

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on January 26, 2012, in Austin, Texas. The meeting was called to order by Chairman Houghton. The meeting opened at 9:02 a.m. with the following commissioners present:

Texas Transportation Commission:

Ted Houghton	Chairman
Ned Holmes	Commissioner
Fred Underwood	Commissioner
Bill Meadows	Commissioner
Jeff Austin III	Commissioner

Administrative Staff:

Phil Wilson, Executive Director
Bob Jackson, Office of General Counsel
Rose Walker, Chief Clerk
JoLynne Williams, Chief Minute Order Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute Order 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 2:32 p.m. on January 18, 2011, as required by Chapter 551, of the Government Code, referred to as “The Open Meetings Act.”

ITEM 1. Approval of Minutes of the December 15 meeting of the Texas Transportation Commission

Commissioner Holmes made a motion, which was seconded, and the commission approved the minutes of the December 15, 2011, regular meeting, by a 5-0 vote.

ITEM 2. Public Hearing Project Selection Process

This item was presented by Finance Division Director Brian Ragland.

ITEM 8. Pass-Through Toll Program

a. El Paso County - Authorize the Camino Real Regional Mobility Authority (CRRMA) to participate in the funding of improvements to the state highway system in connection with department construction of direct connectors to the Loop 375 intersection at FM 659, rescind Minute Order 112346 that authorized a project development agreement for the CRRMA to develop the project, rescind Minute Order 112635 that authorized a pass-through toll agreement for the department to

develop the project with partial CRRMA funding, and authorize the executive director to enter into a project development agreement with the CRRMA to establish the funding and development responsibilities (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112958
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, Texas (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, including the addition of direct connectors at the intersection of Loop 375 at FM 659 from 0.5 miles northeast of Loop 375 on FM 659, to 0.53 miles south of FM 659 on Loop 375 (Loop 375 at FM 659 interchange project). 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.

Transportation Code, Chapter 370 authorizes a regional mobility authority to participate with the department in the development of a state highway project within its boundaries. The department proposes to develop and construct the Loop 375 at FM 659 interchange project with financial assistance from the CRRMA. A state infrastructure bank loan to the CRRMA in the amount of \$20 million for this project was approved by Minute Order 112668 on April 28, 2011 and the CRRMA proposes to use tax revenue from a city transportation reinvestment zone (TRZ) to assist with repayment.

On July 29, 2010, by Minute Order 112346, the commission approved the CRRMA's request to develop and construct the Loop 375 at FM 659 interchange project and authorized the executive director to negotiate and execute a project development agreement with the CRRMA. During negotiation of terms for the project development agreement, the parties mutually agreed that the project should be constructed by the department rather than the CRRMA and the agreement was never executed.

On March 31, 2011, by Minute Order 112635, the commission granted final approval of the CRRMA's request for pass-through toll financing for partial funding of the Loop 375 at FM 659 interchange project to be constructed by the department and authorized the executive director to negotiate and execute a pass-through toll agreement with the CRRMA. The CRRMA selected the pass-through toll financing method primarily to enable it to use tax revenue from the city's TRZ. During negotiation of terms for the pass-through toll agreement, HB 563 was enacted by the 82nd Texas Legislature and implemented statutory changes to allow a TRZ to be established for a project independent of the existence of pass-through toll financing. The CRRMA is requesting removal of the pass-through toll financing in order to use tax revenue from

the city's TRZ directly without the constraints and additional expense of the pass-through toll financing method.

The commission finds that monies are available under Category 2, Metropolitan and Urban Corridor Projects, of the 2010 Unified Transportation Program, approved by Minute Order 112237, dated April 29, 2010, for funding the state's portion of the Loop 375 at FM 659 interchange project. The commission further finds that the proposed improvement of the state highway system will provide for the expeditious completion of a critically needed project within the Loop 375 corridor that will relieve traffic congestion on the existing state highway system and improve mobility in El Paso County.

IT IS THEREFORE ORDERED by the commission that pursuant to Transportation Code, Chapter 370, the Camino Real Regional Mobility Authority is authorized to participate with the department in the development and construction of the Loop 375 at FM 659 interchange project, and the executive director is authorized to enter into a project development agreement with the CCRMA that provides for such improvements to the state highway system.

IT IS FURTHER ORDERED that Minute Order 112635, dated March 31, 2011, and Minute Order 112346, dated July 29, 2010, are rescinded.

b. El Paso County - Authorize the Camino Real Regional Mobility Authority (CRRMA) to participate in the funding of improvements to the state highway system in connection with department construction of Loop 375 mainlanes from approximately one mile west of US 54 to Business US 54 in far northeast El Paso County, rescind Minute Order 112636 that authorized a pass-through toll agreement for the department to develop the project with partial CRRMA funding, and authorize the executive director to enter into a project development agreement with the CRRMA to establish the funding and development responsibilities (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112959
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, Texas (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, including the construction of Loop 375 mainlanes from approximately one mile west of US 54 to Business US 54 in far northeast El Paso County (Loop 375 NE mainlanes project). 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.

Transportation Code, Chapter 370 authorizes a regional mobility authority to participate with the department in the development of a state highway project within its boundaries. The department proposes to develop and construct the Loop 375 NE mainlanes project with financial assistance from the CRRMA. A state infrastructure bank loan to the CRRMA in the amount of \$6 million for this project was approved by Minute Order 112667 on April 28, 2011 and the CRRMA proposes to use tax revenue from a city transportation reinvestment zone (TRZ) to assist with repayment.

On March 31, 2011, by Minute Order 112636, the commission granted final approval of the CRRMA's request for pass-through toll financing for partial funding of the Loop 375 NE mainlanes project and authorized the executive director to negotiate and execute a pass-through toll agreement with the CRRMA. The CRRMA selected the pass-through toll financing method primarily to enable it to use tax revenue from the city's TRZ. During negotiation of terms for the pass-through toll agreement, HB 563 was enacted by the 82nd Texas Legislature and implemented statutory changes to allow a TRZ to be established for a project independent of the existence of pass-through toll financing. The CRRMA is requesting removal of the pass-through toll financing in order to use tax revenue from the city's TRZ directly without the constraints and additional expense of the pass-through toll financing method.

The commission finds that monies are available under Category 2, Metropolitan and Urban Corridor Projects, of the 2010 Unified Transportation Program, approved by Minute Order 112237, dated April 29, 2010, for funding the state's portion of the Loop 375 NE mainlanes project. The commission further finds that the proposed improvement of the state highway system will provide for the expeditious completion of a critically needed project within the Loop 375 corridor that will relieve traffic congestion on the existing state highway system and improve mobility in El Paso County.

IT IS THEREFORE ORDERED by the commission that pursuant to Transportation Code, Chapter 370, the Camino Real Regional Mobility Authority is authorized to participate with the department in the development and construction of the Loop 375 NE mainlanes project, and the executive director is authorized to enter into a project development agreement with the CRRMA that provides for such improvements to the state highway system.

IT IS FURTHER ORDERED that Minute Order 112636, dated March 31, 2011, is rescinded.

c. **El Paso County** - Consider approving an amendment to a project development agreement for development of four direct connectors to the I-10/ Loop 375 intersection (Americas Interchange) between the Camino Real Regional Mobility Authority (CRRMA) and the department dated November 19, 2009, approved in Minute Order 111818, to permit: the addition of the City of El Paso as a party to the agreement with joint responsibility for development of the project; termination of a pass-through toll agreement between the CRRMA and the department dated July 22, 2010, approved in Minute Order 112045, that provided one of the financing methods for the project; and the addition of another direct connector to the Americas Interchange that will be designed by the CRRMA and constructed by the department (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112960
ADM

The Texas Transportation Commission (commission) by Minute Order 111818, dated May 28, 2009, authorized the Camino Real Regional Mobility Authority (CRRMA) to develop and construct direct connectors at the intersection of I-10 at Loop 375 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 to 0.19 miles west of Eastlake Boulevard (Project).

On November 19, 2009, the Texas Department of Transportation (department) and the CRRMA entered into a Project Development Agreement that provides for the construction of those improvements to the state highway system. The Project Development Agreement was amended three times with amendments effective March 8, 2010, July 20, 2010, and December 12, 2011, to reduce the scope of work, clarify the parties' obligations concerning quality control and roadway maintenance, and authorize the CRRMA to design an additional direct connector.

Partial funding of the Project under the Project Development Agreement was provided by a Pass-Through Agreement for Payment of Pass-Through Tolls (Pass-Through Agreement) executed effective July 23, 2010 by the department, the CRRMA, and the City of El Paso (city). HB 563, enacted by the 82nd Texas Legislature, amended Subchapter E, Chapter 222, Transportation Code, and added §222.108 that allows a municipality or county to establish a transportation reinvestment zone (TRZ) for a transportation project independent of the existence of pass-through toll financing. On January 24, 2012, the city exercised its option under that section to assume full responsibility for the Project with a further delegation of development responsibility to the CRRMA. The city and the CRRMA are requesting termination of the Pass-Through Agreement and the addition of the city as a party to the Project Development Agreement in order to use tax revenue from the city's TRZ for the Project without the constraints and additional expense of the pass-through toll financing method. The department will continue to exercise oversight of the Project as currently provided in the Project Development Agreement.

The department, the CRRMA, and the city estimate that construction of the direct connectors included in the Project Development Agreement scope of work, as amended, can be completed for less than the original estimated cost. The parties are requesting that the cost savings be combined with Proposition 12 bond funds and other available funding sources to add another direct connector to the Project. The CRRMA will be responsible for the design of the new direct connector and the department will be responsible for the construction.

The commission confirms its findings in Minute Order 111818, dated May 28, 2009, and determines that termination of the Pass-Through Agreement and the amendment of the Project Development Agreement to add the city as a party and develop an additional direct connector for the Project will provide for the expeditious completion of a critically needed project within the Loop 375 corridor that will relieve

traffic congestion on the existing state highway system and improve mobility in El Paso County.

IT IS THEREFORE ORDERED that termination of the Pass-Through Agreement is approved and the executive director is directed and authorized to enter into a termination agreement with the Camino Real Regional Mobility Authority and the City of El Paso.

IT IS FURTHER ORDERED that amendment of the Project Development Agreement to (i) add the City of El Paso as a party with full responsibility for the Project and a further delegation of development responsibility to the Camino Real Regional Mobility Authority and (ii) increase the scope of work to include construction by the department of an additional direct connector is approved, and the executive director is directed and authorized to enter into an amendment to the Project Development Agreement in accordance with the terms of this order.

ITEM 3. Aviation

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

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Aviation Division Director Dave Fulton.

112961
AVN

The Texas Department of Transportation (department) is authorized under the federal Aviation Development Act and the state Aviation Facilities Development and Financial Assistance Act to award federal and state 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 and state grant funds for the improvements.

On Thursday, December 8, 2011, 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 \$6,749,147.

Note: Exhibit A is on file with minute order clerk.

ITEM 4. Public Transportation

a. Various Counties – Approve changes to public transit projects previously approved for funding from Texas' portion of the American Recovery and Reinvestment Act (ARRA) (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason.

112962
PTN

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides \$64.1 billion nationwide for infrastructure projects, including \$1.5 billion for surface transportation grants to be administered by the Secretary of Transportation. Texas' share of the funding for transit is approximately \$372 million.

The Texas Transportation Commission (commission) has been designated by the governor as the administering agency for the Federal Transit Administration (FTA) program under 49 USC §5311, and has the authority to award approximately \$50 million of ARRA nonurbanized (rural) transit funds.

In Minute Order 111716, dated February 26, 2009, the commission approved the funding of approximately \$33 million in public transit projects. In Minute Orders 111778 dated April 30, 2009, and 111920 dated August 27, 2009, the commission approved the funding of additional public transit projects. In Minute Orders 112115, 112341, 112392, 112512, 112597, 112714 and 112888 dated January 28, 2010, July 29, 2010, August 26, 2010, December 16, 2010, February 24, 2011, June 30, 2011, and October 27, 2011 respectively, the commission approved a list of public transit projects with revised funding.

The department has continued to monitor the progress of these projects to ensure that they comply with the criteria identified in the minute orders, the ARRA, and the project selection requirements established by FTA. As a result of these efforts, a proposed list of transit projects has been developed with revised funding, which is set forth in Exhibit A. There is no net change in transit funding. No other previously approved public transit projects are affected. All projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required.

IT IS THEREFORE ORDERED by the commission that the project as set forth in Exhibit A is hereby approved for funding under the provision of the ARRA.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to proceed with the sub-grant award for the transit agreements for the activities described in Exhibit A, and to enter into any other necessary agreements associated with those projects and activities.

IT IS FURTHER ORDERED that the department shall track the progress of the projects set forth in Exhibit A separately from other ongoing projects and place information regarding the status of these projects on the department's website.

Note: Exhibit A is on file with minute order clerk.

b. Various Counties – Award Federal §5316, Job Access Reverse Commute (JARC) grant program funds to Golden Crescent Regional Planning Commission and Ark-Tex Council of Governments (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason.

112963
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 commission recognizes the importance of the success of JARC projects and finds that \$141,389 in JARC funds are available for award from projects that were unable to fully expend previously awarded funds.

The commission also recognizes that FTA has informed the department that Texas would lose any remaining balance unless similar projects are selected and therefore desires to award \$97,000 to Golden Crescent Regional Planning Commission and \$44,389 to Ark-Tex Council of Governments to purchase replacement vehicles to continue current JARC services.

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 awards as described above, submit the necessary state application to the FTA and enter into the necessary contracts.

c. Various Counties - Award transportation development credits to various transit providers (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason.

112964
PTN

The Texas Transportation Commission (commission) desires to award 2,772,438 Transportation Development Credits (TDC) to six transit agencies listed in Exhibit A to be used as the local match for federally funded capital and planning projects.

The commission recognizes that state and federal law permits the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission. The commission finds that TDC investments in:

- Transit vehicles will improve air quality by replacing older vehicles with newer models which meet current emission standards and increase the value of the transportation assets by investing into the replacement of depreciated rolling stock;
- Planning will reduce congestion and improve air quality by coordinating the planning of multimodal transportation projects that reduce the need for single occupant vehicle travel;

- Facilities and shelter/access improvements increase the value of the transportation assets by improving or adding system infrastructure and capacity designed to provide transit services to the citizens of Texas.

The commission finds that the projects listed in Exhibit A are eligible to receive TDC and satisfy the criteria of 43 TAC §5.73, as described above.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation.

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 awards as described in Exhibit A, and enter into the necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A is on file with minute order clerk.

ITEM 5. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Final Adoption

Chapter 3 - Public Information (MO)

Repeal of §3.20, Purpose, and New §3.20, Purpose; Amendments to §3.21, Applicability, §3.22, Definitions, §3.23, Filing a Complaint, and §3.24, Notice to Consumers and Service Recipients; Repeal of §3.25, Complaint Resolution; New §3.25, Complaint Resolution and §3.26, Complaint Data Collection, Analysis, and Reporting (Complaint Resolution)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Government Relations Office Interim Director Coby Chase.

112965
GRO

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §3.20 and §3.25, amendments to §§3.21 - 3.24, and new §3.20, §3.25, and §3.26 all relating to complaint resolution 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 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 repeal of §3.20 and §3.25, amendments to §§3.21 - 3.24, and new §3.20, §3.25 and §3.26 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 are on file with minute order clerk.

b. Proposed Adoption

(1) Chapter 1 - Management (MO)

Amendments to §1.4, Public Access to Commission Meetings, and §1.5, Public Hearings (Public Meetings and Hearings)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by General Counsel Bob Jackson.

112966
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.4 and §1.5 relating to public meetings and hearings to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed 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 §1.4 and §1.5 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 and B are on file with minute order clerk.

(2) Chapter 10 - Ethical Conduct by Entities Doing Business with the Department (MO)

Amendments to §10.6, Conflict of Interest (General Provisions), and §10.102, Grounds for Sanctions (Required Conduct by Entities Doing Business with the Department)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by General Counsel Bob Jackson.

112967
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §10.6, Conflict of Interest, and §10.102, Grounds for Sanctions, both relating to Ethical Conduct by Entities Doing Business with the Department to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed 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 §10.6 and §10.102 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 C are on file with minute order clerk.

c. Rule Review

In accordance with Government Code, §2001.039, Readoption of 43 Texas Administrative Code Chapter 28, Oversize and Overweight Vehicles and Loads, Subchapter F, Highway Crossings by Oversize and Overweight Vehicles and Loads, Subchapter G, Port of Brownsville Port Authority Permits, and Subchapter H, Chambers County Permits (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by General Counsel Bob Jackson.

112968
OGC

During November and December 2011, the Texas Department of Transportation reviewed Title 43 Texas Administrative Code, Part 1, Chapter 28, Oversize and Overweight Vehicles and Loads, Subchapter F, Highway Crossings by Oversize and Overweight Vehicles and Loads, Subchapter G, Port of Brownsville Port Authority Permits, and Subchapter H, Chambers County Permits. The Notice of Intent to review was published in the *Texas Register* on November 25, 2011 (36 TexReg 8073).

No comments were received regarding this rule review.

Independent of the rule review, the commission contemporaneously adopted amendments to §§28.90-28.92 on December 15, 2011. No comments were received regarding the amendments.

The Texas Transportation Commission (commission) finds that the reasons for adopting these rules continue to exist.

IT IS THEREFORE ORDERED by the commission that the reviewed rules, as so amended, are readopted and that the executive director provide for filing with the Office of the Secretary of State, Texas Register Division, a notice readopting these rules.

ITEM 6. Office of Compliance and Ethics Report

This item was presented by Office of Compliance and Ethics Director Suzanne Mann.

ITEM 7. Rail Transportation

Appoint a public member to the board of directors of the Lone Star Rail District (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Rail Division Director Bill Glavin.

112969
RRD

Transportation Code §173.051 authorizes the creation of a commuter rail district for the purpose of providing commuter rail service between two municipalities which meet certain criteria.

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 Lone Star Rail District (District) is governed by a board of directors (board). The board is responsible for 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 for the public members are now staggered in alternate two year periods.

Transportation Code §173.102 provides that the Texas Transportation Commission (commission) will appoint two public directors to the board of the District.

The commission, by Minute Order 109121, dated December 19, 2002, originally appointed J. Tullos Wells of San Antonio 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, a third two-year term by Minute Order 110814 dated January 25, 2007, a fourth two-year term by Minute Order 111214 dated January 31, 2008, and a fifth two-year term by Minute Order 112101 dated January 28, 2010.

The commission has determined that it is in the best interest of the citizens of central Texas for Mr. Wells to be reappointed for a sixth 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 J. Tullos Wells be reappointed as a member of the board of directors of the Lone Star Rail District for a sixth term. The term will start February 1, 2012, and will expire January 31, 2014.

ITEM 9. Toll Operations

a. Various Counties – Approve the selection of the best value proposal to provide statewide toll system integration and maintenance for current and future toll facilities, and authorize the executive director to negotiate and execute an agreement (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass.

112970
CFO

Transportation Code §228.052 authorizes the Texas Department of Transportation (department) to enter into an agreement with one or more persons to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system, including the operation of toll plazas and lanes and customer service centers and the collection of tolls.

The Texas Transportation Commission (commission) has adopted rules located at Title 43, Texas Administrative Code §27.83 governing the requirements for soliciting proposals from private entities to operate a department toll project or system.

On November 18, 2011, the department issued a request for proposals (RFP) to procure services from a prime vendor for statewide toll system integration and maintenance, including the development, infrastructure design coordination, construction, implementation, and testing of roadside equipment and systems associated with toll collection, as well as the maintenance of new and existing equipment and systems.

On January 4, 2012, proposals were received from three proposer teams, including (in alphabetical order): Raytheon, Telvent and TransCore. The department reviewed each proposal for compliance with minimum qualifications. Proposals meeting minimum qualifications were evaluated by the department. The department evaluated technical and price proposals from all three proposers.

The technical proposals were evaluated in the following categories: system approach, technical approach, key personnel qualifications, project management, and quality management approach. Each proposal was evaluated and assigned adjectival ratings in each category. Points were assigned to the proposals based on those ratings and the weightings of the individual evaluation criteria. The points assigned to the technical proposals pursuant to the qualitative evaluations were then added to the points assigned to the price proposals to determine the total number of points received by each proposal. The proposal with the highest score was deemed to provide the apparent best value.

The evaluation and scoring of each proposal resulted in the proposals being ranked as follows:

(1) TransCore, (2) Raytheon, and (3) Telvent. The proposal submitted by TransCore was accordingly determined to provide the apparent best value.

IT IS THEREFORE ORDERED by the commission that the determination that the proposal submitted by TransCore provides the apparent best value to the department is approved, and the department is authorized and directed to commence and complete negotiations with TransCore as necessary to finalize the agreement.

IT IS FURTHER ORDERED that the agreement is awarded to TransCore subject to and effective upon the successful conclusion of negotiations and the mutual execution and delivery of the agreement by the executive director of the department and the proposer.

b. Establish fees to be charged for administering electronic toll collection customer accounts (MO)

Commissioner Meadows made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass.

112971
CFO

Transportation Code §228.057(d) provides that the Texas Department of Transportation (department) may charge reasonable fees for administering electronic toll collection customer accounts.

Title 43, Texas Administrative Code, §27.82(c) provides that the Texas Transportation Commission (commission) by minute order will establish customer account fees. In establishing customer account fees, the commission will consider the cost of operations, including the estimated cost to the department for labor, materials, storage, and bank fees as well as the requirements of project bond covenants.

The department offers customers the opportunity to use auto-replenishment, which allows them to keep sufficient funds in their accounts by automatically charging a credit card when the funds in the account fall below a pre-set low balance threshold. The use of auto-replenishment is the most efficient way to pay tolls and reduces the likelihood that the customer will incur toll violations. In order to encourage increased use of auto-replenishment, the commission has determined that those customers will not be charged a fee for the issuance of a standard tag.

The department has conducted an analysis of annual operational costs and recommends the following fee structure:

- Standard tags (including replacement tags) - \$13.85 per tag for accounts that do not participate in auto-replenishment;
- Specialty tags - \$45.00 per tag, which includes a \$35.00 refundable deposit;
- Mailed or faxed account statements - \$1.15 per statement;
- Checks returned for insufficient funds - \$25.00 per check;
- Account reactivation - \$8.50 per account, per reactivation.

IT IS THEREFORE ORDERED by the commission that the department is authorized to charge customer account fees in the amounts stated above, effective March 1, 2012.

ITEM 10. Comprehensive Development Agreements

Consider the approval of the payment of compensation to ZAI/ACS 69 Partners, Inc., in connection with a claim for reimbursement of costs incurred during the procurement of the I-69 comprehensive development agreement (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112972
TTA

In Minute Order 110698, dated September 28, 2006, the Texas Transportation Commission (commission) authorized and directed the Texas Department of Transportation (department) to issue a request for proposals (RFP) for the development of the I-69 corridor from Northeast Texas to Mexico and other potential facilities to the extent necessary for connectivity, mobility, safety, and financing.

Minute Order 110698 further authorized the department to pay to each proposer that submits a responsive, but unsuccessful, proposal for the I-69 project an amount based upon the value of the work product provided in the proposal that can, as determined by the executive director of the department or designee, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$750,000.

In March 2008, two proposer teams submitted proposals in response to the RFP issued by the department for a comprehensive development agreement (CDA) for the planning, development, design and construction of the I-69 corridor. In Minute Order 111409, dated June 26, 2008, the commission conditionally awarded the CDA to ZAI/ACS 69 Partners, Inc. (ZAI/ACS). Following negotiation of final terms and review by the Legislative Budget Board, the CDA was submitted in November 2009 to the Office of the Attorney General for legal sufficiency review as required by statute.

During the two and a half years after conditional award, ZAI/ACS extended its proposal validity period fourteen times at TxDOT's request. The proposal ultimately expired in November 2010, without a final award of the CDA.

On November 15, 2010, ZAI/ACS submitted an invoice to TxDOT in the amount of \$3,440,332.84 for reimbursement of "I-69 CDA Procurement Termination Cost." The invoice described four categories of expenses for which reimbursement was sought: (1) costs of preparation and submittal of statement of qualifications and proposal (approximately \$1.5 million); (2) costs to respond to department inquiries and requests for information regarding the proposal (approximately \$100,000); (3) costs of negotiating and finalizing the CDA for execution (approximately \$300,000); and (4) costs incurred between December 2008 and October 2010 for presentations to stakeholders, monitoring status of projects, responding to department requests, fostering relationships with key stakeholders, management mobilization, and preparation of CDA execution documents (approximately \$840,000). The invoice also includes a line item for overhead and profit (approximately \$620,000).

As authorized by the commission, the department previously made a payment of \$750,000 to each of the two proposer teams (Cintra and ZAI/ACS) in January 2011, as payment for work product in accordance with the RFP. Because the ZAI/ACS invoice was submitted prior to the department's payment of the \$750,000 stipend amount, the claim for reimbursement of proposal preparation and related costs has been reduced by that amount.

Department staff has reviewed and analyzed the invoices and backup supporting documentation provided by ZAI/ACS. After that review and analysis, and further discussions with ZAI/ACS, department staff recommends that ZAI/ACS be reimbursed the amount of \$1,095,275.44 based on mobilization of contract staff and work performed by ZAI/ACS in anticipation of the execution of the CDA that the department can use in the development of the I-69 corridor.

IT IS THEREFORE ORDERED by the commission that the department is authorized to make a payment to ZAI/ACS in the amount of \$1,095,275.44 in settlement and in full satisfaction of the ZAI/ACS claim for "I-69 CDA Procurement Termination Cost".

IT IS FURTHER ORDERED that this payment is conditioned on ZAI/ACS waiving or withdrawing any further claims in connection with the I-69 project and procurement and releasing the commission and the department from any further claims in connection with the I-69 project and procurement.

ITEM 11. Unified Transportation Program (UTP)

Approve preliminary funding levels for the UTP for fiscal years 2013 through 2022 (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass.

112973
CFO

Transportation Code, §201.991 provides that the Texas Department of Transportation (department) shall develop a Unified Transportation Program (UTP) covering a period of 10 years to guide the development of and authorize construction of transportation projects.

The Texas Transportation Commission (commission) has adopted rules located at Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects. The rules include guidance regarding the development of the UTP and any updates to the program, as well as public involvement requirements.

Based on the current financial forecast, the department recommends that the funding allocations set forth in Exhibit A be utilized during the development of the 2013 UTP. Exhibit A reflects only preliminary funding levels within each category and is subject to change based on input from the department's strategic partners and members of the public, as well as updated financial forecast information.

IT IS THEREFORE ORDERED by the commission that the preliminary funding levels for fiscal years 2013 through 2022 set forth in Exhibit A are approved, and the executive director or his designee is directed to proceed with the development of the 2013 UTP utilizing those preliminary funding levels.

Exhibit A is on file with minute order clerk.

ITEM 12. Debt & Portfolio Management

a. Approve the resolution authorizing the issuance of the unissued remainder of the \$5 billion in highway improvement general obligation (HIGO) bonds authorized by the constitutional provision and enabled under Transportation Code, §222.004; approve the preliminary official statement and other documents relating to the issuance of the bonds and authorize designated department officials to take all actions necessary to deliver one or more series of bonds; approve an application to the Bond Review Board for authority to issue additional bonds and state volume cap related to private use (MO)

Commissioner Austin made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass.

112974
CFO

Section 49-p, Article III of the Texas Constitution (Constitutional Provision) and Transportation Code, Section 222.004 (Section 222.004), and other applicable law, including Government Code, Chapter 1371, and HB 1 General Appropriation Bill, 82nd Legislature, Regular Session, authorize the Texas Transportation Commission (commission) to issue general obligation bonds, notes and other public securities (bonds) and to enter into credit agreements. The commission may issue general obligation bonds for one or more of the following purposes: 1) to pay, or reimburse the State Highway Fund for payment of, all or part of the costs of highway improvement projects including loans for highway improvement projects; 2) to pay (a) the costs of administering projects authorized under Section 222.004 and HB 1 General Appropriation Bill, 82nd Legislature, (b) the costs or expense of the issuance of the bonds or (c) all or part of a payment owed or to be owed under a credit agreement and 3) refunding outstanding bonds.

Pursuant to Minute Order 112100 adopted by the commission on January 28, 2010, the commission approved a "Master Resolution Establishing the Texas Transportation Commission Highway Improvement General Obligation Financing Program" (Master Resolution) to establish a general obligation financing program in an initial aggregate principal amount not to exceed \$5 billion pursuant to which the commission may issue bonds and execute credit agreements secured by and payable from the general revenues of the State pursuant to the Constitutional Provision and Section 222.004.

Pursuant to the "First Supplemental Resolution to the Master Resolution Establishing the Texas Transportation Commission Highway Improvement General Obligation Financing Program" also approved by Minute Order 112100, the commission issued \$815,420,000 aggregate principal amount of "Texas Transportation Commission State of Texas Highway Improvement General Obligation Bonds, Taxable Series 2010A (Build America Bonds – Direct Payment) and \$162,390,000 aggregate principal amount of "Texas Transportation Commission State of Texas Highway Improvement General Obligation Bonds, Series 2010B."

In furtherance of financing highway improvement projects and the allocation of funding by the commission pursuant to Minute Order No. 112823 adopted on September 29, 2011 the commission has determined it to be in the best interest of the State to issue additional general obligation bonds for highway improvement projects.

The Master Resolution, together with the "Second Supplemental Resolution to the Master Resolution Establishing the Texas Transportation Commission Highway Improvement General Obligation Financing Program" (Second Supplement), prescribes the terms, provision and covenants related to the issuance of additional general obligations bonds in one or more series entitled "Texas Transportation Commission State of Texas Highway Improvement General Obligation Bonds" with such series designation as set forth in the Second Supplement, in the aggregate principal amount not to exceed \$4,000,709,953.34.

Under the Second Supplement, the Department Representative, as defined in the Second Supplement, is authorized to determine the method of sale for the bonds, and shall further determine such price, interest rate or rates and such terms of the bonds, as prescribed in the award certificate in accordance with the Second Supplement.

The commission understands that a preliminary official statement (POS) and final official statement (Official Statement) in substantially the form of the POS will be distributed in connection with the public offering and sale of the bonds, which POS does, and which Official Statement will, include a description of the general obligation pledge of the State's full faith and credit.

Under the Second Supplement, the Department Representative is authorized to price all or a portion of the bonds as variable rate bonds, which may require the use of liquidity provider(s), tender agents, remarking agents and other entities performing similar functions in connection with any such variable rate bonds.

Pursuant to Minute Order 112801 dated August 25, 2011, the commission approved a revised Derivative Management Policy which policy established a Derivative Committee to review and make recommendations regarding the commission's use of derivative financial products. The commission is authorized to enter into credit agreements related to the bonds with some or all of the existing swap providers previously approved by the commission and any qualified swap providers as determined by the Department Representative in compliance with the Derivative Management Policy when, in the judgment of the Department Representative, and in accordance with the commission's Derivative Management Policy, Government Code, Chapter 1371, and the Second Supplement, the transaction is expected to benefit the commission and the State.

Government Code, Section 1231.041 provides that a state agency may not issue a state security, including a bond, unless the Texas Bond Review Board (Board) approves the issuance. Government Code, Section 1231.042 provides that, in order to obtain the approval of the Board to issue a state security, a state agency must apply to the Board in the manner prescribed by the Board.

There remains \$1 billion in general obligation bonds previously approved by the Board on July 30, 2010; however, additional Board approval is necessary for the issuance of any additional general obligation bonds above \$1 billion.

Department staff is in the process of determining which highway improvement projects may include private business use or other issues that may require the issuance of taxable bonds or obtaining State volume cap through application to the Board's private activity bond program.

IT IS THEREFORE ORDERED by the commission that the chairman of the commission and executive director of the department are authorized and directed to execute and deliver the bonds and such other documents and certificates necessary to carry out the intent of this order and the Department Representative, on behalf of the commission, is authorized and directed to execute and deliver the Second Supplement, any bond purchase contract, award certificate and paying agent agreement (collectively, Program Documents), and the Program Documents are approved in substantially the form presented to the commission with such changes as the Department Representative executing the same may approve, such approval to be conclusively evidenced by execution of the Program Documents.

IT IS FURTHER ORDERED by the commission that the Department Representative, on behalf of the commission, is authorized and directed to execute and deliver any remarketing agreement, liquidity agreement, tender agent agreement and

similar agreements necessary for any variable rate bonds (collectively, Variable Rate Documents), and the Variable Rate Documents and similar agreements in connection with any variable rate bonds are approved in substantially the form previously approved by the commission in connection with the Outstanding Mobility Fund Debt, as defined in the Second Supplement, with such changes as the Department Representative executing the same may approve, such approval to be conclusively evidenced by execution of the Variable Rate Program Documents.

IT IS FURTHER ORDERED by the commission that any necessary ancillary documents in connection with the issuance of the bonds, the Program Documents and the Variable Rate Documents, if any, are hereby approved, and the Department Representative, on behalf of the commission, is authorized and directed to execute and deliver such documents, including the application and submission to the Board, as necessary.

IT IS FURTHER ORDERED by the commission that the Department Representative, on behalf of the Commission, is hereby authorized to enter into master swap agreements similar to the master swap agreements executed in connection with the Outstanding Texas Mobility Fund Debt and any appropriate confirmation for any interest rate swap transaction relating to bonds with any or all of the existing swap providers previously approved by the commission and any other qualified swap providers as determined by the Department Representative in compliance with the Derivative Management Policy, with such changes as the Department Representative executing the same may approve, such approval to be conclusively evidenced by execution of the confirmation in accordance with the Derivative Management Policy and the Second Supplement.

IT IS FURTHER ORDERED by the commission that the POS and the Official Statement are approved for distribution with such changes as the Department Representative executing the same may approve, such approval to be conclusively evidenced by execution of the POS and the Official Statement, and the POS and Official Statement are deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Commission (rule) with such omissions as permitted by the rule.

IT IS FURTHER ORDERED that the Department Representative, on behalf of the commission, is authorized to make application to the Board from time to time as necessary to receive further approval for additional bonds or State volume cap in connection with certain projects funded with the proceeds of the bonds.

IT IS FURTHER ORDERED by the commission that the highway improvement projects to be financed with the proceeds of the bonds issued pursuant to the Master Resolution and the Second Supplement, and in accordance with, Minute Order 112823 adopted on September 29, 2011, are necessary highway improvements and related structures, including the bike/pedestrian bridge at MoPac (Loop 1) near Barton Creek in Austin, for the efficient and safe functioning of the state highway system.

IT IS FURTHER ORDERED by the commission that each member of the commission, each Department Representative, the Executive Director and General Counsel of the department are authorized and directed to perform all such acts and execute such documents, certificates, notices and applications, including execution of certifications to the underwriters, the Attorney General, the Comptroller of Public

Accounts, the Board and other parties, as may be necessary to carry out the intent of this order and other orders of the commission relating to the general obligation financing program established by the Master Resolution, the Second Supplement, the Program Documents and the Variable Rate Documents, if any.

Exhibit A is on file with minute order clerk.

b. Approve the replacement of the liquidity provider for the Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds, Series 2005-B; approve the substantially final form and distribution of a remarketing memorandum for the remarketing of the Series 2005-B Bonds with the new liquidity facility; authorize an amendment to the remarketing agreement with Jefferies and Company, Inc.; take all other actions necessary, including the approval of a liquidity facility agreement and any other agreements relating to the replacement of the liquidity provider (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass.

112975
CFO

Pursuant to Minute Order 110081, dated May 4, 2005 (authorizing minute order), the Texas Transportation Commission (commission) has approved a Master Resolution Establishing the Texas Transportation Commission Mobility Fund Revenue Financing Program, as subsequently amended (Master Resolution), to establish a revenue financing program (Mobility Fund Revenue Financing Program) pursuant to which the commission may issue obligations including bonds, notes and other public securities and execute credit agreements secured by and payable from a pledge of and lien on all or part of the moneys in the Mobility Fund. Under such Master Resolution, the commission has approved eight supplemental resolutions to the Master Resolution which authorized the issuance of eight series of Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds.

The 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 of the Master Resolution (Second Supplement). There is currently \$82,315,000 aggregate principal amount of the Series 2005-B Bonds currently outstanding.

Under the Second Supplement, Series 2005-B Bonds are authorized to be tendered for purchase from time to time by the purchasers pursuant to the provisions of the Second Supplement and the commission must maintain a liquidity agreement with a liquidity provider to pay the purchase price of tendered bonds in the event the Series 2005-B Bonds are not remarketed by the remarketing agent.

As part of the ongoing management of the Mobility Fund Revenue Financing Program, the commission has been requested to consider several actions with respect to the Series 2005-B Bonds.

The Series 2005-B Bonds current liquidity agreement with DEPFA Bank, plc, acting through its New York Branch (DEPFA) expires April 6, 2012 and the commission must take action to replace DEPFA prior to the expiration date.

The Texas Department of Transportation (department) has solicited requests for proposal from various banks relating to providing liquidity services to the commission for the Series 2005-B Bonds and has determined that Royal Bank of Canada meets the requirements of the Second Supplement to act as the liquidity provider and should be selected, on the basis of its qualifications and proposed cost structure, as the liquidity provider for the Series 2005-B Bonds pursuant to the terms of the Second Supplement and a standby bond purchase agreement (Liquidity Agreement) between the commission and Royal Bank of Canada, substantially in the form attached hereto with such changes as approved by the Chief Financial Officer

ITEM 13. Transportation Planning

a. Various Counties - Concurrence with the Regional Transportation Council (RTC) of the North Central Texas Council of Governments' funding of construction and other project development costs of projects to be advanced through the use of payments received from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland.

112976
FIN

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA) and the surplus revenue of a toll project or system.

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which the project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may assign the responsibility for allocating money in a subaccount to the metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (SH 121 payments).

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 121 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another

governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (commission) approved, and authorized the department's executive director to enter into, a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 121 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 121 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

In Minute Order 112015, dated October 29, 2009, the commission clarified that commission concurrence in projects selected by the RTC to be financed with surplus toll revenue and CDA concession payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. The minute order requires the department to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

Exhibits A through C are on file with minute order clerk.

b. **Various Counties** - Concurrence with the Regional Transportation Council (RTC) of the North Central Texas Council of Governments' funding of construction and other project development costs of projects to be advanced through the use of payments received from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate and maintain the SH 161 toll project from I-20 to SH 183 in Dallas County (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland.

112977
FIN

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA) and the surplus revenue of a toll project or system.

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which the project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may

assign the responsibility for allocating money in a subaccount to the metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 161 toll project from I-20 to SH 183 in Dallas County (SH 161 payments).

Pursuant to Transportation Code, §228.012, the SH 161 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 161 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (commission) approved, and authorized the department’s executive director to enter into a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 161 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 161 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

In Minute Order 112015, dated October 29, 2009 the commission clarified that commission concurrence in projects selected by the RTC to be financed with surplus toll revenue and CDA concession payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. The minute order requires the department to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

Exhibits A through C are on file with minute order clerk.

ITEM 14. Obligation Limit and Fund 6 Cash Reports

a. Quarterly status report on the FY 2012 Obligation Limit, the actual obligations utilized, proposed remaining highway maintenance and construction contract letting for the fiscal year and an update on motor fuel tax receipts

This item was presented by Finance Division Director Brian Ragland.

b. Quarterly report on FY 2012 State Highway Fund 6 cash status

This item was presented by Finance Division Director Brian Ragland.

ITEM 15. Contracts

Award or reject contracts for maintenance, highway and building construction

a. Highway Maintenance and Department Building Construction

(see attached itemized list) (MO)

Commissioner Austin made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Construction Division Director John Obr.

112978
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 4 and 5, 2012.

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.

b. Highway and Transportation Enhancement Building Construction
(see attached itemized list) (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Construction Division Director John Obr.

112979
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 4 and 5, 2012.

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 16. Eminent Domain Proceedings

Various Counties – Authorize the filing of condemnation proceedings to acquire real property by eminent domain for non-controlled and controlled access highways (see attached list) (MO)

Commissioner Austin made a motion that the Texas Transportation Commission authorize the Texas Department of Transportation to use the power of eminent domain

to acquire the properties described in the minute order set forth in the agenda for the current month for construction, reconstruction, maintenance, widening, straightening, or extending the highway facilities listed in the minute order as a part of the state highway system, and that the first record vote applies to all units of property to be condemned. The motion was seconded and the following minute order was approved by Chairman Houghton, Commissioner Holmes, Commissioner Underwood, Commissioner Meadows and Commissioner Austin (a vote of 5 – 0). This item was presented by Right of Way Division Director John Campbell.

112980
ROW

To facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, the Texas Transportation Commission (commission) finds that public necessity requires the laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating of the highway facilities listed below as a part of the State Highway System (highway system).

As provided for by Transportation Code, Chapter 203, Subchapter D, including Sections 203.051, 203.052, and 203.054, the commission finds and determines that each of the parcels of land listed below, and more particularly described in the attached Exhibits (parcels), are necessary or convenient as a part of the highway system to be constructed, reconstructed, maintained, widened, straightened, or extended (constructed or improved) and it is necessary to acquire fee simple title in the parcels or such lesser property interests as set forth in the attached Exhibits.

The commission finds and determines that the highway facilities to be constructed or improved on the parcels identified and listed below under "CONTROLLED ACCESS" are designated as a Controlled-Access Highway in accordance with Transportation Code, Section 203.031; and where there is adjoining real property remaining after acquisition of a parcel, the roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits A - O. Where there is adjoining real property remaining after acquisition of a parcel with respect to the highway facilities to be constructed or improved on the parcels identified as listed below under "NON-CONTROLLED ACCESS," roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits 1 - 10, in accordance with Transportation Code, Sections 203.002 and 203.003.

The commission finds and determines that condemnation of the parcels is required.

IT IS THEREFORE ORDERED that the initiation of condemnation proceedings for the parcels is adopted and authorized by a single order for the parcels, and this first vote by the commission applies to all of the parcels.

IT IS FURTHER ORDERED that the executive director is hereby authorized to proceed to condemnation on the parcels and directed to transmit or cause to be transmitted this request of the commission to the Office of the Attorney General to file

or cause to be filed against all owners, lienholders, and any owners of any other interests in the parcels, proceedings in condemnation to acquire in the name of and on behalf of the state, fee simple title to each parcel or such lesser estates or property interests as are more fully described in each of the attached Exhibits, save and excepting oil, gas, and sulfur, as provided by law, as follows:

NON-CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Collin	FM 455	8	0816-04-046	28
Collin	FM 455	5	0816-04-046	2
Collin	SH 289	4	0091-03-023	26
Collin	SH 289	2	0091-03-023	18
Collin	SH 289	3	0091-03-023	22
Collin	SH 289	10	0091-04-056	4
Collin	SH 289	6	0091-04-056	9
Jefferson	FM 365	9	0932-01-099	19
Jefferson	FM 365	1	0932-01-099	1
Montgomery	FM 1774	7	1400-04-026	121

CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Bell	IH 35	B	0015-04-083	104, 104AC
Bell	IH 35	I	0015-04-083	41
Bell	IH 35	N	0015-04-083	6
Bell	IH 35	O	0015-04-083	87
Bell	IH 35	H	0015-04-083	29
Harris	IH 610	K	0271-14-225	316
Harris	IH 610	A	0271-14-225	310
Harris	IH 610	J	0271-14-225	315
McLennan	IH 35	E	0015-01-220	18
McLennan	IH 35	C	0015-01-220	5
McLennan	IH 35	G	0015-01-220	58
McLennan	IH 35	F	0015-01-220	19
McLennan	IH 35	L	0015-01-220	1
McLennan	IH 35	M	0015-01-220	47
McLennan	IH 35	D	0015-02-058	16

ITEM 17. Routine Minute Orders

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute orders by a vote of 5 – 0. This item was presented by Executive Director Phil Wilson.

(1) Traffic Operations Division – Consider a donation from the American Traffic Safety Services Association (ATSSA) for a department employee’s travel expenses to

attend the 42nd Annual Convention and Traffic Expo meeting in Tampa, Florida from February 12–16, 2012 (MO)

112981
GSD

This minute order considers a donation from the American Traffic Safety Services Association (ATSSA) for a Texas Department of Transportation (department) employee’s travel expenses to attend the 42nd Annual Convention and Traffic Expo Meeting in Tampa, Florida, from February 12 – 16, 2012. The amount is estimated to be \$2,654.16.

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.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation estimated at \$2,654.16 from ATSSA is approved for acceptance. 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) **Brownwood District** – Consider a donation from Vulcan Construction Materials, LP., to fund the engineering design work and infrastructure improvements for four

railroad crossings, including CR 546, north of I-20; the north and south frontage roads and two underpasses on I-20; and FM 570, south of I-20 (MO)

112982
GSD

In the city of Lubbock, LUBBOCK COUNTY, on US 82, the State of Texas acquired certain land for highway purposes by instruments recorded in the Deed Records of Lubbock County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for state highway purposes.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Department of Transportation advertised the surplus land for sale.

Ty Lane submitted a bid of \$70,000, which was the only bid received.

The Texas Transportation Commission (commission) finds \$70,000 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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 Ty Lane for \$70,000; **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.

(3) **Bryan District** – Consider a donation from Med Place 1, LTD., for the costs associated with the construction of a deceleration lane on the west frontage road of US 290 in Brenham at the entrance to St. Joseph's Hospital Clinic and for the state's direct and indirect costs to add this work to a current highway improvement project by change order and to inspect the construction (MO)

112983
GSD

In the city of Lubbock, LUBBOCK COUNTY, on US 82, the State of Texas acquired certain land for highway purposes by instruments recorded in the Deed Records of Lubbock County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for state highway purposes.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Department of Transportation advertised the surplus land for sale.

Ty Lane submitted a bid of \$70,000, which was the only bid received.

The Texas Transportation Commission (commission) finds \$70,000 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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 Ty Lane for \$70,000; **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.

(4) Bryan District – Consider a donation from Walker County Proud Communities for wildflower seeds to be planted within the state’s right of way (MO)

112984
GSD

This minute order considers a donation from Walker County Proud Communities for wildflower seeds valued at approximately \$1,000. The wildflower seeds will be used to plant within the state’s right of way to beautify the community.

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.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of wildflower seeds valued at approximately \$1,000 from Walker County Proud Communities is approved for acceptance. The executive director or the executive director’s designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(5) Texas Turnpike Authority Division – Consider a donation from SH 130 Concession Company for one half of the estimated costs of constructing offsite SH 130 traffic signs and the full costs of signing schematics as well as construction plans, specifications and estimates for those signs (MO)

112985
GSD

This minute order considers a donation from SH 130 Concession Company, LLC., for one half of the estimated costs of constructing offsite SH 130 traffic signs (\$444,326) and the full costs of signing schematics as well as construction plans, specifications and estimates for those traffic signs (\$218,500). The amount is estimated at \$662,826.

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.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation estimated at \$662,826 from SH 130 Concession Company, LLC., is approved for acceptance. 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. Right of Way Dispositions and Donations

(1) El Paso County – I-10 at T. & N.O. Railroad in El Paso - Consider the exchange of drainage easements (MO)

112986
ROW

In the city of El Paso, EL PASO COUNTY, on I-10, the State of Texas used an easement for highway drainage purposes, there being no record title in the state’s name.

The easement (surplus easement), shown on 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 exchange of an interest in real property no longer needed for a highway purpose as partial or full consideration for another interest in real property needed for a state highway purpose.

EP Hospitality No. 2, L.P., (owner), is the property owner and has granted to the state an easement needed for highway drainage purposes (new easement), described in Exhibit B. Owner has requested that the surplus easement be quitclaimed to owner in exchange for the new easement to the state.

It is the opinion of the commission that it is proper and correct that the state quitclaim its interest in the surplus easement as full consideration for the new easement to the state.

NOW, THEREFORE, the commission finds that the surplus easement 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 quitclaiming the state’s rights and interest in the surplus easement to EP Hospitality No. 2, L.P., in exchange and as consideration for the new easement to the state.

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

(2) Grayson County – SH 11 between Lackey Street and Eubank Street in Tom Bean - Consider the quitclaim of surplus right of way to the county (MO)

112987
ROW

In the city of Tom Bean, GRAYSON COUNTY, on STATE HIGHWAY 11, the State of Texas used certain land acquired in the county’s name for state highway purposes.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for state highway purposes.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the quitclaim to a county or municipality any interest in property acquired and held by the county or municipality in its own name for use by the state.

It is the opinion of the commission that it is proper and correct that the state quitclaim its rights and interest in the surplus land to the county.

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 quitclaiming all of the state’s rights and interest in the surplus land to Grayson County, Texas.

Note: Exhibit A on file with minute order clerk.

(3) Lubbock County – US 82 at Toledo Avenue in Lubbock - Consider the sale of surplus right of way to the successful bidder (MO)

112988
ROW

In the city of Lubbock, LUBBOCK COUNTY, on US 82, the State of Texas acquired certain land for highway purposes by instruments recorded in the Deed Records of Lubbock County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for state highway purposes.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Department of Transportation advertised the surplus land for sale.

Ty Lane submitted a bid of \$70,000, which was the only bid received.

The Texas Transportation Commission (commission) finds \$70,000 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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 Ty Lane for \$70,000; 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.

(4) McLennan County – BU 77-L at FM 434 in Waco - Consider the sale of surplus right of way to the abutting landowner (MO)

112989
ROW

In the city of Waco, McLENNAN COUNTY, on BUSINESS US 77-L, the State of Texas acquired certain land for highway purposes by instrument recorded Volume 433, Page 646, Deed Records of McLennan County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for state highway purposes.

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.

Baylor University is the abutting landowner and has requested that the surplus land be sold to the university for \$95,880.

The commission finds \$95,880 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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 Baylor University for \$95,880; 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.

(5) McLennan County – US 81 at SH 31 in Waco - Consider the sale of a surplus right of way easement to the city (MO)

112990
ROW

In the city of Waco, McLENNAN COUNTY, on BUSINESS US 77-L, the State of Texas acquired certain land for highway purposes by instrument recorded Volume 433, Page 646, Deed Records of McLennan County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for state highway purposes.

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.

Baylor University is the abutting landowner and has requested that the surplus land be sold to the university for \$95,880.

The commission finds \$95,880 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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 Baylor University for \$95,880; 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.

(6) Potter County – I-40 at Tee Anchor Boulevard in Amarillo - Consider the sale of surplus right of way to the abutting landowner (MO)

112991
ROW

In the city of Amarillo, POTTER COUNTY, on INTERSTATE-40, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 890, Page 482; Volume 894, Page 681; Volume 896, Page 5; Volume 911, Page 202; and Volume 916, Page 339, Deed Records of Potter County, Texas.

Portions of the land (surplus land), described in Exhibit A, are no longer needed for state highway purposes.

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.

Washington Street Venture II (Venture II) is the abutting landowner and has requested that the surplus land be sold to Venture II for \$13,000.

The commission finds \$13,000 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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 Washington Street Venture II

for \$13,000; 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.

(7) Shelby County – SL 500 north of Center - Consider the sale of surplus right of way to the abutting landowner and waiver of the service fee (MO)

112992
ROW

In SHELBY COUNTY, on STATE HIGHWAY LOOP 500, the State of Texas acquired certain land for highway purposes by instrument recorded as Document No. 2010010940, Official Public Records of Shelby County, Texas.

The land (surplus land), described in Exhibit A, is no longer needed for state highway purposes.

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 abutting landowners.

Jimmy W. Adams is the abutting landowner and has requested that the surplus land be sold to him for \$252.

The commission finds \$252 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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

The commission finds that the service fee is unjust or unwarranted because the proposed highway alignment was revised.

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 is less than \$10,000. The commission authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Jimmy W. Adams for \$252 and that the service fee be waived; 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 is on file with minute order clerk.

c. Finance

(1) Accept the Quarterly Investment Report (MO)

112993
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.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002, securing the outstanding bonds, notes, and 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 commission has designated the department's Chief Financial Officer as investment officer. In the absence of the Chief Financial Officer, Director of the Debt Management Office, the Director of Finance or the Deputy Director of Finance is authorized to act as investment officer.

Pursuant to Government Code §2256.005(e) and Section 20 of the investment policy, the investment policy and investment strategies of the commission have been reviewed and revised annually by minute order since 2003, most recently by Minute Order 112799, dated August 25, 2011.

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.

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. A quarterly investment report for the department for the period ending November 30, 2011, 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 is on file with minute order clerk.

(2) Travis and Williamson Counties – Accept the audited financial statements of the Central Texas Turnpike System (CTTS), as required by the CTTS Indenture of Trust (MO)

112994
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the 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.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002, securing the outstanding bonds, notes, and 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 commission has designated the department's Chief Financial Officer as investment officer. In the absence of the Chief Financial Officer, Director of the Debt Management Office, the Director of Finance or the Deputy Director of Finance is authorized to act as investment officer.

Pursuant to Government Code §2256.005(e) and Section 20 of the investment policy, the investment policy and investment strategies of the commission have been reviewed and revised annually by minute order since 2003, most recently by Minute Order 112799, dated August 25, 2011.

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.

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. A quarterly investment report for the department for the period ending November 30, 2011, 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 audited financial statements of the system, attached as Exhibit A, is accepted.

Note: Exhibit A is on file with minute order clerk.

d. Speed Zones

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

112995
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 the speed limit on a segment of the state highway system, previously established by the commission by minute order and listed in Exhibit C, is no longer necessary or has been incorporated by the city which has the authority to set the speed limit on this section of the highway.

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

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

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

ITEM 18. Executive Session Pursuant to Government Code, Chapter 551

a. Section 551.071 – Consultation with and advice from legal counsel regarding any item on this agenda

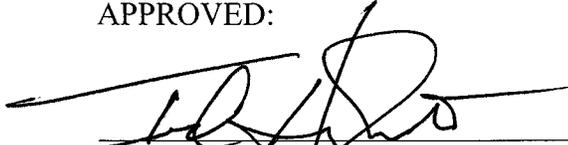
b. Section 551.074 – Discussion regarding the creation of a performance plan for the executive director

The commission did not meet in executive session.

There were no comments in the Open Comment Period.

The regular meeting of the Texas Transportation Commission was adjourned at 10:19 a.m.

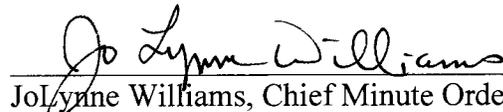
APPROVED:



Ted Houghton, Chairman
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 26, 2012, in Austin, Texas.



JoLynne Williams, Chief Minute Order Clerk
Texas Department of Transportation