

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on May 26, 2011, in Austin, Texas. The meeting was called to order by Commissioner Ted Houghton. (Chair Delisi appeared soon after the meeting was convened and presided for the remainder of the meeting.) The meeting opened at 9:04 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:

Steve Simmons, Depute Executive Director
 Bob Jackson, 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 4:30 p.m. on May 18, 2011, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. Approval of Minutes of the April 28 meeting of the Texas Transportation Commission

Commissioner Underwood made a motion, which was seconded, and the commission approved the minutes of the April 28, 2010, regular meeting, by a 5-0 vote.

ITEM 2. Resolution

Present a resolution to recognize Travel Information Division Director Doris Howdeshell who retired from TxDOT on April 30, 2011, with 32 years of service

This item was presented by Deputy Executive Director Steve Simmons. The commission received comments from Doris Howdeshell.

ITEM 3. Discussion Item**a. Update on TxDOT's modernization project**

This item was presented by Assistant Executive Director for Engineering Operations John Barton. Comments were also received from Scott Kaepfel, president of Kaepfel Consulting.

ITEM 9. Pass-Through Toll Program

Select pass-through toll proposals submitted under the December 16, 2010, pass-through toll program call in accordance with Minute Order 112526 and authorize the executive director or designee to negotiate the financial terms of a potential pass-through toll agreement with the selected public entity proposers (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 Turnpike Authority Division Director Mark Tomlinson. The commission received comments from Cameron County Regional Mobility Authority chairman David Alex, Travis County Commissioner Karen Huber, Parker County Judge Mark Riley, Cameron County Regional Mobility Authority vice chairman John Wood, and Cameron County Commissioner Sofia C. Benavides.

112685
TTA

Section 222.104(b), Transportation Code authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled facility on the state highway system by the public or private entity. 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.

Title 43 Texas Administrative Code §§5.51-5.60 (rules) prescribe the policies and procedures governing the department's implementation of the program under Section 222.104(b), Transportation Code.

Section 5.54 of the rules provides that if the commission determines that funds available for use in the program are limited, it may periodically limit the periods of time during which the department will accept proposals for pass-through toll projects to be developed and, for each specific period, prescribe conditions for submission and the costs that may be reimbursed under a pass-through agreement (agreement).

On December 16, 2010, by Minute Order 112526, the commission approved a program call for highway projects to be developed on the state highway system under a pass-through toll agreement (program call). The commission further prescribed several conditions for submission and cost reimbursement for the program call including a determination 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 §5.54 of the rules, the department published in the Texas Register a notice 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 set forth §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

After considering the factors described by §5.55 of the rules and the criteria set forth in Minute Order 112526, it is determined that the pass-through toll proposals set forth in Exhibit A represent the best value to the state for a total of approximately \$176 million in authorized funds.

Before the projects in the selected proposals are designed, developed, or constructed using funds administered by the department, the proposals: (1) must be included in the department's UTP, thereby identifying committed funding for the project; (2) prior to construction, 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 by the commission that the pass-through toll proposals submitted under the current pass-through toll program call and set forth in Exhibit A are hereby selected as providing the best value to the state.

IT IS FURTHER ORDERED that the executive director or designee is authorized to negotiate the financial terms of potential pass-through toll agreements for each of the selected pass-through toll proposals as set forth in Exhibit A. Payment 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, subject to limited exceptions for cost overruns and underruns of the estimated cost of construction. If negotiations are successful, the executive director shall submit to the commission a summary of the final terms of each agreement so that the commission may consider final approval of the agreement under §5.57 of its rules. If the financial terms of a pass-through toll agreement for one or more of the selected pass-through toll proposals set forth in Exhibit A cannot be successfully negotiated with the proposer(s) by July 19, 2011, the unsuccessful proposal or proposals will be rejected and the commission may, in accordance with §5.55 of the rules and the criteria set forth in Minute

Order 112526, consider selection of additional proposals that were timely submitted under the program call.

Note: Exhibit A on file with minute order clerk.

ITEM 4. Public Transportation

Various Counties – Award federal funds to Central Texas Council of Governments to support continuation of coordinated regional public transportation planning for fiscal year 2011(MO)

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

112686
PTN

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

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

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

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

IT IS THEREFORE ORDERED that \$40,000 is awarded to Central Texas Council of Governments, as the lead agency for regional coordinated public transportation planning in state Planning Region 23 for FY 2011.

IT IS FURTHER ORDERED by the commission that the executive director or the director's designee is authorized to distribute funds as described herein, submit the necessary state application to the FTA, and enter into the necessary contracts in accordance with the priorities established in this minute order.

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

a. Final Adoption

Chapter 25 - Traffic Operations (MO)

Amendments to §25.977, Reporting by Investigating Officers (Crash Records Information System)

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 Traffic Operations Division Director Carol Rawson.

112687
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §25.977 relating to reporting by investigating officers, 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 §25.977 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 25 - Traffic Operations (MO)

Amendments to §25.501, Definitions (Safe Routes to School Program)

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 Traffic Operations Division Director Carol Rawson.

112688
TRF

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §25.501, Definitions, relating to Safe Routes to School 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 §25.501 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 27 - Toll Projects (MO)

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

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 Assistant Executive Director for Engineering Operations John Barton.

112689
TTA

The Texas Transportation Commission (commission) finds it necessary to propose 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 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 §27.8 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.

ITEM 6. Internal Compliance Program (ICP) Report

Annual update on the department's ICP

This item was presented by Deputy Executive Director Steve Simmons.

ITEM 7. Strategic Research Program

Appoint members to the Strategic Research Program Advisory Committee (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 Research & Technology Implementation Division Director Rick Collins.

112690
RTI

The Texas Transportation Commission (commission) recently adopted amendments to the administrative rules governing Texas Department of Transportation (department) advisory committees, located at Title 43, Texas Administrative Code, §1.85. These amendments created a Strategic Research Program Advisory Committee (committee) and set forth the purpose and duties of the committee.

Title 43, Texas Administrative Code, §1.85(a)(6)(A) provides that the purpose of the committee is to make recommendations to the department concerning the selection of research topics and the direction and facilitation of strategic research to prepare the department for the transportation challenges it is likely to face over the next 30 years. The commission, by order, will appoint the members of the committee.

Section 1.85(a)(6)(A) further provides that the committee may be composed of members who are: private-sector executives whose companies are major users of the state's multimodal transportation system; private-sector finance or international business experts; technical experts with a broad base of transportation knowledge in one or more applicable fields, such as mobility, safety, economics, and demographics; and individuals in the public or private sector who have national standing and credibility in the transportation field.

The following individuals have been nominated to serve as members of the committee:

Ken Allen, San Antonio, Texas
 Rollin Bredenberg, Fort Worth, Texas
 Judy Hawley, Portland, Texas
 Mary Peters, Peoria, Arizona
 Joe Wardy, El Paso, Texas

IT IS THEREFORE ORDERED by the commission that the individuals identified above are hereby appointed for two-year terms as members of the Strategic Research Program Advisory Committee.

ITEM 8. Toll Road Projects

Accept the annual Inspection Report for the Central Texas Turnpike System (CTTS) (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 Turnpike Authority Division Director Mark Tomlinson.

112691
 TTA

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

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

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

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

In Section 707 of the Indenture of Trust, the commission covenants that it shall cause the general engineering consultant to make an inspection of the system at least once in the fiscal year following the substantial completion of the 2002 Project and in each fiscal year thereafter.

Following each inspection and on or before the 90th day prior to the end of each fiscal year, the general engineering consultant shall submit to the commission a report concerning the inspection, setting forth (a) their findings as to whether the system has been maintained in good repair, working order and condition and (b) their advice and recommendations as to the proper maintenance, repair and operation of the system during the ensuing fiscal year and (c) an estimate of the amount of money necessary for such purposes, including their recommendations as to the total amounts and classifications of

items and amounts that should be provided for in the annual operating budget, the annual maintenance budget and annual capital budget for the next ensuing fiscal year.

Section 707 of the Indenture of Trust requires copies of the report to be filed with the U.S. Department of Transportation and the Trustee.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. The FY 2011 Central Texas Turnpike Project Annual Inspection Report, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 707 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's FY 2011 Central Texas Turnpike Project Annual Inspection Report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

ITEM 10. Proposition 14 Bonds

Grimes, Denton, and Webb Counties – Approval of additional projects to be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. (Commissioner Holmes abstained.) This item was presented by Assistant Executive Director for Engineering Operations John Barton.

112692
AEO

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

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

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

preceding year. The commission has issued approximately \$3.1 billion of Proposition 14 bonds pursuant to the terms of the Enabling Act.

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

On October 30, 2008, January 29, 2009, February 26, 2009, March 26, 2009, July 30, 2009, September 24, 2009, November 19, 2009, December 17, 2009, February 25, 2010, March 25, 2010, May 27, 2010, August 26, 2010, October 28, 2010, and February 24, 2011, the commission adopted Minute Orders 111550, 111680, 111709, 111751, 111890, 111976, 112037, 112075, 112155, 112199, 112275, 112375, 112474, and 112610, respectively, which approved the use of proceeds of Proposition 14 bonds for state highway improvement projects and work associated with state highway improvement activities, as contained in exhibits to the Orders.

Due to continuing national economic conditions and the accompanying effects on construction and material supplies, the projects that have gone to letting continue to experience underruns of the originally obligated bond funds. These underruns allow additional projects to be brought forward for funding under the bond program.

This minute order revises funding allocations for previously approved projects and activities and approves additional projects to be funded with the proceeds of Proposition 14 bonds, as set forth in Exhibit A.

IT IS THEREFORE ORDERED by the commission that the state highway improvement project and work to be performed in connection with state highway improvement activities, as contained in Exhibit A, is approved for funding with the proceeds of Proposition 14 bonds.

Note: Exhibit A on file with minute order clerk.

ITEM 12. State Infrastructure Bank (SIB)

Preliminary Approval

Hidalgo County – City of Donna - Consider granting preliminary approval of an application from the City of Donna (city) to borrow up to \$607,000 from the SIB to pay for utility relocation and right-of-way costs associated with the overlay and reconstruction of FM 493 from Business US 83 to US 281 (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 Finance Division Director Brian Ragland.

112693
FIN

The City of Donna (city) submitted an application for \$607,000 in financial assistance from the State Infrastructure Bank (SIB) under Title 43, Texas Administrative Code, Chapter 6 (rules). The application satisfies all requirements of the rules, including passage of a resolution by the Donna City Council authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the financial assistance to pay for utility relocation and right-of-way costs associated with the overlay and reconstruction of FM 493 from Business 83 to US 281. The project will tie into

the newly opened Donna/Rio Bravo International Bridge, and will become a main thoroughfare for international truck traffic.

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

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has pledged general revenue funds and funds TxDOT pays to reimburse the city for eligible project costs incurred by the city as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Donna meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$607,000 from the SIB, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

ITEM 13. 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 report was presented by Finance Division Director Brian Ragland.

ITEM 14. Contracts

Award or reject contracts for maintenance, highway and building construction

a. Highway Maintenance and Department Building Construction (see attached itemized list) (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 Construction Division Director Russel Lenz.

112694
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, 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 May 3 and 4, 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 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. The commission also received comments from James Construction Group, LLC, vice presidents Pat Pluenneke and Ken Janke.

112695
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 May 3 and 4, 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.

ITEM 11. Unified Transportation Program (UTP)

Approve the 2012 UTP (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 Assistant Executive Director for Engineering Operations John Barton.

112696
FIN

The UNIFIED TRANSPORTATION PROGRAM (UTP) of the Texas Department of Transportation (department) is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The UTP contains all of the department's funding categories which enhance the transportation system.

Transportation Code, §201.103 requires the Texas Transportation Commission (commission) to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002 requires the commission to lay out, construct, maintain, and operate a modern state highway system, with emphasis on the construction of controlled access highways, and to plan for future highways.

The commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects. These rules, which became effective on January 1, 2011, require the commission to adopt the UTP not later than March 31 of each even-numbered year. The rules also include guidance regarding public involvement related to the adoption of the UTP, as well as the allocation of funds through that program.

In accordance with the rules, the department conducted open-house style public meetings across the state and held two public hearings in Austin to receive comments and

testimony concerning the development of the 2012 UTP, including the highway project selection process and the relative importance of the various criteria which the commission uses for project selection decisions. Minute Order 112639, dated March 31, 2011, was approved to authorize the project selection process.

The 2012 UTP, which is attached as Exhibit A, authorizes funding for each of the twelve funding categories established by the rules, with specific projects listed for categories 2, 3, 4, 6, 10, and 12. The specific projects listed in the section of the UTP pertaining to category 6 may be modified according to the project selection process as it is an allocation program. The specific projects listed in the sections of the UTP pertaining to categories 10 and 12 have been approved by prior action of the commission and their inclusion in this UTP in no way modifies that prior approval. The remaining funding levels and lists of projects in the Aviation Capital Improvement Program, Rail, Public Transportation, and State Waterways and Coastal Waters are authorized by separate minute orders.

IT IS THEREFORE ORDERED by the commission that the 2012 UTP, as shown in Exhibit A, is hereby approved and supersedes the previously-approved 2010 UTP for fiscal years 2012-2020.

IT IS FURTHER ORDERED that the executive director is hereby authorized to develop the projects listed in the UTP to the level of authority indicated for each project to include any necessary agreements, right of way acquisitions, utility adjustments, and relocation assistance, subject to the policies of the department and all applicable federal and state laws governing the acquisition of real property.

IT IS FURTHER ORDERED that pursuant to Transportation Code, §222.052, the commission may accept financial contributions from political subdivisions of the state for development of projects in the 2012 UTP.

Note: Exhibit A on file with minute order clerk.

ITEM 15. Routine Minute Orders

Commissioner Houghton 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 Deputy Executive Director Steve Simmons.

a. Donations to the Department

(1) Bridge Division – Acknowledge a donation from the National Steel Bridge Alliance for a department employee’s travel expenses to attend the North American Steel Construction conference in Pittsburgh, Pennsylvania, on May 10-11, 2011 (MO)

112697
GSD

This minute order acknowledges acceptance of a donation of an estimated \$638.25 from the National Steel Bridge Alliance (NSBA) for a Texas Department of Transportation (department) employee’s travel expenses to attend the North American Steel Construction conference in Pittsburgh, Pennsylvania, on May 10-11, 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 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 acceptance of the donation of an estimated \$638.25 by the NSBA is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) Construction Division – Acknowledge a donation from the Institute for Multimodal Transportation at Jackson State University for a department employee's travel expenses to speak at the Automated Pavement Distress Seminar in Jackson, Mississippi, on April 21-23, 2011 (MO)

112698
GSD

This minute order acknowledges acceptance of a donation of an estimated \$813.60 from the Institute for Multimodal Transportation (IMT) at Jackson State University in Jackson, Mississippi, for a Texas Department of Transportation (department) employee's travel expenses to speak at the Automated Pavement Distress seminar on April 21-23, 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 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 acceptance of the donation of an estimated \$813.60 by the IMT is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

b. Eminent Domain Proceedings

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

112699
ROW

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

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under

"CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

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

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

NON-CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Collin	SH 289	5	0091-04-057	27
Collin	SH 289	6	0091-04-057	13
Collin	SH 289	15	0091-04-057	9E
Collin	SH 289	10	0091-04-057	15
Collin	US 75	13	0047-06-125	1A
Comal	US 281	7	0253-03-065	8
Comal	US 281	8	0253-03-065	16
Comal	US 281	9	0253-03-065	19
Denton	FM 423	1	1315-02-010	45
Denton	FM 423	4	1315-02-010	29
Denton	SH 114	14	0353-02-067	11E
Harrison	FM 449	12	0640-06-039	5, 5TE
Hood	SL 567	3	3524-01-005	26
Hood	SL 567	2	3524-01-005	20
Hood	SL 567	11	3524-01-005	2

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	W	0015-04-083	9
Bell	IH 35	V	0015-04-083	8
Bell	IH 35	Y	0015-04-083	16
Bell	IH 35	X	0015-04-083	14
Bell	IH 35	Z	0015-07-078	27AC
Harris	IH 610	C	0271-14-221	225
Harris	IH 610	B	0271-14-221	202
Harris	IH 610	A	0271-14-221	220
Harris	IH 610	P	0271-14-221	218
Harris	IH 610	Q	0271-14-221	219
Harris	IH 610	R	0271-14-221	222
Harris	IH 610	S	0271-14-221	223
Harris	IH 610	T	0271-14-221	209
Harris	IH 610	U	0271-14-221	226
Hill	IH 35	AA	0014-07-096	8, 8TE
Hill	IH 35	BB	0014-07-096	36AC
McLennan	IH 35	DD	0014-08-083	35, 35AC
McLennan	IH 35	FF	0014-08-083	42
McLennan	IH 35	CC	0014-08-083	17
McLennan	IH 35	EE	0014-08-083	36, 36E
McLennan	IH 35	GG	0015-02-058	30
McLennan	IH 35	KK	0015-01-220	60
Tarrant	IH 820	L	0008-14-093	154
Tarrant	IH 820	M	0008-14-093	107
Tarrant	IH 820	JJ	0008-14-093	15
Tarrant	IH 820	K	0008-14-093	158
Tarrant	SH 121	HH	0364-01-119	576
Tarrant	SH 121	II	0364-01-119	614
Tarrant	SH 121	E	0364-01-119	508
Tarrant	SH 121	F	0364-01-119	605
Tarrant	SH 121	G	0364-01-119	701
Tarrant	SH 121	I	0364-01-119	619
Tarrant	SH 121	J	0364-01-119	521
Tarrant	SH 121	N	0364-01-119	541
Tarrant	SH 121	O	0364-01-119	691
Tarrant	SH 121	H	0364-01-119	683
Tarrant	SH 183	D	0364-05-038	645

Note: Exhibits 1 through 15 and A through KK are on file with the minute order clerk.

c. Load Zones & Postings

(1) Roads – Chambers County – Revise load restrictions on a roadway on the state highway system (MO)

112700
CST

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

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

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

It has been determined from this investigation that the load restriction on a certain section of road on the state highway system should be removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be transported or moved on, over or upon the roads described in Exhibit A be removed for the month of May, 2011, as set forth therein, superseding any portion of a previous action in conflict. The executive director shall proceed with the removal of signs as appropriate, making the removal of this load limitation effective and operative.

Note: Exhibit A on file with minute order clerk.

(2) Bridges – Hunt, Nueces and Tarrant Counties - Revise load restrictions on bridges on the state highway system (MO)

112701
BRG

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

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

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

It has been determined from this investigation that the load limit on the bridges described in Exhibit A should be removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over the bridges described in Exhibit A be removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall

proceed with the erection of signs as appropriate, making the removal of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

d. Right of Way Dispositions and Donations

(1) Hidalgo County – US 83, southeast corner at Bridge Avenue in Weslaco - Consider the sale of surplus right of way to the abutting landowner (MO)

112702
ROW

In the city of Weslaco, HIDALGO COUNTY, on US 83, the State of Texas acquired certain land needed for highway purposes by instrument recorded in Volume 1038, Page 184, Deed Records of Hidalgo 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.

James A. Payne as Trustee of the Weslaco Property 2003 Income Trusts is the abutting landowner and has requested that the surplus land be sold to the trustee for \$60,064.

The commission finds \$60,064 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 James A. Payne as Trustee of the Weslaco Property 2003 Income Trusts for \$60,064; **SAVE AND EXCEPT**, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(2) Montgomery County – I-45 at FM 1097 north of Conroe - Consider the permitting of access rights (MO)

112703
ROW

In MONTGOMERY COUNTY, on INTERSTATE 45, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 486, Page 102, Deed Records of Montgomery County, Texas, with denial of access to the abutting remainder property as described in the instrument.

Kroger Texas L.P., the current owner of the abutting property, has requested that access to and from the southbound frontage road of I-45 be permitted along Kroger's east property line at a new access point, described in Exhibit A.

Transportation Code, §201.103 empowers the Texas Transportation Commission (commission) to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002 authorizes the commission to lay out, construct, maintain, and operate a modern state highway system, with an emphasis on the construction of controlled access highways.

Transportation Code, §203.031 authorizes the commission to designate locations on a controlled access highway at which access to or from the highway is permitted and determine the type and extent of access permitted at each location.

NOW, THEREFORE, the commission finds that the new access point will not compromise the mobility, safety or operation of the existing state highway facility, and designates the new access point as a location where ingress and egress are permitted to and from the southbound frontage road of I-45.

IT IS FURTHER ORDERED by the commission that the executive director or his designee is hereby authorized to execute any necessary documents containing terms consistent with the provisions of this order.

Note: Exhibit A on file with minute order clerk.

(3) Tarrant County – Business US 287 south of I-820 in Kennedale - Consider the sale of surplus right of way to the City of Kennedale (MO)

112704
ROW

In the city of Kennedale, TARRANT COUNTY, on BUSINESS US 287, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 2844, Page 155, and Volume 2844, Page 157, Deed Records of Tarrant County, Texas.

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

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

The City of Kennedale has requested that the surplus land be sold to the city for \$30,400.

The commission finds \$30,400 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 Kennedale for \$30,400; 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.

e. Speed Zones

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

112705
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 limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by the city which has the authority to set the speed limits on these sections of the highway.

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

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

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

ITEM 16. Executive Session Pursuant to Government Code, Chapter 551, Section 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 search for a new Executive Director and for a new internal auditor for the department

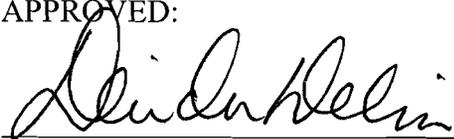
There was an executive session on Item 16.b. The commission recessed the open meeting at 10:49 a.m. and entered executive session.

The commission reconvened the open meeting at 11:31 a.m. and adjourned at 11:31 a.m.

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

There were no open comments.

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 May 26, 2011, in Austin, Texas.



JoLynne Williams, Chief Minute Order Clerk
Texas Department of Transportation