

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on July 28, 2011, in Austin, Texas. The meeting was called to order by Chair Delisi. The meeting opened at 9:00 a.m. with the following commissioners present:

**Texas Transportation Commission:**

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

**Administrative Staff:**

Amadeo Saenz, Executive Director  
 Leonard Reese, 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 4:55 p.m. on July 20, 2011, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**ITEM 1. Approval of Minutes of the June 30 meeting of the Texas Transportation Commission**

Commissioner Underwood made a motion, which was seconded, and the commission approved the minutes of the June 30, 2011, regular meeting, by a 5-0 vote.

**ITEM 2 Resolutions**

Resolutions to recognize Childress District Engineer Terry Keener, El Paso District Engineer Chuck Berry, Houston District Engineer Delvin Dennis, and Bridge Division Director David Hohmann upon their retirement from the department.

This item was presented by Executive Director Amadeo Saenz. The commission received comments from all recipients.

**ITEM 3 Report****Update on TxDOTs modernization project**

This item was introduced by Assistant Executive Director for Engineering Operations John Barton and presented by Yoakum District Engineer Lonnie Gregorcyk.

**ITEM 4 Discussion Items**

a. Discussion of options for the establishment of eligibility, prioritization, and selection criteria for highway improvement projects to be funded using the proceeds from bonds, notes, and other public securities issued under Transportation Code, Section 222.004, known as Proposition 12 bonds, as well as undistributed funds from the State Highway Fund (Fund 6)

This item was presented by Assistant Executive Director for Engineering Operations John Barton.

**ITEM 4 Discussion Items**

b. Discussion of the department's approach to project selection and submission of applications for the federal Transportation Investment Generating Economic Recovery (TIGER) III grant program

This item was presented by Assistant Executive Director for Engineering Operations John Barton.

**ITEM 5. Aviation****Various Counties – Award federal grant funding for airport improvement projects at various locations (MO)**

Commissioner Houghton 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. Comments were also received from former mayor of DeSoto Bobby Waddle.

112745  
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, June 23, 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 \$715,556.

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

**ITEM 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 Houghton 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 Deputy Division Director Bobby Killebrew.

112746  
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. Additionally the state legislature appropriates state funds as matching funds for those FTA planning programs which require a non-federal match.

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 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 transportation development credits to Alamo Area Council of Governments and Community Action Council of South Texas (MO)**

Commissioner Houghton 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 Deputy Division Director Bobby Killebrew.

112747  
PTN

The Texas Transportation Commission (commission) desires to award Transportation Development Credits (TDC) to two transit agencies, Alamo Area Council of Governments (AACOG) in the amount of 64,000 credits and Community Action Council of South Texas (CACST) in the amount of 3,800 credits, to be used as the local match for federal funded fleet projects.

The commission recognizes that state and federal law permits the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission. The commission finds that TDC investments in transit vehicles will improve air quality by replacing older vehicles with newer models which meet current emission standards; and increase the value of the transportation assets by investing into the replacement of depreciated rolling stock.

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

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

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

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the awards as described above, and enter into the necessary contracts in accordance with the priorities established in this minute order.

**c. Various Counties – Award federal §5311(b)(3) Rural Transportation Assistance Program funds to Texoma Area Paratransit System Inc. and Kaufman Area Rural Transportation (MO)**

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

112748  
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, Formula Grant Program for Areas Other Than Urbanized (49 U.S.C. §5311), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

Title 43, Texas Administrative Code, Section §31.37 establishes a process by which funds are distributed and describes the program purpose to foster the development of state and local capacity to meet the training and technical assistance needs of nonurbanized public transportation systems.

The department received requests from two transit agencies for technical assistance funds to purchase interactive driver training equipment and associated training room needs.

Texoma Area Paratransit System, Inc. requests \$25,550 and Kaufman Area Rural Transportation requests \$15,673 respectively.

The commission finds that the projects are eligible for funding and awards a total of \$41,223 in federal program funds as described above.

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

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

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the awards as described, submit the necessary state application to the FTA 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**

**Chapter 27 - Toll Projects (MO)**

**Amendments to §27.8, Conflict of Interest and Ethics Policies (Comprehensive Development Agreements)**

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Texas Turnpike Authority Division Director Mark Tomlinson. Comments were also received from HNTB Corporation Vice President Glenn Gregory.

112749  
TTA

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §27.8, relating to Conflict of Interest and Ethics Policies, 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 §27.8 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

**b. Proposed Adoption****(1) Chapter 1 - Management (MO)****New §1.12, Negotiated Rulemaking (Procedure for Adoption of Rules)**

Commissioner Houghton 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 Leonard Reese.

112750  
OGC

The Texas Transportation Commission (commission) finds it necessary to propose new §1.12 relating to negotiated rulemaking to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed 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 new §1.12 is proposed for adoption and is 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 9 - Contract and Grant Management (MO)****Amendments to §9.13 (Notice of Letting and Issuance of Bids Forms) (Relating to advertisement for bids)**

Commissioner Houghton 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 Russel Lenz. Comments were also received from Texas Daily Newspaper Association Executive Vice President Ken Whalen.

112751  
CST

The Texas Transportation Commission (commission) finds it necessary to propose propose amendments to §9.13 relating to Notice of Letting and Issuance of Bid Forms 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 §9.13 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.

**(3) Chapter 9 - Contract and Grant Management (MO)**

**Amendments to §9.21, Purchase of Service (Highway Improvement Contracts)**

Commissioner Houghton 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 Services Division Purchasing Director Glenn Hagler.

112752  
GSD

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.21 relating to Purchase of Service 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 §9.21 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.

**(4) Chapter 21 - Right of Way (MO)**

**Amendments to §21.38, Construction and Maintenance (Utility Accommodation)**

Commissioner Houghton 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.

112753  
ROW

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.38 relating to construction and maintenance 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 §21.38 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.

**(5) Chapter 25 - Traffic Operations (MO)**

**New 25.26, Temporary Traffic and Engineering Investigation Requirements (Procedures for Establishing Speed Zones)**

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 Traffic Operations Division Director Carol Rawson.

112754  
TRF

The Texas Transportation Commission (commission) finds it necessary to propose new §25.26, Provisional Traffic and Engineering Investigation Requirements to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed 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 new §25.26 is proposed for adoption and is 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.

**8. Pass-Through Toll Program**

**Authorize the executive director or designee to negotiate and execute a final pass-through toll agreement with each of those entities whose proposals under the December 16, 2010, pass-through toll program call were selected by the commission on May 26, 2011, as providing the best value to the state and who were successful in negotiating the financial terms of a pass-through toll agreement (MO)**

Commissioner Houghton 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 Director Mark Tomlinson.

112755  
TTA

On December 16, 2010, by Minute Order 112526, the Texas Transportation Commission (commission) approved a program call for highway projects to be developed on the state highway system under a pass-through toll program agreement (program call). The commission further determined that (i) monies available that can be allocated among all proposals selected under this program call will be limited to an estimated total of \$250 million in Category 12 funds; (ii) only the following category of project costs described in 43 TAC §5.53(a)(11) will be considered as eligible for reimbursement under this program call: construction cost, exclusive of construction engineering cost, and, in the case of a pass-through toll project submitted as a design-build project, the construction cost, exclusive of construction engineering costs must be broken out separately as one component of the total project cost; (iii) the value of development and implementation services and products for the project, including but not limited to environmental studies and mitigation, right-of-way acquisition, engineering, and construction inspection services that have been or will be provided by the department, will be deducted from the eligible reimbursement amounts; and (iv) federal and state funding that is otherwise programmed for or committed to a proposed pass-through toll project will not be considered as part of the proposer's contribution, nor may it be reimbursed under the program.

Pursuant to Minute Order 112526 and Title 43 Texas Administrative Code §§5.51-5.60 (rules), the Texas Department of Transportation (department) published a notice in the Texas Register designating a 60-day period commencing on December 31, 2010, for acceptance of proposals from both public and private entities for projects to be developed under the program call. The deadline for submitting proposals was March 1, 2011. Department staff evaluated the proposals that were timely submitted under the program call using the items of consideration set forth in §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

In accordance with §222.104(b), Transportation Code and §§5.54-5.55 of the rules, the commission granted preliminary approval on May 26, 2011, in Minute Order 112685, authorizing the department to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals were selected by the commission in that minute order as providing the best value to the state. The agreements will provide for the payment of pass-through tolls to the selected public entities as reimbursement for the construction of facilities on the state highway system. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

In accordance with §5.58(b)(3)(A) of the rules, the commission finds that it is in the public interest to require all agreements negotiated with the selected public entities to contain a provision that limits reimbursement to the actual costs incurred by the public entity (actual cost provision). The actual cost provision will be based on the following concepts:

- (1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). Payments of pass-through tolls will be limited to reimbursement of the department's proportional share of the actual cost of labor and materials required for construction of the project as determined by the low bid award of the

construction contract (actual cost of construction), subject to the following two exceptions.

- (a) The department will reimburse its proportional share of the amount by which the actual cost of construction exceeds the estimated total construction cost of construction that was approved by the department for the same project (cost overrun). The department's total payment obligation for the project, however, will not exceed 110 percent of the estimated total reimbursement amount as set forth in Exhibit A.
  - (b) The department will reimburse to the public entity the amount by which the actual cost of construction is less than the estimated cost of construction that was approved by the department for the same project (cost underrun), up to a maximum of 10 percent of the estimated construction of cost, if the following conditions are met:
    - (i) the total of actual cost and underrun reimbursements by the department may not exceed the department's reimbursement amount as set forth in Exhibit A;
    - (ii) the amount of cost underrun received by the public entity will be expended on the same project as set forth in Exhibit A, or on other mutually acceptable state highway projects located in the public entity's jurisdiction;
    - (iii) the amount of cost underrun received by the public entity may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right-of-way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
    - (iv) the public entity receives the department's prior written consent for the expenditures.
- (2) The reimbursement rate, the minimum reimbursement amount per year, and the maximum reimbursement amount per year as set forth in Exhibit A will be applicable regardless of the actual total reimbursement amount. The number of annual payments will be adjusted to reflect the total reimbursement amount as determined in accordance with paragraph (1).
  - (3) No change order to the construction plans or contract may be issued by the public entity without the department's prior written approval, if it would affect prior environmental approvals or significantly revise the scope of the project or the geometric design.
  - (4) Construction costs shall have the same meaning as described in the program call.

The department and each of the public entities identified in Exhibit A have agreed to a total reimbursement through pass-through tolls for construction of the projects, a reimbursement rate per vehicle or vehicle mile, the minimum amount to be reimbursed in any year with all projects open to traffic, and the maximum amount per year as set forth in the exhibit. Each agreement will expire once the total amount of that agreement has been

reimbursed. The projects will be authorized and reimbursed from Category 12, Strategic Priority funds.

In accordance with §5.57 of the rules, the commission finds that: (1) the projects serve the public interest and not merely a private interest; (2) the proposed pass-through agreements are in the best interest of the state; (3) the projects are compatible with existing and planned transportation facilities; and (4) the projects further state, regional, and local transportation plans, programs, policies, and goals.

Before the projects in the selected proposals are designed, developed, or constructed using funds administered by the department, the projects: (1) must be included in the department's Unified Transportation Program, thereby identifying committed funding for the project; (2) must be included in the department's Statewide Transportation Improvement Program; and (3) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or designee is authorized to negotiate and execute a pass-through toll agreement with each of the public entities set forth in Exhibit A for the construction of their respective projects as identified in the exhibit, in accordance with the negotiated terms, actual cost provision described in this minute order, and such other terms the department determines to be necessary.

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

## **9. Toll Roads**

**a. Various Counties** – Approve the selection of the best value proposal to support the operation of the customer service center and toll plazas and lanes for current and future toll facilities, and authorize the executive director to negotiate and execute an agreement (MO)

This item was deferred.

**b. Chambers County** – Establish toll rates for Segment I-2 of SH 99 from I-10 east to Fisher Road in Chambers County (MO)

Commissioner Houghton 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 Director Mark Tomlinson.

112756  
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 and prescribes criteria to be considered by the commission in setting toll rates.

Minute Order 111167, dated December 13, 2007, designated SH 99 Segment I-2 as a toll project on the state highway system. SH 99 Segment I-2 is a four-lane controlled-access toll road extending 6.6 miles from I-10 to Fisher Road in Chambers County. SH 99 Segment I-2 is an all-electronic, open-road tolling facility with a closed ramp system of toll

collection under which no toll-free use of the roadway will be possible. The tolling configuration consists of one mainline toll gantry and one set of ramp toll gantries.

Pursuant to Title 43, Texas Administrative Code, §27.82(d), in setting toll rates, the commission considered: (1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report; and (2) vehicle classifications, type and location of the facility, and similar criteria that apply to the project.

The results of the toll rate analysis for SH 99 Segment I-2 provide toll rates at each tolling point as set forth in Exhibit A.

IT IS THEREFORE ORDERED by the commission that the Texas Department of Transportation is authorized to charge tolls in Chambers County on the SH 99 Segment I-2 toll project from I-10 to Fisher Road in the amounts stated in Exhibit A.

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

**c. Fort Bend County – Fort Bend County Toll Road Authority (FBCTRA)**

**Consider the preliminary approval of a request for financial assistance of \$4 million a year for 10 years, from the FBCTRA to pay for the construction of 4.2 miles of toll mainlane extension and frontage roads on the Westpark Toll Road Phase II, between SH 99 and FM 1463 (MO)**

Commissioner Houghton 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 Director Mark Tomlinson.

112757  
TTA

The Texas Department of Transportation (department) and Fort Bend County (county) have been proceeding with the extension of the Westpark Tollway facility in the county, including frontage roads, from the Grand Parkway (SH 99) to FM 1463 (Westpark Toll Road Phase II or project), for a total length of approximately 4.2 miles.

The project is consistent with the Statewide Transportation Plan (Plan) and the Metropolitan Transportation Plan of the Houston-Galveston Area Metropolitan Planning Organization (HGAC). The frontage roads portion of the project will be included in the HGAC Transportation Improvement Program in 2013, and is listed in the FY 2011-2014 Statewide Transportation Improvement Program (STIP). HGAC is currently revising the conformity model to move the tolled mainlanes portion of the project forward to a construction year between 2015 and 2018.

The tolled mainlines will consist of four lanes extending for a total length of 3.0 miles and will include grade separations over Katy-Gaston Road and FM 723/Spring Green Drive. The mainlanes will transition to the frontage roads which will continue west to FM 1463. The project also includes a direct connector from the eastbound Westpark Tollway mainlanes to the northbound mainlanes of SH 99.

Transportation Code, §284.008 authorizes the Texas Transportation Commission (commission) to provide for and contribute toward the acquisition, construction, improvement, operation, maintenance, or pooling of a project under that chapter and under terms agreed to by the commission and the county. Transportation Code, §222.103 authorizes the department to participate by spending money from any available source in the

acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

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

In accordance with Section 27.53 of the toll equity rules, the county has submitted a request for financial assistance in the amount of \$4 million a year for 10 years to pay for the development and construction of the Westpark Toll Road Phase II. The financial assistance was requested to be in the form of a grant.

As required by Section 27.53, on April 4, 2011, the county, acting through its Commissioners Court, certified that it has adopted and is enforcing an internal ethics and compliance program that satisfies the requirements set forth in 43 TAC §1.8.

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

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

The county has committed that the project will comply with all applicable environmental laws, and has committed that all environmental permits, issues, and commitments will be implemented.

The completion of the project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by improving safety, mobility, traffic operations, and travel times, and by reducing traffic delays along a congested and developing FM 1093 corridor.

The financial assistance will improve the efficiency of the state transportation system by providing added capacity to the FM 1093 corridor, and by potentially expanding the availability of funding for transportation projects or reducing direct state costs. Without the financial assistance, the timeline to complete the project and realize the benefits described above could be delayed indefinitely.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by Fort Bend County meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval in the amount of \$4 million per year for 10 years to be used for the purposes described herein with a requirement that the county then deliver an adjacent project with a value which exceeds \$40 million as soon as the necessary environmental approvals for the adjacent project are received and directs the executive director to implement the actions authorized and required by those and other applicable toll equity rule provisions.

## **10. Transportation Planning**

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

Commissioner 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 Finance Division Deputy Director John Muñoz.

112758  
FIN

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

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

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

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air-quality project within a region in which any part of the SH 121 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. An air-quality project is a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

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

Responsibility for allocating the SH 121 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be

selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

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

The department has established a work program to account for and track projects and project costs in the Dallas District funded with the SH 121 payments. In MO 111215, January 31, 2008; MO 111439, July 31, 2008; MO 111528, September 25, 2008; MO 111553, October 30, 2008; MO 111822, May 28, 2009; MO 111854, June 25, 2009; MO 111928, August 27, 2009; MO 112047, November 19, 2009; MO 112121, January 28, 2010; MO 112273, May 27, 2010; MO 112568, January 27, 2011; and MO 112603, February 24, 2011, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional project costs in the Dallas District to be funded with the SH 121 payments.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the projects as shown in Exhibit A that have been selected by the RTC to be funded with the SH 121 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air-quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 121 payments.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right-of-way acquisition, preliminary engineering, and construction engineering, and the costs of department staff incurred in the development, procurement, and construction of the projects.

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

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

Commissioner 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 Finance Division Deputy Director John Muñoz.

112759  
FIN

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

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

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

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

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

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

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

requires the department to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

The department has established a work program to account for and track projects and project costs in the Dallas District that are to be funded with the SH 161 payments. The RTC, through an extensive public involvement process, has identified project costs in the Dallas District to be funded with the SH 161 payments. The commission concurs with the projects identified by the RTC to be funded with those payments, and approves the placement of those projects in the work program.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the projects as shown in Exhibit A that have been selected by the RTC to be funded with the SH 161 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air-quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 161 payments.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right of way acquisition, preliminary engineering, and construction engineering, and the costs of department staff incurred in the development, procurement, and construction of the projects.

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

c. **Various Counties** – Award Transportation Development Credits (TDC) to provide the non-federal match of federal metropolitan planning funds and statewide planning and research funds (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 Transportation Planning & Programming Division Director Jim Randall

112760  
TPP

Title 23 U.S.C. §134 establishes a metropolitan planning program for each state. The 25 participating metropolitan planning organizations (MPOs) in Texas receive federal metropolitan planning funds to carry out the provisions of the metropolitan planning program. The federal funds must be matched by non-federal share funds.

Title 23 U.S.C. §505 reserves a portion of federal apportionments for activities related to statewide planning and research activities. The federal funds must be matched by non-federal share funds.

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

In the past, the Texas Department of Transportation (department) provided the non-federal share match for the metropolitan planning program allowing MPOs to receive federal funds without having to provide a local match. In addition, the department also provided the non-federal share match for the State Planning and Research (SPR) Work Program. Due to current financial constraints, the department desires to substitute the non-federal match with transportation development credits. It is estimated that 4.5 million in TDC is required to provide for the non-federal match of unexpended metropolitan planning program reimbursements and seven million in TDC is required for the SPR Work Program through Fiscal Year 2012.

Title 43, Texas Administrative Code, §5.73 establishes a process by which TDC may be awarded at the discretion of the Texas Transportation Commission (commission). In accordance with §5.73(b), the commission will consider the expressed opinion, if any, of MPOs regarding projects within their boundaries.

The commission finds that distribution of TDC to provide for the non-federal share match of metropolitan planning and SPR funds serves to meet department needs after considering the potential of this award to expand the availability of funding for transportation projects, reduce congestion, expand economic opportunity, enhance safety, improve air quality, and increase the value of transportation assets.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to utilize TDC in support of the metropolitan planning program and the SPR Work Program in an amount not to exceed 11.5 million.

#### **11. Obligation Limit Report**

Status report on the FY 2011 Obligation Limit, the actual obligations utilized through the current month, proposed remaining highway maintenance and construction contract letting for the fiscal year and an update on motor fuel tax receipts

This item was presented by Finance Division Director Brian Ragland.

#### **12. 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 Russel Lenz.

112761  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on July 7 and 8, 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 is on file with minute order clerk.

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

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

112762  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on July 7 and 8, 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: Exhibits A and A-1 are on file with minute order clerk.

### **13. 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 Holmes 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 commission approved the following minute order by a vote of 5 – 0. This item was presented by Right of Way Division Director John Campbell. Comments were also received from Dawson, Sodd, Ellis, & Hodge attorney Justin Hodge.

112763  
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 - PP. 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 and 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 - 4, in accordance with Transportation Code, Sections 203.002 and 203.003.

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

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

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

**NON-CONTROLLED ACCESS**

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Denton	FM 2181	1	2054-02-017	50
Jefferson	FM 365	4	0932-01-099	38
Tarrant	SH 26	2	0363-01-123	24
Tarrant	SS 347	3	0081-01-044	2TE

## CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	II	0015-04-083	96
Bell	IH 35	V	0015-04-083	28
Bell	IH 35	FF	0015-04-083	35
Bell	IH 35	HH	0015-04-083	93
Bell	IH 35	U	0015-04-083	7
Bell	IH 35	JJ	0015-04-083	97AC
Bell	IH 35	EE	0015-04-084	34, 34AC
Bell	IH 35	BB	0015-04-084	7E, 7AC
Bell	IH 35	C	0015-06-082	109AC
Bell	IH 35	Y	0015-06-082	107AC
Bell	IH 35	S	0015-06-082	33AC
Bell	IH 35	OO	0015-06-082	69AC
Bell	IH 35	CC	0015-07-078	10
Bell	IH 35	DD	0015-07-078	15
Bell	IH 35	GG	0015-07-078	54
Bell	IH 35	PP	0015-07-079	4EAC
Bell	IH 35	J	0015-07-079	17AC
Dallas	IH 635	I	2374-02-116	55
Harris	IH 610	AA	0271-14-221	229
Harris	IH 610	A	0271-14-221	204
Harris	IH 610	Z	0271-14-221	227
Hill	IH 35	KK	0014-07-096	21
Hill	IH 35	LL	0014-07-096	23, 23TE
McLennan	IH 35	X	0014-08-082	89AC
McLennan	IH 35	T	0014-08-082	43, 43AC
McLennan	IH 35	W	0014-08-083	25, 25E
McLennan	IH 35	NN	0015-02-058	75
McLennan	IH 35	MM	0015-02-058	22
Tarrant	IH 820	F	0008-14-093	7
Tarrant	IH 820	N	0008-14-093	161
Tarrant	IH 820	G	0008-14-093	170A
Tarrant	SH 121	K	0364-01-119	577
Tarrant	SH 121	H	0364-01-119	553
Tarrant	SH 121	O	0364-01-119	615
Tarrant	SH 121	P	0364-01-119	620A
Tarrant	SH 121	Q	0364-01-119	555
Tarrant	SH 121	R	0364-01-119	707
Tarrant	SH 183	L	0364-05-038	674
Tarrant	SH 183	B	0364-05-038	664
Tarrant	SH 183	E	0364-05-038	667
Tarrant	SH 183	D	0364-05-038	671
Tarrant	SH 183	M	0364-05-038	672

Note: Exhibits 1 through 4 and A through PP are on file with minute order clerk.

#### **14. Routine Minute Orders**

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 Executive Director Amadeo Saenz.

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

**(1) General Services Division – Consider a donation from the Texas Association of Public Purchasers for a department employee’s travel expenses to attend the 66<sup>th</sup> Annual Forum and Products Exposition in National Harbor, Maryland on August 25 - 29, 2011. (MO)**

112764  
GSD

This minute order considers a donation of an estimated sum of \$2,500 from the Texas Association of Public Purchasers (TAPP) for a Texas Department of Transportation (department) employee’s travel expenses to attend the 66<sup>th</sup> Annual Forum and Products Exposition in National Harbor, Maryland on August 25 –29, 2011.

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

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

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

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

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

IT IS THEREFORE ORDERED by the commission that the donation of \$2,500 by the TAPP 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) **Houston District** – Consider a donation from Texas Children's Hospital to provide funding, installation, operation, and maintenance of an underground irrigation system and annual maintenance for trees and landscape areas located within the department's right of way of SH 288 abutting the Rise School west property boundary at the Texas Medical Center in Harris County. (MO)

112765  
GSD

This minute order considers a donation of an estimated value of \$219,000 from the Texas Children's Hospital (TCH) to be used towards the installation, operation, and maintenance of an underground irrigation system as well as the annual maintenance activities for trees and landscape areas located within the department's right of way on SH 288 abutting the west property boundary of the Rise School at the Texas Medical Center, Leland Anderson Campus in Houston, Texas.

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 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 of an estimated value of \$219,000 by TCH 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.

**b. Finance****(1) Accept the Quarterly Cash Report (MO)**112766  
FIN

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

The cash statement will be prepared for each quarter of the department's fiscal year. A quarterly cash report for the department for the third quarter of FY 2011, ending May 31, 2011, attached as Exhibit A, has been prepared in accordance with Texas Transportation Code, §201.107.

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

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

**(2) Accept the Quarterly Investment Report (MO)**112767  
FIN

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

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

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002, securing the outstanding bonds, notes, and other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The commission has designated the department's Chief Financial Officer as investment officer. In the absence of the Chief Financial Officer, the Director of Finance, Deputy Director of Finance, or the Debt Management Director is authorized to act as investment officer.

Pursuant to Government Code §2256.005(e) and Section 20 of the investment policy, the investment policy and investment strategies of the commission have been reviewed and revised annually by minute order since 2003, most recently by Minute Order 112401, dated August 26, 2010.

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

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period. A quarterly investment report for the department for the period ending May 31, 2011, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

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

Note: Exhibit A on file with minute order clerk.

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

**(1) Collin County – US 380, northeast corner of the Princeton Village development east of Quail Lane in Princeton - Consider the sale of surplus right of way to the abutting landowner (MO)**

112768  
ROW

In the city of Princeton, COLLIN COUNTY, on US 380, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 313, Page 184, Deed Records of Collin County, Texas.

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

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

Princeton Village, LLC, is the abutting landowner and has requested that the surplus land be sold to the company for \$13,790.

The commission finds \$13,790 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Princeton Village, LLC, for \$13,790; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

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

**(2) Denton County – FM 407 at McMakin Road and Jeter Road in Bartonville - Consider the designation on new location of a new highway segment and removal from the state highway system of a segment of the old alignment, as well as the transfer of control, jurisdiction and maintenance, and transfer of surplus right of way to the town (MO)**

112769  
ROW

In the town of Bartonville, DENTON COUNTY, on FARM TO MARKET ROAD 407, the State of Texas acquired certain land for highway purposes by various instruments.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended, as shown in Exhibit A, the designation of FM 407 on a new location from McMakin Road to Jeter Road, the removal from the state highway system of the old alignment and the transfer of control, jurisdiction and maintenance of the old alignment to the Town of Bartonville.

A portion of the land (surplus land), described in Exhibit B, 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 waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The fair value of the surplus land has been determined to be \$1.45 million, and the cost of future maintenance over the next 20 years is estimated to be \$7.11 million.

The commission finds \$1.45 million to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

IT IS THEREFORE ORDERED by the commission that: 1) FM 407 is designated on a new location from the intersection with the old alignment at McMakin Road north of Post Oak Road to the intersection with the old alignment at Jeter Road west of Lantana Trail, a distance of approximately 0.5 mile; 2) existing FM 407 within the same limits is removed from the state highway system, a distance of approximately 0.7 mile; and 3) control, jurisdiction and maintenance of the old alignment is transferred to the Town of Bartonville.

FURTHER, 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 transferring the state's rights, title and interest in the surplus land to the Town of Bartonville, Texas, in consideration of the savings to the state of future maintenance costs; 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.

**(3) Grayson County – FM 120 at Lillis Lane in Denison - Consider the sale of surplus right of way to the abutting landowner (MO)**

112770  
ROW

In the city of Denison, GRAYSON COUNTY, on FARM TO MARKET ROAD 120, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 4979, Page 341, Official Public Records of Grayson County, Texas.

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

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

Landmark Bank, a Texas banking corporation now known as Landmark Bank, N.A., is the abutting landowner and has requested that the surplus land be sold to the company for \$43,996.

The commission finds \$43,996 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Landmark Bank, a Texas banking corporation now known as Landmark Bank, N.A., for \$43,996; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

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

**(4) Harris County – US 59 at Greens Road in Humble - Consider the conveyance of surplus right of way in exchange for new right of way and a new easement (MO)**

112771  
ROW

In the city of Humble, HARRIS COUNTY on US 59, the State of Texas acquired certain land for highway purposes by instruments recorded in the Deed Records of Harris 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 commission may recommend the exchange of an interest in surplus land as partial or full consideration for another interest in land needed for a state highway purpose.

Katy-Washington, L.C., a Texas limited liability company (owner), has conveyed to the state land (new land), described in Exhibit B, and an easement (new easement), described in Exhibit B-1, needed for state highway purposes. The state

and owner have executed an exchange agreement providing for the conveyance to the owner of the state's rights, title and interest in the surplus land, valued at \$767,911, in exchange for the conveyance to the state of new land and new easement and construction cost for a new detention facility, valued at a total of \$768,341. Owner is donating the cash difference in value of \$430 to the state.

The commission finds \$767,911 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Katy-Washington, L.C., a Texas limited liability company, in exchange and as consideration for the conveyance of the new land and new easement and partial cash donation of the difference in value 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.

(5) **Harris County** - US 59 at Hamilton Street in Houston - Consider the sale of surplus right of way to the City of Houston (MO)

112772  
ROW

In the city of Houston, HARRIS COUNTY, on US 59, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 4118, Page 389, and Volume 4911, Page 390, Deed Records of Harris County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to a governmental entity with the authority to condemn the property.

The City of Houston has requested that the surplus land be sold to the city for \$1,985,850.

The commission finds \$1,985,850 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the City of Houston for \$1,985,850; 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 through B-1 are on file with minute order clerk.

**(6) Travis County – US 290, old Highway 20 at FM 973 east of Manor - Consider the sale of surplus right of way to the abutting landowner (MO)**

112773  
ROW

In TRAVIS COUNTY, on US 290, the State of Texas acquired certain land needed for highway purposes by instrument recorded in Volume 613, Page 478, Deed Records of Travis County, Texas.

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

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

Eternal Faith Baptist Church is the abutting landowner and has requested that the surplus land be sold to the church for \$36,946.

The commission finds \$36,946 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Eternal Faith Baptist Church for \$36,946; 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.

**d. Speed Zones**

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

112774  
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: Exhibit A through C are on file with minute order clerk.

**OPEN COMMENT PERIOD** – At the conclusion of all other agenda items, the commission received additional comments from Bob De La Rosa of Austin, Texas.

**15. 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 - Deliberate on the duties of the new position of director of the department's compliance office and the search for a person to fill that position.

c. Section 551.074 - Deliberate on the search for a new executive director and for a new internal auditor for the department.

d. Section 551.074 - Deliberate on the appointment and duties of either or both an interim executive director or an interim internal auditor.

There was an executive session on Items 15a. through 15d. The commission adjourned the open meeting at 11:34 a.m. and entered executive session.

The commission reconvened the open meeting at 11:49 a.m. and the regular meeting of the Texas Transportation Commission adjourned at 11:50 a.m.

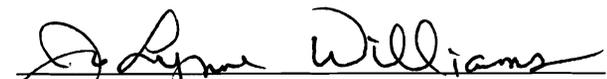
APPROVED:



Deirdre Delisi, Chair  
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on July 28, 2011, in Austin, Texas.



JoLynne Williams, Chief Minute Order Clerk  
Texas Department of Transportation