

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on July 30, 2009 in San Angelo, Texas. The meeting opened at 9:01 a.m. with the following commissioners present:

**Texas Transportation Commission:**

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

**Administrative Staff:**

Amadeo Saenz, Executive Director  
 Steve Simmons, Deputy Executive Director  
 Angie Parker, Office of General Counsel  
 Roger Polson, Executive Assistant to the Deputy Executive Director

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 4:10 p.m. on July 22, 2009, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**Receive comments from area public officials, community and civic leaders, and private citizens. Report by the San Angelo District.**

The commission received comments from San Angelo District Engineer Walter McCullough; Representative Drew Darby; City of San Angelo Mayor Pro Tem Jon Mark Hogg; and Tom Green County Judge Mike Brown.

**ITEM 1. Approval of Minutes of the June 24, 2009 and June 25, 2009 meetings of the Texas Transportation Commission.**

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the minutes of the June 24, 2009 and June 25, 2009 meetings of the Texas Transportation Commission.

**ITEM 5. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

**b. Approve candidate transportation projects for submission to the U.S. Department of Transportation for funding from the Transportation Investment Generating Economic Recovery (TIGER) discretionary grant portion of the ARRA (MO)**

This item was cancelled.

Note: The commission received comments from Representative Charles Doc Anderson; and MOTRAN Alliance President James Beauchamp.

a. Discussion of the status of American Recovery and Reinvestment Act (ARRA) project delivery, and approve changes to the list of additional preventive maintenance and rehabilitation projects previously approved for funding from Texas' portion of the ARRA (MO)

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

111879  
ADM

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides \$64.1 billion nationwide for infrastructure projects, including \$27.5 billion for highway and bridge construction, and \$1.5 billion for surface transportation grants to be administered by the Secretary of Transportation.

Texas' share of the funding for highway and bridge construction is expected to be approximately \$2.25 billion, based on the existing apportionment formula.

In anticipation of the enactment of the ARRA, the Texas Department of Transportation (department) collaborated with the Texas Division of the Federal Highway Administration (FHWA), MPOs, tolling authorities and transit providers to develop a unified approach to identifying and prioritizing projects that potentially qualify for funding. Department staff and local officials agreed upon a list of criteria to be used for evaluating projects. FHWA also issued a guidance document on funding, project selection, eligible activities, and other specific requirements to assist states in implementing the ARRA. The priority and preference selection criteria described in the ARRA and the FHWA guidelines were subsequently used in the evaluation process to develop the lists of projects recommended for funding under the ARRA.

Time is a critical element with regard to the selection and prosecution of projects. States must have 100 percent of the funds obligated within one year of receiving the apportionment from FHWA or the remaining funds will be redistributed to other states. The department received the Notice of Apportionment from FHWA on March 2, 2009. States initially submitted data on projects to be funded completely or partially with ARRA funds to FHWA on March 17, 2009. States must continue to update the data on projects to be funded with ARRA funds in a timely manner.

In Minute Order 111848, dated June 25, 2009, the Texas Transportation Commission (commission) approved the funding, under the provisions of the ARRA, of approximately \$120 million in additional preventive maintenance and rehabilitation projects due to under runs of originally obligated amounts.

The department has continued to monitor the progress of these projects to ensure that they comply with the criteria identified in the minute order, the ARRA, and the project selection requirements established by FHWA.

As a result of these efforts, a revised list of additional preventive maintenance and rehabilitation projects has been developed and is forth in Exhibit A. These revisions provide for technical corrections to project numbers, limits, and descriptions on certain projects. In addition, the following substantive revisions have been made:

- Seven projects in the Austin District have been added to the list due to ARRA funding being available for that area. These added projects are the SH 142 project (CSJ 0384-01-020, Caldwell County), the FM 621 project (CSJ 0987-03-009, Hays County), the SH 123 project (CSJ 0366-01-067, Hays County), the RM 2900 project (CSJ 3101-01-006, Llano County), the US 183 project (CSJ 0151-06-133, Travis County), the SH 29 project (CSJ 0337-01-033, Williamson County), and the SH 29 project (CSJ 0337-02-039, Williamson County).

- One project in the Atlanta District has been removed from the list due to not meeting the functional classification requirement for federal funding. The FM 1840 project (CSJ 1215-02-013, Bowie County) will be funded with conventional funding and the ARRA funding will be added to another project on the list (CSJ 0919-00-064, Cass County) to install and upgrade flashing beacons and traffic signals at various locations.
- One project in the Beaumont District has been removed from the list due to early construction completion under a non-ARRA project number.

No other projects listed in Exhibit A have been changed or removed.

A list of preventive maintenance and rehabilitation projects deleted from Minute Order 111848 is shown in Exhibit B.

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

IT IS THEREFORE ORDERED by the commission that the preventive maintenance and rehabilitation projects set forth in Exhibit A are hereby approved for funding under the provisions of the ARRA.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to proceed with project development and contract awards for the projects described in Exhibit A and to enter into any necessary agreements associated with these 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 web site.

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

c. Approve candidate high-speed and intercity passenger rail projects for submission to the Federal Railroad Administration for funding under the HSIPR Program (MO)

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

111880  
ADM

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides in part \$8 billion for the High-Speed Intercity Passenger Rail (HSIPR) grant program to be administered by the Secretary of Transportation.

The HSIPR grants follow one of four tracks. Track 1 is for “shovel ready” projects with independent utility. Track 2 is for environmental, preliminary engineering or construction of projects already identified through a Service Development Program. Track 3 is for planning. Track 4 is for design and construction of intercity passenger rail projects. Tracks 1 and 2 are funded by ARRA. Tracks 3 and 4 are funded through FY 2008 and 2009 Federal Appropriations.

States were required to submit pre-applications for grants by July 10, 2009. Texas submitted pre-applications having a total value of \$ 1.9 billion. Final applications are due August 24, 2009 for Tracks 1, 3 and 4, and October 2, 2009 for Track 2.

In anticipation of the enactment of the ARRA, the Texas Department of Transportation (department) collaborated with the Federal Railroad Administration (FRA), metropolitan planning organizations, transit providers, and rail districts to develop a unified approach to identifying and prioritizing projects that potentially qualify for funding. Through this process rail projects were identified. Additionally department staff contacted other rail planning entities to develop a more comprehensive list of potential rail projects. Department staff categorized each project based on its potential to improve freight or passenger rail movements. Department staff also identified some projects that are located on an existing designated high-speed rail corridor. Department staff contacted both Amtrak and the Class 1 railroads in Texas for a list of potential projects that could be “shovel ready.” On June 17, 2009, the FRA issued guidance on funding, project selection, eligible activities, and other requirements for the HSIPR grants. Based on that guidance, department staff proposed submitting applications for the projects listed in Exhibit A attached to this minute order.

All projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required for Track 1 and 2 projects. A 50 percent non-federal match is required for Track 3 and 4 projects.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the transportation projects set forth in Exhibit A are approved for submittal for grant funding under the provisions of the HSIPR grant program.

IT IS FURTHER ORDERED that the executive director or the director’s designee is authorized to proceed with project grant application development for the projects described in Exhibit A and to enter into any necessary agreements associated with these projects and activities.

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

Note: Exhibit A on file with minute order clerk.

## **ITEM 2. MANAGEMENT**

### **a. Discussion on the status of the independent management and organizational review of the department.**

This item was presented by Deputy Executive Director Steve Simmons.

b. Discussion of a proposed approach to the development of the department's strategic plan, the transportation planning process, and the Texas Transportation Plan and related coordinated public outreach efforts for those activities and the management and organizational review of the department.

This item was presented by Special Assistant, Strategic Policy and Performance Mary Meyland.

### **ITEM 3. AVIATION**

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

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Aviation Division Director Dave Fulton.

111881  
AVN

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

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

On Thursday, June 18, 2009, a public hearing was held. No comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$1,993,000.

Note: Exhibit A on file with minute order clerk.

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

a. **El Paso County – Negotiate and award federal §5304 funds, Statewide Transportation Planning Program, and state funds to El Paso County Rural Transit District to support operation of a demonstration project for commuter bus service between El Paso, Texas, and Las Cruces, New Mexico (MO)**

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

111882  
PTN

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

The New Mexico Department of Transportation approached the Texas Department of Transportation (department) soliciting support for an interstate commuter bus demonstration project for the corridor between El Paso, Texas and Las Cruces, New Mexico.

The commission recognizes the importance and benefits of reliable public transportation which provides residents with a means to employment.

The commission desires to award \$192,371 of federal §5304 and \$65,432 of state funds to the El Paso County Rural Transit District to support the operation of a demonstration project for commuter bus service between El Paso and Las Cruces.

The commission further desires to award additional state funds, up to a maximum of \$50,000, to partner with locally-prioritized funds offered in support of this project.

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 authorized to enter into negotiations for the above awards, submit the necessary state application to the FTA, and enter into the necessary contracts in accordance with the priorities established in this minute order.

**b. Various Counties – Negotiate and award federal §5304 funds, Statewide Transportation Planning Program, and state matching funds to designated lead agencies to support continuation of coordinated regional public transportation planning for FY 2010 (MO)**

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

111883  
PTN

The Texas Transportation Commission (commission) desires to award funds to support the continued development of coordinated regional planning in public transportation.

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

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

Under §5304 of the Federal Transit Code, the Federal Transit Administration (FTA) provides the department with funds to be used for planning and coordination projects.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to enter into negotiations to distribute funds as described in Exhibit A, not to exceed \$60,000 per lead agency responsible for regionally coordinated transportation planning, submit the necessary state application to the FTA, and enter into the necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Concho Valley Transit District Director Robert Stephens.

**6. KEEP TEXAS BEAUTIFUL**

**Discussion of the Keep Texas Beautiful Governor's Community Achievement Awards Program (GCAA) and approve increase of funding for the awards (MO)**

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

111884  
DES

The Texas Transportation Commission (commission) approved Minute Order 82606 on January 28, 1985 authorizing a comprehensive litter prevention program to include promotion, support, and development of grassroots programs for antilitter efforts, cleanup and enforcement.

One of these grassroots programs is the Governor's Community Achievement Awards (GCAA) that provide, in the form of landscape funds, incentives for and recognition of communities' efforts in litter removal and other beautification efforts. The Texas Department of Transportation contracts annually with an entity to provide the various grassroots programs and administer the annual GCAA program.

IT IS THEREFORE ORDERED by the commission that landscape incentives in a total amount not to exceed \$2 million are hereby authorized to be awarded to the winning cities of the Governor's Community Achievement Awards beginning in 2010 as outlined in Exhibit A.

IT IS FURTHER ORDERED that the executive director, or his designee, be authorized to continue to work in cooperation with the communities winning the Governor's Community Achievement Awards to create appropriate landscape projects on state-maintained roadways.

Note: Exhibit A on file with minute order clerk.

**ITEM 7. PROMULGATION OF ADMINISTRATIVE RULES** Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

**a. Final Adoption**

**Chapter 9 – Contract Management (MO)**

**Amendments to §9.114, Opportunity for Formal Hearing (Contractor Sanctions)**

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

111885  
CST

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.114, relating to opportunity for formal hearing to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §9.114 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

**b. Proposed Adoption**

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

**Chapter 30 – Aviation (MO)**

**Repeal of §30.101, Scheduled Intrastate Air Passenger Carriers, §30.102, United States Certificated Air Carriers, §30.103, Nonscheduled Air Carriers, and §30.104, All-Cargo Air Carriers (Air Carriers)**

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

111886  
AVN

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §30.101, scheduled intrastate air passenger carriers, §30.102, United States certificated air carriers, §30.103, nonscheduled air carriers, and §30.104, all-cargo air carriers, all relating to air carriers to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals, 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 §30.101, §30.102, §30.103, and §30.104 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 on file with minute order clerk.

**ITEM 8. TOLL ROAD POLICY**

**Travis, Williamson and Smith Counties** – Authorize the development of a one-time policy for establishing a toll violation amnesty period, under which a percentage of administrative fees related to toll violations on certain state toll projects will be discharged for those customers paying the total amount of tolls due and opening a TxTag account (MO)

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

111887  
TTA

Title 43, Texas Administrative Code, Section 27.82(a) authorizes the Texas Department of Transportation (department) to adopt policies relating to toll collection and enforcement and the operation of customer service centers.

In adopting those policies, the department must consider (1) whether those policies will provide ease of use by travelers and maximize mobility on toll projects; (2) whether those policies will provide a high level of customer service; (3) the requirements of project bond covenants; (4) cost of operations; (5) whether those policies will facilitate the auditing of customer service center operations and the marketing of toll projects; and (6) whether those policies will maximize the preservation of revenue streams.

Title 43, Texas Administrative Code, Section 27.82(e) provides that the department may waive administrative fees if a violator agrees to open a funded account and maintain that account in good standing for a period of time determined by the department.

The department desires to establish a one-time enhanced toll recovery program which would involve the discharge of a percentage of administrative fees related to toll violations in return for a customer's payment of the total amount of tolls due and opening a funded account. Customers that do not resolve outstanding violations during the specified period would be subject to further collection efforts and, potentially, court action. Rental car companies would be excluded from participation in the program.

The initiation of an enhanced toll recovery program is reasonable and necessary for the department to enhance the collection of outstanding toll revenue due, initiate the implementation of a program that will pursue violators through the court system and increase the number of tolls paid with a TxTag, the lowest cost and most reliable transaction.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the department is authorized to develop and implement, for a limited period of time, an enhanced toll recovery program under which a percentage of administrative fees related to toll violations on certain state toll projects will be discharged for those customers paying the total amount of tolls due and opening a funded account. Rental car companies will be excluded from participation in this program.

**ITEM 9. TOLL PROJECTS**

a. **Harris County** – Consider preliminary approval of a request for financial assistance from Harris County to pay for a portion of the costs of constructing a 4-lane, controlled-access toll road running north-south for 15.4 miles on SH 99 Segment E (Grand Parkway) from I-10W to US 290 in northwest Harris County (MO)

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

111888  
FIN

The Texas Department of Transportation (department) and Harris County (county) have been proceeding with the preliminary development of SH 99 (Grand Parkway) from I-10W to US 290 (project).

The project is located within the boundaries of Harris County which is authorized to construct, operate, maintain, expand, or extend the project pursuant to Transportation Code, §228.0111, Transportation Code, Chapter 284, and other applicable law.

The county has proposed financing and developing the project as a planned 4-lane, controlled-access toll road, typically without frontage roads, which will run north-south for 15.4 miles from I-10 to US 290 in northwest Harris County. SH 99 will be grade separated with ramps to provide access at various major thoroughfares.

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides \$64.1 billion nationwide for infrastructure projects, including \$27.5 billion for highway and bridge construction, and \$1.5 billion for surface transportation grants to be administered by the Secretary of Transportation. On March 5, 2009, by Minute Order 111734, the Texas Transportation Commission (commission) authorized and directed the department to commit \$181 million in ARRA funds to the project.

Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

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

In accordance with §27.53 of the toll equity rules, Harris County has submitted a request for a grant of financial assistance to be used for the construction of the project. The financial assistance being requested is, at a minimum, the \$181 million of ARRA funds authorized by the commission to be committed to the project.

Section 27.53(d) authorizes the executive director of the department to waive submission of individual items of information or data required by Section 27.53(c) if: (1) the information or data required by this section is not relevant to the project or the financial assistance requested; (2) the department already possesses information or data in a format that may be substituted for the required information or data; or (3) the past performance of the requestor on previous projects developed in collaboration with the department indicates that the requestor will adequately and prudently address the issues and impacts described in the requested information or data.

Information and data required by Section 27.53(b) is either contained in the request for financing or is already in the department's possession. Supplemental information and data required by Section 27.53(c) is contained in the request for financial assistance or is temporarily waived under Section 27.53(d)(3), as the past performance of Harris County

on previous projects developed in collaboration with the department indicates that the county will adequately and prudently address the issues and impacts described in the requested information or data.

The department previously conducted environmental studies and analyses of the project, and the FHWA approved the Final Environmental Impact Statement on November 19, 2007. FHWA issued a Record of Decision for the project on June 24, 2008. Harris County has committed to describe and enforce EPIC in construction contracts for the project.

The completion of the project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by relieving existing and projected congestion in northwest Harris County, thereby enhancing mobility and safety within this segment of the state transportation system.

The county has indicated that they will fund \$126 million of the \$307 million estimated cost of constructing the project through the issuance of revenue bonds. Accordingly, the project will expand the availability of funding for transportation projects or reduce direct state costs.

The proposed project and work by Harris County is consistent with the approved Statewide Transportation Plan, included in the Statewide Transportation Improvement Program, and included in the approved conforming plan and transportation improvement program of the Houston-Galveston Area Council (H-GAC), and is consistent with the State Implementation Plan.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by Harris County meets the requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financing in the amount of \$181 million, in the form of a grant, to be used for the purposes described herein, and directs the executive director to implement the actions authorized and required by those and other applicable toll equity rule provisions.

**b. Tarrant County – Consider final approval of a request for financing from the North Texas Tollway Authority to pay certain construction and right of way costs related to the crossing of the Southwest Parkway, a toll project from I-30 to Altamesa Boulevard in the city of Fort Worth, over the Union Pacific Railroad Davidson Rail Yard in Tarrant County (MO)**

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

111889  
FIN

The Texas Department of Transportation (department) and the North Texas Tollway Authority (NTTA) have been proceeding with the preliminary development of the SH 121 toll project from I-30 to Altamesa Boulevard in Tarrant County (Southwest Parkway).

The Southwest Parkway project is located within the boundaries of the NTTA, and the NTTA is authorized to construct, operate, maintain, expand, or extend the Southwest Parkway project pursuant to Transportation Code, §228.0111(s) and other applicable law.

The Southwest Parkway project crosses over and affects railroad facilities known as the Davidson Yard, which are owned and operated by the Union Pacific Railroad Company (UPRR). The NTTA and the City of Fort Worth (city) have reached an agreement with UPRR regarding the design, construction, and operation of the Southwest Parkway across the Davidson Yard, documented in the "Union Pacific Railroad/Project Partners Formal Agreement," dated January 8, 2009 (Formal Agreement). The department is also a party to the Formal Agreement to document the department's agreement to convey certain real property necessary for the proposed Union Pacific facilities contemplated in the Formal Agreement.

To acquire right-of-way interests needed for the Southwest Parkway, obtain access to the Davidson Yard to construct the Southwest Parkway, and otherwise close the settlement described in the Formal Agreement (obligations), the NTTA and the city agreed to each fund an equal share of the \$95 million cost of the obligations. The failure of the NTTA and the city to demonstrate by August 20, 2009 their ability to fund the \$95 million is one of several events entitling any party to the Formal Agreement, including UPRR, to terminate that agreement.

On June 11, 2009, the Regional Transportation Council (RTC) of the North Central Texas Council of Governments (NCTCOG), the metropolitan planning organization for the Dallas/Fort Worth region, adopted a resolution committing to program \$49.87 million of Surface Transportation Program – Metropolitan Mobility funds to fund the first portion of the \$95 million.

Transportation Code, §366.301 authorizes the department to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system by the NTTA on terms agreed to by the department and the NTTA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

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

In accordance with Sections 27.53 and 27.54(a) of the toll equity rules, the commission, in Minute Order 111856, dated June 25, 2009, granted preliminary approval of financial assistance in the amount of \$49.87 million to pay for a portion of the costs of the obligations. The financial assistance was approved in the form of a grant.

In accordance with Section 27.54 of the toll equity rules, negotiations have been conducted and a financial assistance agreement that complies with Section 27.55 of those rules will be developed.

The department previously conducted environmental studies and analyses of the Southwest Parkway, and has secured environmental clearance in the form of a reevaluation of the Final Environmental Impact Statement for the Southwest Parkway, which was approved by the FHWA on June 3, 2009.

The NTTA has, subject to establishing feasibility for, and committing to develop, the Southwest Parkway, committed that the Southwest Parkway project will comply with all applicable local, state and federal environmental laws, regulations and requirements, and has, with respect to any construction regarding the Southwest Parkway undertaken by the NTTA, committed that the NTTA will assume all liability and responsibility for existing and future EPIC.

The completion of the Southwest Parkway will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing local and regional mobility, decreasing congestion, increasing safety, increasing economic development opportunities, decreasing travel time, decreasing air pollution, and enhancing quality of life in the Southwest Parkway corridor.

The Southwest Parkway project will expand the availability of funding for transportation projects or reduce direct state costs. The financial assistance will reduce the amount of funding required from the city and realize the benefits described above. This financial assistance will enhance the ability of Southwest Parkway to go forward as a toll facility, improving the efficiency of the state transportation system. Without the financial assistance, the timeline to complete the Southwest Parkway and realize the benefits could be indefinitely delayed.

Based on the above information, the commission has determined that providing financial assistance will prudently provide for the protection of public funds, and that, given the level of project development to date, the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate adverse environmental impacts.

NTTA has not yet completed an investment-grade traffic and revenue report for the project. The department has determined, pursuant to 43 TAC §27.54(b)(2), that the requirement for such a report is inapplicable or unnecessary due to the nature of the requested financial assistance as the toll equity grant will not be used to construct the Southwest Parkway project.

The Southwest Parkway project is consistent with the approved Statewide Transportation Plan, the Statewide Transportation Improvement Program, and the approved metropolitan transportation plan (MTP) of the NCTCOG. The US DOT (FHWA/FTA) found the MTP to conform to the State Implementation Plan on June 12, 2007 and found the 2008-2011 Transportation Improvement Program to conform on October 31, 2007.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the North Texas Tollway Authority meets the requirements of 43 TAC §27.53 and §27.54 and, in accordance with those provisions, the commission grants final approval of financial assistance in the amount of \$49.87 million, to be used to pay for a portion of the costs to acquire right-of-way interests needed for the Southwest Parkway, obtain access to the Davidson Yard to construct the Southwest Parkway, and otherwise close the settlement described in the Formal Agreement, and authorizes the executive director to enter into a financial assistance agreement with the North Texas Tollway Authority.

**ITEM 10. PROPOSITION 14 BOND PROJECTS**

Approval of eligible activities associated with projects to be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (Proposition 14 bonds) (MO)

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

111890  
ADM

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

Pursuant to the constitutional provision, the Texas Legislature enacted Section 222.003, Texas Transportation Code (Enabling Act), which authorizes the commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the highway fund. Bonds issued under this provision are commonly known as "Proposition 14" bonds.

The Enabling Act, as amended, provides that (i) the aggregate principal amount of such bonds and other public securities may not exceed \$6 billion, (ii) the commission may issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 billion each year, (iii) \$1.2 billion of the aggregate principal amount of such bonds or other public securities must be issued to fund safety projects that reduce accidents or correct or improve hazardous locations on the state highway system, and (iv) bonds and other public securities and credit agreements may not have a principal amount or terms that are expected to cause annual expenditures with respect thereto to exceed 10 percent of the amount deposited to the credit of the highway fund in the preceding year. The commission has issued approximately \$2.9 billion of Proposition 14 bonds pursuant to the terms of the Enabling Act.

Pursuant to the Enabling Act, the commission has adopted rules, codified as 43 TAC §§15.170-15.174, that prescribe criteria for selecting projects (including safety projects) eligible for funding under the Enabling Act.

On October 30, 2008, January 29, 2009, and March 26, 2009, the commission adopted Minute Orders 111550, 111680, and 111751 respectively, which approved the use of proceeds of Proposition 14 bonds for the state highway improvement projects contained in an exhibit to the Orders.

In order to ensure construction letting capacity is maintained while at the same time preserving motor fuel tax revenue to match federal funding, this minute order seeks to apply the proceeds of Proposition 14 bonds for the following eligible activities:

- construction cost overruns on previous commission authorized Proposition 14 projects,
- future new construction projects approved by the commission,

- as a source of matching federal funds for project construction and for right of way acquisition, preliminary engineering activities and construction engineering and change orders.

IT IS THEREFORE ORDERED by the commission that the work to be performed in connection with state highway improvement activities as contained in Exhibit A is approved for funding with the proceeds of Proposition 14 bonds, including additional such bonds authorized by Minute Order 111514, adopted by the commission August 29, 2008.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 11. TRANSPORTATION PLANNING**

Create a Rulemaking Advisory Committee to advise the department on drafting rules for its transportation planning and project development program and appoint members of the committee (MO)

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

111891  
ADM

Prior to the 81st Legislature, Regular Session, 2009, the Sunset Advisory Commission made several recommendations for legislation that would require the Texas Department of Transportation (department) to redevelop and regularly update the statewide transportation plan to establish a transparent, well-defined and understandable system of project programming. The recommendations of the Sunset Advisory Commission report were incorporated into the transportation planning article of the department's sunset bill. Although the sunset bill was not enacted, the concepts expressed in the Conference Committee Report for HB 300 provide a basis for revisions to the department's existing transportation planning and project development program.

Under §§201.101, 201.103, and 201.601, Transportation Code, the Texas Transportation Commission (commission) may adopt rules for the planning and development of all modes of transportation, including highways on the state highway system. A planning process for long-range, mid-range, and short-range terms, procedures for selection of projects, establishment of program funding categories, and creation of formulas for the allocation of transportation funds are all integral to a comprehensive transportation planning and project development program for the department. The commission will be adopting rules to implement these concepts.

Under §2001.031, Government Code and 43 Texas Administrative Code §1.85, the commission may appoint a rulemaking advisory committee to advise the department and the commission on development of administrative rules for establishing the transportation planning and project development program.

IT IS THEREFORE ORDERED by the commission that the Transportation Planning and Project Development Rulemaking Advisory Committee is created and that it shall be composed of eleven members, report its advice and recommendations to the department and the commission, and continue until final adoption of transportation planning and project development rules by the commission.

IT IS FURTHER ORDERED that the executive director or his designee is directed to designate an office or division of the department to be responsible for development of the rules and providing any necessary administrative support essential to the functions of the committee.

IT IS FURTHER ORDERED that the individuals selected by the entities identified in the attached Exhibit A are appointed as members of the Transportation Planning and Project Development Rulemaking Advisory Committee.

Note: Exhibit A on file with minute order clerk.

**ITEM 12. TRAFFIC OPERATIONS**

**a. Approve funding for the 2010 Highway Safety Plan (MO)**

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

111892  
TRF

The Texas Traffic Safety Act of 1967 (H.B. 353, 60<sup>th</sup> Legislature) and the United States Code, Title 23, Section 402, require a highway safety program designed to reduce traffic crashes and deaths, injuries and property damage.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) also appropriated various traffic safety incentive programs to the states.

The Texas Department of Transportation has, in compliance with these requirements, developed the FY 2010 Highway Safety Plan (HSP).

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the HSP is approved and the executive director is directed to enter into any necessary agreements and proceed in the most feasible and economical manner with program development at an estimated total cost of \$76,235,954.70 as shown in Exhibit A. The estimated cost for this program is contingent upon the appropriation of funds by the U.S. Congress and could increase or decrease from the requested amount.

IT IS FURTHER ORDERED that, should additional federal funds become available, the director of the Traffic Operations Division is authorized to approve an increase in the HSP up to 10 percent of the total approved budget and the executive director or the director's designee is authorized to approve an increase in the HSP up to 50 percent of the total approved budget, or to the extent of the additional federal funds.

Note: Exhibit A on file with minute order clerk.

**b. Tarrant County – Authorize temporary reversible lane operation for a section of SH 180 & FM 157 (MO)**

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

111893  
TRF

In TARRANT COUNTY, the Texas Department of Transportation (department) and numerous other entities have worked cooperatively and participated in developing a comprehensive traffic control plan for vehicular access to and egress from Cowboys Stadium events and other large venue events within the Arlington Entertainment District at which more than 80,000 attendees are anticipated.

A portion of this traffic control plan requires the temporary reassignment of lane operations including possible one-way operation or reversible operation on a section of:

- STATE HIGHWAY 180, between FM 157 and SH 360, westbound toward the events for up to five hours prior to the beginning and during the events and eastbound away from the events for up to five hours during and after the events; and
- FARM TO MARKET ROAD 157, between SH 180 and Rogers Street, northbound toward the events for up to five hours prior to the beginning and during the events and southbound away from the events for up to five hours during and after the events.

The department and the Texas Transportation Commission (commission) find it necessary to participate in the implementation of this traffic control plan to facilitate the orderly flow of traffic and ensure the safety of the attendees and traveling public. Transportation Code, Section §545.059, authorizes the commission to designate a highway or separate roadway under the jurisdiction of the commission for one-way traffic and mandates the erection of appropriate signs giving notice to the designation.

IT IS THEREFORE ORDERED by the commission that SH 180, between FM 157 and SH 360 and FM 157, between SH 180 and Rogers Street is designated for reversible lane operation before and after Cowboys Stadium events and other large venue events within the Arlington Entertainment District as outlined in the comprehensive traffic control plan.

IT IS FURTHER ORDERED that the executive director is directed to enter into any necessary agreements required to fulfill the conditions of this order, and that implementation be consistent with provisions of the Texas Manual on Uniform Traffic Control Devices.

**ITEM 13. TRANSFER OF PROPERTY**

**Polk County – US 59, 0.82 mile north of US 190 in Livingston – Approve the transfer of real property to Polk County in compliance with Senate Bill 1670 (MO)**

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

111894  
ROW

In the city of Livingston, POLK COUNTY, on US 59, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 305, Page 357, and Volume 305, Page 726, Deed Records of Polk County, Texas.

SB 1670, passed by the 81<sup>st</sup> Legislature, requires the Texas Department of Transportation (department) to transfer to Polk County certain land (surplus land), described in Exhibit A, to be used by the county for a purpose that benefits the public interest of the state.

The state is to be reimbursed for the department’s actual cost to acquire the property, which is \$13,120. If Polk County uses the property for any purpose other than a purpose that benefits the public interest of the state, Polk County shall pay the department an amount equal to the fair market value of the property on the date the purpose is changed, less the county's prior payment of \$13,120.

NOW, THEREFORE, the Texas Transportation 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 Polk County, Texas, for \$13,120; 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; and SUBJECT TO Polk County's obligation to pay to the department an additional amount equal to the fair market value of the property in the event and on the date Polk County begins using the property for a purpose other than a purpose that benefits the public interest of the state, less the county's prior payment of \$13,120.

IT IS FURTHER ORDERED that the \$13,120 received for the transfer of the property shall be deposited to the state highway fund and used in the department's Lufkin district.

Note: Exhibit A on file with minute order clerk.

**ITEM 14. FINANCE**

**a. Adopt the 2010 Operating Budget (MO)**

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

The General Appropriations Act (SB 1) of the 81<sup>st</sup> Legislature, 2009 Regular Session, as amended by HB 1 of the 81<sup>st</sup> Legislature, First Called Session, appropriated funds for the operations of the Texas Department of Transportation (department) for Fiscal Year 2010.

The funds shown below are necessary to effectively operate the activities of the department in accordance with the guidelines set forth in the General Appropriations Act.

111895  
FIN

<b>TEXAS DEPARTMENT OF TRANSPORTATION OPERATING BUDGET FOR FISCAL YEAR 2010</b>		
<b>A. GOAL: TRANSPORTATION PLANNING</b>		
Strategy A.1.1	PLAN/DESIGN/MANAGE	\$ 372,870,420
	A.1.2 CONTRACTED PLANNING & DESIGN	219,220,658
	A.1.3 RIGHT-OF-WAY ACQUISITION	344,807,796
	A.1.4 RESEARCH	22,345,918
	<b>TOTAL, GOAL A:</b>	<b>\$ 959,244,792</b>
<b>B. GOAL: TRANSPORTATION CONSTRUCTION</b>		
Strategy B.1.1	EXISTING CONSTRUCTION CONTRACTS	\$1,503,921,094
	B.1.2 NEW CONSTRUCTION CONTRACTS	520,213,268
	B.1.3 CONSTRUCTION GRANTS & SERVICES	422,506,365
	B.1.4 AVIATION SERVICES	101,542,704

<b>TOTAL, GOAL B:</b>		\$2,548,183,431
<b>C. GOAL: MAINTENANCE AND PRESERVATION</b>		
Strategy C.1.1	EXISTING MAINTENANCE CONTRACTS	\$1,352,883,691
C.1.2	NEW MAINTENANCE CONTRACTS	447,242,346
C.1.3	CONTRACTED ROUTINE MAINTENANCE	520,148,407
C.1.4	ROUTINE MAINTENANCE	595,000,000
C.1.5	GULF WATERWAY	962,766
C.1.6	FERRY SYSTEM	30,296,060
<b>TOTAL, GOAL C:</b>		\$2,946,533,270
<b>D. GOAL: OPTIMIZE SERVICES AND SYSTEMS</b>		
Strategy D.1.1	PUBLIC TRANSPORTATION	\$ 89,368,251
D.1.2	REGISTRATION & TITLING	119,587,995
D.1.3	VEHICLE DEALER REGULATION	6,403,314
D.2.1	TRAFFIC SAFETY	48,380,594
D.3.1	TRAVEL INFORMATION	18,666,720
D.4.1	AUTOMOBILE THEFT PREVENTION	15,214,355
D.5.1	RAIL SAFETY	1,246,950
<b>TOTAL, GOAL D:</b>		\$ 298,868,179
<b>E. GOAL: INDIRECT ADMINISTRATION</b>		
Strategy E.1.1	CENTRAL ADMINISTRATION	\$ 49,299,118
E.1.2	INFORMATION RESOURCES	72,581,768
E.1.3	OTHER SUPPORT SERVICES	39,361,203
E.1.4	REGIONAL ADMINISTRATION	68,128,976
<b>TOTAL, GOAL E:</b>		\$ 229,371,065
<b>F. GOAL: DEBT SERVICE PAYMENTS</b>		
Strategy F.1.1	GENERAL OBLIGATION BONDS	\$ 0
F.1.2	STATE HIGHWAY FUND BONDS	366,307,388
F.1.3	TEXAS MOBILITY FUND BONDS	343,750,492
F.1.4	OTHER DEBT SERVICE	0
<b>TOTAL, GOAL F:</b>		\$ 710,057,880
<b>G. GOAL: SH 121 TRANSPORTATION PROJECTS</b>		
Strategy G.1.1	PLAN/DESIGN/MANAGE – SH 121	\$ 1,597,255
G.1.2	CONTRACTED PLAN/DESIGN – SH 121	30,347,843
G.1.3	RIGHT-OF-WAY ACQUISITION – SH 121	11,232,555
G.1.4	EXISTING CONSTRUCTION – SH 121	135,084,657
G.1.5	NEW CONSTRUCTION – SH 121	108,057,480
G.1.6	EXISTING MAINTENANCE – SH 121	57,893,425
G.1.7	NEW MAINTENANCE – SH 121	46,310,349
<b>TOTAL, GOAL G:</b>		\$ 390,523,564

<b>H. GOAL: SH 130 TRANSPORTATION PROJECTS</b>	
Strategy H.1.1 EXISTING CONSTRUCTION - SH 130	\$ 3,000,000
H.1.2 NEW CONSTRUCTION - SH 130	2,000,000
<b>TOTAL, GOAL H:</b>	\$ 5,000,000
<b>GRAND TOTAL: Texas Department of Transportation</b>	<b>\$8,087,782,181</b>

IT IS THEREFORE ORDERED by the Texas Transportation Commission that a cash operating budget of \$8,087,782,181 be authorized for the operations of the department for Fiscal Year 2010; and the executive director is hereby ordered to administer this cash operating budget in the most feasible and economical manner within the guidelines prescribed by the 81<sup>st</sup> Legislature.

IT IS FURTHER ORDERED that the executive director is hereby authorized to make necessary adjustments to spending levels in accordance with the General Appropriations Act as may be necessary in the operations of the department.

b. Approval of the execution of credit agreements and a revised offering memorandum for the State Highway Fund commercial paper note program (MO)

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

111896  
FIN

Pursuant to Section 49-m, Article III, of the Texas Constitution, Section 201.115, Texas Transportation Code (enabling act), and Minute Order 110147, dated July 28, 2005, the Texas Transportation Commission (commission) approved a resolution (resolution) authorizing the issuance of Texas Department of Transportation State Highway Fund Revenue Commercial Paper Notes, Series A (notes), in the aggregate principal amount not to exceed \$500 million to carry out the functions of the Texas Department of Transportation (department).

The resolution also authorized the execution and delivery of agreements related thereto, including a note enhancement agreement, approved the form of an offering memorandum therefor, and appointed certain authorized officers and employees of the department to act on behalf of the department in the issuance of notes and, to provide an additional source of payment and security for the notes, the resolution requires that the department maintain a note enhancement agreement therefor.

To provide for the replacement of the existing note enhancement agreement, which is scheduled to expire on August 25, 2009, the department has considered proposals to provide a substitute note enhancement agreement for the notes (substitute note enhancement agreement) and, following an evaluation of such proposals, department staff has negotiated the terms and conditions of a substitute note enhancement agreement to be provided by the banks (liquidity providers) named in the substitute note enhancement agreement presented to the commission with this order.

Department staff has determined that the terms and conditions of the substitute note enhancement agreement presented to the commission with this order are the most advantageous reasonably obtainable by the department and department staff has recommended that the commission approve the execution and delivery of such substitute note enhancement agreement.

Chapter 1371, Texas Government Code, authorizes the department to execute and deliver credit agreements related to or in connection with the issuance, security and payment of the notes on substantially the terms and for the period approved by the commission, except for certain specific terms that the commission may delegate to authorized representatives of the department.

The commission has determined that (i) the substitute note enhancement agreement constitutes a credit agreement within the meaning of Chapter 1371, Texas Government Code, (ii) the substitute note enhancement agreement shall constitute a subordinate obligation under the resolution, (iii) the obligations of the commission and the department arising under and in connection with the substitute note enhancement agreement are and shall be limited obligations of the department, payable solely from and to the extent of funds identified in the resolution and in the substitute note enhancement agreement, and (iv) the liquidity providers shall have no recourse against any other funds or accounts of the commission, the department or the state for payment of the obligations arising under and in connection with the substitute note enhancement agreement.

In connection with the proposed execution of the substitute note enhancement agreement, an updated offering memorandum for the notes, in substantially the form presented to the commission with this order, has been prepared for use in the offering, marketing and sale of the notes.

Since the approval of the resolution in 2005, there have been organizational changes in the administration of the department resulting in the need to review the identification and designation of officers and employees of the department who may act on behalf of the department in the issuance of notes and in the administration of the financing program established by the resolution.

IT IS THEREFORE ORDERED by the commission that the substitute note enhancement agreement is hereby approved by the commission, and the authorized representatives and the chief financial officer (each as defined in the resolution) are each authorized to execute and deliver the substitute note enhancement agreement, in substantially the form presented to the commission with this order, together with such changes as shall be approved by an authorized representative or the chief financial officer, subject to the terms and conditions set forth in the term sheet presented to the commission with this order.

IT IS FURTHER ORDERED by the commission that the authorized representatives and the chief financial officer are each authorized to execute and deliver any modifications, amendments and extensions to the substitute note enhancement agreement and any additional substitute note enhancement agreements as shall be deemed necessary or appropriate by an authorized representative or the chief financial officer, subject to the limitations and parameters set forth in Exhibit A hereto.

IT IS FURTHER ORDERED by the commission that the preparation, use and distribution of an updated offering memorandum, in substantially the form presented to the commission with this order, is hereby approved, and the authorized representatives and the chief financial officer are each authorized and directed to take and approve such actions as they deem necessary or appropriate to complete the offering memorandum. The authorized representatives and the chief financial officer are each further authorized to approve any future amendments, modifications and supplements to such offering memorandum as shall be deemed necessary or appropriate by an authorized representative or the chief financial officer.

IT IS FURTHER ORDERED by the commission that any authority, power, duty or responsibility conferred by the resolution or this order on the chief financial officer may be discharged by any one of the following officers of the department: the chief financial officer, the director of the finance division, or the deputy director of the finance division.

IT IS FURTHER ORDERED by the commission that each member of the commission, the executive director of the department, each authorized representative, the chief financial officer, the director of the finance division, and the deputy director of the finance division are each authorized and directed to perform all such acts, to obtain such approvals and to execute all such documents as may be necessary to carry out the intent of this order.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 15. STATE INFRASTRUCTURE BANK**

##### **a. Final Approval**

**Travis County – Central Texas Regional Mobility Authority (CTRMA) – Consider granting final approval of an application from the CTRMA to borrow \$31.61 million from the State Infrastructure Bank to pay for certain costs of Segment 1A of the 290E Toll Project in Travis County, from just east of US 183, easterly to just east of Springdale Road (MO)**

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

111897  
FIN

On June 25, 2009, by Minute Order Number 111855, the Texas Transportation Commission (commission) granted preliminary approval of an application request for financial assistance from the Central Texas Regional Mobility Authority (CTRMA) to borrow \$31.61 million. Proceeds of the financial assistance would be used to pay for right-of-way acquisition and partial funding of final design for Segment 1A of the 290 East Toll Project in Travis County, from just east of US 183, easterly to just east of Springdale Road.

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact studies have been completed, and that the Texas Department of Transportation has approved those studies. The executive director recommends that the commission grant final approval of the State Infrastructure Bank (SIB) application for financial assistance.

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

IT IS THEREFORE ORDERED that the financial assistance application submitted by the Central Texas Regional Mobility Authority to borrow \$31.61 million from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with CTRMA. The term of the loan will be 30 years, anticipated to be paid from proceeds of bonds issued by CTRMA within two years. The loan rate is set at 2.95 percent interest per annum for the first two years of the loan term, with no principal or interest payments during the first two years. Should the loan not be repaid in full by the end of the first two year term, the interest rate for the remaining term will be 7.0 percent interest per annum.

**b. Preliminary Approval**

(1) Burnet County – City of Burnet – Consider granting preliminary approval of an application from the City of Burnet to borrow \$1.02 million from the State Infrastructure Bank to pay for replacement of utilities along US 281 and the relocation of utilities along SH 29 in Burnet County (MO)

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

111898  
FIN

The City of Burnet (city) submitted an application for \$1,020,000 in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the financial assistance to pay for the replacement of utilities along US 281 and the relocation of utilities along SH 29 in Burnet County.

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

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its surplus water and sewer system revenues and a subordinate lien pledge of its property taxes as security to assure likely repayment of the financial assistance; 2) the projects are consistent with the Statewide Transportation Plan; 3) the projects are listed under Preventative Maintenance and Rehabilitation, which does not require being listed in the STIP, and are consistent with the Texas Transportation Plan; 4) the projects will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Burnet meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$1,020,000 from the SIB, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

(2) Montgomery County – City of Splendor – Consider granting preliminary approval of an application from the City of Splendor to borrow \$600,000 from the State Infrastructure Bank to pay for certain costs of relocating water, sewer, and gas lines along US 59 (MO)

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

111899  
FIN

The City of Splendor (city) submitted an application for \$600,000 in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the financial assistance to pay for water, sewer and gas line relocation costs along US 59.

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

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its ad valorem taxes as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is categorized as a Grouped Project and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Splendor meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$600,000 from the SIB, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

**ITEM 16. OBLIGATION LIMIT REPORT**

Status report on the FY 2009 Obligation Limit and report on the actual July 2009 and proposed August 2009 highway maintenance and construction contract letting.

This report was presented by Chief Financial Officer James Bass:

**ITEM 17. CONTRACTS****a. Award or Reject Highway Improvement Contracts****(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute rejecting Project No. CBC 4704-00-884 in Pharr County, order as recommended by staff and presented by Assistant Executive Director for Engineering Operations John Barton:

111900  
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 July 7 and 8, 2009.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

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

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

111901  
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 July 7 & 8, 2009.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Gaynelle Riffe.

### **ITEM 18. ROUTINE MINUTE ORDERS**

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

#### **a. Donations to the Department**

**(1) Bryan District – Consider a donation from Texas Westmoreland Coal Co. of preliminary engineering services, complete plans, specifications, estimates, and construction funds (MO)**

111902  
GSD

This minute order considers a donation to the Texas Department of Transportation (department) from Texas Westmoreland Coal Co. for approximately \$350,000 worth of preliminary engineering services, complete plans, specifications, estimates, and construction funds. The donation will be used to construct a concrete haul-road crossing on SH 164 in Freestone County.

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 for approximately \$350,000 from Texas Westmoreland Coal Co. is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) Various Offices – Acknowledge a donation from AGC of Texas, Highway, Heavy, Utilities & Industrial Branch for department employees' travel expenses to speak and participate in the AGC of Texas – 2009 Administrative Conference. The meeting was held in South Padre Island, Texas from July 16-19, 2009 (MO)

111903  
GSD

This minute order acknowledges a donation of \$1,821.48 from the AGC of Texas, Highway, Heavy, Utilities & Industrial Branch for the Texas Department of Transportation (department) employees' travel expenses to speak at the AGC of Texas – 2009 Administrative Conference which was held in South Padre Island, Texas, on July 16-19, 2009.

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

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

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

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

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

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 \$1,821.48 by the AGC of Texas, Highway, Heavy, Utilities & Industrial Branch is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

**b. Eminent Domain Proceedings**

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

111904  
ROW

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

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or

convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

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

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

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

NON-CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Dallas	SH 183	12	0094-03-098	4
Dallas	SH 183	10	0094-03-098	84E
Dallas	SH 183	5	0094-03-098	83E
Denton	FM 423	1	1567-02-030	10
Denton	FM 423	8	1567-02-030	52
Denton	FM 423	2	1567-02-030	78

## NON-CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Denton	FM 423	9	1567-02-030	4
Denton	FM 423	7	1567-02-030	36
Denton	US 380	3	0134-09-058	18
Denton	US 380	6	0134-09-058	15
Denton	US 380	4	0134-09-058	17
Rockwall	FM 740	11	1014-03-047	48

## CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Caldwell	SH 130	R	3583-01-002	1534AC & E
Caldwell	SH 130	Q	3583-01-002	1533AC & E
Caldwell	SH 130	P	3583-01-002	1514A AC & E
Comal	SH 46	N	0215-02-050	16
Comal	SH 46	J	0215-02-050	17
Dallas	IH 30	H	1068-04-139	7
Dallas	IH 30	T	1068-04-139	11
Dallas	IH 30	U	1068-04-139	12
Dallas	IH 30	I	1068-04-139	4
Dallas	SH 183	L	0094-03-098	59
Dallas	SH 183	G	0094-03-098	2
Dallas	SH 183	B	0094-03-098	25AC
Dallas	SH 183	F	0094-03-100	1
Dallas	US 80	C	0095-10-050	2 & 2AC
Denton	IH 35E	A	0196-01-099	2
Harris	IH 10	M	0271-07-260	739
Maverick	SH Loop 480	D	0299-14-019	10
Maverick	SH Loop 480	K	0299-14-019	7
Travis	SH 130	S	0440-06-008	458
Webb	SH Loop 20	E	0086-14-036	5
Webb	SH Loop 20	O	0086-14-036	1

Note: Exhibits 1 through 12 and A through U on file with minute order clerk.

**c. Finance****(1) Accept the Quarterly Cash Report (MO)**

111905  
FIN

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

The cash statement will be prepared for each quarter of the department's fiscal year. A quarterly cash report for the department for the third quarter of Fiscal Year 2009, ending May 31, 2009, attached as Exhibit A, has been prepared in accordance with Texas Transportation Code, §201.107.

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

Note: Exhibit A on file with minute order clerk.

(2) Accept the Quarterly Investment Report (MO)

111906  
FIN

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

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

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

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

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an

investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the 2002 Project for the period ending May 31, 2009, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

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

Note: Exhibit A on file with minute order clerk.

**d. Load Zones & Postings**

**Various Counties – Revise load restrictions on the state highway system:**

**(1) Roadways (MO)**

111907  
CST

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

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

An engineering and traffic investigation has been made on the state highway system to determine and fix the maximum loads to be transported or moved on, over or upon the roads of the highway system.

It has been determined from this investigation that load restrictions on certain sections of roads of the state highway system should be placed or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be transported or moved on, over or upon the roads described in Exhibit A to be placed and Exhibit B to be removed for the month of July, 2009, as set forth therein, superseding any portion of a previous action in conflict. The executive director shall proceed with the erection or removal of signs as appropriate, making the load limitation effective and operative.

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

**(2) Bridges (MO)**

111908  
BRG

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

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

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

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

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

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

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

**(1) Callahan County – FM 604 southwest of Clyde – Consider the sale of surplus right of way to the abutting landowner (MO)**

111909  
ROW

In CALLAHAN COUNTY, on FARM TO MARKET ROAD 604, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 211, Page 195, Deed Records of Callahan County, Texas.

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

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

Ted Lucas is the abutting landowner and has requested that the surplus land be sold to him for \$1,175.

The commission finds \$1,175 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Ted Lucas for a cash consideration of \$1,175.

Note: Exhibit A on file with minute order clerk.

**(2) Collin County – FM 546 south of Elm Street in McKinney – Consider the sale of surplus right of way to the abutting landowner (MO)**

111910  
ROW

In the city of McKinney, COLLIN COUNTY, on FARM TO MARKET ROAD 546, the State of Texas acquired certain land for state highway purposes by instruments recorded in Volume 357, Page 379; Volume 398, Page 104; and Volume 400, Pages 344, 346, 352, 354 and 370, Deed Records of Collin County, Texas.

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

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

Encore Wire Corporation is the abutting landowner and has requested that the surplus land be sold to the corporation for \$274,818.

The commission finds \$274,818 to be a fair and reasonable value for 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 Encore Wire Corporation for \$274,818; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(3) Gillespie County – US 290 at Reeh-Weinheimer Road west of Fredericksburg – Consider the exchange of right of way (MO)**

111911  
ROW

In GILLESPIE COUNTY, on US 290, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 51, Page 208, Deed Records of Gillespie County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the exchange of surplus land as partial or full consideration for other land needed for a state highway purpose.

Spring Canyon Ranches, Ltd., (partnership) has conveyed to the state land needed for a state highway purpose (new land), described in Exhibit B. The partnership has requested that the surplus land be conveyed to the partnership in exchange and as consideration for the new land.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land to the partnership in exchange and as consideration for the conveyance of the new land to the state.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Spring Canyon Ranches, Ltd., in exchange and as consideration for the conveyance of the new land to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interest, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

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

(4) Harris County – I-10 at Memorial Brook Drive in Houston – Consider the sale of surplus access rights to the abutting landowner (MO)

111912  
ROW

In the city of Houston, HARRIS COUNTY, on INTERSTATE 10, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instrument recorded in Document No. W781371, Official Public Records of Real Property, Harris County, Texas.

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

Moody National EC Houston S, LLC, a Delaware limited liability company, owner of a 12.32-acre tract of land conveyed by deed recorded under County Clerk's File No. 20060285093, Official Public Records of Real Property, Harris County, Texas (Moody National Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to the abutting landowner for \$268,330.

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

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

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to the abutting landowner for a cash consideration of \$268,330.

NOW, THEREFORE, the commission finds that the surplus access rights are no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument granting the state's interest in the surplus access rights to Moody National EC Houston S, LLC, a Delaware limited liability company, for a cash consideration of \$268,330.

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

Note: Exhibit A on file with minute order clerk.

(5) Lubbock County – US 82 west of SH Loop 289 in Lubbock – Consider the exchange of right of way (MO)

111913  
ROW

In the city of Lubbock, LUBBOCK COUNTY, on US 82, the State of Texas acquired certain land by instrument recorded in Volume 7008, Page 175, Deed Records of Lubbock County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the exchange of surplus land as partial or full consideration for other land needed for a state highway purpose.

WT Hubwest, LLC, (company) has conveyed to the state land needed for a state highway purpose (new land), described in Exhibit B. The company has requested that the surplus land be conveyed to the company in exchange and as consideration for the new land.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land to the company in exchange and as consideration for the conveyance of the new land to the state.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to WT Hubwest, LLC, in exchange and as consideration for the conveyance of the new land to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interest, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(6) Travis County – US 290 at FM 973 east of Manor – Consider the exchange with an abutting landowner of surplus right of way for new right of way (MO)**

111914  
ROW

In TRAVIS COUNTY, on US 290, the State of Texas acquired certain land and easement interests for highway purposes by instruments recorded in Volume 622, Page 450, and Volume 622, Page 449, Deed Records of Travis County, Texas, and in Volume K, Page 35, Civil Minutes of Travis County, Texas.

A portion of the land (surplus land), described in Exhibit A, and the easement (surplus easement), described in Exhibit B, are no longer needed for a state highway purpose.

Greenview Development 973, L.P. (owner), has conveyed to the state land needed for a state highway purpose on Farm to Market Road 973 (new land), described in Exhibits B and C, and desires to make a partial donation to the state of the difference in value between the new land and the surplus land and surplus easement.

V.T.C.A., Transportation Code, Chapter 201, Subchapter D, authorizes the Texas Department of Transportation (department) to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept by majority vote at an open meeting any gift or donation valued at over \$500, and the commission hereby finds that acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new land provided by the owner, which is \$184,128, exceeds the value of the surplus land and surplus easement, which is \$134,940.

The owner has executed and delivered a conveyance document under the terms of the donation agreement to convey the new land to the state and has requested that the state's rights, title and interest in the surplus land be conveyed to the owner and that the state's rights and interest in the surplus easement be released to the owner.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission may recommend the exchange of an interest in surplus real property as whole or partial consideration for another interest in real property needed for a state highway purpose.

It is the opinion of the commission that it is proper and correct that the state convey its rights, title and interest in the surplus land and release its rights and interest in the surplus easement to the owner in exchange and as consideration for the partial donation and the conveyance of the new land to the state.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new land and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, Chapter 1, Subchapter G.

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land and the surplus easement are no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land, described in Exhibit A, and releasing all of the state's rights and interest in the surplus easement, described in Exhibit B, to the owner in exchange and as consideration for the conveyance of the new land to the state.

Note: Exhibit A on file with minute order clerk.

**(7) Victoria County – SH Loop 175 at Hill Road in Telferner – Consider the sale of a surplus easement (MO)**

111915  
ROW

In the city of Telferner, VICTORIA COUNTY, on STATE HIGHWAY LOOP 175, the State of Texas acquired an easement interest in certain land needed for highway purposes by instrument recorded in Volume 753, Page 634, Deed Records of Victoria County, Texas.

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

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

Alfredo Salazar, Sr., and wife, Ernestina P. Salazar, are the owners of the underlying fee and have requested that the surplus easement be sold to them for \$1,680.

The commission finds \$1,680 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement is no longer needed for a state highway purpose and that the value of the surplus easement is less than \$10,000 and authorizes the executive director to execute a proper instrument releasing all of the state's rights and interest in the surplus easement to Alfredo Salazar, Sr., and wife, Ernestina P. Salazar, for a cash consideration of \$1,680.

Note: Exhibit A on file with minute order clerk.

**f. Speed Zones**

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

111916  
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 one segment of the state highway system, previously established by the commission by minute order and listed in Exhibit C, is no longer necessary or has been incorporated by the city which has the authority to set the speed limit on this section of the highway.

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

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

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

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

Note: The commission did not meet in executive session.

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

The commission received comments from Paul Alexander; and Carol Sue Dakan.

The regular meeting of the Texas Transportation Commission adjourned at 12:40 p.m.

APPROVED:

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Deirdre Delisi, Chair  
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on July 30, 2009, in San Angelo, Texas.

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Dee Hernandez, Chief Minute Clerk  
Texas Department of Transportation