

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on December 15, 2011, in Austin, Texas. The meeting was called to order by Chairman Houghton. The meeting opened at 9:00 a.m. with the following commissioners present:

Texas Transportation Commission:

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

Administrative Staff:

Phil Wilson, Executive Director
Bob Jackson, Office of General Counsel
Roger Polson, Executive Assistant to the Deputy Executive Director
JoLynne Williams, Chief Minute Order Clerk

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 2:03 p.m. on December 7, 2011, as required by Chapter 551, of the Government Code, referred to as “The Open Meetings Act.”

ITEM 1. Approval of Minutes of the November 17 meeting of the Texas Transportation Commission

Commissioner Austin made a motion, which was seconded, and the commission approved the minutes of the November 17, 2011, regular meeting, by a 5-0 vote.

ITEM 2. Resolution

a. Recognize Human Resources Division Director George Ebert upon his retirement from the department after 18 years of state service

This item was presented by Executive Director Phil Wilson. The commission received comments from Mr. Ebert.

b. Recognize Commission Support Office Director Roger Polson upon his retirement from the department after 18 years of service

This item was presented by Executive Director Phil Wilson. The commission received comments from Mr. Polson.

ITEM 3. Discussion Items

a. Update on TxDOT's modernization project

This item was presented by Chief Human Resources and Modernization Officer Dee Porter. Comments were also received from ROW's Acquisition Section Director and modernization project co-lead John Zimmerman.

b. Discussion of ongoing studies to identify transportation projects that will significantly reduce levels of congestion on the state's most congested roadways, as required by the General Appropriations Act

This item was introduced by Transportation Planning and Programming Division Data Management Director Shannon Crum. A report was received from the Texas Transportation Institute Executive Associate Director Bill Stockton.

4. Texas State Railroad

Report on transportation enhancements at the Texas State Railroad between Palestine and Rusk

This item was introduced by Rail Division Director Bill Glavin. A report was received from Texas State Railroad Authority President Steve Presley.

5. Aviation

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

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

112925
AVN

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

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

On Thursday, November 10, 2011, a public hearing was held. No comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$7,336,667.

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

6. Public Transportation

a. Various Counties – Award federal and state funds to designated lead agencies and fiscal agents to support continuation of coordinated regional public transportation planning for FY 2012 (MO)

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

112926
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 various sections of the United States 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 distribute funds as described in Exhibit A to lead agencies or fiscal agents 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 is on file with minute order clerk.

b. Various Counties – Award state planning funds to North Central Texas Council of Governments (NCTCOG) to provide match to federal dollars (MO)

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

112927
PTN

The Texas Transportation Commission (commission) desires to award \$15,000 in state planning funds to North Central Texas Council of Governments (NCTCOG) to assist with funding a technical assistance project for the Collin County Area Regional Transit, which is a division of Collin County Committee on Aging and an urban transit district funded by the Texas Department of Transportation (department).

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

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

IT IS THEREFORE ORDERED by the commission that the executive director, or the director's designee, is hereby authorized to proceed with the award of \$15,000 in state planning funds to NCTCOG for conducting the technical assistance project described above, and enter into the necessary contracts.

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

a. Final Adoption

(1) Chapter 9 - Contract and Grant Management (MO)

Amendments to §9.33, Notice of Intent and Letter of Interest (Contracting for Architectural, Engineering, and Surveying Services); and Amendments to §9.83, Notice and Letter of Interest (Contracts for Scientific, Real Estate Appraisal, Right Of Way Acquisition, and Landscape Architectural Services)

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

112928
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.33 relating to contracting for architectural, engineering, and surveying services and §9.83 relating to contracts for scientific, real estate appraisal, right-of-way acquisition, and landscape architectural services to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §9.33 and §9.83 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(2) Chapter 9 - Contract and Grant Sanctions (MO)

Amendments to §9.133, Procedure for Imposing Sanctions (Grant Sanctions)

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

112929
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.133 relating to Procedure for Imposing Sanctions 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 §9.133 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(3) Chapter 21 - Right of Way , Chapter 25 – Traffic Operations, and Chapter 27 - Toll Projects (MO)

Amendments to §21.406, Exemptions for Certain Populous Counties (Control of Signs Along Rural Roads), §25.101, Purpose, and §25.103, Routing Designations by Political Subdivisions (Hazardous Material Routing Designations), §27.40, Purpose and §27.42, Creation (Regional Tollway Authorities), and §27.73, Commission Approval of County Toll Project (County Toll Roads and Ferries)

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

112930
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.406, §25.101, §25.103, §27.40, §27.42, and §27.73 relating to updates to statutory population references to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §21.406, §25.101, §25.103, §27.40, §27.42, and §27.73 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

(4) Chapter 26 - Regional Mobility Authorities (MO)
Amendments to §26.61, Written Reports, §26.62, Annual Audits, §26.63, Other
Reports, and New §26.65, Annual Reports to the Commission

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Austin abstained). This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112931
TTA

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§26.61 - 26.63 and new §26.65 relating to regional mobility authorities' reports and audits 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 §§26.61 - 26.63 and new §26.65 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(5) Chapter 28 - Oversize and Overweight Vehicles and Loads (MO)
Amendments to §§28.90 - 28.92 (Port of Brownsville Port Authority Permits)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Maintenance Division Director Toribio Garza. The commission also received comments from Chief Financial Officer James Bass.

112932
MNT

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§28.90 - 28.92, relating to Port of Brownsville Port Authority Permits 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 §§28.90 - 28.92, are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

b. Proposed Adoption

(1) Chapter 15 - Financing and Construction of Transportation Projects (MO) Financing and Construction of Transportation Projects Amendments to §15.51, Definitions, §15.52, Agreements, and §15.55, Construction Cost Participation (Federal, State, and Local Participation)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by GSD’s Contract Services attorney Janice Mullenix.

112933
GSD

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §15.51, §15.52, and §15.55 relating to federal, state, and local participation to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §15.51, §15.52, and §15.55 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

Exhibits A and B are on file with minute order clerk.

(2) Chapter 15 - Financing and Construction of Transportation Projects (MO) Amendments to §15.86, Conflict of Interest and §15.90, Reports and Audits, and New §15.95, Toll Project Corporations (Transportation Corporations)

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

112934
CFO

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §15.86, Conflict of Interest and §15.90, Reports and Audits, and new §15.95, Toll Project Corporations, relating to Transportation Corporations, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new section, 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 §15.86 and §15.90 and new §15.95 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.

Exhibits A and B are on file with minute order clerk.

(3) Chapter 21 - Right of Way (MO)

Amendments to §21.144, §21.146, §21.149, §21.152, §21.155, §21.158, §21.159, §21.160, §21.169, §21.172 - 21.174, §21.179, §21.180, §21.183, §21.187, §21.193, §21.198, and New §21.204 (Regulation of Signs Along Interstate and Primary Highways); Amendments to §21.404, §21.405, §21.409, §21.411, §21.416; the Repeal of §21.419 and New §21.419; Amendments to §§21.420 - 21.423, §21.429, and New §§21.447 - 21.457 (Control of Signs Along Rural Roads)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Right of Way Division director John Campbell.

112935
ROW

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.144, §21.146, §21.149, §21.152, §21.155, §§21.152.160, §21.169, §§21.172 – 21.174, §21.179, §21.180, §21.183, §21.187, §21.193, §21.198, and new §21.204 relating to Regulation of Signs Along Interstate and Primary Highways; amendments to §21.405, §21.409, §21.411, §21.416; the repeal of §21.419 and new §21.419; amendments to §§21.420 - 21.423, §21.429, and new §§21.447 - 21.457 all relating to Control of Signs Along Rural Roads to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §21.144, §21.146, §21.149, §21.152, §21.155, §§21.158 - 21.160, §21.169, §§21.172 - 21.174, §21.179, §21.180, §21.183, §21.187, §21.193, §21.198, §21.405, §21.409, §21.411, §21.416, §§21.420 - 21.423, §21.429, the repeal of §21.419, and new §21.204, §21.419, and §§21.447 - 21.457 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.

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

(4) Chapter 31 - Public Transportation (MO)
Amendments to §31.11, Formula Program (State Programs)

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

112936
PTN

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §31.11 relating to formula program to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §31.11 are proposed 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.

Exhibits A and B are on file with minute order clerk.

8. Internal Compliance Program (ICP) Report

This item was presented by Interim Compliance Office Director Angie Parker.

9. Determination of Conflict of Interest

Issuance of a determination as to whether participation by IDC as a member of a proposer team for a comprehensive development agreement (CDA) project while performing consulting services for the department in connection with another CDA project would constitute a conflict of interest (MO)

Commissioner Austin made a motion to approve the following minute order with a change to approve the appointment of a committee chair only. The motion was seconded and the commission approved the minute order by a vote of 5 – 0. This item was presented by Texas Turnpike Authority Division Interim Director Ed Pensock.

112937
ADM

Title 43, Texas Administrative Code, Section 27.8 prescribes ethical standards of conduct applicable to private entities, including consultants and subconsultants,

participating in the comprehensive development agreement (CDA) program of the Texas Department of Transportation (department).

Section 27.8(c)(8) provides that a consultant actively engaged and performing procurement services to the department with respect to a CDA project may be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for another CDA project, or may have a financial interest in any of the foregoing entities with respect to another CDA project, provided the consultant submits a request for a written determination under 43 TAC §27.8(c)(9) that establishes to the satisfaction of the Texas Transportation Commission (commission) that such participation or interest would not constitute a conflict of interest or create the appearance of a conflict of interest, and the consultant institutes ethical walls or other safeguards required by the department.

Pursuant to Section 27.8(c)(9), in determining whether a conflict of interest exists or whether to approve an exception to the applicability of Section 27.8(c) (conflict of interest rules) to services performed by a consultant or subconsultant, the commission shall consider the recommendation of the executive director of the department and:

- (1) the extent to which the firm obtained access to or the ability to gain knowledge of confidential or sensitive information, procedures, policies, and processes concerning the CDA program or a particular project or procurement that could provide an unfair competitive advantage with respect to the procurement or project at issue;
- (2) the type of consulting services at issue;
- (3) the particular circumstances of each procurement;
- (4) the specialized expertise needed by the department and proposers to implement the procurement;
- (5) the past, current, or future working relationship between the consultant and the department;
- (6) the period of time between the potential conflict situation and the project at issue; and
- (7) the potential impact on the procurement and project at issue, including competition.

On November 22, 2011, IDC Inc. (IDC) submitted a request to the executive director for a determination in accordance with Section 27.8(c)(9) that a conflict of interest does not exist between IDC's procurement services and IDC's potential participation on a CDA developer team for the I-35E, Grand Parkway, SH 249, and SH 288 CDA projects. IDC is currently under contract, as a subconsultant to URS Corporation, to perform procurement services for the SH 183 CDA project in Dallas County.

As an Historically Underutilized Business (HUB) subconsultant, IDC has provided preliminary engineering services for the SH183 project in Dallas County.

In its request letter, IDC states that it has not had access to any confidential information. URS provided IDC with a stick diagram which identified project termini, from which IDC is preparing a schematic and cost estimate for the SH 183 project.

IDC states that the firm's staff has not participated in any meetings or conference calls during which sensitive information has been discussed. According to URS' letter to TxDOT, dated August 12, 2011, URS maintains security and control over confidential information and documents through a firewall which extends to subconsultants on their procurement team. According to URS, "Subconsultants are retained to carry out the obligations of their contracts, such as gather information or conduct research. They are not included in TxDOT deliberations or decision making."

Most of the criteria in Section 27.8(c)(9) are considered when determining whether to grant an exception to the applicability of the conflict of interest rules to the services in question. The criterion of concern in the issuance of a determination in response to IDC's request is the extent to which the firm obtained access to or the ability to gain knowledge of confidential or sensitive information, procedures, policies, and processes concerning the comprehensive development agreement program or a particular project or procurement that could provide an unfair competitive advantage with respect to the procurement or project at issue.

A consultant providing procurement services may be privy to discussions concerning sensitive or confidential information, including strategies for structuring the procurement, evaluation criteria and points to be assigned to each evaluation criterion, and what is important to evaluators, that other proposers will not be aware of. Moreover, those consultants may participate in internal discussions the department has concerning issues that come up at one-on-one meetings with proposers during industry review of the draft request for proposals for a CDA project. Those issues typically are not project specific. A consultant providing procurement services will be aware of the department's sensitivities on those issues and how far the department will be willing to go to compromise on those issues. This understanding of the department's procurement and negotiation strategy can be used to the advantage of the consultant and the proposer who uses their consulting services.

In addition, discussions during one-on-one meetings may involve the confidential business strategy of a proposer that is the competitor of the consultant on a different project. Additionally, the department, historically and currently, conducts CDA procurements for multiple projects at the same time. A procurement engineer on a project is tasked to review the confidential alternative technical concepts submitted by proposers for that project. The proposers submitting the alternative technical concepts are potential competitors to the procurement engineer's proposer. Given the schedule for CDA procurements, it is possible that consultants may be reviewing the alternative technical concepts of their competitors at the same time that they are developing their own alternative technical concepts for a different project.

Department staff has indicated that IDC has not been privy to current sensitive information that could be carried forward and valuable in future CDAs. IDC has not been involved with the planning of strategy sessions for the current candidate CDA projects, and IDC's involvement in past efforts is not directly applicable to the current philosophy in developing CDA procurement strategies. In addition, IDC's involvement in past efforts resulted in documents that are now public and available to all prospective bidders. Any sensitive information or knowledge IDC may have gained during those activities is either public or no longer current and relevant to future project discussions.

Based on the information provided by IDC and department staff, IDC has not obtained access to or gained knowledge of confidential or sensitive information, procedures, policies, and processes concerning the CDA program or a particular project or procurement that could provide an unfair competitive advantage with respect to the future procurements and projects IDC is seeking to participate as a member of a proposer or developer team, either through never having obtained access to such information, or because the information is no longer sensitive or confidential because it is publicly available or no longer relevant to future project procurements.

In accordance with the requirements of Section 27.8(c)(9), the executive director has recommended that the commission determine that IDC's participation on a proposer team with respect to the Grand Parkway, SH 249, SH 288 and I-35E projects would not constitute a conflict of interest or create the appearance of a conflict of interest. There is insufficient information supporting a conclusion that a conflict of interest exists, or that there is the appearance of a conflict of interest.

Section 27.8(c)(12) provides that in instances where there is a written determination under Section 27.8(c)(9) that a conflict of interest does not exist, or an exception to the application of the conflict of interest rules is granted, the department may still, in its discretion, restrict the scope of services the consultant or subconsultant may be eligible to perform for the department in order to further the intent and goals of the conflict of interest rules.

IT IS THEREFORE DETERMINED by the commission, in consideration of the foregoing facts and the recommendation of the executive director, and pursuant to the requirements of 43 TAC §27.8(c)(8) and (9), that IDC's participation as an equity owner, team member, consultant, or subconsultant of or to a proposer for the Grand Parkway, SH 249, SH 288 and I-35E projects, would not constitute a conflict of interest or create the appearance of a conflict of interest.

IT IS FURTHER ORDERED that the department review IDC's scope of services under their subconsultant procurement engineering contract and restrict that scope as necessary to ensure that neither a conflict of interest nor the appearance of a conflict of interest is created in the future as a result of IDC's participation as part of a proposer team.

10. Toll Roads

a. Harris County – Concur in the election of a chair and vice-chair of the committee formed pursuant to Transportation Code, §228.013 to make certain determinations concerning the distribution of financial risk, the method of financing, and the tolling structure and methodology for SH 99 (Grand Parkway) Segments E, F, & G (MO)

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

112938
TTA

The Texas Department of Transportation (department) and local stakeholders are currently analyzing options for the financing and delivery of the portion of SH 99 (Grand Parkway) in Harris and Montgomery Counties (Grand Parkway Project) that

includes the construction of tolled main lanes and limited frontage roads on new location.

For certain toll projects of the department in which a private entity has a financial interest in the project's performance, Senate Bill 1420, 82nd Legislature, Regular Session, 2011, added Transportation Code, §228.013 requiring that the distribution of the project's financial risk; the method of financing for the project; and the tolling structure and methodology must be determined by a committee comprised of representatives from the department; any local toll project entity for the area in which the project is located; the applicable metropolitan planning organization; and each municipality or county that has provided revenue or right of way for the project (SB 1420 Committee).

The Texas Transportation Commission (commission) has adopted 43 TAC §§27.90-27.92 to implement Section 228.013 and define the process for the issuance of these determinations by an SB 1420 Committee (committee rules).

Under Section 27.92(a) of the committee rules, the requirement to form an SB 1420 Committee for the purpose of issuing a report containing the committee's determinations applies to department toll projects that will be developed under a concession agreement or availability payment contract. As the department and local stakeholders are analyzing options for the financing and delivery of the Grand Parkway Project that include the use of a concession agreement, a SB 1420 Committee for the Grand Parkway Project was formed.

On November 29, 2011, the SH 99 in Harris and Montgomery Counties SB 1420 Committee met and elected James Patterson, representing the Houston-Galveston Area Council, the metropolitan planning organization for the area, as chair of the committee. Under Section 27.92(c) of the committee rules, an SB 1420 Committee's election of a chair and vice-chair is subject to the concurrence of the commission.

IT IS THEREFORE ORDERED that the Texas Transportation Commission hereby concurs with the election of James Patterson as chair of the SH 99 in Harris and Montgomery Counties SB 1420 Committee.

b. Travis and Williamson Counties – Accept the Report of Actual Traffic and Revenue for the Central Texas Turnpike System (CTTS) (MO)

Commissioner Austin made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Toll Operations Division Interim Director Doug Woodall.

112939
TTA

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

The commission has previously issued \$2,199,993,781.80 in obligations to finance a portion of the costs of the Central Texas Turnpike System (system), a turnpike project composed initially of the SH 130, SH 45, and Loop 1 project elements (2002

Project), pursuant to an Indenture of Trust and four supplemental indentures. The Indenture of Trust dated July 15, 2002 (Indenture), prescribes the terms, provisions and covenants related to the issuance of turnpike revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Section 501(c) of the Indenture covenants that for the first five full years of operation of the 2002 Project, the commission will provide to the Trustee a report showing the traffic and revenue of the system for the previous quarter.

Pursuant to Minute Order 111081, dated September 27, 2007, the 2002 Project was declared Substantially Complete as defined within the Indenture.

A report of actual traffic and revenue for the required period, attached as Exhibit A, has been prepared in accordance with Section 501(c) of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the report of actual traffic and revenue attached as Exhibit A is accepted.

Exhibit A is on file with minute order clerk.

c. Travis and Williamson Counties – Establish temporary main lane toll rate tables on SH 130 Segments 1-4 and SH 45 Southeast to charge the two-axle rate for all vehicles, regardless of classification (MO)

Commissioner Austin made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Toll Operations Division Interim Director Doug Woodall.

112940
TTA

Title 43, Texas Administrative Code, §27.82(d) provides that the Texas Transportation Commission (commission) will establish toll rates for the use of a toll project on the state highway system. In setting toll rates, the commission is required to consider: (1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report; (2) the requirements of project bond covenants; and (3) vehicle classification, type and location of the facility, and similar criteria that apply to a specific project.

SH 130 is a four-lane, controlled-access toll road extending 49 miles from I-35 north of Georgetown to US 183 south of the Austin-Bergstrom Airport, and is an element of the Central Texas Turnpike System 2002 Project (2002 Project). SH 45 Southeast is a four-lane, controlled-access toll road extending 7.4 miles from I-35 to US 183/SH 130 in Travis County.

The Texas Department of Transportation (department) desires to establish temporary toll rate tables on SH 130 Segments 1-4 and SH 45 Southeast for the period of December 21, 2011, to January 31, 2012, to charge the current two-axle toll rate for all vehicles, regardless of classification. The intent of this temporary change is to encourage greater truck usage on the toll roads during the holiday season. The toll rates would revert back to the previously-approved rates, as described in Minute Order 112604, on February 1, 2012.

In accordance with Section 502 of the Indenture of Trust for the 2002 Project (indenture), any change in classification that results in a reduced toll or any new classification shall be subject to a traffic consultant approving the same before it is

implemented unless the same is temporary. In all events, the commission shall not make a change in classification or any new classification unless the commission determines that such change is not expected to result in the receipt of revenues in amounts less than that contemplated by the rate covenant.

The department's traffic consultant has provided a certification indicating that the adoption of temporary changes in the main lane toll rates associated with the 2002 Project for a two week period will not adversely affect the ability of the commission to comply with its rate covenants in Section 501 of the indenture. The traffic consultant is currently analyzing the same scenario for a six week period, including ramps, and is expected to provide a certification indicating that the adoption of the temporary changes in the toll rates for the extended period of time will not adversely affect the ability of the commission to comply with its rate covenants.

IT IS THEREFORE ORDERED and determined by the commission that the change in classification is not expected to result in the receipt of revenues in amounts less than that contemplated by the rate covenant and the department is authorized to charge tolls on SH 130 Segments 1-4 and SH 45 Southeast in the amounts stated in Exhibit A from December 21, 2011, up to January 31, 2012, provided that the department's traffic consultant provides a certification confirming that the cost of the temporary changes in toll rates will represent less than a 1% change in annual revenue and will not adversely affect the ability of the commission to comply with its rate covenants.

IT IS FURTHER ORDERED that the department will determine the exact length of time the temporary toll rates will apply, based on the certification provided by the traffic consultant.

IT IS FURTHER ORDERED that the toll rates will revert back to the previously-approved rates, as described as in Minute Order 112604, on a date determined by the department, but in no case later than February 1, 2012.

Exhibit A is on file with minute order clerk.

11. Leasing of Right of Way

Various Counties – Lease of right of way for implementation of low-emission freight transportation facility, report concerning request for competing proposals issued April 8, 2011 (MO)

This item was deferred.

12. State Infrastructure Bank (SIB)

Various Counties – North East Texas Regional Mobility Authority (NETRMA) - Consider approving an amendment to the SIB loan agreement between NETRMA and the department dated as of March 1, 2011, approved in Minute Order 112475 and amended in Minute Order 112607, to permit an expansion of the Toll 49 project scope (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner

Austin abstained). This item was presented by Finance Division Director Brian Ragland.

112941
FIN

On October 28, 2010, by Minute Order 112475, the Texas Transportation Commission (commission) granted final approval of financial assistance for the North East Texas Regional Mobility Authority (NETRMA) to borrow up to \$39.2 million from the State Infrastructure Bank (SIB) to pay for certain costs of design and construction of Segment 3B of Toll 49, from SH 31 north to I-20 (project).

On February 24, 2011, the commission adopted Minute Order 112607 to modify the terms of the SIB loan approved pursuant to Minute Order 112475, to extend the maturity and provide for an adjustment in the SIB loan interest rate, and to approve the connection of the project with a segment of the state highway system.

Pursuant to Minute Order 112475, as modified by Minute Order 112607, the Texas Department of Transportation (department) and NETRMA entered into the SIB Loan Agreement dated as of March 1, 2011 to finance certain costs of the project that will not be financed by a toll equity loan for the project.

The NETRMA has determined that the project to be financed in part by the SIB loan agreement should now also include preliminary studies required to determine the feasibility of the Toll 49 East Texas Hourglass project (Hourglass project) which traverses Gregg, Harrison, Smith, and Upshur counties. The Hourglass project is expected to provide a regional connecting transportation facility for the cities of Tyler and Longview. The Hourglass project may provide a possible connection to future I-69, crossing I-20 close to the Smith/Gregg county line. The Hourglass project is expected to then parallel I-20 to the north and connect to US 59 north of the city of Marshall.

The NETRMA has also determined that the requirement in the SIB loan agreement to provide financial information audited by a nationally recognized firm of independent public accountants should be revised to eliminate the requirement that the audit firm be one that is nationally recognized.

The project as redefined is consistent with the Metropolitan Transportation Plan of both the Tyler and Longview Metropolitan Planning Organizations, and is consistent with the FY 2011-2014 Statewide Transportation Improvement Program. Further, the project as redefined will improve the efficiency of the state's transportation systems, and will expand the availability of funding for transportation projects or reduce direct state costs.

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

The commission has determined that the requirement in the SIB loan agreement to provide financial information audited by a firm of independent public accountants meets the requirements of 43 TAC Chapter 6 (SIB rules).

IT IS THEREFORE ORDERED that the definition of the project in the SIB loan agreement be revised to include preliminary studies required to determine the feasibility of the Hourglass project.

IT IS FURTHER ORDERED that the executive director of the department or his designee is authorized to enter into an amendment of the SIB loan agreement and any related agreement or document as may be needed to revise (i) the definition of the project and (ii) the audit requirements, each as described herein.

13. Toll Equity

Various Counties – North East Texas Regional Mobility Authority

(NETRMA) - Consider approving an amendment to the toll equity loan agreement between NETRMA and the department dated as of March 1, 2011, approved in Minute Order 112498, and amended in Minute Order 112608, to permit an expansion of the Toll 49 project scope (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Austin abstained). This item was presented by Finance Division Director Brian Ragland.

112942
FIN

On November 18, 2010, by Minute Order 112498, the Texas Transportation Commission (commission) granted final approval of a request by the North East Texas Regional Mobility Authority (NETRMA) for toll equity financing in the form of a loan for certain costs of design and construction of Segment 3B of Toll 49, from SH 31 north to I-20 (project), in the amount of up to \$90 million, not to exceed the difference between the amount of eligible project costs and the amount of a State Infrastructure Bank (SIB) loan for the project.

On February 24, 2011, the commission adopted Minute Order 112608 to modify the terms of the toll equity loan authorized under Minute Order 112498, to extend the maturity and adjust the interest rate accruing on the toll equity loan.

Pursuant to Minute Order 112498, as modified by Minute Order 112608, the Texas Department of Transportation (department) and NETRMA entered into the Toll Equity Loan Agreement (agreement) dated as of March 1, 2011, to provide a loan in the stated amount of \$59,749,346.02 to finance certain costs of the project that will not be financed by a SIB loan for the project.

The NETRMA has determined that the project to be financed in part by the agreement should now also include development costs as defined in 43 TAC §27.51 (toll equity rules), and for all feasible segments, the preparation of plans, specifications, and estimates for the Toll 49 East Texas Hourglass project (Hourglass project) which traverses Gregg, Harrison, Smith, and Upshur counties. The Hourglass project is expected to provide a regional connecting transportation facility for the cities of Tyler and Longview and may provide a possible connection to future I-69, crossing I-20 close to the Smith/Gregg county line. The Hourglass project is expected to then parallel I-20 to the north and connect to US 59 north of the city of Marshall.

The NETRMA has also determined that the requirement in the toll equity loan agreement to provide financial information audited by a nationally recognized firm of independent public accountants should be revised to eliminate the requirement that the audit firm be one that is nationally recognized.

The project as redefined is consistent with the Metropolitan Transportation Plan of both the Tyler and Longview Metropolitan Planning Organizations, and is consistent with the FY 2011-2014 Statewide Transportation Improvement Program. Further, the project as redefined will improve the efficiency of the state's transportation systems, expand the availability of funding for transportation projects or reduce direct state costs.

The commission has determined that the requirement in the toll equity loan agreement to provide financial information audited by a firm of independent public accountants meets the requirements of 43 TAC §§27.50-27.58 (toll equity rules).

IT IS THEREFORE ORDERED that the definition of the project in the toll equity loan agreement be revised to include development costs and, for all feasible segments, the preparation of plans, specifications, and estimates for the Hourglass project.

IT IS FURTHER ORDERED that the executive director of the department or his designee is authorized to enter into an amendment of the toll equity loan agreement and any related agreement or document as may be needed to revise (i) the definition of the project and (ii) the audit requirements, each as described herein.

14. Unified Transportation Program (UTP)

Approve updates to the 2012 UTP (MO)

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

112943
FIN

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

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

The 2012 UTP was approved by the commission on May 26, 2011, in Minute Order 112696, and the revised 2012 UTP was approved by the commission on September 29, 2011, in Minute Order 112824.

On November 10, 2011, the department conducted public video-teleconferences across the state, and a public hearing on November 22, 2011, to receive comments and testimony concerning the proposed updates to the 2012 UTP.

The updates to the 2012 UTP, as shown in Exhibit A, include revised funding allocations based on fund transfer requests and revised tiered funding on Category 1, 2, 7 and 11 projects previously approved by the commission in the 2012 UTP. In

addition, this minute order addresses updates to project specific program lists for Categories 2, 3, and 10 and other minor revisions or technical corrections.

IT IS THEREFORE ORDERED by the commission that the updates to the 2012 UTP, as shown in Exhibit A, are hereby approved.

Exhibit A is on file with minute order clerk.

15. Contracts

Award or reject contracts for maintenance, highway and building construction

a. Highway Maintenance and Department Building Construction

(see attached itemized list) (MO)

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

112944
MNT

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 December 1 and 2, 2011.

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

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

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

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

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

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to

fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

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

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

112945
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 December 1 and 2, 2011.

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.

16. Eminent Domain Proceedings

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

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

112946
ROW

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

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

The commission finds and determines that the highway facilities to be constructed or improved on the parcels identified and listed below under "CONTROLLED ACCESS" are designated as a Controlled-Access Highway in accordance with Transportation Code, Section 203.031; and where there is adjoining real property remaining after acquisition of a parcel, the roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits A - R. Where there is adjoining real property remaining after acquisition of a parcel with respect to the highway facilities to be constructed or improved on the parcels identified as listed below under "NON-CONTROLLED ACCESS," roads are to be constructed or improved as a part of the highway facility with the right of ingress and egress to or from the remaining real property adjoining the highway facility to be permitted or denied, as designated and set forth on each of the attached Exhibits 1 - 22, in accordance with Transportation Code, Sections 203.002 and 203.003.

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

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

IT IS FURTHER ORDERED that the executive director is hereby authorized to proceed to condemnation on the parcels and directed to transmit or cause to be transmitted this request of the commission to the Office of the Attorney General to file or cause to be filed against all owners, lienholders, and any owners of any other interests in the parcels, proceedings in condemnation to acquire in the name of and on behalf of the state, fee simple title to each parcel or such lesser estates or property interests as are more fully described in each of the attached Exhibits, save and excepting oil, gas, and sulfur, as provided by law, as follows:

NON-CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Collin	FM 545	1	1012-02-033	1
Collin	SH 289	20	0091-03-023	4
Collin	SH 289	19	0091-03-023	9
Collin	SH 289	16	0091-03-023	16
Collin	SH 289	12	0091-03-023	24
Collin	SH 289	21	0091-03-023	8
Collin	SH 289	22	0091-03-023	2
Collin	SH 78	15	0281-01-031	4
Collin	SH 78	2	0281-01-031	3
Collin	SH 78	17	0281-02-064	39
Collin	SH 78	18	0281-02-066	3, 3E
Collin	SH 78	14	0281-02-066	2
Collin	SH 78	13	0281-02-066	1
Comal	US 281	3	0253-03-065	5
Denton	FM 423	5	1315-02-010	65
Denton	FM 423	4	1315-02-010	5
Denton	FM 423	6	1315-02-010	64
El Paso	SH 76	11	0674-01-058	70A
Montgomery	FM 1774	10	1400-04-027	202A
Montgomery	FM 1774	9	1400-04-027	202B
Upshur	SH 155	7	0520-02-046	3B
Upshur	SH 155	8	0520-02-046	3A

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	K	0015-04-083	47
Bell	IH 35	F	0015-04-083	39, 39AC
Bell	IH 35	G	0015-04-083	43
Bell	IH 35	O	0015-04-083	74

CONTROLLED ACCESS (CONTINUED)

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	N	0015-04-083	72
Bell	IH 35	L	0015-04-083	48
Bell	IH 35	M	0015-04-083	49
Denton	IH35E	R	0196-01-097	57
Harris	IH610	A	0271-14-221	230
Harris	IH 610	E	0271-14-225	317
Harris	IH 610	D	0271-14-225	324
Harris	IH 610	B	0271-14-225	312
Harris	IH 610	P	0271-14-225	325
Harris	IH 610	Q	0271-14-225	333
Harris	IH 610	C	0271-14-225	332
McLennan	IH 35	J	0015-01-220	37
McLennan	IH 35	I	0015-01-220	48
McLennan	IH 35	H	0015-01-220	13, 13E

Note: Exhibits 1 through 22 and A through Q are on file with minute order clerk.

17. Routine Minute Orders

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

a. Donations to the Department

(1) Corpus Christi District – Consider a donation from NAC Services for the cost to design and construct a left turn, right turn, and acceleration lanes at the NAC development on US 181 in Karnes County (MO)

112947
GSD

This minute order considers a donation from NAC Services of the design and construction of a left turn, right turn, and acceleration lanes at the NAC development on US 181 in Karnes County. The estimated value of the donation is \$590,441.

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.

Transportation Code, §223.049 authorizes the department to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right of way that is directly related to improving access to or from the owner's land.

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 finds that acceptance of the donation would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation, with an estimated value of \$590,441 by NAC Services is approved for acceptance. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(2) Traffic Operations Division – Consider a donation for the cost associated with the fabrication and installation of 16 highway signs which designates various highways statewide as the Purple Heart Trail (MO)

112948
GSD

This minute order considers a donation for \$25,212 from the Military Order of the Purple Heart, Department of Texas, to be used for the costs associated with the fabrication and installation of 16 highway signs statewide, which designate a part of I-40; a part of I-37 from I-35 to US 77; a part of US 77 from I-37 to SH 100; and Park Road 100 as the Purple Heart Trail.

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 \$25,212 by the Military Order of the Purple Heart, Department of Texas, is approved for acceptance. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(3) Tyler District – Consider a donation from Luminant Mining Company, LLC. for sufficient funding to construct a new segment of highway parallel to FM 2658 in Rusk County which will then be conveyed to the state in exchange for an approximately 1.46 mile length of highway currently designated as FM 2658 (MO)

112949
GSD

Luminant Mining Company, LLC., (donor) would like to donate sufficient funding, property and services to provide for land acquisition and exchange of right of way, utility relocation, environmental assessments, schematics, plan specifications and estimates, and construction and construction engineering necessary to construct a new segment of replacement highway parallel to FM 2658 in Rusk County, approximately 1.76 miles in length, as more particularly described in Exhibit A (new right of way). The estimated donation is \$5,150,552. The donor has further agreed that upon completion of the realignment and construction of the new replacement highway facility for a portion of FM 2658, it will convey to the state the new right of way. Upon acceptance of the new right of way, the department will abandon an approximately 1.46 miles length of highway currently designated as FM 2658 as more particularly described in Exhibit B (existing right of way). In essence, this series of transactions will provide for the construction of a new segment of highway on property owned by the donor and the ultimate exchange of that segment for a parallel segment of highway currently owned by the department. As a result, the department will receive a new highway segment meeting all current specifications, and the donor will be able to pursue mining operations under the existing highway segment.

Transportation Code, §201.206, authorizes the Texas Department of Transportation (department) to accept a donation in any form, including realty,

personalty, money materials, and services, for the purpose of carrying out its functions and duties.

Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 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.

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

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

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

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

It is the opinion of the commission that upon completion and acceptance of the new right of way, the existing right of way described in Exhibit B (surplus land) will no longer be needed for highway purposes, will be surplus, and should be removed from the state system of highways. It would then be proper and correct that the state convey and release its rights, title and interest in the surplus land including all coal and lignite rights, title and interest to the donor in exchange and as consideration for the conveyance of the new right of way to the state.

IT IS THEREFORE ORDERED by the commission that the donation by Luminant Mining Company, LLC, is accepted. The director of general services is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation and completion of the exchange.

IT IS FURTHER ORDERED by the commission that the director of general services is authorized to tender the following proposal to Luminant Mining Company, LLC., (donor).

Provided that the donor at its sole expense completes construction of the new right of way to the satisfaction of the department, conveys the new right of way described in Exhibit B to the state, and pays the cash difference between the value of the existing right of way and the value of the new right of way, if any, then the commission will recommend the conveyance of the existing right of way to the donor in accordance with Transportation Code, Chapter 202, Subchapter B.

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

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

b. Audited Financial Statements

(1) Travis and Williamson Counties – Accept the audited financial statements of the CTTS, as required by the CTTS Indenture of Trust (MO)

This item was deferred

(2) Accept the audited financial statements of the Texas Mobility Fund (TMF) as required by the governing master resolution (MO)

112950
FIN

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

Transportation Code, Chapter 201 and other applicable law authorizes the commission to issue obligations secured by and payable from a pledge of and lien on all or part of the moneys in the Mobility Fund in the name and on behalf of the state and the Texas Department of Transportation (department) in multiple series and issues from time to time for one or more of the following purposes: (i) to pay all or part of the costs

of constructing, reconstructing, acquiring, and expanding state highways, including any necessary design and acquisition of rights of way, in the manner and locations determined by the commission that, according to conclusive findings of the commission, have an expected useful life, without material repair, of not less than 10 years; (ii) to provide participation by the state in the payment of part of the costs of constructing and providing publicly owned toll roads and other public transportation projects that are determined by the commission to be in the best interests of the state in its major goal of improving the mobility of the residents of the state; (iii) to create debt service reserve accounts; (iv) to pay interest on obligations for a period of not longer than two years; (v) to refund or cancel outstanding obligations; and (vi) to pay the commission's costs of issuance. The commission also authorized the execution of a Master Resolution, an amendment to the Master Resolution and eight supplemental Resolutions (Resolutions) to authorize bonds for the Mobility Fund Revenue Financing Program. The Resolutions pledge a variety of dedicated statutory fees and other revenues as security and sources of payment for the Mobility Fund bonds and additionally pledge the general revenue of the state. The Resolutions also prescribe the terms, provisions and covenants related to the general obligation Mobility Fund bonds.

Under Section 5 (j) of the Resolution, the commission covenants to prepare, or cause to be prepared, no more than 120 days after the last day of each fiscal year, a financial report of the Mobility Fund. The financial report is required to be prepared in accordance with generally accepted accounting principles and certified by a certified public accountant. Audited financial statements, contained in the attached Exhibit A, have been prepared for the year ended August 31, 2011.

IT IS THEREFORE ORDERED by the commission that the audited financial statements of the Mobility Fund, attached as Exhibit A, are accepted.

Note: Exhibit A on file with minute order clerk.

c. Right of Way Dispositions and Donations

(1) Andrews County – US 385 approximately 1.0 mile south of Andrews - Consider the exchange of right of way (MO)

112951
ROW

In ANDREWS COUNTY, on US 385, the State of Texas acquired certain land by instrument recorded in Volume 42, Page 198, Deed Records of Andrews 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 full or partial consideration for other land needed for a state highway purpose.

Centurion Pipeline, L.P. (owner), is the owner of land needed for highway purposes (new land), described in Exhibit B, and has granted the new land to the state. Owner has requested that the surplus land be conveyed to owner. In accordance with the terms of an executed exchange agreement, state will pay to owner the \$240 difference in value between the value of the surplus land and that of the new land.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land and pay \$240 to owner in exchange and as full consideration for the conveyance of the new land to the state.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying the surplus land to Centurion Pipeline, L.P., and pay \$240 to owner 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 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: Exhibits A and B are on file with minute order clerk.

(2) Coryell County – US 84 approximately one mile west of CR 158 - Consider the sale of surplus right of way with reservation of an easement interest (MO)

112952
ROW

In CORYELL COUNTY, on US 84, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 129, Page 78, Deed Records of Coryell County, Texas.

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

An easement interest over the surplus land is needed for highway drainage purposes (drainage easement) and is reserved to the state.

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

Leon N. Vernon is the abutting owner and has requested that, subject to the drainage easement, the surplus land be sold to him for \$200.

The commission finds \$200 to be a fair and reasonable value of 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 is less than \$10,000. The commission authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Leon N. Vernon for \$200, subject to the drainage easement; 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) Denton County – FM 423 from US 380 to 0.8 miles south of FM 2934 - Consider the acceptance of a donation of land for a highway improvement project (MO)

112953
ROW

In DENTON COUNTY, on FARM TO MARKET ROAD 423 from US 380 to 0.8 miles south of FM 2934, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

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

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

The City of Frisco (owner) is the owner of the property described in Exhibit A and wants to donate this property, estimated at \$76,722, to the department for construction of a highway improvement project.

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

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

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

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

(4) El Paso County – SL 375 from 0.038 miles west of I-10 at SL 375 to 0.479 Miles east of Franklin Mountain State Park - Consider the acceptance of two donations of land for a highway improvement project (2 MOs)

112954
ROW

In EL PASO COUNTY, on STATE HIGHWAY LOOP 375 from 0.038 miles west of I-10 at SH Loop 375 to 0.479 miles east of Franklin Mountain State west of I-10 at SH Loop 375 to 0.479 miles east of Franklin Mountain State Park, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

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

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

Plexxar Capital, Ltd. (owner) is the owner of the property described in Exhibit A. The owner wishes to make a partial donation of this property to the department for construction of a highway improvement project. The department has determined the fair market value of this property is \$138,056. The donor desires to accept \$5,000 as full compensation for the property and desires to donate to the department any residual amount over and above said \$5,000.

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

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

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

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

112955
ROW

In EL PASO COUNTY, on STATE HIGHWAY LOOP 375 from 0.038 miles west of I-10 at SH Loop 375 to 0.479 miles east of Franklin Mountain State Park, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

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

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

Plexxar North, Ltd. (owner) is the owner of the property described in Exhibit A. The owner wishes to make a partial donation of this property to the department for construction of a highway improvement project. The department has determined the fair market value of this property is \$679,123. The donor desires to accept \$5,000 as full compensation for the property and desires to donate to the department any residual amount over and above said \$5,000.

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

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

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

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

(5) Smith County – FM 346, approximately 1.0 mile north of FM 344 - Consider the sale of two surplus drainage easements to the owners of the fee in the property (fee owners) (MO)

112956
ROW

In SMITH COUNTY, on FARM TO MARKET ROAD 346, the State of Texas acquired an easement interest in certain land by instrument recorded in Volume 21, Page 183, Smith County Commissioner’s Minutes.

Portions of the land (surplus easements), described as Tract 1 in Exhibit A and Tract 2 in Exhibit B, are no longer needed for state highway purposes.

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

Thomas Lewis Neumeier and wife, Kimberly M. Neumeier (Neumeiers), are the fee owners of Tract 1 and have requested that the surplus easement be sold to them for \$2,237.

Robert M. Tippens and wife, Judith A. Tippens (Tippens), are the fee owners of Tract 2 and have requested that the surplus easement be sold to them for \$662.

The commission finds \$2,237 to be a fair and reasonable value for the state's rights and interest in Tract 1, and \$662 to be a fair and reasonable value for the state's rights and interest in Tract 2.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easements are no longer needed for a state highway purpose and that the values of the surplus easements are less than \$10,000 and authorizes the executive director to execute proper instruments partially releasing all of the state's rights and interest in Tract 1 to the Neumeiers for \$2,237 and releasing all of the state's rights and interest in Tract 2 to the Tippens for \$662.

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

e. Speed Zones

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

112957
TRF

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

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

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

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

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

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

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

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

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

18. Executive Session Pursuant to Government Code, Chapter 551

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

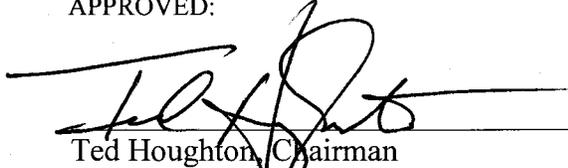
b. Section 551.074 – Discussion regarding the creation of a performance plan for the executive director

The commission did not meet in executive session.

There were no comments in the Open Comment Period.

The regular meeting of the Texas Transportation Commission was adjourned at 11:00 a.m.

APPROVED:



Ted Houghton, Chairman
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on December 15, 2011, in Austin, Texas.



JoLynne Williams, Chief Minute Order Clerk
Texas Department of Transportation