

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on February 26, 2009 in Austin, Texas. The meeting opened at 9:03 a.m. with the following commissioners present:

**Texas Transportation Commission:**

Deirdre Delisi	Chair
Ted Houghton, Jr.	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner
Bill Meadows	Commissioner

**Administrative Staff:**

Amadeo Saenz, Jr., Executive Director  
 Bob Jackson, General Counsel  
 Roger Polson, Executive Assistant to the Deputy Executive Director  
 Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 4:13 p.m. on February 18, 2009, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**ITEM 1. Approval of Minutes of the January 28, 2009 special meeting and the January 29, 2009 regular meeting of the Texas Transportation Commission**

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the minutes of the January 28, 2009 special meeting and the January 29 regular meeting of the Texas Transportation Commission.

**ITEM 2. REPORT**

**Reports from the I-35 and I-69 Corridor Advisory Committees on the current and future needs of these transportation corridors**

This report was presented by Texas Turnpike Authority Division Director Mark Tomlinson; Bell County Commissioner Tim Brown and I-69 Corridor Advisory Committee Chair Judy Hawley.

**ITEM 3. AVIATION**

**Various Counties – Award federal grant funding for airport improvement projects at various locations (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Aviation Division Director David Fulton:

111699  
AVN

The Texas Department of Transportation (department) is authorized under the federal Aviation Development Act to award federal funding for capital improvement projects and to assist in the development and establishment of airports in the state of Texas.

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. The department recommends the award of federal grant funds for the improvements.

On Friday, January 23, 2009, a public hearing was held. No comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$8,897,772.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 4. PUBLIC TRANSPORTATION**

##### **a. Various Counties – Award federal §5310 funds, Elderly Individuals and Individuals with Disabilities Program, and award transportation development credits for FY 2009 (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

111700  
PTN

Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, "Formula Grants for Special Needs of Elderly Individuals and Individuals with Disabilities" (49 U.S.C. §5310), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that grant funds are distributed fairly and equitably within the state.

The United State Congress has passed a Continuing Appropriation Resolution for a five-month period; the FTA has available funds for this period. Allocations to transit operators are calculated in accordance with the formula in Title 43, Texas Administrative Code §31.31. The distribution of the available FY 2009 allocation, including unobligated funds from previous grants, is shown in Exhibit A. It is possible that there will be increases above the total amount. In these instances, increases will be calculated on a pro rata district level based on the formula in §31.31.

Title 43, Texas Administrative Code, §5.73 establishes the process for which Transportation Development Credits (TDC) may be awarded at the discretion of the commission. The commission passed Minute Order 110771, on December 14, 2006, expressing its intent to award TDC that will promote public transportation capital infrastructure projects: fleet replacement, fleet expansion, maintenance facilities; and capital projects that support regional coordination.

The commission finds that the projects in Exhibit A are eligible for funding and awards a total of \$3,676,433 in federal Formula Grant funds for Special Needs of Elderly Individuals and Individuals with Disabilities and 449,408 in TDC. The projects receiving TDC awards will reduce congestion by improving reliable transit options thereby increasing levels of ridership; expand economic opportunity by increasing the level of service access for the transit dependent populations to jobs and other necessary activities; enhance safety by reducing mechanical breakdowns; improve air quality by reducing emissions with technological advances in the bus industry; and increase the value of the transportation assets by investing in the replacement of depreciated rolling stock thus yielding savings and efficiencies which can be reinvested into additional trips.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the department. Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the available FY 2009 §5310 FTA allocation for the program as described in Exhibit A, submit the necessary state application to FTA, enter into the necessary contracts for the FY 2009 program of projects.

Note: Exhibit A on file with minute order clerk.

**b. Ector and Midland Counties – Award federal planning funds and state matching funds to the MPO of Midland-Odessa for a public transportation planning project (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

111701  
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, "State Planning and Research Programs" (49 U.S.C. §5304), in a letter dated October 4, 2005. Under §5304, FTA provides funds to be used for planning and coordination projects.

The commission desires to award \$48,659 in §5304 funds and \$12,165 in state match to assist Midland-Odessa Transportation Organization (MOTOR) in conducting a study of a public transportation service between Midland and Odessa.

Transportation Code, Chapter 455 requires the Texas Department of Transportation to assist political subdivisions of this state to obtain federal aid to establish or maintain public transportation systems.

Transportation Code, Chapter 456 requires the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director, or the director's designee, is hereby authorized to proceed with the award of \$48,659 in federal §5304 funds and \$12,165 in state match to assist MOTOR in conducting the project described above, and enter into the necessary contracts.

**ITEM 5. PROMULGATION OF ADMINISTRATIVE RULES** Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

**Final Adoption**

**Chapter 24 – Trans-Texas Corridor (MO)**

**Amendments to §24.13, Corridor Planning and Development (Development of Facilities), relating to Corridor Segment Committees**

Commissioner Holmes made a motion, seconded by Commissioner Meadows and the commission approved the following minute order presented by Design Division Director Mark Tomlinson:

111702  
DES

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §24.13 relating to corridor planning and development to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §24.13 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

**ITEM 6. TOLL PROJECTS**

a. **Dallas County** – Act on the recommendation of department staff concerning: (1) the selection of the best value proposal for the development, design, construction, financing, operation, and maintenance of a toll project along I-635 from east of Luna Road to Greenville Avenue and on I-35E from south of the Loop 12/I-35E split to south of Valwood Parkway in Dallas County, as well as other potential facilities to the extent necessary for connectivity, safety, and financing (I-635 Managed Lanes Project); and (2) the execution of a comprehensive development agreement for the I-635 Managed Lanes Project (MO)

Commissioner Meadows made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Design Division Director Mark Tomlinson:

111703  
DES

Transportation Code, Chapter 223, Subchapter E, prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement (CDA) with a private entity that provides for the design, development, financing, construction, maintenance, repair, operation, extension, or expansion of a toll project on the state highway system.

On April 28, 2005, by Minute Order 110052, the Texas Transportation Commission (commission) authorized and directed the department to issue a request for qualifications (RFQ) for the development of the INTERSTATE 635 (I-635) Managed Lanes Project. The department issued the RFQ on May 23, 2005 and subsequently determined that all four teams submitting qualifications statements in response to the RFQ were qualified to be on the short list of teams that would be requested to submit detailed proposals for the project.

Transportation Code, §223.203 and 43 TAC §27.4 provide that, if authorized by the commission, the department will issue a request for proposals (RFP) from all private entities qualified for the short-list. On October 26, 2006, by Minute Order 110725, the commission authorized and directed the department to issue an RFP for the I-635 Managed Lanes project requesting detailed proposals from the short-listed teams, and authorized a payment for work product stipend of up to \$1 million per unsuccessful responsive proposer, which amount was subsequently increased to \$1.5 million on March 27, 2008, by Minute Order 111296. On September 18, 2007, the department issued the RFP.

On January 21, 2009, proposals were received from LBJ Development Partners and LBJ Mobility Group. From January 22, 2009 until February 25, 2009, the department evaluated development and price proposals from the two proposers.

The proposals were evaluated concurrently in the following categories: (1) Pass/Fail and Responsiveness; (2) Technical Score; and (3) Price Score. The technical development proposals were evaluated using qualitative ratings of meets minimum, fair, good, very good, and excellent, and assigned adjectival ratings and numerical scores in each category. Points were assigned to the technical development proposals based on those ratings and the weightings of the individual evaluation criteria to arrive at the Technical Score. To arrive at the Price Score, points were assigned to the financial proposal using a formula that is based on the net present value of all public funds requested by a proposer as of the proposal due date or the nominal value of a concession payment, if any, offered to the department.

The Technical Score points assigned to the technical development proposal were then added to the Price Score points assigned to the financial proposal to determine the total number of points received by each proposal. The responsive proposal with the highest score was determined to provide the apparent best value.

The concurrent qualitative evaluation and scoring of each proposal under the Technical Score and Price Score categories, and the Pass/Fail review, resulted in the proposals being ranked as follows: (1) LBJ Development Partners and (2) LBJ Mobility Group. The proposal submitted by LBJ Development Partners was accordingly determined to provide the apparent best value.

IT IS THEREFORE ORDERED by the commission that the determination that the proposal submitted by LBJ Development Partners provides the apparent best value to the department is approved, and the department is authorized and directed to commence and complete negotiations with LBJ Development Partners necessary to finalize the comprehensive development agreement to develop, design, construct, finance, maintain and operate the I-635 Managed Lanes project along I-635 from east of Luna Road to Greenville Avenue and on I-35E from south of the Loop 12/I-35E split to south of Valwood Parkway in Dallas County, as well as other potential facilities to the extent necessary for connectivity, safety, and financing, and to modify the comprehensive development agreement as necessary as a result of such negotiations.

IT IS FURTHER ORDERED that the comprehensive development agreement is awarded to LBJ Development Partners subject to, and effective upon the occurrence of, all of the following: (1) the successful conclusion of negotiations; (2) the issuance of a Notice of Intent to Award by the department; (3) applicable FHWA approvals as identified by the department; (4) a determination by the Office of the Attorney General that the proposed comprehensive development agreement is legally sufficient, in accordance with Transportation Code, §371.051; (5) notification to, and written approval from, the Legislative Budget Board, in accordance with Transportation Code, §371.052(b) and Riders 40 and 43, Pages VII-30-VII-31, Page VII-30, Chapter 1428, Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act); (6) notification to the State Auditor's Office, in accordance with Transportation Code, §371.052(c); and (7) the mutual execution and delivery of the comprehensive development agreement by the executive director of the department and the proposer.

IT IS FURTHER ORDERED that if the executive director determines that the negotiations with LBJ Development Partners cannot be successfully completed, and that therefore the proposal submitted by LBJ Development Partners will not provide the apparent best value, the department is authorized to commence and complete discussions and negotiations with LBJ Mobility Group, the next highest ranked proposer, with award to the next highest ranked proposer subject to the terms and conditions in the immediately preceding paragraph of this order.

Note: The commission received comments from LBJ Development Partners Jose Lopez de Fuentes.

**b. Dallas County – Authorize the actions required for the finalization of a project agreement with the North Texas Tollway Authority for the development, financing, design, construction, operation, and maintenance of the SH 161 toll project extending from SH 183 south to I-20, and authorize the executive director to enter into the project agreement (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Meadows and the commission approved the following minute order presented by Assistant Executive Director for Innovative Project Development Phillip Russell:

111704  
ADM

The Texas Department of Transportation (department) has been proceeding with the development of a toll project that will extend SH 161 from SH 183 south to I-20 through the cities of Irving and Grand Prairie (SH 161 Project).

The SH 161 Project is located within the boundaries of the North Texas Tollway Authority (NTTA), and is subject to the market valuation provisions set forth in Transportation Code, §228.0111. The department and the NTTA have been working together to identify an approach to provide for the funding and development of the SH 161 Project and other transportation improvements within the boundaries of the NTTA and adjacent counties.

The department and the NTTA entered into an Agreement Regarding a Negotiated Value for SH 161 dated April 19, 2008 (Negotiated Value Agreement), pursuant to which the NTTA and the department waived the requirement under Transportation Code, §228.0111 to develop a market valuation for the SH 161 Project and agreed to a negotiated value of \$1.068 billion for the SH 161 Project, with a \$458 million upfront payment (acquisition payment).

Transportation Code, §228.0111(g) grants the NTTA the first option to develop, finance, construct and operate the SH 161 Project, and gives the NTTA six months after the date the negotiated value for the SH 161 Project was mutually approved to decide whether to exercise that option.

In Minute Order 111557, dated October 30, 2008, the Texas Transportation Commission (commission): (1) approved a term sheet for providing financial assistance to the NTTA for the SH 161 Project (Term Sheet), by which the department and the NTTA outlined a transaction to, among other things, strengthen the ability of the NTTA to undertake additional projects if the NTTA elects to undertake the SH 161 Project; (2) preliminarily approved financial assistance to the NTTA for the SH 161 Project; and (3) authorized the executive director of the department to negotiate a project agreement with the NTTA for the SH 161 Project.

Under the Term Sheet, the NTTA would be obligated to design, construct, operate, maintain and finance development of the SH 161 Project in accordance with the Negotiated Value Agreement, except as modified by the Term Sheet. However, after exercising its option for the SH 161 Project, the NTTA retains the discretion, as allowed under Transportation Code, §228.0111(g), to not proceed for any reason, including negative rating impacts to the NTTA System, with entering into a contract for the construction of the SH 161 Project and making the acquisition payment to the department, in which case the right to design, construct, operate, maintain and finance development of the SH 161 Project will revert to the department, as provided in Transportation Code, §228.0111(i).

On October 15, 2008, the NTTA's Board of Directors (Board): (1) accepted the Term Sheet without qualification or condition; (2) elected to exercise the NTTA's option to develop, finance, construct, and operate the SH 161 Project pursuant to the Negotiated Value Agreement, as modified by the Term Sheet; and (3) authorized the executive director of the NTTA to negotiate with the department the project agreement for the SH 161 Project.

Transportation Code, §§228.002-228.003 authorizes the department to enter into an agreement with a regional tollway authority, including the NTTA, that permits the regional tollway authority to design, develop, finance, construct, maintain, repair, or operate a toll project on the state highway system.

Subject to approval by the commission and the Board, the department and the NTTA have finalized the material terms of a project agreement based upon the Term Sheet that sets forth the department's and the NTTA's rights and obligations regarding the NTTA's design, construction, operation, and maintenance of the SH 161 Project.

On February 18, 2009, in Resolution No. 09-60, the Board authorized and directed the NTTA's interim executive director to finalize, complete, and, on behalf of the NTTA, enter into the project agreement on the same material terms as described in staff's briefing to the Board, but subject to such non-material modifications as the Interim Executive Director determines to be in the best interest of the NTTA, and further subject to satisfaction of all conditions and taking of all actions by the department and the commission that are required to permit the department to enter into and fulfill its obligations under the project agreement.

The project agreement contemplates that the main lane portion of the SH 161 Project (that is, exclusive of the portion required for project frontage roads) will be removed from the state highway system and transferred to the NTTA after (1) completion of the required public hearings pertaining to the transfer and approval of the commission and the Governor and (2) satisfaction of the other conditions and requirements set forth in the project agreement.

NTTA's construction of the SH 161 Project pursuant to the terms of the project agreement requires additional approvals by the commission. Transportation Code, §201.113(a) authorizes the commission to enter into an agreement with a regional tollway authority under which the regional tollway authority makes improvements to the state highway system. The commission's rules at Title 43, Texas Administrative Code, §11.56 require the commission to approve a public or private entity's connection of a regionally significant highway to the state highway system.

Development of the SH 161 Project is a crucial element in responding to considerable population increases and associated development that have resulted in traffic increases that have created significant congestion in the SH 161 area and across the region. The SH 161 Project is designed to improve the transportation network and level of service in the SH 161 area and region, particularly by serving as a reliever route to SH 360. The SH 161 Project is included in the Dallas-Fort Worth Metropolitan Transportation Plan known as Mobility 2030 and has been in previous metropolitan transportation plans as well, dating back to the 1950s.

The successful funding of the SH 161 Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by providing for the timely completion of the NTTA's portion of the construction of the SH 161 Project, which will enhance mobility and operational efficiency, decrease congestion, increase safety, increase economic development opportunities, decrease travel time, decrease air pollution, and enhance quality of life in the SH 161 corridor. Without the department's assistance, the timeline to complete the SH 161 Project and realize those benefits could be delayed.

IT IS THEREFORE ORDERED by the commission that the executive director, subject to commission approval of the NTTA's construction of improvements to the state highway system and the approval of the connection of the SH 161 Project to the state highway system, is authorized to enter into the project agreement with the North Texas Tollway Authority for the development, financing, design, construction, operation, and maintenance of the SH 161 toll project extending from SH 183 south to I-20.

IT IS FURTHER ORDERED that the department is authorized and directed to present, for the commission's consideration, a minute order providing for the NTTA's construction of improvements to the state highway system and the approval of the connection of the SH 161 Project to the state highway system.

IT IS FURTHER ORDERED that the department, after compliance with the applicable requirements of Transportation Code, §§228.151-228.154 and 43 TAC §§27.11-27.16, is authorized to submit for the commission's approval additional agreements providing for the removal of segments of the SH 161 Project from the state highway system and the transfer of those project segments to the NTTA, to be owned and operated by the NTTA under the terms of the project agreement.

Note: The commission received comments from North Texas Tollway Authority Executive Director Rick Herrington.

c. **El Paso County** – Consider preliminary approval of a request for financing from the Camino Real Regional Mobility Authority (CRRMA) to pay for the costs of project management, data collection and evaluation, and preparation of a regional toll plan to include engineering, environmental, legal, financial, and public outreach services associated with the development of potential toll projects in the El Paso metropolitan area identified as LP 375 Phase I, Phase II, and Phase III Southern Corridor projects, and development of the Northeast Parkway Phase I Corridor project from Loop 375 to FM 3255 at the Texas/New Mexico state line, all as outlined in El Paso's 2008 Comprehensive Mobility Plan (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Design Division Director Mark Tomlinson:

111705  
DES

In Minute Order 110573, dated June 29, 2006, the Texas Transportation Commission (commission) authorized creation of the Camino Real Regional Mobility Authority (authority), with the boundaries of the authority to be the entire geographic area of the City of El Paso.

The Texas Department of Transportation (department) and the authority have worked together to identify an approach to pursue the development of certain transportation system improvements within the jurisdictional limits of the authority.

The authority's goals are to improve mobility by implementing projects proposed within the authority's 2008 Comprehensive Mobility Plan, which generally consist of the LP 375 Southern Corridor projects comprising seven distinct toll projects in three different phases, and the Northeast Parkway toll project connecting LP 375 in northeast El Paso with I-10 at the Texas/New Mexico state line. These projects would be accomplished by

accelerating the delivery of individual segments and projects with innovative funding and partnerships.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §§27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with Section 27.53 of the toll equity rules, the authority submitted a request for \$1.1 million for the purposes of project management, data collection and evaluation, and preparation of a regional toll plan for development of the LP 375 Phase I, Phase II, and Phase III Southern Corridor projects, and development of the Northeast Parkway Phase I Corridor project (projects) to include engineering, environmental, legal, financial, and public outreach services. The financial assistance may also be used for necessary or incidental administrative and other expenses relating to the development, acquisition, construction, maintenance, or operation of the projects. The financial assistance may be in the form of a grant or loan.

Information and data required by Section 27.53(b) is either contained in the request for financing, in the petition for authorization to form the authority filed with the department on January 27, 2009, or is already in the department's possession. Supplemental information and data required by Section 27.53(c) is contained in the request for financial assistance or has already been provided to the department.

As provided in Minute Order 110573, the authority will benefit the state and the traveling public and improve the efficiency of the state's transportation system through the potential construction and operation of this project, which will enhance mobility and safety within this segment of the state transportation system.

The projects are consistent with the approved Texas Transportation Plan and the Metropolitan Transportation Plan of the El Paso Metropolitan Planning Organization.

The projects are in a nonattainment area and will be consistent with the Statewide Transportation Improvement Program, with the conforming plan and Transportation Improvement Program for the El Paso Metropolitan Planning Organization, and with the State Implementation Plan.

The authority has indicated that they will fund a portion of the costs of developing the proposed projects through revenue bond sales, local contributions, and various loans. Along with the requested financial assistance, the projects have the potential to expand the availability of funding for transportation projects or reduce direct state costs.

The application for financing shows that the projects and the authority are likely to have sufficient revenues to assure repayment of the loan.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Camino Real Regional Mobility Authority meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financing in the amount of \$1.1 million, in the form of a loan, to be used for the purposes of project management, data collection and evaluation, and preparation of a regional toll plan, and directs the executive director to implement the actions authorized and required by those and other applicable toll equity rule provisions.

d. **Grayson County** – Consider the preliminary approval of a request for financing from the Grayson County Regional Mobility Authority to pay for the costs of preliminary engineering documents, public outreach and education, financial advisory services, traffic and revenue studies, and project management services, including the costs of necessary administrative, legal, engineering, and other services associated with the development of a potential turnpike facility from the Collin County line to US 75 north of the city of Denison (MO)

Commissioner Meadows made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Design Division Director Mark Tomlinson:

111706  
DES

In Minute Order 109645, dated April 29, 2004, the Texas Transportation Commission (commission) authorized the creation of the Grayson County Regional Mobility Authority (authority), with the boundaries of the authority to be the entire geographic area of Grayson County.

The Texas Department of Transportation (department) and the authority have worked together to identify an approach to pursue the development of certain transportation system improvements within the jurisdictional limits of the authority.

The authority's goals are to improve mobility by providing an extension of the Dallas North Tollway into Grayson County and to provide congestion relief to US 75. This would be accomplished by accelerating the delivery of individual segments and projects with innovative funding and partnerships.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with Section 27.53 of the toll equity rules, the authority has submitted a request for a total of \$10 million to secure financial advisors and engineering consultants for the development of a turnpike facility from the Collin County line to US 75 north of the city of Denison (project). The request includes an estimated \$6.5 million for the purposes of developing preliminary engineering documents, and public outreach and education efforts, and an estimated \$3.5 million for the purposes of financial advisory services, traffic and revenue studies, and project management services. The financial assistance may also be used for necessary or incidental administrative, legal, and other expenses relating to the development, acquisition, construction, maintenance, or operation of the project. The financial assistance may be in the form of a grant or loan.

Information and data required by Section 27.53(b) is either contained in the request for financing, in the petition for authorization to form the authority filed with the department on December 23, 2008, or is already in the department's possession. Supplemental information and data required by Section 27.53(c) is contained in the request for financial assistance or has already been provided to the department.

As provided in Minute Order 109645, the authority will benefit the state and the traveling public and improve the efficiency of the state's transportation system through the potential construction and operation of this project, which will enhance mobility and safety within this segment of the state transportation system.

The project is consistent with the approved Texas Transportation Plan and the Metropolitan Transportation Plan of the Sherman-Denison Metropolitan Planning Organization.

The authority has indicated that they will fund a portion of the costs of developing the proposed project through revenue bond sales, local contributions, and various loans, and will consider public private partnerships and other means of private funding. Along with the requested financial assistance, the project has the potential to expand the availability of funding for transportation projects or reduce direct state costs.

The application for financing shows that the project and the authority are likely to have sufficient revenues to assure repayment of the loan.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Grayson County Regional Mobility Authority meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financial assistance in the total amount of \$10 million, with \$6.5 million to be provided as an in-kind grant to the authority in the form of preliminary engineering documents, and public outreach and education efforts, and \$3.5 million, in the form of a loan, to be used to fund the costs of financial advisory services, traffic and revenue studies, and project management services, including the costs of necessary administrative, legal, engineering, and other services associated with the development of the project, and directs the executive director to implement the actions authorized and required by those and other applicable toll equity rule provisions.

e. **Grayson County** – Authorize the executive director to negotiate the financial terms of an advanced funding agreement with the City of Denison relating to the FM 691 at US 75 project in Grayson County in which the department will reimburse the city for expenditures pursuant to 43 TAC §15.56(e) (MO)

This item was deferred.

f. **Harris County** – Authorize the executive director to execute an advance funding agreement with Harris County for the development, design, construction, operation and maintenance of toll lanes and interchanges on Segment E of SH 99 (the Grand Parkway), from I-10 to US 290 (MO)

Commissioner Holmes made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Design Division Director Mark Tomlinson:

111707  
ADM

The Texas Department of Transportation (department), assisted by the Grand Parkway Association and other entities, has been proceeding with the development of SH 99 (Grand Parkway), a planned facility that will extend from State Highway 146 in Galveston County to State Highway 146 at Spur 55 in Chambers County.

The Grand Parkway project is subject to the market valuation provisions set forth in Transportation Code, §228.0111. The department and the seven counties in which the project is to be located (counties), including Harris County, have been working together to identify an approach to provide for the funding and development of the Grand Parkway project.

Section 228.0111 contains provisions relating to the development of a market valuation, based on terms and conditions that are agreed to by the department and the local toll project entity (or entities) within whose jurisdiction a project is located, which in the case of the Grand Parkway Project are the counties.

With respect to the Grand Parkway project, Section 228.0111 also requires that the terms and conditions be approved by the metropolitan planning organization for the region, which is the Houston-Galveston Transportation Policy Council (TPC) of the Houston-Galveston Area Council, the council of governments in the region that includes the proposed Grand Parkway.

Terms and conditions for development of the Grand Parkway have been agreed to by the department and the counties and have been approved by the TPC.

The department and the counties have evaluated the terms and conditions and other information and have determined that development of a market valuation for the Grand Parkway should be waived, and intend to enter into a market valuation waiver agreement in accordance with Transportation Code, §228.0111.

Transportation Code, §228.0111(g) grants the local toll project entities the first option to develop, finance, construct and operate the Grand Parkway project. The department and the counties are in the process of negotiating an agreement to construct the entire length of the Grand Parkway project, and it has not been determined who will be the developer of the Grand Parkway.

Transportation Code, §201.209 authorizes the department and a local government to enter into an agreement to increase the efficiency and effectiveness of government within the scope of their authorized duties. Transportation Code, Section 222.052 allows a political subdivision of the state to contribute funds for the development and construction of public roads and the state highway system located within the jurisdiction of the political subdivision.

The market valuation waiver agreement contemplates the counties undertaking work on all or any portion of the Grand Parkway project, subject to agreements between the department and the counties that provide for reimbursement of costs to the counties if the counties are ultimately not responsible for the development of the project.

The department and Harris County desire to proceed with the development, design, construction, operation and maintenance of toll lanes and interchanges on Segment E of the Grand Parkway, from I-10 to US 290, along with approaches thereto (Segment E), as soon as practical.

The department and Harris County have negotiated an advance funding agreement under which Harris County agrees to fund, develop, design, construct, operate and maintain Segment E, subject to the reimbursement of Harris County's costs as provided in the agreement.

On February 24, 2009, the Harris County Commissioners Court adopted an order exercising Harris County's option to develop, design, construct, operate and maintain Segment E, subject to certain conditions prescribed in the order.

The development of Segment E is essential and urgent, as construction of this segment would alleviate congestion and improve traffic flow in the north and northwest Houston metropolitan area, and would provide a connection to the existing Segment D facility from US 59 to I-10. Construction of Segment E will enhance mobility and operational efficiency, decrease congestion, increase safety, and increase economic development opportunities in this corridor.

IT IS THEREFORE ORDERED by the commission that the executive director of the department is authorized to enter into an advance funding agreement with Harris County for the development, design, construction, operation, and maintenance by Harris County of toll lanes and interchanges on Segment E of SH 99 (Grand Parkway), from I-10 to US 290, and approaches thereto, with all costs to be paid for by Harris County, but subject to reimbursement as provided in the agreement.

Note: The commission received comments from Katy Prairie Conservancy Executive Director Mary Anne Piacentini; Houston Tomorrow Program Development and Researcher Jay Blazek Crossley.

**ITEM 7. MANAGEMENT****Grant final approval for the selection of a vendor for project management and business requirements analysis services (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Assistant Executive Director for Support Operations Edward Serna:

111708  
ADM

The State Purchasing and General Services Act, Government Code, Chapter 2155 et seq., authorizes the Texas Department of Transportation (department) to issue a purchase order for the purchase of services to a firm to provide project management, business requirements gathering and analysis, and business process improvement services to identify business needs and recommend organizational, financial, and other core process improvements. The Comptroller of Public Accounts has adopted rules and procedures governing such a purchase in 34 TAC Chapter 20.

On October 6, 2008, the department issued a Request for Proposal (RFP) seeking to contract with a firm to provide project management, business requirements gathering and analysis, and business process improvement services to identify business needs and recommend organizational, financial and other core process improvements. One of the major deliverables from this project was to be TxDOT's documented requirements for a new financial system that was to be submitted to the Comptroller for use in that agency's statewide Enterprise Resources Planning project. Nine firms submitted responses to the RFP.

On December 18, 2008, by Minute Order 111620, the Texas Transportation Commission (commission) authorized and directed the department to begin negotiations with firms to provide project management, business requirements gathering and analysis, and business process improvement services to identify business needs and recommend organizational, financial, and other core process improvements. These negotiations took place in January and February 2009.

The situation has changed since the negotiations began. Specifically:

- TxDOT has been asked by the Chairman of the Senate Transportation Committee to complete a management and organizational study, similar to a recent Department of Public Safety study, that could result in organizational changes affecting the majority of the areas to be studied under this project.
- Sunset and other pending legislation could result in organizational changes to the department which would create different business needs.
- The available state and federal funding has grown increasingly uncertain and funding has not yet been authorized for this project.

With these ongoing activities, there is a significant concern that a needs analysis done now may not be applicable by the time it is complete and the funding becomes available for the Enterprise Resources Planning project.

IT IS THEREFORE ORDERED by the commission that a contract not be awarded and that this procurement be cancelled in its entirety.

**ITEM 8. SAFETY BOND PROGRAM**

**Safety Projects – Authorize safety projects funded with the proceeds of bonds and other public securities issued under Transportation Code, §222.003 (state highway fund revenue bonds) (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Traffic Division Director Carlos Lopez:

111709  
TRF

Transportation Code, §222.003 authorizes the Texas Transportation Commission (commission) to issue bonds and other public securities for state highway improvement projects, payable from revenue credited to the state highway fund.

Minute Order 111550, signed October 30, 2008, authorized the use of \$600 million of Transportation Code §222.003 bonds for highway improvement projects that reduce crashes or improve hazardous locations on the state highway system. Minute Order 111550, Exhibit A, Recommended Safety Projects, identified seven specific highway safety projects and approved \$441,833,000 for various safety projects to be selected after the issuance of a separate program call. The Texas Department of Transportation (department) issued a program call for qualified safety projects on December 9, 2008.

As required by Transportation Code, §222.003, the commission adopted 43 TAC §§15.170-15.174, which provides criteria for selecting projects eligible for funding from the proceeds of bonds and other public securities issued under that section. Under 43 TAC §15.174(a) projects are eligible for selection if it meets the following construction types:

- expansion of the surface width of highways with a pavement width less than 24 feet;
- projects submitted under the guidelines of the department's hazardous elimination program;
- installation of left turn lanes or two-way continuous turn lanes (TWCTL);
- installation of median barriers;
- conversion of four lane undivided to four lane divided;
- construction of grade separations at highway intersections; and
- construction of grade separation at an existing highway-railroad at grade crossing.

As required by 43 TAC §15.174(b), the department considered crash data, traffic volume, pavement geometry and other conditions that may create or exacerbate hazardous roadway conditions in project selection and one or more of the following criteria:

- potential of the project to correct identified safety problems;
- the anticipated time required to complete the project;
- adherence to all accepted department design standards as well as applicable state and federal law and regulation; and
- feasibility of the project.

The department has evaluated the projects received pursuant to the program call. Exhibit A to this order contains a list of candidate projects which is proposed by the department for development and construction which includes the seven highway safety projects previously approved as Recommended Safety Projects in Minute Order 111550.

IT IS THEREFORE ORDERED by the commission that Minute Order 111550, Exhibit A, Recommended Safety Projects, is superseded by the attached Exhibit A.

IT IS FURTHER ORDERED by the commission that the 2009 Safety Bond Program projects, as shown in Exhibit A, are approved and the executive director is directed to proceed in the most feasible and economical manner with program development at an estimated total cost of \$600 million.

**ITEM 9. PASS-THROUGH TOLL PROGRAM**

Authorize the designation of a period of time for public and private entities to submit proposals under the pass-through toll program and prescribe the conditions that will be applicable to the proposals under Title 43, Texas Administrative Code, Section 5.54 (MO)

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Assistant Executive Director for Innovative Project Development Phillip Russell:

111710  
ADM

Section 222.104(b), Transportation Code authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

The pass-through toll program (program) was implemented in 2004, but in December 2007, it was determined that all available monies for the program had been committed and that the cash flow forecast would not support the repayment of costs for additional pass-through toll projects from Category 12, Strategic Priority funds. As a result, the department informed the sponsors of pending applications that the program would be suspended until funding sources could be identified.

On January 29, 2009 by Minute Order 111669 the Texas Transportation Commission (commission) adopted revised rules, codified as Title 43 Texas Administrative Code §§5.51-5.60 (rules), that prescribe the policies and procedures governing the department's implementation of the program under Section 222.104(b), Transportation Code.

Section 5.54 of the rules provides that if the commission determines that funds available for use in the program are limited, it may periodically limit the periods of time during which the department will accept proposals for pass-through toll projects to be developed and, for each specific period, prescribe conditions for submission and the costs that may be reimbursed under a pass-through agreement (agreement).

The commission finds that monies available for use in the program during the entire reimbursement period of all selected proposals are limited to an estimated \$300 million in funds from Category 12, Strategic Priority, of the 2007 Statewide Mobility Program, as amended (Category 12 funds). In order to extend use of the funds to the greatest number of highway improvement projects and to allow both public and private entities to have an equal chance to participate in the program, the commission determines that from the date of this minute order until the expiration of the 2009 fiscal year, or such additional time as authorized by the commission, proposals for projects to be developed under the program will only be accepted in accordance with the terms of this minute order.

Pursuant to §5.54 of the rules, the department will publish in the Texas Register notice of the designated period for acceptance of proposals for projects to be developed under the program. The notice will specify the deadline for submitting proposals, the estimated amount of funds available in the program that can be allocated to the proposals submitted, whether submissions will be accepted from only public entities, or from both public and private entities, whether submissions will be accepted for highway projects, railroad projects, or both, the categories of project costs that will be eligible for reimbursement, and any other condition deemed appropriate by the commission.

After evaluation of properly submitted proposals, the department will present its analyses to the commission which may, after consideration of the criteria set forth in §5.55 of the rules and the conditions established in this minute order, select the entities whose proposals provide the best value to the state. The department will attempt to negotiate the financial terms of a potential pass-through toll agreement with the selected public entity proposers, and will solicit competitive proposals under §5.56 of the rules for the selected private entity proposers.

IT IS THEREFORE ORDERED that during the period of time beginning on February 27, 2009 and continuing until August 31, 2009, or such additional time as authorized by the commission, proposals for pass-through toll projects to be developed under the program will only be accepted if the proposals are in compliance with the following conditions:

- (1) proposals may be submitted by both public and private entities;
- (2) submissions will be for highway projects only;
- (3) only the following category of project costs described in §5.53(a)(11) of the rules will be considered as eligible for reimbursement under the program: construction cost, exclusive of construction engineering cost, and in the case of a pass-through toll project submitted as a design-build project, the construction cost, exclusive of construction engineering costs must be broken out separately as one component of the total project cost;
- (4) the estimated total amount of funds available to be allocated among the selected proposals will be \$300 million in Category 12 funds for the entire reimbursement period of all selected proposals;
- (5) the deadline for submitting proposals will be 60 days after publication of notice in the Texas Register soliciting proposals in accordance with this minute order;

(6) in the event that an alternative funding source or a significant increase in Category 12 funding becomes available for use in the program prior to August 31, 2009 or any extended date, the commission may authorize an additional deadline period for submitting proposals to be in compliance with conditions specific to the new period, in accordance with the requirements of §5.54 of the rules; and

(7) in the event that a critical transportation need which can be addressed with a pass-through toll agreement arises after expiration of the 60 day deadline for submitting proposals, or an alternative funding source becomes available for a specific transportation project, the commission may, at any time and irrespective of the limitations above, authorize acceptance of an individual proposal for development of a pass-through toll project to meet that need or utilize those funds, provided that the proposal otherwise complies with the rules.

IT IS FURTHER ORDERED that the executive director or his designee is directed to take the necessary steps to implement the actions as ordered in this minute order.

**ITEM 10. FINANCE**

**a. Accept the annual continuing disclosure report for the Texas Mobility Fund (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111711  
FIN

Article III, Section 49-k of the Texas Constitution created the Texas Mobility Fund (Mobility Fund) within the treasury of the State of Texas (state) to be administered by the Texas Transportation Commission (commission) as a revolving fund to (i) provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways, including costs of any necessary design and costs of acquisition of rights of way, as determined by the commission in accordance with standards and procedures established by law and (ii) provide participation by the state in the payment of a portion of the costs of constructing and providing publicly-owned toll roads and other public transportation projects in accordance with the procedures, standards, and limitations established by law.

Pursuant to a Master Resolution, a First Supplemental Resolution, and a Second Supplemental Resolution each adopted on May 4, 2005; a Third Supplemental Resolution adopted on May 25, 2006; a Fourth Supplemental Resolution and Fifth Supplemental Resolution each adopted on September 28, 2006; a Sixth Supplemental Resolution adopted on May 24, 2007; and a Seventh Supplemental Resolution adopted on September 27, 2007, the commission issued seven series of obligations under Transportation Code, Chapter 201 and other applicable law, which obligations are secured by and payable from a pledge of and lien on all or part of the moneys in the Mobility Fund, and a full faith and credit pledge of the state, and which obligations were issued in the name and on behalf of the state to (i) pay all or part of the costs of constructing, reconstructing, acquiring, and expanding State highways, including any necessary design and acquisition of rights of way, in the manner

and locations determined by the commission that, according to conclusive findings of the commission, have an expected useful life, without material repair, of not less than 10 years; (ii) provide participation by the state in the payment of part of the costs of constructing and providing publicly owned toll roads and other public transportation projects that are determined by the commission to be in the best interests of the state in its major goal of improving the mobility of the residents of the state; and (iii) pay the costs of issuance.

Under provisions of the First, Third, Fourth, Sixth and Seventh Supplemental Resolutions, the commission has covenanted to provide annually, within six months after the end of each fiscal year, financial information and operating data with respect to the Mobility Fund of the general type in the attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that the annual report of financial information and operating data, attached as Exhibit B, is accepted.

Note: Exhibits A and B on file with minute order clerk.

b. Accept the annual continuing disclosure report for the State Highway Fund revenue bonds (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111712  
FIN

Article III, Section 49-n of the Texas Constitution authorized the Legislature to authorize the Texas Transportation Commission (commission) to issue bonds and other public securities to (i) finance state highway improvement projects that are eligible for funding with revenues dedicated under Section 7-a and (ii) pay the costs of issuing the bonds. The bonds are payable from certain revenues deposited to the credit of the State Highway Fund held in the treasury of the State of Texas.

Pursuant to a Master Resolution and a First Supplemental Resolution, each adopted on March 30, 2006, and Second and Fourth Supplemental Resolutions adopted on October 26, 2006, and August 23, 2007, respectively, the commission issued four series of obligations under Transportation Code, Section 222.003 and other applicable law.

Under provisions of the First, Second and Fourth Supplemental Resolutions, the commission has covenanted to provide annually, within 180 days after the end of each fiscal year, financial information and operating data with respect to the State Highway Fund of the general type in the attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that the annual report of financial information and operating data, attached as Exhibit B, is accepted.

Note: Exhibit A on file with minute order clerk.

**c. Travis and Williamson Counties – Accept the annual continuing disclosure report for the Central Texas Turnpike System (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111713  
FIN

Transportation Code, Chapter 228 and other applicable law authorizes the Texas Transportation Commission (commission) to issue turnpike revenue bonds, bond anticipation notes, and other obligations to finance turnpike projects on the state highway system, and to enter into trust agreements and indentures of trust governing matters relating to the issuance of such obligations.

The commission issued turnpike revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike System (System), a turnpike project composed initially of the SH 130 (Segments 1 through 4), SH 45 North, and Loop 1 project elements (2002 Project). The commission also authorized the execution of an indenture of trust and five supplemental indentures to secure revenue bonds and other obligations issued for the 2002 Project. The Indenture of Trust dated July 15, 2002 (indenture) prescribes the terms, provisions and covenants related to the issuance of turnpike revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Section 716 of the indenture requires the commission to provide annually, within 6 months after the end of each fiscal year, updated financial information and operating data with respect to the commission and the System of the general type included in specified sections of the final official statement relating to the Series 2002 First Tier Obligations and Series 2002 Second Tier Bond Anticipation Notes issued for the 2002 Project (annual report).

The annual report is required to include a copy of the General Engineering Consultant's quarterly progress report for the last quarter of the fiscal year and investment earnings on funds in the Construction Fund, as defined in the indenture, for such fiscal year. The August 31, 2008 General Engineering Consultant's quarterly progress report has been previously filed with the central post office for filing with each Nationally Recognized Municipal Securities Information Repository and State Information Depository in accordance with the indenture, and, therefore, the annual report contains a more current version (November 30, 2008) of the General Engineering Consultant's quarterly progress report.

The Preliminary Offering Statement for the Texas Transportation Commission Central Texas Turnpike System First Tier Revenue Refunding Put Bonds, Series 2009, includes the annual update of quantitative financial information and operating data and several other required documents. The annual report is attached as Exhibit 1.

IT IS THEREFORE ORDERED by the commission that the annual report of financial information and operating data with respect to the commission and the System, attached as Exhibit 1, is accepted.

**ITEM 11. STATE INFRASTRUCTURE BANK**

**a. Preliminary Approval**

Hays County – City of Kyle – Consider granting preliminary approval of an application from the City of Kyle to borrow \$11 million from the State Infrastructure Bank to pay for costs associated with projects on I-35 southbound frontage roads and ramps, and CR 210 overpass

Commissioner Holmes made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111714  
FIN

The City of Kyle (city) submitted an application for \$11 million in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the financial assistance to pay for improvements to the I-35 southbound frontage roads and ramps between CR 210 and FM 1626, and the reconstruction of CR 210 overpass in Kyle.

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its Tax Increment Reinvestment Zone revenues and property taxes as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the projects are individually listed in the 2008-2011 Statewide Transportation Improvement Program and are consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Kyle meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$11 million from the SIB, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

Note: The commission received comments from Hays County Commissioner Jeff Barton.

**b. Final Approval**

Cass County – City of Domino – Consider granting final approval of an application from the City of Domino to borrow \$60,000 from the State Infrastructure Bank to pay for costs associated with a railroad grade separation project on FM 3129 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111715  
FIN

The City of Domino (city) submitted an application for limited financial assistance from the State Infrastructure Bank (SIB) in the amount of \$60,000 plus a 20 percent contingency under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the limited financial assistance to pay for utility relocation along FM 3129 made necessary by the construction of a railroad grade separation.

The intended use of the limited financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested limited financial assistance for the project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its utility revenues as security to assure likely repayment of the limited financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2008-2010 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of the state transportation systems; and 5) the repayment of the limited financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

The executive director affirms that the necessary social, economic, and environmental impact study has been completed, and that the department has approved that study. The executive director recommends that the commission grant final approval of the SIB application for limited financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB limited financial assistance submitted by the City of Domino meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants final approval of the application to borrow \$60,000 plus a 20 percent contingency from the SIB. The loan will be paid over a period of no more than 20 years with interest at 3.0 percent per annum. The executive director is directed and authorized to commence negotiations and other actions authorized and required by its rules, and to enter into the financial assistance agreement as negotiated with the city.

**ITEM 12. TRANSPORTATION PLANNING****e. Various Counties – Approve transportation projects to be funded from Texas’ portion of the American Recovery and Reinvestment Act (MO)**

Commissioner -Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations John Barton:

111716  
ADM

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides \$64.1 billion nationwide for infrastructure projects, including \$27.5 billion for highway and bridge construction, and \$1.5 billion for surface transportation grants to be distributed based on a competitive selection by the Secretary of Transportation. The ARRA also includes \$8.4 billion for transit projects, \$9.3 billion for rail projects, and \$1.3 billion for aviation projects.

Texas’ share of the funding for highway and bridge construction is expected to be approximately \$2.25 billion, based on the existing apportionment formula. Of that amount, 67 percent will be obligated to projects selected at the discretion of the Texas Transportation Commission (commission) and 30 percent will be sub-allocated through the Surface Transportation Program to metropolitan planning organizations (MPOs) and rural areas. The remaining three percent of the funds are set aside for enhancement projects.

Texas’ share of transit funds is estimated at \$372 million. The commission has been designated by the governor as the administering agency for the Federal Transit Administration program under 49 USC §5311, and has the authority to award approximately \$50 million in nonurbanized (rural) funds. Transportation Code, Chapter 455, assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation (department), and Chapter 456 authorizes the commission to administer funds appropriated for public transportation. Federal program regulations require the department to ensure that these grant funds are distributed fairly and equitably within the state.

Texas’ share of funding for aviation projects is yet to be determined and the Federal Aviation Administration (FAA) will distribute these funds as discretionary grants. Funds are available for airport development projects as provided by 49 USC Chapter 471. Transportation Code, Chapter 21, authorizes the department to provide a statewide airport system to serve the state's air transportation needs.

In anticipation of the enactment of the ARRA, the department collaborated with the Texas Division of the Federal Highway Administration (FHWA), MPOs, tolling authorities and transit providers to develop a unified approach to identifying and prioritizing projects that potentially qualify for funding. Projects have been identified that are ready to proceed to contract within the time requirements stipulated in the ARRA, meaning that all environmental requirements, design work, and right of way acquisition are sufficiently complete now to allow projects to proceed to construction or a development agreement to be executed.

Time is of the essence with regard to the selection of projects. The ARRA requires that 50 percent of the discretionary funds allocated to the state for highway and bridge projects must be obligated within 120 days of receiving the apportionment from FHWA or the funds will be redistributed to other states. The ARRA also requires that 50 percent of the public transit funds be obligated within 180 days following apportionment, and that the FAA shall award grants totaling not less than 50 percent within 120 days of the enactment. States must have 100 percent of the funds obligated with one year or the remaining funds will be redistributed.

The approximately \$500 million in preventative maintenance and rehabilitation projects set forth in Exhibit A were identified by the department's district engineers. The funding level for each district was based on population, lane miles, vehicle traffic, and pavement conditions. Once the funding level was allocated, the district engineers identified projects based on bridge and pavement conditions, as well as geometric needs.

The approximately \$49 million in aviation projects set forth in Exhibit B were selected for submission to the FAA for approval based on the priority list developed for the Airport Improvement Program annual funding program for general aviation. Seven of these projects have received approval by the commission under previous minute orders, with funding to be paid from the federal Aviation Trust Fund and local matches. Three of the projects are new projects to be approved by the commission.

The public transit projects set forth in Exhibit C represent an award of approximately \$32 million in §5311 nonurbanized (rural) funds to rural program operators for capital funding for fleet, facilities, and information technology equipment. These awards were calculated in accordance with the formula stated in 43 TAC §31.36(g). The balance of the §5311 funds will be awarded within the timeframe specified in the ARRA.

All projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required.

IT IS THEREFORE ORDERED by the commission that the transportation projects set forth in Exhibits A, B, and C are hereby approved for funding under the provisions of the ARRA.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to proceed with project development and contract awards for the projects described in Exhibit A, transit grant agreements for the activities described in Exhibit C, presenting a recommendation to the FAA for consideration of funding for the projects described in Exhibit B, and to enter into any necessary agreements associated with these projects and activities.

Note: Exhibits A through C on file with minute order clerk.

Note: The commission received comments from Representative Richard Raymond; Representative Ryan Guillen; City of Laredo City Manager Carlos Villarreal; City of Waxahachie Director of Planning Clyde Melick

## **ITEM 12. TRANSPORTATION PLANNING (CONTINUED)**

### **a. Accept Final 2030 Committee report assessing Texas Transportation needs (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Assistant Executive Director for District Operations David Casteel:

111717  
ADM

Texas' transportation infrastructure is a key factor in the state's economic vitality, quality of life and natural environment. As population and trade increase throughout all areas of the state, maintaining an efficient and effective transportation system has become more challenging.

A working group of elected and appointed officials, business leaders and transportation professionals from across the state, referred to as the 2030 Committee, was selected to look at Texas' transportation challenges and identify the financial needs for building and maintaining the transportation system improvements Texas will require between now and the year 2030 to help the Texas Transportation Commission (commission) in making decisions regarding the future of transportation in Texas.

The "Texas Transportation Needs Report" developed by this group, identifies the transportation needs anticipated in Texas in the areas of pavement and bridge maintenance, system expansion, safety improvements, public transportation, freight and passenger rail, ports and waterways and airports. The working group was assisted in quantifying the needs in each of these areas through the research and technical assistance of the Texas Transportation Institute, the Center for Transportation Research, and the University of Texas at San Antonio.

The commission finds that this report, attached as Exhibit A, is a strong foundation for quantifying the state's enormous transportation challenges and serves as a component of the development of the Texas Transportation Plan.

IT IS THEREFORE ORDERED that the commission accepts this report and encourages the use of partnerships of federal, state and local governments, businesses and citizens in addressing the identified transportation needs.

IT IS FURTHER ORDERED by the commission that a report be prepared by the Texas Department of Transportation in conjunction with its partners on the development of the Texas Transportation Plan and be presented to the governor and members of the Texas Legislature at the beginning of the next legislative session.

Note: The commission received comments from President of 2030 Committee Dr. Michael Walton.

**b. Brazos County – Amend the 2007 Statewide Preservation Program to authorize CONSTRUCT authority for a bridge structure over SH 6 in Category 6, Structures Replacement and Rehabilitation (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111718  
FIN

In BRAZOS COUNTY (county), it is necessary to authorize CONSTRUCT authority for an on-system bridge replacement project in Category 6, Structures Replacement and Rehabilitation, of the 2007 Statewide Preservation Program (SPP). The structure is classified as Functionally Obsolete due to substandard deck width.

Due to increased residential development in the area, the Bryan Independent School District built a new high school. The creation of this new school has significantly affected traffic in the area by adding to the already present bottlenecks created by the nearby middle school. Recent upgrades to the frontage roads and intersections have provided minimal improvement to the traffic flow; however, the narrow structure is still an impediment to the east-west vehicular traffic over SH 6 and is undesirable for pedestrians.

To provide the citizens of the county with a safe and efficient transportation system, it is necessary to replace this structure as soon as possible.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director is hereby authorized to enter into any necessary agreements and to proceed in the most feasible and economical manner to advance this bridge replacement project (CSJ: 0049-12-080) over SH 6 at Old Reliance Road at an estimated cost of \$6.5 million to CONSTRUCT authority in Category 6, Structures Replacement and Rehabilitation of the 2007 SPP.

c. Approve the Relief from Local Matching Funds (Economically Disadvantaged Counties Program) Report (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Transportation Planning Division Director Jim Randall:

111719  
TPP

Section 222.053(a), Transportation Code defines an “economically disadvantaged county” as a county that has, in comparison to other counties in the state: (1) below average per capita taxable property value; (2) below average per capita income; and (3) above average unemployment.

Section 222.053(c) directs the Texas Transportation Commission (commission), when evaluating a proposal for a highway project in a political subdivision that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating the political subdivision's effort and ability to meet the requirement.

Section 222.053(e) further directs the commission to report annually to the governor, the lieutenant governor, and the speaker of the house of representatives on the use of matching funds and local incentives and the ability of the commission to ensure that political subdivisions located in economically disadvantaged counties have equal ability to compete for highway funding with political subdivisions in counties that are not economically disadvantaged.

The Texas Department of Transportation has completed the Fiscal Year 2008 Annual Report on the Economically Disadvantaged Counties Program, which is attached as Exhibit A.

IT IS THEREFORE ORDERED that the Fiscal Year 2008 Annual Report on the Economically Disadvantaged Counties Program, as shown in Exhibit A, is approved by the commission and shall be presented to the governor, the lieutenant governor, and the speaker of the house of representatives as required by Section 222.053(e), Transportation Code.

Note: Exhibit A on file with minute order clerk.

**d. Various Counties – Accept the report to the Texas Legislature on the market value of the South Orient Railroad and the feasibility of selling the railroad to private interests (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Meadows and the commission approved the following minute order presented by Assistant Executive Director for Innovative Project Development Phillip Russell:

111720  
ADM

On January 31, 2001, the State of Texas, obtained full ownership of the South Orient rail line (rail line), which includes the right of way, installed rails, ties, ballast, tracks, signals, switches, communication facilities, structures, fixtures and improvements from the international rail bridge in Presidio to San Angelo Junction in Coleman County.

The Sunset Advisory Commission was established by the Texas Legislature to identify and eliminate waste, duplication and inefficiencies in government agencies. In January 2009, the Sunset Advisory Commission issued their Commission Decisions report regarding the Texas Department of Transportation (department) to the 81<sup>st</sup> Texas Legislature for their consideration.

In their Commission Decisions report, the Sunset Advisory Commission adopted New Issue 114 that directed the department, as a management action, to determine the market value of the rail line and study the feasibility of selling the railroad to private interests, and report this information to the Legislature by February 28, 2009. Furthermore, New Issue 114 stated that if the State decides to sell the railroad, it must remain as a viable functioning railroad.

The department has completed the work described in New Issue 114 of the Commission Decisions report, which was published in January 2009.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the report, as shown in Exhibit A, is approved for submission to the 81<sup>st</sup> Texas Legislature.

Note: Exhibit A on file with minute order clerk.

**ITEM 13. REPORT**

**Status report on the FY 2009 Obligation Limit and report on the actual February 2009 and proposed March 2009 highway maintenance and construction contract letting**

This report was presented by Chief Financial Officer James Bass.

**ITEM 14. CONTRACTS****a. Award or Reject Highway Improvement Contracts****(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute rejecting Project No. RMC 6032-32-001 in Taylor County, order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

111721  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on February 10 and 11, 2009.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance and department building construction contracts, with an engineer's estimated cost of \$300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

**(2) Highway and Transportation Enhancement Building Construction** (see attached itemized list) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order rejecting Project No. CM 2008(835) in Montgomery County, as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

111722  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on February 10 and 11, 2009.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the commission respectively award to the lowest bidder or reject, as indicated, those highway and transportation enhancement building construction contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

**ITEM 15. ROUTINE MINUTE ORDERS**

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute orders presented by Executive Director Amadeo Saenz:

**a. Donations to the Department**

**(1) Beaumont District – Consider a donation from Port Arthur Holdings LNG, LLC, a Delaware limited liability company, for sufficient funding, property, and to provide for land acquisition and exchange of right of way, utility relocation, environmental assessments, schematics, plans, specification and estimates, and construction and construction engineering necessary for relocation of an approximately 3.3 mile portion of SH 87 to accommodate the proposed realignment of Port Arthur LNG Project in Jefferson County (MO)**

111723  
GSD

Transportation Code, §201.206, authorizes the Texas Department of Transportation (department) to accept a donation in any form, including realty, personalty, money materials, and services, for the purpose of carrying out its functions and duties.

Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60<sup>th</sup> day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30<sup>th</sup> day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

In accordance with Transportation Code, Chapter 202, Subchapter B, the commission may recommend the exchange of surplus land as partial or full consideration for other land needed by the state for highway purposes.

Port Arthur LNG Holdings, LLC, a Delaware limited liability company, would like to donate sufficient funding, property and services to provide for land acquisition and exchange of right of way, utility relocation, environmental assessments, schematics, plans, specifications and estimates and construction and construction engineering necessary for relocation of an approximately 3.3 mile length of highway designated as SH 87 to accommodate the proposed realignment of Port Arthur Marine Terminal Project, in Jefferson County, (existing right of way). The estimated amount of the donation is approximately \$18 million.

Port Arthur LNG Holdings, LLC, a Delaware limited liability company, has further agreed that upon completion of construction for the realignment and reconstruction of a new replacement highway facility for such portion of SH 87, it will convey to the state the parcel of property described as (new right of way).

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation and exchange is in the best interest and welfare of the traveling public.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission finds that the donor is not interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donation would provide significant public benefits and would not influence or reasonably appear to influence the department in the performance of its duties.

It is the opinion of the commission that upon completion and acceptance of the new right of way, the existing right of way (surplus land) will no longer be needed for highway purposes, will be surplus, and should be removed from the state highway system. It would then be proper and correct that the state convey and release its rights, title and interest in the surplus land including all coal and lignite rights, title and interest to Port Arthur LNG Holdings, LLC, a Delaware limited liability company, in exchange and as consideration for the conveyance of the new right of way to the state.

IT IS THEREFORE ORDERED by the commission that the donation by Port Arthur LNG Holdings, LLC, a Delaware limited liability company, is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation and completion of the exchange.

IT IS FURTHER ORDERED by the commission that the executive director is authorized to tender the following proposal to Port Arthur LNG Holdings, LLC, a Delaware limited liability company (donor).

Provided that Port Arthur LNG Holdings, LLC, a Delaware limited liability company, at its sole expense completes construction on the new right of way to the satisfaction of the department, conveys the new right of way to the state, and pays the cash difference between the value of the existing right of way and the value of the new right of way, if any, then the commission will recommend the conveyance of the existing right of way to the donor in accordance with Transportation Code, Chapter 202, Subchapter B.

IT IS FURTHER ORDERED, in consideration of the foregoing premises and in accordance with Transportation Code, Chapter 202, Subchapter B, the commission hereby finds that if and when the donor satisfactorily complies with all the conditions of this minute order, the designation of the surplus land as part of the state system is then cancelled and the surplus land is no longer needed for highway or public transportation purposes and recommends, subject to approval by the attorney general, that the Governor of Texas execute proper instruments conveying and releasing all of the state's rights, title and interest in the surplus for land, including all coal and lignite rights, title and interest to Port Arthur LNG Holdings, LLC, a Delaware limited liability company, in exchange and as consideration for the conveyance to the state of the new right of way.

(2) McLennan County – Consider a donation from the Waco Industrial Foundation to go towards construction to widen a 0.85 mile section of FM 3476. The widening will provide the necessary paved surface to accommodate a right turn lane at Gateway Boulevard in McLennan County (MO)

111724  
GSD

This minute order considers a donation of \$83,086 to the Texas Department of Transportation (department) from the Waco Industrial Foundation to go towards construction to widen a 0.85 mile section of FM 3476. The widening will provide the necessary paved surface to accommodate a right lane turn at Gateway Boulevard in Waco, Texas, McLennan County. The donation allows the department to improve FM 3476 at Gateway Boulevard. These improvements will provide immediate operational relief and safety benefits for those vehicles and trucks needing access to this rapidly developing area of Waco.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation for \$83,086 from the Waco Industrial Foundation is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

**(3) Technology Services Division – Consider a donation from Bentley Systems, Incorporated for a department employee’s travel expenses to attend and participate in the Bentley’s Annual Be Conference 2009, as a member of a distinguished panel of jurors for the 2009 Be Awards of Excellence. The conference will be held in Charlotte, NC, from May 11 – 14, 2009 (MO)**

111725  
GSD

This minute order considers a donation of approximately \$800 to the Texas Department of Transportation (department) from Bentley Systems, Incorporated for a department employee’s travel expenses to attend and participate in the Bentley’s Annual Be Conference 2009, as a member of a distinguished panel of jurors for the 2009 Be Awards of Excellence. The conference will be held in Charlotte, NC from May 11 – 14, 2009.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department’s acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department’s responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation for approximately \$800 from Bentley Systems, Incorporated is accepted. The executive director or the executive director’s designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(4) Tom Green County – Consider a cash donation from Hunt Building Company, Ltd. to go towards construction of an acceleration lane and left-turn lane for a new-access driveway to a new subdivision located on FM 388, in San Angelo, Texas, Tom Green County (MO)

111726  
GSD

This minute order considers a cash donation of \$144,730.20 to the Texas Department of Transportation (department) from Hunt Building Company, Ltd. to go towards construction of an acceleration lane and left-turn lane for a new-access driveway to a new subdivision, the Goodfellow AFB OFF Base Housing Development located on FM 388 in San Angelo, Texas, Tom Green County. The donation allows the department to provide a significant public benefit, by increasing safety to the traveling public accessing the new subdivision.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the cash donation for \$144,730.20 from Hunt Building Company, Ltd. is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(5) Travel Division – Consider a donation from the San Angelo Convention and Visitors Bureau to provide food, beverages, and admission and transportation to area attractions, solicited from various sponsors, to the department for distribution to attendees of the 54<sup>th</sup> Annual Texas Travel Counselors Conference in San Angelo on April 20 – 23, 2009, which the department is hosting (MO)

111727  
GSD

This minute order considers a donation of food, beverage, and admission and transportation to area attractions from the San Angelo Convention & Visitors Bureau (SACVB) to the Texas Department of Transportation (department). The estimated \$35,000 donation was solicited from various sponsors and is part of SACVB hosting the 54th Annual Texas Travel Counselors Conference in San Angelo, Texas on April 20-23, 2009.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days. The commission also finds that some of the sponsors may be interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. Nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation worth an estimated \$35,000 by SACVB is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

**b. Eminent Domain Proceedings****Various Counties – noncontrolled and controlled access highways (see attached itemized list) (MO)**111728  
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

## NON-CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Brazoria	SH 35	5	0178-02-072	10
Brooks	US 281	1	0255-03-031	30
Dallas	SH 183	6	0094-03-098	65
Dallas	SH 183	7	0094-03-098	67
Dallas	SH 183	2	0094-03-100	3
Dallas	Spur 366	3	0196-07-023	5
Dallas	Spur 366	4	0196-07-023	8

## CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Caldwell	SH 130	F	3583-01-002	650
Caldwell	SH 130	G	3583-01-002	651
Caldwell	SH 130	H	3583-01-002	652A
Caldwell	SH 130	I	3583-01-002	652B
Caldwell	SH 130	J	3583-01-002	653
Caldwell	SH 130	K	3583-01-002	655
Caldwell	SH 130	L	3583-01-002	657
Caldwell	SH 130	M	3583-01-002	1525E
Caldwell	SH 130	N	3583-01-002	1631AC
Caldwell	SH 130	O	3583-01-002	1806
Caldwell	SH 130	P	3583-01-002	1812A
Caldwell	SH 130	Q	3583-01-002	1812B
Caldwell	SH 130	R	3583-01-002	1813
Caldwell	SH 130	S	3583-01-002	1815
Caldwell	SH 130	T	3583-01-002	1834
Dallas	IH 30	B	1068-04-132	6
Dallas	SH 183	E	0094-03-098	62
Dallas	SH 183	A	0094-03-100	15AC
Dallas	Spur 366	C	0196-07-023	3
Dallas	Spur 366	D	0196-07-023	11

## CONTROLLED ACCESS (continued)

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Guadalupe	SH 130	U	3583-02-002	829
Guadalupe	SH 130	V	3583-02-002	832
Guadalupe	SH 130	W	3583-02-002	833
Guadalupe	SH 130	X	3583-02-002	834
Guadalupe	SH 130	Y	3583-02-002	955

Note: Exhibits 1 through 7 and A through Y on file with minute order clerk.

**c. Load Zones & Postings**

**Various Counties** – Revise load restrictions on various bridges on the state highway system (MO)

111729  
BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

It has been determined from this investigation that the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over the bridges described in Exhibit A be placed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection of signs as appropriate, making the placement of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

**d. Right of Way Dispositions and Donations**

**(1) Brazos County** – US 190, 0.3 mile northeast of FM 974 – Consider the quitclaim of a surplus roadside park, waiver of the service fee and removal of the land from the highway system (MO)

111730  
ROW

In BRAZOS COUNTY, on US 190, the State of Texas acquired certain land for use as a roadside park by instrument recorded in Volume 80, Page 228, of the Deed Records of Brazos County, Texas.

The instrument conveying the land to the state provided that if the land ceases to be used as a roadside park, the land reverts to the grantors.

The land (surplus land), described in Exhibit A, is no longer needed for use as a roadside park.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the quitclaim of the state's interest to comply with a reversionary clause contained in the instrument that originally conveyed the interest to the state.

The commission finds that it is proper and correct that the state quitclaim all of its rights, title and interest in the surplus land to comply with the reversionary clause contained in the instrument of conveyance to the state.

In accordance with Title 43, Texas Administrative Code, §21.105, the commission may determine that a service fee to be charged for the disposal of real property shall not apply if the commission determines the service fee to be unjust or unwarranted.

The commission finds that the service fee is unjust or unwarranted, since the grantors, their heirs or assigns are deceased or unknown.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for use as a roadside park or for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument quitclaiming all of the state's rights, title and interest in the surplus land to J.W. Hall and Marta Hall, their heirs or assigns, and that the service fee be waived.

IT IS FURTHER ORDERED that the surplus land is removed from the state highway system.

Note: Exhibit A on file with minute order clerk.

**(2) Freestone County – County Road 235 north of County Road 240 – Consider the quitclaim of surplus land to the county (MO)**

111731  
ROW

In FREESTONE COUNTY, on COUNTY ROAD 235, the State of Texas acquired certain land by instrument recorded in Volume 387, Page 315, Deed Records of Freestone County, Texas.

The land (surplus land), described in Exhibit A, was not intended to be acquired and is not needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend that surplus land be quitclaimed to resolve an error in an instrument that conveyed an interest in real property to the state for a highway right of way.

Freestone County (county) has requested that the surplus land be quitclaimed to the county.

NOW, THEREFORE, the commission finds that the surplus land was acquired in error and is not needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument quitclaiming all of the state's rights, title and interest in the surplus land to Freestone County, Texas.

Note: Exhibit A on file with minute order clerk.

**(3) Williamson County – I-35 at FM 2243 in Georgetown – Consider the sale of surplus access rights (MO)**

111732  
ROW

In WILLIAMSON COUNTY, on INTERSTATE 35, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 469, Page 257, Deed Records of Williamson County, Texas. The state owns and controls certain access rights to the highway facility to and from the abutting lands.

A portion of the access rights (surplus access rights), shown on Exhibit A, is no longer needed for a state highway purpose.

P.W. Properties, a Texas general partnership (P.W.), owner of a 6.743-acre tract of land conveyed by deed recorded in Volume 2155, Page 904, Deed Records of Williamson County, Texas (P.W. Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to P.W. for \$98,000.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus access rights to the abutting landowner.

The Texas Department of Transportation has determined that the sale of the surplus access rights is not expected to compromise the safety or add traffic volume in an amount to exceed the capacity of the existing highway.

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to P.W. for a cash consideration of \$98,000.

NOW, THEREFORE, the commission finds that the surplus access rights are no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument granting the state's interest in the surplus access rights to P.W. Properties, a Texas general partnership, for a cash consideration of \$98,000.

IT IS FURTHER ORDERED that the surplus access rights will be exclusive to the P.W. Tract, and nothing in this order shall be construed to directly or indirectly approve conveyance of access rights to the properties abutting the P.W. Tract.

Note: Exhibit A on file with minute order clerk.

**e. Speed Zones**

**Various Counties – Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)**

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Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that the speed limit on one segment of the state highway system, previously established by the commission by minute order and listed in Exhibit C, is no longer necessary or has been incorporated by the city which has the authority to set the speed limit on this section of the highway.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portion of the minute order establishing the speed zones shown on the attached Exhibit C are canceled.

Note: Exhibits A through C on file with minute order clerk.

**16. Executive Session Pursuant to Government Code, Chapter 551, Section 551 Section 551.071 – Consultation with and advice from legal counsel regarding any item on this agenda**

Note: The commission did not meet in executive session.

**OPEN COMMENT PERIOD** – At the conclusion of all other agenda items, the commission will allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the commission. No action will be taken. Each speaker will be allowed a maximum of three minutes. Speakers must be signed up prior to the beginning of the open comment period.

The regular meeting of the Texas Transportation Commission adjourned at 12:13 p.m.

APPROVED:

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Deirdre Delisi, Chair  
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on February 26, 2009, in Austin, Texas.

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Dee Hernandez, Chief Minute Clerk  
Texas Department of Transportation