included in the transactions that did not have evidence of prior approval and one is included in the expenses incurred by the Division Director but not approved by his supervisor. In addition, two of the seven transactions that exceeded approved amounts were for two out-of-state trips, one totaling \$5,900 and the other totaling \$1,700. We conducted further testing on the trips and found the total costs for both trips exceeded the amounts approved on the out-of-state travel authorization forms by 77 and 34 percent, respectively. These trips also included reimbursements to a Division employee totaling about \$1,300 without receipts to document the expenses and \$380 in expenses incurred by the Division Director that were not approved by his supervisor.
- **Recording errors.** We identified two types of recording errors among the 74 transactions we tested. First, we found that six of the transactions totaling about \$49,600 were coded to the wrong object codes, meaning they were not recorded as the correct expenditure type in the State's accounting system. These exceptions consisted of about \$1,100 in payments for contracted professional services that were charged to "equipment maintenance," about \$48,000 in printing services that were charged to "supplies," and a \$500 grant disbursement that was charged to "supplies and maintenance." Second, two transactions totaling about \$1,960 were improperly recorded as credits against Division expenditures rather than as revenue. These credits included a payment made by an airport to reimburse conference costs as well as workshop registration fees and revenue from sales of merchandise at the workshop. According to

State Fiscal Rules, state agencies should normally only record money received as a credit against expenditures when the receipt is a specific, incidental, and nonrecurring reimbursement of an expenditure that occurred within the same fiscal year. These two credits did not meet these criteria.

The expenditure exceptions we identified create concern that public funds are not being used in a prudent and accountable manner. For example, lack of adequate expense documentation increases the risk that state funds could be misused without detection. Recording expenditures to the wrong expense code prevents the Division from monitoring expenditures to ensure they are accurate, appropriate, and within approved amounts. Further, crediting receipts against expenditures understates both revenue and expenditures, making it difficult for the Board and Division to accurately budget and make sound management decisions regarding the expenditure of funds.

According to the Division, expenditures undergo two levels of review and approval within the Division. First, the Division's business manager, who serves as the Division's accountant, reviews expenditures for adequacy of documentation, mathematical accuracy, and compliance with State Fiscal Rules and/or other applicable requirements. Second, the Division Director approves expenditures after reviewing them for appropriateness, such as to ensure the expenditure was for a business purpose. In addition, expense reimbursements claimed by the Division Director are reviewed and approved by either the Department Executive Director or Deputy Director. However, expenses incurred on behalf of the Division Director and paid through other methods, such as through use of a Division credit card, are not approved by the Department. Finally, all credits against expenditures are reviewed by both the Division business manager and Director, and are then submitted to the Department for final approval.

We believe the problems identified in our expenditure testing result primarily from a lack of adequate controls and inadequate reviews by Division staff who have oversight and approval responsibilities. For example, the Division has no written, binding agreements with airports or other entities which would provide controls to ensure that the Division is reimbursed for events or activities paid on behalf of these entities. Additionally, the Department does not require that all expenditures made by the Division Director on his own behalf, such as those charged on a Division credit card, are reviewed and approved by the Director's supervisor. Finally, the Division's business manager is not sufficiently versed in State Fiscal Rules and the accounting and control requirements that should be applied to expenditure and credit transactions.

The Department conducted an internal audit of the Division in September 2006 and found that documentation was not sufficient to support reimbursements to employees for work-related expenses. The internal audit recommended that the Division adopt expense account review procedures to verify that employee reimbursement requests are reasonable and legitimate. The audit also recommended that the Department controller review and approve Division expense reimbursements until the Division demonstrated that sufficient controls were in place. The Department controller reported that Division expenditures were reviewed by the Department for about six months after the audit. However, the results of our expenditure testing indicate that the Division still lacks adequate controls. The Division and Department need to ensure that all expenditures are reasonable and necessary for state business and that individuals with accounting expertise are responsible for processing and overseeing Division expenditures. The Division should also discontinue its practice of paying for other entities' expenses. If the Division chooses to continue this practice, the Division should establish written agreements with the entities regarding reimbursement before incurring such expenditures.

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### **Recommendation No. 13:**

The Division of Aeronautics and the Aeronautical Board should improve controls over expenditures for Division administration and projects by:

- a. Discontinuing the practice of making advance payments for conferences, training, or other activities on behalf of airports or other entities. If this practice continues, the Division should ensure that binding, written agreements documenting expectations for reimbursement exist between the Division and the other entities before paying the expenses.
- b. Requiring adequate documentation, including itemized receipts and notations to explain the business purpose of expenses, and proper approvals before making payments or reimbursing expenses.
- c. Ensuring Division accounting staff are trained on and held accountable for following proper accounting and fiscal procedures by including specific accounting responsibilities and expectations in job descriptions, performance plans, and evaluations.
- d. Submitting all Division Director expenses to the Department for approval, regardless of the payment method.

### **Division of Aeronautics Response:**

- a. Agree. Implementation Date: September 2009. When advance payments for conferences or other activities are necessary, the Division will work with the Department's accounting staff to ensure that airports and/or other entities after signing an agreement are invoiced in a timely manner and that corresponding receivable entries are recorded in the Department's financial accounting system. The Department's accounting staff will monitor any outstanding balances by reviewing the receivable aging report on a monthly basis.
- b. Agree. Implementation Date: February 2009. In January 2009, the Division began implementing a process to assure adequate documentation is received and reviewed prior to approval and payment. The Department's audit division will conduct regular reviews of the Division payments. Those reviews will begin in February 2009.
- c. Agree. Implementation Date: September 2009. The Division is working with the Department's accounting staff to ensure that all accounting and fiscal procedures are followed including specific accounting responsibilities. These expectations will be included in job description, performance plans, and evaluations.
- d. Agree. Implementation Date: February 2009. The Aeronautics Division will submit all Division Director expenses for Department approval, effective February 1, 2009.

### **Aeronautical Board Response:**

Agree. Implementation Date: September 2009. The Board will oversee the Division's implementation of parts "a" through "d" of the recommendation. The Board will request the Department's audit division to report on the internal Audit Implementation Tracking Report at the first regularly scheduled meeting following the release of the Tracking Report. The Tracking Report will help the Board monitor the implementation of the audit recommendations. The Board will review the report and if necessary meet with the Division Director and Department Internal Audit to review implementation status.

### **Recommendation No. 14:**

The Department of Transportation should improve its oversight over Division expenditures by:

- a. Implementing a process for Departmental review and approval of Division Director expenses, regardless of the payment method.
- b. Reinstating regular Department review of Division payments until the Division can demonstrate full implementation of proper accounting controls. Once the Division demonstrates adequate controls, the Department should follow up and periodically review a sample of transactions to ensure ongoing compliance.

### **Department of Transportation Response:**

Agree. Implementation Date: February 2009.

- a. The Department's Office of Financial Management and Budget staff will work with the Division of Aeronautics in developing a process whereby the Division Director expenses will be reviewed by the supervisor regardless of payment method.
- b. The Department's audit division will conduct regular reviews of the Division payments. Those reviews will begin in February 2009.

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## **Division Budgeting**

The Board has responsibility for overseeing the Division's expenditures through the budget process. Specifically, statute [Section 43-10-105, C.R.S.] requires the Board to "set and adopt on an annual basis, a budget for the Division . . ." The Board does not have control over fuel tax reimbursements, which are calculated and disbursed according to a statutory formula, or federal funding, which is used to carry out airport pavement inspections and planning activities in accordance with federal requirements. However, the Board does have control over the remaining portions of the Division's budget, which include:

- State Aviation System Grant Program grants to other entities, which were discussed in Chapter 1.

- Grants to the Division for projects and activities such as studying and implementing a mountain radar system that tracks aircraft as they fly through Colorado's high mountains; supporting aviation education, such as through teacher workshops and the dissemination of educational kits; and creating and distributing aeronautical charts, directories, and newsletters to airports and pilots.
- Division administration, which includes the day-to-day operations of the Division.

The following table shows the amounts the Board has approved in grants to the Division and to other entities for Fiscal Years 2005 through 2008.

<b>Colorado Division of Aeronautics Grants Awarded<sup>1</sup> to the Division and Other Entities (In Thousands) Fiscal Years 2005 Through 2008</b>										
	2005		2006		2007		2008		Total: 2005 - 2008	
<b>Grants to:</b>	<b>Amount</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Total</b>	<b>Amount</b>	<b>% of Total</b>
Other Entities <sup>2</sup>	\$3,155	86%	\$3,311	48%	\$4,572	81%	\$8,433	90%	\$19,471	76%
Division	\$534	14%	\$3,615 <sup>3</sup>	52%	\$1,053	19%	\$966	10%	\$6,168	24%
<b>TOTAL</b>	<b>\$3,689</b>	<b>100%</b>	<b>\$6,926</b>	<b>100%</b>	<b>\$5,625</b>	<b>100%</b>	<b>\$9,399</b>	<b>100%</b>	<b>\$25,639</b>	<b>100%</b>

**Source:** Office of the State Auditor's analysis of Division of Aeronautics data.

<sup>1</sup> The grant award amounts are the approved grant amounts to the Division and other entities rather than amounts actually disbursed. Most grants to other entities are for projects that extend beyond the fiscal year in which they are awarded. Grants to the Division include projects that are completed within a single fiscal year as well as those lasting multiple years. The data available from the Division regarding grants to the Division do not routinely indicate the length of the project.

<sup>2</sup> Most grants to entities other than the Division are awarded to airports. However, the Board has also awarded grants to other organizations, including an aviation museum and a city seeking to build an airport.

<sup>3</sup> The grants to the Division in 2006 include a \$2.7 million grant for planning and implementing the mountain radar system.

Over the four-year period of Fiscal Years 2005 through 2008, the Division recorded a total of slightly more than \$2.1 million in administrative costs, or an average of about \$529,800 annually. These administrative costs were incurred in addition to the almost \$6.2 million in grants awarded to the Division shown in the table above. Therefore, over this four-year period, more than \$8.2 million controlled by the Board was allocated for Division spending, either for specific projects or administration, while about \$19.5 million was awarded in grants to other entities.

We evaluated the Board's processes for awarding and overseeing grants to the Division as well as Division administrative costs. Overall, we found that the Board does not request, approve, or monitor a comprehensive budget for the Division. These problems contribute to an overall lack of transparency and accountability for Division grants and administrative expenditures, as discussed below.

## Grants for Division Activities

We identified weaknesses in the processes used by the Board and Division to approve and manage grants to the Division. Specifically, we found:

**Incomplete information for Division grant requests.** The Board does not have requirements regarding the type of information the Division must provide when requesting grants. We reviewed Board meeting minutes and the packets of information given to the Board for a sample of five Board meetings in Fiscal Year 2008. During these five meetings, the Division made nine requests for funding totaling about \$440,600. The Board packets contained no written descriptions for one requests of \$10,000. For the other eight requests, the written explanations provided to the Board all lacked some important information about the projects for which funding was being requested. For example:

- In December 2007 the Division requested and the Board approved \$55,000 to sponsor a booth at an aviation-related conference. The memo describing the event does not provide any breakdown of the estimated costs that make up the \$55,000 request.
- In June 2008 the Division requested and the Board approved \$25,000 for the Division to update aerial photos of 23 Colorado airports. The request memo states that the photos are used by the FAA, airports, and the Division for airport planning and development. The request does not provide any breakdown of the \$25,000 cost, or indicate whether the expenditure is for work to be conducted by the Division or a contractor.
- None of the written requests specified the time frame during which the funds would be expended.

**Lack of methods to evaluate Division grant requests within a strategic budgeting process.** The Board does not have criteria to evaluate Division grant requests and does not weigh these requests against each other or against grant applications from other entities. The Division requests grants for its own projects at various times throughout the year, which prevents the Board from considering the merits of these requests relative to other funding uses. Using standardized criteria to evaluate Division funding requests and including the requests as part of a comprehensive budget (as discussed further in the next section of this chapter) is important because the Board has limited grant funds available. Between Fiscal Years 2005 and 2008 the Board approved more than 99 percent of the nearly \$6.2 million requested by the Division. Each dollar the Board grants to the Division reduces the amount available for grants to airports and so should undergo careful consideration.

**Lack of reporting on Division grant expenditures and outcomes.** The Board does not require the Division to regularly report on the results of its grant-funded projects. In reviewing the Board minutes for Fiscal Years 2005 through 2008 and Board packets for five meetings in Fiscal Year 2008, we found evidence that the Division occasionally provided the Board with updates on its grant projects. For example, in June 2008 the Division provided the Board a memo that described the status of the automated weather-observing system and the need for increased funding for the system. However, the Division did not provide the Board with routine reports on the progress of all grant-funded projects, comparisons of approved to actual expenditures, whether projects were meeting timelines, or details about project outcomes.

Statute establishes a cap on the Division's administrative costs of 5 percent of the prior year's aviation fuel tax revenue deposited in the Aviation Fund [Section 43-10-109(3), C.R.S.]. Statute also specifies that aviation grants are for "the network of facilities which includes airports, navigational aids, and safety-related facilities" [Section 43-10-108.5, C.R.S.]. These statutory provisions do not indicate that grants should support Division administrative functions. In fact, legislative testimony from 1991 when the Division's statutes were created indicate that the goal of the Grant Program was to maximize the amount of Aviation Fund monies provided to airports. However, we found that some Division grants, such as for staff to attend aviation conferences, appear to fund administrative activities. A Department of Transportation internal audit conducted in September 2006 also found that grants had been used to fund some Division administrative costs, such as to hire and pay training costs for an intern. The internal audit recommended that the Board consider a policy prohibiting the use of grants for Division administration. The Board has not implemented such a policy. Because the Division does not consider activities funded with grants to be administrative, neither the Board nor the Division has ensured that the total cost of all administrative functions has not exceeded the statutory 5 percent limit. Administrative costs are discussed further in the next section.

To ensure that limited Aviation Fund monies are used in the best interests of the state aviation system, the Board should improve its procedures for granting funds to the Division. The Board should establish comprehensive written standards and procedures that address the form and content of grant requests from the Division, the criteria and process the Board will apply in evaluating such requests, and requirements for the Division to report to the Board regarding grant expenditures and outcomes.

### **Recommendation No. 15:**

The Aeronautical Board should strengthen accountability for grants to the Division and include such grants in an overall strategic grantmaking process by developing written policies and procedures requiring that the Division:

- a. Submit grant requests as part of the annual budget process, as discussed further in Recommendation No. 16.
- b. Provide detailed justifications for all Division grant requests, including a breakdown of the projected costs, the time frame for expending approved funds, and the benefit of the grant to the aviation system. Division grant requests should be evaluated against established criteria that are consistent with the criteria developed by the Board for grant applications from other entities (see Recommendation No. 1).
- c. Routinely report to the Board on the progress, budget-to-actual costs, and outcomes/benefits to the aviation system of the Division's grants.

### **Aeronautical Board Response:**

Agree. Implementation Date: January 2010.

- a. In response to parts "a", "b", and "c" of the recommendation, the Board will direct staff to include a section in the Manual that addresses projects/grants to the Division as a part of the annual budget process.
  - b. The Division projects/grants will be evaluated with criteria consistent with criteria for other grant applications to include project costs and timeframes. On all Division grant requests approved, the Board will identify the benefit to the overall State System which differs from individual airport grants.
  - c. The Board will request the Division provide quarterly progress reports and began reviewing budget-to-actual cost reports in December 2008.
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## Comprehensive Annual Budgeting and Reporting

Statutes require the Division to prepare “annual projections of revenue and expenses for review by the Board” and the Board to “set and adopt on an annual basis, a budget for the Division . . . .” [Sections 43-10-103(2)(h) and 105(1)(f), C.R.S.]. We found the Division does not prepare a comprehensive budget request at the beginning of each fiscal year for the Board’s review and approval. We also found the Division does not routinely report to the Board on spending. As a result, the Board is not fulfilling its statutory responsibilities for overseeing the Division’s activities and expenditures and ensuring accountability.

**Annual Budgeting.** We found the Division does not prepare a complete annual budget request that identifies the total amount of funds to be allocated to the Grant Program, to Division projects, to administration, or to other approved purposes. Instead, near the beginning of each fiscal year, the Division typically provides the Board with a rough estimate of the amount needed to fund grants to other entities, an estimate of the Division’s administrative costs, and requests for grants for some Division-managed projects. For example, the Division typically requested funding for the automated weather-observing system, the Division’s newsletter, and the airport directory near the beginning of each of the fiscal years we reviewed. However, when the Division needs funding for other specific projects, it requests Board approval sporadically throughout the year. Consequently, the Board never receives a complete picture of the Division’s anticipated spending to strategically allocate and oversee funding. We recognize that new funding needs may arise during the year. However, the Division should prepare a comprehensive annual budget and request amendments to the approved budget as needed.

Additionally, the Division does not provide the Board with details of its administrative budget or roll-forwards of grant funds for all projects that are committed but unspent at year end. Historically, the Division has given the Board a single lump-sum estimate of the Division’s administrative budget, with no detail of expenses by category, such as salaries, benefits, travel, or operating costs. Further, at the beginning of each fiscal year the Board approves a lump-sum roll-forward of all previously committed but unspent monies in the Aviation Fund. For example, at the beginning of Fiscal Year 2008, the Board approved a roll-forward from Fiscal Year 2007 of about \$13.2 million for various approved grant projects, but the Division did not provide a breakdown of the amounts, by grant, included in the roll-forward. The lack of detail for the administrative cost estimates and the roll-forward amounts prevents the Board from fully exercising

its statutory duty to oversee the Division and its expenditures, including whether projects are behind schedule.

To ensure that the Board has the information it needs to fulfill its statutory oversight duties, the Division should develop a detailed annual budget request for Board review and approval at the beginning of the fiscal year. The request should contain detailed estimates of: (1) Division administrative costs, (2) other Division funding needs, (3) the total amount needed for grants to other entities, and (4) details on committed funds to be rolled forward at the end of the year.

**Budget Reporting.** The Division does not provide the Board with regular budget-to-actual comparisons for Division grants or administrative costs. The Division tracks Board-approved funding and updates the Board at each meeting by providing the Board with the current committed and uncommitted Aviation Fund balance and a list of specific projects the Board has already approved. We reviewed financial updates for 6 of the 26 Board meetings held during Fiscal Years 2005 through 2008 and found that none of the updates reported actual expenditures for grants, Division administration, or other projects. As a result, the Board does not know if the Division is adhering to the budget for any given activity. Further, the Division does not always inform the Board about whether the Division obtains reimbursements for a variety of projects the Board approved on the condition that the Division obtain matching funds or reimbursements, such as the airport training and conference costs discussed previously in this chapter. Budget-to-actual reporting is important if the Board is to fulfill its statutory oversight function and make informed decisions about approving funding. The Board should require the Division to implement a comprehensive method for tracking and reporting its actual expenditures against the approved budget at each Board meeting, including both Division grants and administrative expenditures.

**Definition of Administrative Costs.** Under statute [Section 43-10-109(3), C.R.S.], the Division's administrative costs are limited to no more than 5 percent of the revenue deposited to the Aviation Fund in the preceding fiscal year. The statute does not define "administrative costs." The Division recorded administrative costs ranging from about 2.4 percent to 4.2 percent of the preceding year's Aviation Fund revenue during Fiscal Years 2005 through 2008. Recorded administrative costs ranged from about \$510,000 to about \$570,000 annually over this period. In addition to these administrative expenditures, the Board approved a total of about \$6.2 million in grants to the Division during these years, or an average of about \$1.5 million annually. Some of these grants were for activities that could be considered administrative, such as grants for the Division's participation in aviation organizations. Currently the Board and Division do not have a definition of the types of expenses that should qualify as "administrative costs" under statute. Consequently, neither the Board nor the Division can demonstrate compliance with the 5 percent statutory limit. The

Board and Division should work with the Department to determine the types of Division expenditures that can be considered administrative and develop a written definition of administrative costs. The Division should apply the definition consistently when developing its annual budget and when recording, tracking, and reporting its expenditures. As mentioned earlier, grants to the Division are made from the same pool of funds as grants to airports across the State, so it is important that grant funds only be used for non-administrative expenditures.

Some of the Board members we interviewed reported that they were unaware of their duties with respect to the budget and fiscal oversight of the Division. Additionally, we found that the Board has no written policies and procedures related to its fiscal responsibilities. As suggested in Recommendation No. 18, the Board should have an annual orientation or training that includes a review of all of its statutory duties, including those related to approving and overseeing the Division's budget. To ensure appropriate accountability for the Division's management of Aviation Fund monies, the Board should also develop written policies and procedures outlining how it will monitor the Division's budget, including expectations related to recording and reporting of expenditures by the Division.

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### **Recommendation No. 16:**

The Aeronautical Board should work with the Division of Aeronautics to improve management and oversight of the Division's budget by implementing written policies and procedures regarding budgeting, expenditure tracking, and reporting. The policies and procedures should include:

- a. Requirements for the Division to develop and the Board to approve a detailed annual budget request for the Division at the beginning of each fiscal year. The budget should include estimates of specific Division administrative costs, Division grants, funds needed for grants to other entities, and detail by project of previously committed funds to be rolled forward from the prior fiscal year.
- b. A definition of administrative costs that accounts for all the ongoing expenses associated with the Division's regular operations and duties. The Division should apply the standard definition consistently when it prepares its annual budget, records expenditures, and tracks and reports expenditures to the Board.
- c. An ongoing reporting process requiring the Division to provide budget-to-actual reports for all revenue and expenditures at each Board meeting.

### **Aeronautical Board Response:**

- a. Agree. Implementation Date: July 2009. The Division will prepare a detailed budget to include annual administrative costs, Division grants, other grants to entities other than airports and roll forward funds for the Board to approve at the beginning of each fiscal year.
- b. Agree. Implementation Date: July 2009. The Division will utilize the administrative cost definition that is applied to the Department of Transportation as a whole contained in Section 43-1-113(2)(a)(III), C.R.S. This statute specifically defines the administrative costs for the Department as consisting of the salaries and expenses of the following offices and their staffs: the Transportation Commission, the Executive Director, the chief engineer, district engineers, budget, internal audits, public relations, equal employment, special activities, accounting, administrative services, building operations, management systems, personnel, procurement, insurance, legal, and central data processing.
- c. Agree. Implementation Date: Implemented. Beginning in December 2008, the Division submitted a budget to actual report to the Board and will update the report at all regularly scheduled Board meetings.

### **Division of Aeronautics Response:**

- a. & b. Agree. Implementation Date: July 2009. The Board will review and act on a detailed budget to include defined administrative costs as spelled out in Section 43-1-113(2)(a)(III), C.R.S.
- c. Agree. Implementation Date: Implemented. The Board will continue to review budget to actual reports at each meeting as provided by the Division, which began in December 2008.

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## **Controls Over Nonmonetary State Resources**

The current body of law intended to protect the public trust includes statutes, rules, and directives prohibiting state employees from using state assets for personal gain. Colorado Personnel Board Rule 1-16 states that it is the duty of state employees to protect and conserve state property and that “no employee shall use state time, property, equipment or supplies, for private use or any other purpose not in the interests of the State of Colorado.” We found that, in addition to a lack of controls over expenditures, the Division has inadequate controls to

ensure that nonmonetary state resources are used solely for business purposes. We identified concerns in two specific areas, as discussed below.

**Use of Fleet Vehicles.** The Division maintains a log to record use of its two state fleet vehicles. The log documents which employee used each vehicle, the date of use, the miles traveled, the destination, and the purpose of each trip. We reviewed the log entries for the six-month period of July through December 2007. During this time the Division logged 116 trips totaling about 16,130 miles. Our review found that the vehicle log was incomplete and lacked evidence that about 6,170 of the miles logged (about 38 percent of the total mileage recorded for the period) were for business purposes. Specifically, we identified the following problems:

- **Incomplete information on the business purpose for the trip.** Division staff did not provide complete information in the vehicle log regarding the business purpose of about one-quarter of the trips and miles recorded in the log (30 trips or about 3,970 miles valued at nearly \$850). Specifically, the log entries for these 30 trips either: (1) lacked a purpose and/or destination, or (2) contained a purpose or destination that was not complete enough to establish a business purpose. For example, entries such as “errands” or “various,” or with a retail destination such as Hobby Lobby, do not provide enough information to support the business purpose for the trip.
- **Inaccurate mileage entries.** We identified 32 trips with mileage inaccuracies of 20 miles or more per trip. We calculated the mileage for these 32 trips using Internet mapping software, and estimated these 32 trips should have totaled about 7,600 miles, or about 24 percent less than the 9,950 miles recorded in the vehicle log. According to the Division, the reason the mileage recorded did not match our calculations is that staff failed to list all destinations for trips containing multiple destinations. The cost of the excess mileage totaled about \$500.

We also identified discrepancies between the vehicle log and billing records for the Division’s toll transponders and fuel cards. Each vehicle is assigned a state fuel card for purchasing fuel and certain other vehicle supplies, such as motor oil, and a toll transponder to track tolls incurred when the vehicles are used on state toll roads. We found five days during the six-month period we reviewed when the vehicle log contained no record of the fleet vehicles being used, but transponder tolls were charged and/or one of the fuel cards was used. These discrepancies could indicate that the fuel cards or transponders were used for personal use or in a personal vehicle. The Division could not explain the discrepancies we noted.

Statute, State Fiscal Rules, and State Fleet Management Rules prohibit the use of state resources, including fleet vehicles, for personal business. In an internal audit conducted by the Department, auditors examined the log in use by the Division at the time and found they could not verify that the state vehicles were driven only for official business and not for personal use. The internal auditors also could not verify that mileage reimbursements to employees for driving their personal vehicles were only for state business purposes. As a result, the internal auditors recommended the use of a more detailed vehicle log. We believe the log can be a good control to track vehicle use and ensure that vehicles are driven only for state business; however, if logs are not complete and accurate, the Division cannot demonstrate that the vehicles were used only for business purposes. To strengthen controls over the use of the vehicles, the Division should establish clear expectations for all staff to fully and accurately complete the vehicle log for each use of the vehicles. In addition, the Division Director should periodically review the log, along with transponder and fuel card records, for completeness and reasonableness and follow up with staff on any discrepancies.

**Outside Employment.** Statutes, rules, and executive orders, provide specific guidance to Division employees regarding the avoidance of conflicts of interest. Specifically:

- Statutes prohibit state employees from engaging in outside employment or other activities that create a conflict of interest with their duties as state employees, including any substantial financial transactions with entities the employee inspects, regulates, or supervises [Sections 24-50-117 and 24-18-108(2)(a), C.R.S.].
- Department of Personnel and Administration rules and Executive Orders for state employees require that outside employment be approved by an employee's supervisor. These rules and orders emphasize that state employees should avoid conflicts and the appearance of conflicts to prevent adverse effects on public confidence in government, and prohibit state employees from using state time, property, equipment, or supplies for any purpose not in the interests of the State.

We found that the Division does not have adequate controls to prevent employees from engaging in outside employment that may present a conflict of interest or to ensure that employees do not use state resources for the benefit of their outside employers. Specifically, we identified one employee engaged in outside employment and using state resources in violation of statutes, executive directives, and rules. First, the employee held outside employment at a company that provided photographs and graphic designs for airports that are inspected by and receive grants from the Division. According to the Division, this employee is not directly involved in reviewing or recommending grants. However, the

employee does participate in airport inspections. Second, the employee used publications, photos, and graphics that were state property for personal benefit. Specifically, the company for which the employee worked, a company owned by the employee's family, used a variety of aviation-related publications prepared at state expense to promote the family business.

The Division Director reported to us that he was aware that the employee's outside employment sometimes involved doing business with airports that are inspected by, and receive grants from, the Division. The Director indicated he does not consider this activity to create a conflict of interest. However, according to statute, a conflict clearly exists. The Division Director reported that he was unaware that the employee had used photos and graphics, including the Division's and Department's logos, to promote a business owned by the employee's family. After we brought these concerns to the attention of the Division, the state-owned materials were removed from the company's website.

The Division needs to implement controls and policies related to outside employment and the use of state resources that are consistent with statutes, rules, and executive directives. The Division should discontinue the practice of allowing employees to engage in outside employment that involves doing business with airports in Colorado. In addition, the Division Director should consider conducting independent reviews of employees' outside employment to prevent inappropriate use of state resources. The Division should provide routine training to employees on ethical behavior and implement an annual disclosure form for employees to certify that they: (1) are aware of statutes, rules, and directives that guide employee conduct; (2) are in compliance with such statutes, rules, and directives; and (3) have disclosed any situations that may create an actual or perceived conflict of interest with their duties as state employees. Employees should also be made aware that if a conflict arises during the year, the conflict should be reported at that time.

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### **Recommendation No. 17:**

The Division of Aeronautics should implement controls consistent with statutes, rules, and executive directives to prevent misuse of state resources and conflicts of interest by employees. Specifically, the Division should:

- a. Enforce requirements for staff to accurately complete the vehicle log, including detailed destinations and business purposes, each time a state vehicle is used.
- b. Acquire regular training for employees on conflicts of interest and ethical behavior.

- c. Discontinue the practice of allowing employees to engage in outside employment that involves doing business with airports in Colorado or otherwise represents a conflict of interest.
- d. Implement an annual disclosure form for employees to certify that they are aware of and in compliance with statutes, rules, and directives that guide employee conduct and have disclosed any situations that may create an actual or perceived conflict of interest.
- e. Implement oversight reviews of employee activities by the Division Director. The oversight efforts should include a periodic (e.g., monthly) review of the fleet log, fuel credit card statements, and transponder statements for completeness and reasonableness. The reviews should also include periodic independent reviews of employees' outside employment to prevent inappropriate use of state resources.

### **Division of Aeronautics Response:**

- a. Agree. Implementation Date: February 2009. The Division will enforce requirements for accurate and completion of the vehicle log by all Division staff when using a state vehicle. This effort will be reinforced by the regular reviews of the business transactions within the Division of Aeronautics, including accurate and proper completion of the vehicle logs. These reviews will begin in February 2009.
- b. Agree. Implementation Date: July 2009. The Division staff will acquire and attend training on conflict of interest and ethical behavior. The Division has requested a class through the Department of Transportation training. As soon as a class is located either internally or externally, the Division will attend.
- c. Agree. Implementation Date: July 2009. Division staff will be required to submit a Secondary Employment Form. Any employment associated with Colorado airports will not be permitted.
- d. Agree. Implementation Date: July 2009. The Division will require staff to complete annual disclosure forms certifying awareness of and compliance with all departmental and state statutes, rules and directives that guide employee conduct and conflicts of interest, to include Secondary Employment Forms.
- e. Agree. Implementation Date: February 2009. The Department of Transportation Audit Division in conjunction with the Aeronautics Director will begin a schedule of regular reviews of employees'

activities within the Division of Aeronautics. The reviews will include assessments of the fleet log, fuel card statements, outside employment and E-470 statements.

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## Governance and Accountability

The governance and accountability structure for aviation in Colorado was established by the General Assembly in statute, with the Aeronautical Board and Division of Aeronautics having broad powers, authority, and independence. The Board and Division are accountable under the law for effectively carrying out statutory responsibilities of “supporting and improving the state’s aviation system” as set forth in applicable provisions of Title 43. The Board, Division, and Director execute their duties under the Department of Transportation as Type 1 entities as defined in the Administrative Organization Act of 1968. In other words, they operate independently of the Department with respect to the powers, duties, and functions specifically prescribed to them in statute. The Department is responsible for all other functions not specifically assigned to the Board, Division, and Director. The Department’s responsibilities include limited purchasing, accounting, and human resources functions, and reviewing the performance of the Division Director.

Overall, we found that the Aeronautical Board has not established effective governance practices to ensure that it carries out both its duties to taxpayers and its responsibilities under statute. Throughout this report, we have raised questions regarding the Aeronautical Board’s oversight over a range of Division functions that have contributed to a lack of accountability. Specifically, we found that the Board has not established charters, bylaws, policies, or procedures to address how it will meet its statutory charge or to define its roles and responsibilities. The Board’s seven-page Code of Conduct, which dates back to 1992, lacks policies related to the Board’s oversight of the Division and includes only general guidelines on a few aspects of the Board’s operations, such as the types of Board member expenditures that are reimbursable and the frequency and location of meetings. During our interviews, Board members confirmed that the Board provides minimal oversight of the Division. The Board has not implemented adequate procedures for administration and distribution of the monies in the Aviation Fund, as required by Section 43-10-105(1)(b), C.R.S., nor does it hold the Division accountable for complying with statutes, rules, and policies.

As discussed in previous sections of this report, the Board needs to exercise its oversight authority over the Division and establish standards and systems in a number of areas to ensure accountability. This includes:

- **Standards of behavior** regarding how Board members will conduct regular business and exercise leadership without prejudice, bias, or conflicts of interest.
- **Transparency of Board and Division operations**, including open and documented processes, communication, and reporting.
- **Oversight mechanisms** for monitoring of grants and disbursements and to ensure effective budget and financial management.

We also found that the Board has failed to fully comply with Colorado's Open Meetings Law [Section 24-6-401, et seq., C.R.S.], which states: "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." In accordance with this declaration, the law requires that meeting minutes be recorded and made available for public inspection. We found the Division and Board did not take detailed minutes of the Board's discussion of grant applications and awards prior to 2006. Furthermore, the Board sometimes awards funds through fax votes rather than in public meetings. For example, during Fiscal Years 2005 through 2008 the Board approved three out-of-cycle grants totaling about \$300,000 and grants to the Division totaling about \$677,000 using fax votes rather than votes cast in a public meeting. Voting to approve funding is a formal business action of the Board that may only be taken in a public, noticed meeting. Specifically, Section 24-6-402(8), C.R.S., states: "No . . . formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section." Therefore, the grant awards approved by the Board through fax votes are not valid.

The Board also needs a process to ensure Division accountability for implementing internal and external audit recommendations. As discussed throughout this report, the Department of Transportation's internal auditors cited concerns similar to those identified by our audit. For example, the internal auditors identified instances of grant contract noncompliance, circumvention of established policy, the use of grant funds for administrative costs, employee conflicts of interest and outside employment, and a weak internal control environment within the Division that was conducive to fraud. The Department's September 2006 internal audit report made eight recommendations to the Division. Although the Division agreed with all of the recommendations, we found that more than two years later only two recommendations have been fully implemented. Both internal and external audits are valuable in helping organizations establish adequate controls, promote continuous improvement, and ensure accountability. However, audits are only useful if action is taken to fully implement the audit recommendations.

Finally, the Board needs to develop a set of operating and governance policies and procedures that incorporate the recommendations discussed throughout this report and ensure (1) Board and Division compliance with applicable statutes and best practices, and (2) economic, efficient, and effective use of Aviation Fund monies. The Board could look to other entities, such as the Board of Trustees of the Colorado Public Employees' Retirement Association (PERA), which has established a comprehensive set of self-governance practices. Specifically, PERA has established charters for the PERA Board of Trustees, its committees, and the Executive Director. These charters set forth the roles and responsibilities of each and clarify areas of decisionmaking. PERA's governance manual also includes policies on operations, communications, strategic planning, budget approval, and monitoring and reporting. The State Board for Parks and Recreation, which is also a Type 1 Board, is in the process of establishing similar governance policies. Once the Aeronautical Board implements operating and governance policies, all members should annually review and refamiliarize themselves with the Board policies and statutory requirements.

In establishing state-level oversight and support responsibilities for the state aviation system, the General Assembly vested the Aeronautical Board with broad responsibilities for managing at least \$12 million in aviation funding annually. Comprehensive steps to improve internal controls and oversight of Division activities are needed to ensure accountability to taxpayers for the effective use of these funds.

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### **Recommendation No. 18:**

The Aeronautical Board should improve oversight of Division practices with respect to grants, fuel tax reimbursements, loans, budgeting, accounting, and use of state resources, as recommended throughout this report. Additionally, the Board should:

- a. Develop written self-governance policies that include mechanisms for ensuring Board and Division compliance with applicable statutes, rules, policies, and procedures. Board members should annually review the governance policies and statutes to refamiliarize themselves with the provisions.
- b. Provide ongoing monitoring of the performance of the Division to ensure the Division accomplishes its duties assigned by statute.
- c. Follow up on internal and external audit recommendations and communicate progress to the Department, as appropriate, to ensure the Division implements recommendations in an effective and timely manner.

- d. Discontinue the practice of voting on Board action items such as grant applications or other funding requests by fax and holding all votes in a public meeting.

### **Aeronautical Board Response:**

Agree. Implementation Date: January 2010.

- a. The Board will develop self-governance policies to ensure Board and Division compliance with applicable statutes, rules, policies and procedures. This will be done through a consultant contract and actual start date will depend on the Department's ability to contract with a consultant under the current statewide hiring and contract freeze. The Board will have an annual orientation to review statutes, policies and procedures.
  - b. The Board will continue to monitor the Division's statutory duties through regularly scheduled Board meetings, retreats as necessary and general interaction with the Division.
  - c. The Audit Implementation Tracking Report provided by the Department's Internal Audit Division twice a year will be provided to the Board at the first regularly scheduled meeting following the release of the Tracking Report. The Board will review the report and if necessary meet with the Division Director and the Department's Internal Audit to review implementation.
  - d. For special or emergency meetings, the Board will follow the procedures that the Transportation Commission uses for special or emergency meetings. If needed, these meetings are held by conference call. For a special meeting, they are posted three days in advance. For an emergency meeting, they must be posted 24 hours in advance. The Board will not vote by fax.
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## Appendix A

### Colorado Department of Transportation Division of Aeronautics Summary of 2005 System Plan

The Division hired a transportation and infrastructure consulting firm to prepare State Aviation System Plans for Colorado in 2000 and 2005. The plan completed in 2000 was entitled the *Statewide Airport Inventory and Implementation Plan*. That latest version, the *Colorado Aviation System Plan 2005*, is an update to key elements in the 2000 Plan. The plans state that they can be used to identify projects with the greatest potential benefit to the aviation system.

One component of the 2000 Plan was to categorize each Colorado airport into one of three roles: Major, Intermediate, and Minor. The categorizations are determined based on the following elements at each airport:

- **Aviation Activity:** The type and volume of aviation demand the airport accommodates.
- **Expansion Potential:** The ability of the airport to expand to accommodate additional facilities, including both aviation-specific facilities, such as taxiways, and supportive facilities, such as airport terminals.
- **Economic Support:** The economic support the airport provides to the community it serves.
- **Coverage:** The use of the airport by local or visiting businesses.
- **Access:** The use of the airport to support emergency or medical needs.
- **Other Services:** The extent of airside and landside facilities and other services available at the airport.

The 2005 Plan graded each airport on 18 objectives related to the airport's ability to operate at a level that fulfills its role in the aviation system. According to the Plan, those objectives an airport does not meet should be considered in the airport's future planning. Major, Intermediate, and Minor airports have different benchmarks for each objective. A brief description of each follows:

- **Runway Length** is key to the level of activity an airport can support given the needs of various aircraft. Major Airports should accommodate 75 percent of large aircraft, while Intermediate Airports should be able to accommodate 75 percent of small general aviation aircraft. The standard for Minor Airports is merely to maintain their current runway length.
- **Runway Width** is a matter of safety, but higher levels of activity and the size of aircraft at an airport play a role in setting the benchmark for this objective. Major commercial service airports require runways of 100 feet in width; Major general aviation airports require 75 feet, and Intermediate and Minor airports require 60 feet.

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- **Runway Strength** will determine what types of aircraft an airport can accommodate. Major commercial service airports and Minor airports have different standards. Unpaved runways have no rating for strength.
- **Taxiways** link independent sections of the airport, providing more efficient ground traffic movements and increasing safety. Major commercial service airports should have a Full Parallel Taxiway. Major general aviation airports should have a Full or Partial Parallel Taxiway. Intermediate airports should have some form of Taxiway or Turnaround. Minor Airports do not have a benchmark.
- **Published Approach** can be categorized as precision or nonprecision. Published approaches are highly desirable in that they increase capacity and safety. Major airports should have a precision approach or precision approach capabilities, and Intermediate airports should have nonprecision approaches. Minor Airports do not have a benchmark.
- **Visual Aids** consist of four elements: Rotating Beacon, Wind Cone, REILs (Runway End Identifier Lights), and PAPIs (Precision Path Indicators)/VASIs (Visual Approach Slope Indicators). If one element is not present, the entire objective is not met. Minor Airports are not required to have REILs or PAPIs/VASIs.
- **Runway Lighting Systems** are classified according to intensity: high, medium, and low. The Plan sets benchmarks for different categories of airports, but regardless of the Plan, any airport that does not meet FAA lighting standards are deemed to have not met this objective.
- **Weather Reporting Facilities** provide pilots with up-to-date weather information at the airport. There is no objective for Minor airports; both Major and Intermediate airports require AWOS (Aviation Weather Observing System) or ASOS (Automated Surface Observing System) facilities.
- **Telephone** lines or ground communication outlet (GCO) are considered a valuable service to pilots.
- **Restrooms** make airports more functional for airport users.
- **FBOs** (Fixed Based Operators) provide services such as fuel sales, aircraft storage, aircraft maintenance, flight instruction, parts sales, and services. This objective is only considered among Major airports.
- **Aircraft Maintenance** is an objective only for Major airports and is considered an important service.

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- **Fuel** for based aircraft and transient aircraft is seen as a valuable service for an airport. The plan provides specific fuel types that should be available at Major and Intermediate airports. No benchmark is set for Minor airports.
- **Ground Transportation** (rental car, courtesy car, taxi, etc.) availability is a service for airport visitors. Major airports should have rental car access, Intermediate airports should have any sort of ground transportation, and Minor airports do not have a benchmark in this category.
- **Terminals**, complete with waiting areas, pilots' lounges, and briefing rooms meet the needs of pilots, passengers, and visitors. Office space is useful for the administration and operation of an airport. Only Major airports have a benchmark for a terminal.
- **Apron** space for parking aircraft, also promotes use of airports. The amount of space was not measured as part of the objective.
- **Hangars** for aircraft storage are highly desirable for both based and transient aircraft owners. Amount of hangar space was not considered in the objective. This objective was only for Major and Intermediate Airports.
- **Parking** for automobiles is considered desirable for airport users and visitors. The amount of parking was not considered in the benchmark.

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