

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on January 29, 2009 in Austin, Texas. The meeting opened at 9:04 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 4:20 p.m. on January 21, 2009, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. Approval of Minutes of the December 17, 2008 special meeting and the December 18, 2008 regular meeting of the Texas Transportation Commission

Commissioner Underwood made a motion, seconded by Commissioner Holmes, and the commission approved the minutes of the December 17, 2008 special meeting and the December 18, 2008 regular meeting of the Texas Transportation Commission.

ITEM 2. Awards/Recognitions/Resolutions

a. Resolution to recognize Zane Webb, Director of the Maintenance Division, upon his retirement after more than 26 years with the department.

This resolution was presented by Executive Director Amadeo Saenz.

b. Presentation from Keep Texas Beautiful on their accomplishments in litter prevention and presentation of the Keep America Beautiful/US State Department of Transportation Partnership Award and the Great American Cleanup/US State DOT Award to the Texas Department of Transportation.

This was presented by Travel Information Division Director Doris Howdeshell. The commission received comments from Keep Texas Beautiful Executive Director Cathie Gail; and Keep Texas Beautiful President Terri Cardwell.

ITEM 3. Reports**a. Implementation of Sunset Commission staff recommendations**

This report was given by Deputy Executive Director Steve Simmons.

b. Report on the department's efforts to prepare for the potential federal economic stimulus package

This report was given by Assistant Executive Director for Engineering Operations John Barton. The commission received comments from Government and Public Affairs Division Director Coby Chase; John Shackett; and North Central Texas Council of Governments Director of Transportation Michael Morris.

ITEM 12. TRANSPORTATION PLANNING**c. El Paso County – Authorize the executive director to execute a project development agreement with Camino Real Regional Mobility Authority for the planning and development of (1) improvements to Loop 375 from Dyer Street (BU 54) to US 54, (2) improvements and the addition of direct connectors to the intersection of Loop 375 at FM 659 from 0.5 miles north of Loop 375 (on FM 659) to 0.5 miles south of FM 659 (on Loop 375), and (3) improvements and the addition of direct connectors at the intersection of I-10 at Loop 375 (Americas Avenue) on Loop 375 from 0.15 miles north of North Loop to 0.44 miles north of Bob Hope Drive and on I-10 from FM 659 (Zaragoza Road) to 0.19 miles west of Eastlake Boulevard (MO)**

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

111662
ADM

In Minute Order 110573, dated June 29, 2006, the Texas Transportation Commission (commission) authorized the creation of the Camino Real Regional Mobility Authority (CRRMA) for the City of El Paso (city).

The Texas Department of Transportation (department) and the CRRMA, in coordination with the city and the El Paso Metropolitan Planning Organization (EPMPO), developed the 2008 Comprehensive Mobility Plan (plan) that provides for the funding and development of certain transportation system improvements within the jurisdictional limits of the CRRMA. The plan was approved by the EPMPO on July 25, 2008 and a Memorandum of Understanding to implement the plan was executed by the department, the city, the EPMPO, and the CRRMA. In Minute Order 111472, dated August 28, 2008, the commission authorized the CRRMA to coordinate with the department to present proposals identifying the relative rights and obligations of the department and the CRRMA in the planning, design, financing, construction, operation, and ownership of projects within the plan.

Projects identified in the plan include: (1) improvements to Loop 375 from Dyer Street (BU 54) to US 54, (2) improvements and the addition of direct connectors to the intersection of Loop 375 at FM 659 from 0.5 miles north of Loop 375 (on FM 659) to 0.5 miles south of FM 659 (on Loop 375), and (3) improvements and the addition of direct connectors at the intersection of I-10 at Loop 375 (Americas Avenue) on Loop 375 from 0.15 miles north of North Loop to 0.44 miles north of Bob Hope Drive and on I-10 from FM 659 (Zaragoza Road) to 0.19 miles west of Eastlake Boulevard. All three projects are on the state highway system and are collectively referred to as the Loop 375 Projects. On September 11, 2008 the CRRMA submitted a proposal for a pass-through toll agreement to develop and construct the Loop 375 Projects.

Transportation Code, Section 370.033(f) authorizes the department to enter into a contractual agreement with a regional mobility authority (RMA) that authorizes the RMA to plan, develop, operate, or maintain a transportation project on behalf of the department. Transportation Code, Section 222.001 authorizes the department to expend money from the state highway fund to improve the state highway system.

The department proposes that a project development agreement (Agreement) with the CRRMA is necessary to fund and conduct preliminary work by the CRRMA related to (i) preparation of travel demand modeling, traffic, revenue, and cost estimates, and (ii) development of financial plans, project management plans, utility relocation plans, and other feasibility studies and analyses in order to determine if it is appropriate for the CRRMA to advance the three projects at the above described locations along Loop 375 under the pass-through toll program. Funding for the Agreement will come from the proceeds of bonds and other public securities issued pursuant to Minute Order 111514, adopted by the commission on August 29, 2008, and the additional bonds and other public securities to be issued pursuant to the terms of Transportation Code, Section 222.003 (Enabling Act).

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to execute a project development agreement with Camino Real Regional Mobility Authority in accordance with the proposal to perform preliminary development work on the Loop 375 Projects and such other terms the department determines are necessary, and the Agreement is approved for funding in the total amount of \$2.2 million, to be provided from the proceeds of bonds and other public securities issued pursuant to Minute Order 111514 and the additional bonds and other public securities to be issued pursuant to the terms of the Enabling Act.

Note: The commission received comments from Representative Joe Pickett.

ITEM 10. TOLL PROJECTS

b. Tarrant and Dallas Counties – 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 the North Tarrant Express (NTE) managed lanes project; and (2) the execution of a comprehensive development agreement for the NTE managed lanes project (MO)

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

111661
TTA

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 March 30, 2006, by Minute Order 110468, the Texas Transportation Commission (commission) authorized and directed the department to issue a request for qualifications (RFQ) for the development of I-820 and SH 121/SH 183 from I-35W to SH 161, along I-820 east from SH 121/SH 183 to Randol Mill Road, and along I-35W from I-30 to SH 170 in Tarrant and Dallas counties (North Tarrant Express project). The department issued the RFQ on December 8, 2006 and subsequently determined that four of the seven 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 North Tarrant Express 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 December 13, 2007, by Minute Order 111169, the commission authorized and directed the department to issue an RFP for the North Tarrant Express project requesting detailed proposals from the short-listed teams, and authorized a payment for work product stipend of up to \$750,000 per unsuccessful responsive proposer, which amount was subsequently increased to \$1 million on September 25, 2008, by Minute Order 111530. On March 3, 2008, the department issued the RFP.

The RFP solicited detailed proposals for comprehensive development agreements for (1) an initial concession facility comprised of Segment 1 and any other portions of the North Tarrant Express project that the proposer includes in its proposal (Concession Facility), and (2) all or part of Segments 2-4 of the project (Segments 2-4).

On December 1, 2008, proposals were received from NTE Mobility Partners and OHL Infrastructure, Inc. From December 2, 2008 until January 21, 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) Concession Facility Development Plan; (3) Proposal for Segments 2-4; and (4) Concession Financial Score. The 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 development proposals based on those ratings and the weightings of the individual evaluation criteria. Points were assigned to the Concession Financial Proposal using a formula that is based on pre-assigned credits for the value of each project element and element option a proposer included in its proposal.

The points assigned to the development proposals for the Concession Facility and for Segments 2-4 pursuant to the qualitative evaluations were then added to the points assigned to the proposed Concession Financial Plan 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 Pass/Fail and Responsiveness evaluation of each proposal resulted in a determination that the proposal submitted by OHL Infrastructure Inc., was non-responsive, and, consequently, not eligible for award of the comprehensive development agreements.

The concurrent qualitative evaluation and scoring of each proposal under the Concession Facility Development Plan, Proposal for Segments 2-4, and Concession Financial Score categories, and the Pass/Fail review, resulted in the proposals being ranked as follows: (1) NTE Mobility Partners and (2) OHL Infrastructure, Inc. The proposal submitted by NTE Mobility 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 NTE Mobility Partners provides the apparent best value to the department is approved, and the department is authorized and directed to commence and complete negotiations with NTE Mobility Partners necessary to finalize the comprehensive development agreements to develop, design, construct, finance, maintain and operate the North Tarrant Express project along I-820 and SH 121/SH 183 from I-35W to SH 161, along I-820 east from SH 121/SH 183 to Randol Mill Road, and along I-35W from I- 30 to SH 170 in Tarrant and Dallas counties, as well as other potential facilities to the extent necessary for connectivity, safety, and financing, and to modify the comprehensive development agreements as necessary as a result of such negotiations.

IT IS FURTHER ORDERED that the comprehensive development agreements are awarded to NTE Mobility 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 agreements are 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) 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 agreements by the executive director of the department and the proposer.

IT IS FURTHER ORDERED that the department is authorized to commence and complete negotiations with NTE Mobility Partners necessary to finalize any agreement for the construction of a proposed facility under the Segments 2-4 comprehensive development agreement and that commission approval is required before the executive director may enter into any such agreement.

Note: The commission received comments from State Senator Wendy Davis; City of Fort Worth Mayor Oscar Trevino; City of Fort Worth Councilmember Jungus Jordan; Assistant Executive Director for Innovative Project Development Phillip Russell; NTE Mobility Partners President Jose Maria Lopez; and Tarrant County Judge Glen Whitley.

Note: The commission took a break in the meeting for a press conference.

ITEM 4. AVIATION

a. Various Counties – Award federal and state grant funding for airport improvement projects at various locations (MO)

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

111663
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 Thursday, December 11, 2008, 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 \$6,651,666.

Note: Exhibit A on file with minute order clerk.

b. Approve Aviation Capital Improvement Program (MO)

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

111664
AVN

Pursuant to Transportation Code, §§21.108-21.111 and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation (department) prepares an Aviation Facilities Development Program identifying the aviation facility requirements, locations, timing, eligibility for funding, and the investment necessary for a state-wide system of airports that will provide for the state's air transportation needs.

There continues to be a need for the construction, rehabilitation and upgrading of the state airport system.

As an element of the Aviation Facility Development Program, the department is required to prepare and update, at least annually, a multiyear Aviation Capital Improvement Program (CIP) to support aviation facilities development.

In June, the draft FY 2009-2011 Aviation CIP was submitted to the sponsors of airports included in the Texas airport system for review.

The Texas Aviation Advisory Committee recommended approval of the FY 2009-2011 CIP at its October meeting.

Comments received have been evaluated and, when appropriate, have been addressed in the CIP.

IT IS THEREFORE ORDERED by the commission that the attached FY 2009-2011 Capital Improvement Program (Exhibit A) is hereby adopted and the Executive Director is authorized to proceed with the development of the airport facilities included in the Capital Improvement Program.

Note: Exhibit A on file with minute order clerk.

ITEM 5. PUBLIC TRANSPORTATION

Austin County – Award federal §5316 funds, Job Access Reverse Commute Program, to Colorado Valley Transit, Inc. (MO)

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

111665
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, Job Access and Reverse Commute Formula Grant Program (JARC) (49 U.S.C. §5316), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

The Texas Transportation Commission (commission) desires to award federal §5316 JARC funds to Colorado Valley Transit, Inc. (CVT) to operate an ongoing JARC project.

The commission recognizes the importance of the success of the JARC projects and finds that the \$123,203 is available for award to CVT.

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 award of \$123,203 to CVT and enter into the necessary contract in accordance with the priorities as established in this minute order.

ITEM 6. PROMULGATION OF ADMINISTRATIVE RULES Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Final Adoption

(1) Chapter 1 – Management, Chapter 15 – Transportation Planning and Programming, Chapter 27 – Toll Projects (MO)

New §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor’s Internal Ethics and Compliance Program (New Subchapter C, Other Entities’ Internal Ethics and Compliance Procedures); Amendments to §15.92, Miscellaneous Powers and Duties of Corporations (Transportation Corporations); and Amendments to §27.53, Request (Financial Assistance for Toll Facilities)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Interim Internal Compliance Office Director Suzanne Mann:

111666
ADM

The Texas Transportation Commission (commission) finds it necessary to adopt new §1.8 and §1.9 and amendments to §15.92 and §27.53, all relating to the internal compliance program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections and amendments, attached to this minute order as Exhibits A - F, 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 new §1.8 and §1.9 and amendments to §15.92 and §27.53 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 through F on file with minute order clerk.

(3) Chapter 5 – Finance (MO)

Amendments to §5.10, Collection of Debts (Collection of Debts)

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

111667
FIN

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §5.10 relating to collection of debts 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 §5.10 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.

(2) Chapter 2 – Environmental Policy (MO)

Amendments to §2.1, General; Emergency Action Procedures (Environmental Review and Public Involvement for Transportation Projects)

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

111668
ADM

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §2.1, relating to the applicability of the Texas Department of Transportation's environmental review and public involvement requirements to certain transportation projects that are not on the state highway system, 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 §2.1 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.

(4) Chapter 5 – Finance (MO)

Amendments to §5.53, Proposal; Repeal of §5.54, Commission Approval to Negotiate, §5.55, Proposals from Private Entities, §5.56, Final Approval, §5.57, Calculation of Pass-Through Fares and Tolls, §5.58, Project Development by Public or Private Entity, and §5.59, Operation; and New §5.54, Participation in the Program, §5.55, Commission Approval to Negotiate, §5.56, Proposals from Private Entities, §5.57, Final Approval, §5.58, Calculation of Pass-Through Fares and Tolls, §5.59, Project Development by Public or Private Entity, and §5.60, Operation (Pass-Through Fares and Tolls)

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:

111669
ADM

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §5.53, the repeal of §§5.54-5.59 and simultaneous new §§5.54-5.60 relating to pass-through fares and tolls to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeals and new sections, attached to this minute order as Exhibits A - C, 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 §5.53, the repeal of §§5.54-5.59 and simultaneous new §§5.54-5.60 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 through C on file with minute order clerk.

(5) Chapter 21 – Right of Way (MO)

Amendments to §21.142, Definitions, §21.149, Licenses, §21.150, Permits, §21.151, Local Control, §21.155, Directional Signs, §21.160, Relocation (Regulation of Signs Along Interstate and Primary Highways), §21.411, Definitions, §21.431, Registration of Existing Off-Premise Signs, §21.441, Permit for Erection of Off-Premise Sign, §21.521, On-Premise Sign Erectors, §21.531, Board of Variance, §21.541, Revocation of Permits, §21.561, Removal of Sign, and §21.572, Notice and Appeal (Control of Signs Along Rural Roads)

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

111670
ROW

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.142, §21.149, §21.150, §21.151, §21.155, §21.160, §21.411, §21.431, §21.441, §21.521, §21.531, §21.541, §21.561, and §21.572 relating to regulation of signs along interstate and primary highways and rural roads 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 -C, 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 §21.142, §21.149, §21.150, §21.151, §21.155, §21.160, §21.411, §21.431, §21.441, §21.521, §21.531, §21.541, §21.561, and §21.572 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 through C on file with minute order clerk.

b. Proposed Adoption

(to be published in the Texas Register for public comment)

Chapter 2 – Environmental Policy and Chapter 11 – Design (MO)

Amendments to §2.1, General; Emergency Action Procedures; and Repeal of §11.56, Connection with Regionally Significant Highway and New §11.56, Connection with Regionally Significant Highway (Access Connections to State Highways)

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

111671
DES

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §2.1, relating to general and emergency environmental action procedures, and the repeal of §11.56 and new §11.56 relating to connection with regionally significant highway, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, repeal, and new section, attached to this minute order as Exhibits A - E, 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 §2.1, the repeal of §11.56, and new §11.56 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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 through E on file with minute order clerk.

ITEM 8. FINANCE

a. Authorize project selection process for the 2010 Unified Transportation Program (MO)

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

111672
FIN

Pursuant to Transportation Code, §201.602, the Texas Transportation Commission (commission) conducted a public hearing on November 20, 2008 to receive testimony concerning the highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions.

The Unified Transportation Program (UTP) encompasses two documents. The Statewide Preservation and Safety Program (SPSP) consists of funding categories used to maintain the existing transportation system, and the Statewide Mobility and Supplemental Transportation Program (SMSTP) includes funding categories used to enhance the transportation system.

There were no oral comments provided at the public hearing. Written comments were accepted through December 22, 2008, but none were received. Minor technical corrections were made following the conclusion of the public comment period, based on an internal review process. Exhibit A contains a summary of the UTP categories and the various project selection methods and usual funding participation.

The commission is satisfied that the proposed highway project selection process is consistent with the Texas Department of Transportation's goals to reduce congestion, enhance safety, expand economic opportunity, improve air quality and preserve the value of transportation assets.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to utilize the project selection process for developing the 2010 SPSP and SMSTP under the Unified Transportation Program.

Note: Exhibit A on file with minute order clerk.

b. Authorize a variance in the manner in which federal-aid highway construction funds are distributed to parts of the state versus the manner in which they are distributed by the federal government (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:

111673
FIN

Transportation Code, §222.034, requires the Texas Transportation Commission (commission) to distribute federal-aid transportation funds to various parts of the state for a funding cycle through the selection of highway projects in a manner consistent with the federal formulas that determine the amount of federal-aid the state of Texas receives, unless the commission issues a minute order or ruling that identifies the variance and provides particular justification for the variance. A distribution under §222.034 does not include deductions made for the state infrastructure bank or other federal-aid funds reallocated by the federal government.

The commission conducted a public hearing and adopted the project selection process for the 2010 Unified Transportation Program (UTP).

Exhibit A contains an individual evaluation of each federal-aid apportionment program, including particular justification for any variance from the federal-aid apportionment formula and the proposed distribution of the transportation funds through the 2010 UTP.

IT IS THEREFORE ORDERED by the commission that Exhibit A shall serve as the commission's identification and justification of variances, as required by Transportation Code, Section 222.034.

Note: Exhibit A on file with minute order clerk.

c. Approve the replacement of the liquidity provider for the Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds, Series 2005-B (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111674
FIN

The Texas Transportation Commission (commission) has previously issued its \$100 million "Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds, Series 2005-B (Variable Rate Bonds)" (Series 2005-B Bonds) pursuant to the Second Supplemental Resolution (Second Supplement) to the Master Resolution establishing the Mobility Fund Revenue Financing Program which Series 2005-B Bonds bear interest at a weekly rate and can be tendered by the holders upon seven days written notice.

Liquidity for the Series 2005-B Bonds tendered pursuant to the provisions of the Second Supplement is currently provided by DEPFA Bank plc, acting through its New York Branch (DEPFA).

Due to the current downgrade of DEPFA, the commission is considering replacing DEPFA with a alternate liquidity facility provided by the State of Texas through the Comptroller of Public Accounts of the State of Texas (comptroller).

IT IS THEREFORE ORDERED by the commission that the Chief Financial Officer acting as the Department Representative pursuant to the Second Supplement is authorized and directed to take such action necessary to terminate the liquidity facility for the Series 2005-B Bonds with DEPFA including obtaining rating confirmations, giving any notices and other actions required by the Second Supplement.

IT IS FURTHER ORDERED that the agreement with the comptroller is hereby approved with such changes as the Department Representative executing the same may approve, such approval to be conclusively evidenced by execution of the document. The agreement is hereby approved as a credit agreement for purposes of and in accordance with the Master Resolution.

IT IS FURTHER ORDERED by the commission that the Department Representative is authorized and directed to approve a remarketing memorandum for the Series 2005-B Bonds reflecting the new remarketing agent and liquidity provider in such form acceptable to the Department Representative.

IT IS FURTHER ORDERED by the commission that any necessary auxiliary documents in connection with the replacement of DEPFA as liquidity provider for the Series 2005-B Bonds are hereby approved including any amendments to the Second Supplement to conform with the comptroller agreement and the Department Representative is authorized and directed to execute and deliver such documents.

IT IS FURTHER ORDERED by the commission that each member of the commission and each Department Representative is authorized and directed to perform all such acts and execute such documents, including execution of certifications to the remarketing agent, the Attorney General, the Comptroller of Public Accounts and other parties, as may be necessary to carry out the intent of this order and other orders of the commission relating to the Mobility Fund Revenue Financing Program and the related documents.

ITEM 7. MANAGEMENT

Implementing the spirit of the Sarbanes-Oxley Act (SOX) within the commission and the department

a. Policy for Attorney Responsibility – Approve implementation of a policy defining the roles of general counsel and executive director in dealing with evidence of an employee’s material breach of a violation of the law or a legal obligation or fiduciary responsibility to the department (MO)

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Deputy Executive Director Steve Simmons:

111675
ADM

The Texas Department of Transportation (department) has a long-standing reputation for integrity and ethical behavior. This reputation is a great source of pride for the department as well as one of the department’s greatest assets because it instills the necessary trust and confidence that the public must have in any governmental agency. It is of utmost importance to the Texas Transportation Commission (commission) to continue to be good stewards of the taxpayer resources entrusted to the department.

The federal Sarbanes-Oxley Act (SOX) was signed into law in July of 2002, in large part as a response to the corporate and accounting scandals occurring in 2001 and 2002. SOX required publicly traded companies to adhere to significant new governance standards that broadened the roles of board members of those companies in overseeing financial transactions and auditing procedures. While SOX does not apply to private or non-profit companies or to governmental entities, the application of its general principles relating to internal financial controls and professional responsibility would enhance the level of accountability for department actions and reliability of department financial information.

Section 307 of SOX requires minimum standards of professional conduct for attorneys appearing and practicing before the Securities and Exchange Commission that include reporting requirements when the attorney becomes aware of a material violation of securities laws or similar violation by the company or a company’s agent. Those standards could, by analogy, be applied to the general counsel in relation to the general counsel’s duties to the department and commission. The standards applicable to general counsel, however, must also comply with the Texas Disciplinary Rules of Professional Conduct (Disciplinary Rules) that govern the actions of Texas attorneys in their representation of a governmental organization. There is a delicate balance between the duty to preserve client

confidentiality and the duty to disclose a violation of a law or legal obligation. A governing consideration is the concept that the attorney represents the entity - not the individual officers, employees, or others associated with the organization. In the case of a state agency, the attorney's client includes state government as a whole. Under Rule 1.12 of the Disciplinary Rules, the attorney must take remedial actions within the organization whenever the attorney learns or knows that an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization. The Disciplinary Rules further encourage the formulation of a stated policy of the organization to define the circumstances and prescribe the channels for reporting and review.

To maintain and build on the department's commitment to ethical behavior and integrity, and to enhance the level of accountability for department action, the commission desires to implement a reporting policy designed to provide to the executive director any evidence known by general counsel of an employee's or agent's material breach of a violation of the law or a legal obligation or fiduciary responsibility that is likely to result in substantial injury to the department or its reputation, and to then require the executive director to take appropriate remedial action.

IT IS THEREFORE ORDERED by the commission that the following department policy is adopted:

- 1) If the general counsel becomes aware of a material breach of a legal obligation to the department or a fiduciary duty or a violation of law by any officer, employee, or agent of the department, that is likely to result in substantial injury to the department or its reputation, the general counsel shall report evidence of the breach or violation to the executive director, who shall respond to the evidence by taking appropriate action, including enforcing or, as necessary, adopting or initiating the adoption of appropriate remedial measures or sanctions with respect to the violation.
- 2) If, in the general counsel's judgment, the executive director does not appropriately respond to the evidence presented under paragraph (1) within a reasonable period of time or if the material breach or a violation involves the executive director, the general counsel shall report evidence of the breach or violation directly to the chair of the audit subcommittee or the chair of the commission.
- 3) If, in the general counsel's judgment, none of the people to whom the general counsel reports evidence under paragraph (1) or (2) appropriately responds to the evidence within a reasonable period of time or if the department is not capable of taking appropriate remedial action, the general counsel may report such evidence of a material breach directly to the Texas Office of the Attorney General.

b. Policies for Financial Reports and Internal Control; Code of Ethics – Direct the Chief Financial Officer to develop and implement policies and procedures which incorporate the spirit of SOX into key financial reports, including an internal control report; direct the finance division to establish a code of ethics for senior finance personnel (MO)

Commissioner Meadows made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Deputy Executive Director Steve Simmons:

111676
ADM

The Texas Department of Transportation (department) has a long-standing reputation for integrity and ethical behavior. This reputation is a great source of pride for the department as well as one of the department's greatest assets because it instills the necessary trust and confidence that the public must have in any governmental agency. It is of utmost importance to the Texas Transportation Commission (commission) to continue to be good stewards of the taxpayer resources entrusted to the department.

The federal Sarbanes-Oxley Act (SOX) was signed into law in July of 2002, in large part as a response to the corporate and accounting scandals occurring in 2001 and 2002. SOX required publicly traded companies to adhere to significant new governance standards that broadened the roles of board members of those companies in overseeing financial transactions and auditing procedures. While SOX does not apply to private or non-profit companies or to governmental entities, the application of its general principles relating to internal financial controls and professional responsibility would enhance the level of accountability for department actions and reliability of department financial information.

Section 302 of SOX requires that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify (the "302 certifications") to the Securities and Exchange Commission (SEC) in each annual or quarterly report filed or submitted under the Act that:

- (1) the signing officer has reviewed the report;
- (2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- (3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the company as of, and for, the periods presented in the report;
- (4) the signing officers:
 - (A) are responsible for establishing and maintaining internal controls,
 - (B) have designed such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared,
 - (C) have evaluated the effectiveness of the company's internal controls as of a date within 90 days prior to the report, and
 - (D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

- (5) the signing officers have disclosed to the auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):
 - (A) all significant deficiencies in the design or operation of internal controls which could adversely affect the company's ability to record, process, summarize, and report financial data and have identified for the company's auditors any material weaknesses in internal controls; and
 - (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal controls; and
- (6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

The department is not required to submit reports to the SEC, but it regularly prepares comparable annual financial reports which are subject to audit and which contain a complete set of basic financial statements. The executive director and chief financial officer currently incorporate most of the SOX requirements in their certifications to the auditors of the department's annual financial statements in the form of a management representation letter.

Section 404 of SOX sets out requirements for an internal control report. The report is to: (1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) contain an assessment, as of the end of the most recent fiscal year of the company, of the effectiveness of the internal control structure and procedures of the company for financial reporting.

It is expected that outside assistance would be required to complete an internal control assessment for the first year and that future assessments could be prepared by department staff. Department staff has already established and currently maintains internal controls for financial reporting. In the course of auditing the department's annual financial statements, independent auditors (primarily state auditors) evaluate the department's system of internal controls to determine whether it can be relied upon as a basis for expressing an opinion on the financial statements. The auditors do not, however, perform sufficient audit work to express an opinion on the system of internal controls.

As part of maintaining an adequate internal control structure, the role of the chief financial officer in ensuring that the executive director has sufficient reliable financial information to make appropriate budgetary and spending adjustments should be specified and monitored for its effectiveness.

Section 406 of SOX requires that a code of ethics be adopted for senior financial officers. As defined in that section, a code of ethics means such standards as are reasonably necessary to promote:

- (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- (2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the company; and
- (3) compliance with applicable governmental rules and regulations.

Establishing a code of ethics for senior financial officers would define the standards to which they are held in order to ensure full, fair, accurate, timely and understandable financial reports and documents that the department submits to the commission, the Governor and the Texas Legislature, or disseminates to the public.

The commission desires to implement the spirit of Sarbanes-Oxley by implementing policies and procedures, including a code of ethics for senior finance personnel, that are designed to maintain and build on the department's commitment to transparency and reliability of financial information and to ethical behavior and integrity, and to enhance the level of accountability for department action.

IT IS THEREFORE ORDERED by the commission that the chief financial officer or his designee is directed to:

- (1) Develop and implement policies and procedures to expand the practice of providing certifications by the executive director and chief financial officer to include certifications to the commission for all quarterly and annual financial reports filed with the commission, including the operating budget, investment report, and cash forecasting report, with the certification to contain, as applicable, the 302 certifications or similar certifications that the chief financial officer considers applicable to department operations.
- (2) Develop and implement policies and procedures: (a) for establishing and maintaining an adequate internal control structure and procedures for financial reporting, (b) for assessing, as of the end of each fiscal year, the effectiveness of the internal control structure and financial reporting procedures, (c) setting forth the responsibility of management for the internal control structure and for financial reporting procedures, and (d) specifying the role of the chief financial officer in ensuring that the executive director has sufficient reliable financial information to make appropriate budgetary and spending adjustments and providing for monitoring of this role for its effectiveness.
- (3) Develop a code of ethics for senior finance personnel that includes such standards as are reasonably necessary to promote: honest and ethical conduct; full, fair, accurate, timely, and understandable disclosure in reports and other documents; and compliance with applicable rules and regulations.

IT IS FURTHER ORDERED by the commission that the chief financial officer shall report to the commission on the status of implementation of this order no later than May 1, 2009.

c. Creation of Audit Subcommittee – Report by the Chair on appointment of an audit subcommittee

This report was presented by Chair Deirdre Delisi. The chair appointed commissioners Underwood and Houghton to serve as an audit subcommittee.

ITEM 9. STATE INFRASTRUCTURE BANK**Final Approval**

Parker County – City of Weatherford – Consider granting final approval of an application from the City of Weatherford to borrow \$320,000, consisting of \$240,000 initially requested in 2002 plus \$80,000 for increased costs since that time, to fund utility relocation along US 180 (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:

111677
FIN

On December 18, 2008, by Minute Order Number 111635, the Texas Transportation Commission (commission) granted preliminary approval of an amended application request for financial assistance from the City of Weatherford (city) to borrow \$320,000 to fund utility relocations in connection with the replacement of two bridges over the Union Pacific Railroad tracks on US 180 in Parker County and rescinded Minute Order 109065, dated October 31, 2002, which gave final approval of a request for \$240,000.

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact studies have been completed, and that the Texas Department of Transportation has approved those studies. The executive director recommends that the commission grant final approval of the SIB application for 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 projects will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the financial assistance application submitted by the City of Weatherford to borrow \$320,000 plus a 20 percent contingency from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the city. The loan will be repaid over a period of 10 years at 3.8 percent interest per annum.

ITEM 10. TOLL PROJECTS

a. Harris County – Authorize the executive director of the department to enter into an agreement with Harris County pursuant to Transportation Code, §228.011, for the use of state owned right of way by Harris County to develop, construct, operate, and maintain the Beltway 8 toll project from 0.15 mile east of Old Humble Road to 0.88 mile south of US 90E as part of the Harris County road system (MO)

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

111678
TTA

Harris County (county) owns, operates, and maintains the Sam Houston Tollway on extensive segments of Beltway 8. The Texas Department of Transportation (department) owns, operates, and maintains the non-tolled frontage roads along Beltway 8.

Texas Transportation Code, §228.011(a) gives the county the right to develop, construct, and operate the Beltway 8 Tollway East project between US 59 North and US 90 East.

Texas Transportation Code, Section 228.011 requires the department to assist the county in the financing, construction, and operation of the project by allowing the county to use state highway right of way owned by the department and to access the state highway system, and requires the county to reimburse the department for its actual costs to acquire the right of way.

Minute Order 109876, dated November 18, 2004, authorized the county to provide funding for schematic design, environmental documentations, final design and to identify the development scenarios that would most effectively and expeditiously provide for the construction of six and eight toll lanes on Beltway 8 northeast quadrant, from east of Old Humble Road to south of US 90E.

The county has completed the schematic design, environmental documentations, and final design. The department has completed the review of the plans, specifications and estimates for the final design of the facility and has received approval of the environmental documents.

The county has committed to fund, award construction contract, operation and maintenance; and to reimburse the department to utilize the department's highway facility. This amount equals the department's actual cost to acquire the right-of-way from 0.15 mile east of Old Humble Road to 0.88 mile south of US 90E.

IT IS THEREFORE ORDERED that the area between the existing frontage roads to be used by the county within the limits on Beltway 8 from 0.15 mile east of Old Humble Road to 0.88 mile south of US 90E, is hereby removed from the state highway system.

IT IS FURTHER ORDERED that the executive director of the department is hereby authorized to enter into an agreement with the county pursuant to Transportation Code, §228.011, for the use of state owned right of way by the county to develop, construct, operate, and maintain the Beltway 8 toll project from 0.15 mile east of Old Humble Road to 0.88 mile south of US 90E as part of the county road system.

IT IS FURTHER ORDERED that the executive director of the department is hereby authorized to license the county to use the state's right-of-way and to enter into an agreement with the county to fund, award construction contract, operate and maintain Beltway 8 six and eight toll lanes and to reimburse the department to utilize the department's highway right-of-way facility in the amount of \$5,476,620.00.

c. Travis and Williamson Counties – Accept the final General Engineering Consultant quarterly progress 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 Texas Turnpike Authority Division Director Mark Tomlinson:

111679
TTA

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY 130 has been designated a toll project and a controlled access state highway from I-35 north of Georgetown to a southern terminus at US 183.

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY 45N has been designated a toll project and a controlled access state highway from west of US 183 to SH 130.

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY LOOP 1 has been designated a toll project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45N.

The Texas Transportation Commission (commission) has issued toll revenue bonds and other obligations to finance a portion of the costs of the 2002 Project of the Central Texas Turnpike System, a toll project composed of the SH 130, SH 45N, and Loop 1 project elements, and has entered into an Indenture of Trust dated July 15, 2002 with Bank One, National Association, as Trustee to secure the revenue bonds and other obligations issued for the 2002 Project.

In Section 406 of the Indenture of Trust, the commission covenants that at least quarterly during the construction of the 2002 Project it will cause the general engineering consultant to prepare a progress report in connection with such construction, including current projections with respect to the date the 2002 Project will be open to traffic, the date on which construction will be completed, the cost of the 2002 Project, and the amount of funds required each six months during the remaining estimated period of construction to pay the costs of the 2002 Project.

Section 406 of the Indenture of Trust requires copies of the quarterly progress report to be filed with the commission, the U.S. Department of Transportation, and the Trustee, and to be made available by the Trustee to owners of obligations issued for the 2002 Project.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending November 30, 2008, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's quarterly progress report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

ITEM 11. PROPOSITION 14 BOND PROJECTS

Approval of work to be performed in connection with a state highway improvement project that will be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (Proposition 14 Bonds) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Meadows and the commission approved the following minute order presented by Assistant Executive Director for engineering operations John Barton:

111680
ADM

Section 49-n, Article III, of the Texas Constitution (constitutional provision) provides that the Texas Legislature may authorize the Texas Transportation Commission (commission) to issue bonds and other public securities and enter into bond enhancement agreements that are payable from revenue deposited to the credit of the state highway fund to fund state highway improvement projects.

Pursuant to the constitutional provision, the Texas Legislature enacted Section 222.003, Texas Transportation Code (Enabling Act), which authorizes the commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the highway fund.

The Enabling Act, as amended, provides that (i) the aggregate principal amount of such bonds and other public securities may not exceed \$6 billion, (ii) the commission may issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 billion each year, (iii) \$1.2 billion of the aggregate principal amount of such bonds or other public securities must be issued to fund safety projects that reduce accidents or correct or improve hazardous locations on the state highway system, and (iv) bonds and other public securities and credit agreements may not have a principal amount or terms that are expected to cause annual expenditures with respect thereto to exceed 10 percent of the amount deposited to the credit of the highway fund in the preceding year. The commission has issued approximately \$3.1 billion in bonds and other public securities pursuant to the terms of the Enabling Act, leaving approximately \$2.9 billion in bonds and other public securities to be issued.

Pursuant to the Enabling Act, the commission has adopted rules, codified as 43 TAC §§15.170-1 5.174, that prescribe criteria for selecting projects (including safety projects) eligible for funding under the Enabling Act.

On August 19, 2008, Governor Rick Perry, Lieutenant Governor David Dewhurst and Speaker of the House Tom Craddick sent a letter to Commission Chair Deirdre Delisi strongly encouraging the immediate sale of up to \$1.5 billion of bonds to assure greater road funding levels are maintained while they work with other elected officials to provide additional solutions.

On August 29, 2008, the commission adopted Minute Order 111514, which authorized, subject to the approval of the Texas Bond Review Board, the issuance of additional bonds and other public securities pursuant to and in accordance with the terms of the Enabling Act, in an aggregate principal amount not to exceed \$1.5 billion.

The Texas Department of Transportation (department) has evaluated project development needs throughout the state for funding with the proceeds of bonds and other public securities issued pursuant to Minute Order 111514 and the additional bonds and other public securities to be issued pursuant to the terms of the Enabling Act, considering the criteria prescribed in 43 TAC §§15.173-15.174. Exhibit A to this order contains a list of candidate contracts that have been proposed for use for the purpose of facilitating the development of projects throughout the state. The candidate contracts are for work to be performed in connection with state highway improvement projects, and are listed by department district.

IT IS THEREFORE ORDERED by the commission that the work to be performed in connection with state highway improvement projects that is contained in Exhibit A is approved for funding with the proceeds of bonds and other public securities issued pursuant to Minute Order 111514, and the additional bonds and other public securities to be issued pursuant to the terms of the Enabling Act.

Note: Exhibit A on file with minute order clerk.

ITEM 12. TRANSPORTATION PLANNING

a. Appointment of one member to the Austin-San Antonio Intermunicipal Commuter Rail District Board for a two-year term (MO)

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

111681
TPP

Article 6550c-1, VTCS, authorized the creation of a commuter rail district for the purpose of providing commuter rail service between two municipalities.

The commissioners' courts of Bexar and Travis Counties and the city councils of the cities of Austin and San Antonio adopted resolutions favoring the creation of a commuter rail district for the purpose of providing commuter rail service between Austin and San Antonio.

The Austin-San Antonio Commuter Rail District (district) is governed by a board of directors (board). The board is responsible for the management, operation and control of the district. The district convened their first meeting in February 2003, and the appointed board members entered into a service term of two years. Commencing in December 2007 the board terms are now staggered in either one or two year periods.

Article 6550c-1 provides that the Texas Transportation Commission (commission) shall appoint two public members to the board of a district.

As one of the two appointees, the commission, by Minute Order 109121, dated December 19, 2002, originally appointed Mariano Camarillo of Austin to the board of the district based on his experience and knowledge of commuter rail transportation. The commission reappointed him to a second two-year term by Minute Order 109929, dated January 27, 2005, and to a third two-year term by Minute Order 110814, dated January 25, 2007.

The commission has determined that it is in the best interest of the citizens of Central Texas for Mr. Camarillo to be re-appointed for a fourth two-year term as a member of the board due to his exemplary service and the need for the district to continue uninterrupted in their current efforts to bring commuter rail to the region.

IT IS THEREFORE ORDERED by the commission that Mariano Camarillo be reappointed as a member of the Austin-San Antonio Commuter Rail District for a fourth term which will expire in two years.

b. Hays, Travis and Williamson Counties – Award transportation development credits to provide nonfederal match of federal Surface Transportation Program funds authorized by the Capital Area Metropolitan Planning Organization for the Austin-San Antonio Intermunicipal Commuter Rail District (MO)

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

111682
TPP

Transportation Code, Chapter 455 assigns a broad spectrum of powers and duties to the Texas Department of Transportation (department) regarding public and mass transportation. Transportation Code, Chapter 456 authorizes the Texas Transportation Commission (commission) to administer funds appropriated for public transportation.

Title 23 U.S.C. §120(j), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59 (2005), permits a state to use certain toll revenue expenditures, called transportation development credits, as a credit toward the non-federal share of certain programs authorized by Title 23 and Chapter 53 of Title 49 U.S.C.

Title 43, Texas Administrative Code, §5.73(a) establishes a process by which transportation development credits may be awarded at the discretion of the commission. In accordance with §5.73(b), the commission will consider the expressed opinion of the metropolitan planning organization with respect to a project within its boundaries.

In May 2008, the Capital Area Metropolitan Planning Organization (CAMPO) authorized \$10 million of its federal Surface Transportation Program funds to study commuter rail between Austin and San Antonio. The funds will be used by the Austin-San Antonio Intermunicipal Commuter Rail District (district) for preliminary engineering, operations modeling, public involvement and environmental clearance required to implement the Austin-San Antonio regional passenger rail project.

The district has requested the use of transportation development credits as the non-federal match for the development of commuter rail service in the Austin-San Antonio corridor. The department received a letter from CAMPO supporting the award of transportation development credits for this project. The total amount of transportation development credits requested by the district is \$2 million.

The commission finds that distribution of transportation development credits for this particular purpose serves the department's goals of reducing congestion, enhancing safety, expanding economic opportunity, improving air quality, and increasing the value of transportation assets.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to utilize transportation development credits in support of the Austin-San Antonio regional passenger rail project, in an amount not to exceed \$2 million.

ITEM 13. REPORT

Status report on the FY 2009 Obligation Limit and report on the actual January 2009 and proposed February 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 Underwood and the commission approved the following minute order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

111683
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 January 13 and 14, 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 Holmes made a motion, seconded by Commissioner Houghton and the commission approved the following minute order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

111684
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 January 13 and 14, 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 Meadows and the commission approved the following minute orders presented by Executive Director Amadeo Saenz:

a. Donations to the Department

(1) Construction Division – Acknowledge a donation from the Tennessee Road Builders Association for a department employee’s travel expenses to participate and present at the 8th Annual Tennessee Quality Asphalt Initiative Meeting. The meeting was held in Nashville, Tennessee, on January 7, 2009 (MO)

111685
GSD

This minute order acknowledges a donation of approximately \$544.29 to the Texas Department of Transportation (department) from the Tennessee Road Builders Association for a department employee’s travel expenses to participate in the 8th Annual Tennessee Quality Asphalt Initiative Meeting. The meeting was held in Nashville, Tennessee, on January 7, 2009. The department employee shared information about experiences using warm-mix asphalt and also participated in technical sessions, where presentations for pertinent warm-mix topics were presented.

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 \$544.29 from the Tennessee Road Builders Association 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.

(2) Traffic Division – Consider a donation from the American Traffic Safety Services Association for department employees’ travel expenses and registration costs to attend the 39th Annual Convention & Traffic Expo being held in San Jose, California on February 1 – 5, 2009 (MO)

111686
GSD

This minute order considers a donation of approximately \$3,000 to the Texas Department of Transportation (department) from the American Traffic Safety Services Association for department employees’ travel expenses and registration costs to attend the 39th Annual Convention & Traffic Expo being held in San Jose, California on February 1 – 5, 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 \$3,000 from the American Traffic Safety Services Association 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) Maintenance Division – Consider a donation from the newly re-established Lady Bird Legacy Wildflower Campaign, administered through the Austin-American Statesman and Wildseed Farms, for approximately \$25,000 worth of wildflower seeds to be planted within the state’s right of way (MO)

111687
GSD

This minute order considers a donation to the Texas Department of Transportation (department) from the newly re-established Lady Bird Legacy Wildflower Campaign, administered through the Austin-American Statesman and Wildseed Farms, for approximately \$25,000 worth of wildflower seeds. The wildflower seeds will be planted within the state's right of way to beautify the communities.

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 \$25,000 worth of wildflower seeds by the newly re-established Lady Bird Legacy Wildflower Campaign, administered through the Austin-American Statesman and Wildseed Farms, 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) **Waco District** – Consider a donation from NRG Texas Power LLC for sufficient funding, real property and utility adjustments necessary for the widening of the existing FM 39, and any construction costs associated with specific requests for enhancements to various points of access along the state's right of way (MO)

111688
GSD

This minute order considers a donation of \$400,763 to the Texas Department of Transportation (department) from NRG Texas Power LLC for sufficient funding, real

property and utility adjustments necessary for the widening of the existing FARM TO MARKET ROAD 39, and any construction costs associated with specific requests for enhancements to various points of access along the state's right of way. The donation will enable the department to improve FM 39 in Limestone County from FM 80 to the Leon County line.

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 acceptance would provide a significant public benefit and would 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 \$400,763 from NRG Texas Power LLC 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.

b. Eminent Domain Proceedings

Various Counties – noncontrolled and controlled access highways (see attached itemized list) (MO)

111689
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
Dallas	SH 183	4	0094-03-099	31
Denton	FM 407	2	1785-01-031	1
Denton	FM 423	1	1567-02-029	10
Robertson	SH 6	3	0049-06-070	42
Tarrant	SH 26	5	0363-01-123	158

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Caldwell	SH 130	B	3583-01-002	499A
Caldwell	SH 130	C	3583-01-002	600
Caldwell	SH 130	D	3583-01-002	633
Caldwell	SH 130	E	3583-01-002	684
Dallas	SH Loop 12	A	0581-02-115	20
Dallas	SH 183	S	0094-03-099	41
Guadalupe	SH 130	H	3583-02-002	831
Guadalupe	SH 130	G	3583-02-002	830
Guadalupe	SH 130	I	3583-02-002	837
Guadalupe	SH 130	P	3583-02-002	951
Guadalupe	SH 130	R	3583-02-002	957
Guadalupe	SH 130	F	3583-02-002	828
Guadalupe	SH 130	Q	3583-02-002	954, 958A, 958B
Guadalupe	SH 130	J	3583-02-002	850
Guadalupe	SH 130	O	3583-02-002	949
Guadalupe	SH 130	N	3583-02-002	946B\
Guadalupe	SH 130	M	3583-02-002	946A
Guadalupe	SH 130	L	3583-02-002	945
Guadalupe	SH 130	K	3583-02-002	944
Hill	IH 35	T	0014-07-094	20

Note: Exhibits 1 through 5 and A through T on file with minute order clerk.

c. Finance

(1) Accept the quarterly cash report (MO)

111690
FIN

Texas Transportation Code, §201.107 requires the Texas Transportation Commission (commission) to prepare a quarterly statement containing an itemized list of all the money received by the Texas Department of Transportation (department) and the source of the money and of all money paid by the department and the purpose of the payment. The statement shall be filed in the records of the department and a copy submitted to the Governor. The report must comply with each reporting requirement applicable to financial reporting provided by the General Appropriations Act.

The cash statement will be prepared for each quarter of the department's fiscal year. A quarterly cash report for the department for the first quarter of Fiscal Year 2009, ending November 30, 2008, attached as Exhibit A, has been prepared in accordance with Texas Transportation Code, §201.107.

IT IS THEREFORE ORDERED by the commission that the quarterly cash report attached as Exhibit A is approved.

Note: Exhibit A on file with minute order clerk.

(2) Accept the Quarterly Investment Report (MO)

111691
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds and funds under its control in investments authorized under the Public Funds Investment Act, in accordance with investment policies approved by the commission.

Government Code, §2256.005 requires the commission to adopt a written investment policy regarding the investment of its funds and funds under its control, including a separate written investment strategy for each of the funds or group of funds under its control, and to designate one or more officers or employees of the Texas Department of Transportation (department) as investment officer to be responsible for the investment of funds consistent with the investment policy.

Government Code, §2256.023 requires the designated investment officer to prepare and submit to the commission and the executive director, not less than quarterly, a written report of investment transactions for all funds covered by the Public Funds Investment Act for the preceding reporting period. The report must describe in detail the investment position of the department on the date of the report, and must be prepared jointly and signed by each investment officer.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, Minute Order 109732, dated July 29, 2004, Minute Order 109963, dated February 24, 2005, Minute Order 110087, dated May 26, 2005, Minute Order 110145, dated July 28, 2005, Minute Order 110617, dated July 27, 2006, Minute Order 111003, dated July 26, 2007, and Minute Order 111490, dated August 28, 2008. The commission has designated the department's Chief Financial Officer and Deputy Director of Finance as investment officers. The Debt Management Director is authorized to act as investment officer in the absence of the Chief Financial Officer and the Deputy Director of Finance.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the 2002 Project for the period ending November 30, 2008, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

IT IS THEREFORE ORDERED by the commission that the quarterly investment report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

d. Load Zones & Postings

Lamar and Ochiltree Counties – Revise load restrictions on various bridges on the state highway system (MO)

111692
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 Exhibits A and B 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: Exhibits A and B on file with minute order clerk.

e. Right of Way Dispositions and Donations

(1) Bell County – US 190, 1.4 miles south of SH Loop 363 – Consider the sale of surplus right of way (MO)

111693
ROW

In BELL COUNTY, on US 190, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 423, Page 415, Deed Records of Bell County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer 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 the sale of surplus land to the abutting landowner.

BNSF Railway Company is the abutting landowner and has requested that the surplus land be sold to the company for \$900.

The commission finds \$900 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to BNSF Railway Company for \$900; **SAVE AND EXCEPT**, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(2) Dallas County – SH Spur 354, north of Brookhollow Road in Dallas – Consider the sale of surplus right of way (MO)

111694
ROW

In the city of Dallas, DALLAS COUNTY, on STATE HIGHWAY SPUR 354, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 2170, Page 608, and Volume 1845, Page 130, Deed Records of Dallas County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer 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 the sale of surplus land to the abutting landowner.

Brook Hollow Golf Club is the abutting landowner and has requested that the surplus land be sold to the company for \$4,398.

The commission finds \$4,398 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than

\$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Brook Hollow Golf Club for \$4,398; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(3) Harris County – I-10 from east of Peek Road to west of SH 6 - Consider the acceptance of a donation of land for a highway improvement project (MO)

111695
ROW

In HARRIS COUNTY, on INTERSTATE 10 from east of Peek Road to west of SH 6, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Texas Children's Hospital (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$139,680, to the department for construction of a highway improvement project.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A on file with minute order clerk.

(4) McMullen County – SH 72 at SH 16 in Tilden – Consider the exchange of surplus right of way for a maintenance site addition (MO)

111696
ROW

In McMULLEN COUNTY, on STATE HIGHWAY 72, the State of Texas (state) acquired certain land for highway purposes by instruments recorded in Volume 22, Page 22, and in Volume 20, Page 293, Deed Records of McMullen County, Texas.

Portions of the land (surplus land), described in Exhibit A, are no longer 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 the exchange of surplus land as partial or full consideration for other land needed for a state highway purpose.

Jose Javier Verastegui, Jr., is the owner of land needed for a state highway purpose (new land), described in Exhibit B. He has requested that the surplus land be conveyed to him in exchange and as consideration for the new land.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land to Jose Javier Verastegui, Jr., in exchange and as full consideration for the conveyance of the new land to the state.

NOW, THEREFORE, the commission finds that the surplus land is 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 conveying all of the state's rights, title and interest in the surplus land to Jose Javier Verastegui, Jr., in exchange and as full consideration for the conveyance of the new land to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interest, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(5) Shelby County – US 96 north of M.L. Anderson Street in Tenaha – Consider the sale of surplus right of way (MO)

111697
ROW

In the city of Tenaha, SHELBY COUNTY, on US 96, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 166, Page 237, Deed Records of Shelby County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer 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 the sale of surplus land.

Tenaha Independent School District is the abutting landowner and has requested that the surplus land be sold to the school district for \$3,068.

The commission finds \$3,068 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying

all of the state's rights, title and interest in the surplus land to Tenaha Independent School District for \$3,068; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

f. Speed Zones

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

111698
TRF

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 speed limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by cities which have the authority to set speed limits on these sections of highways.

The department, in consultation with the Texas Commission on Environmental Quality, has also determined that the environmental speed limit on the segment of US HIGHWAY 377 established by Minute Order 108409, dated January 25, 2001, and listed in Exhibit D, is no longer necessary.

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 portions of minute orders establishing speed zones shown on the attached Exhibits C and D are canceled.

Note: Exhibits A through D 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 12:44 p.m.

APPROVED:

Deirdre Delisi, Chair
Texas Transportation Commission

xxx

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 January 29, 2009, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation