

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on February 24, 2011, in Austin, Texas. The meeting was called to order by Chair Delisi. 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
Fed Underwood	Commissioner
Bill Meadows	Commissioner

**Administrative Staff:**

Steve Simmons, Deputy Executive Director  
 Joanne Wright, Deputy 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 3:35 p.m. on February 16, 2011, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

Commissioner Holmes acknowledged the delegation from Pearland and the commission received comments from Pearland Mayor Reid.

**ITEM 1. Public Hearing**

Project Selection Process and 2012 Unified Transportation Program (UTP) - Receive data, comments, views and testimony concerning the commission's highway project selection process and the development of the 2012 Unified Transportation Program.

This item was introduced by Finance Division Director Brian Ragland. There were no public comments.

**ITEM 2. Approval of Minutes of the January 26, 2011 workshop and January 27, 2011 regular meeting of the Texas Transportation Commission.**

Commissioner Underwood made a motion, which was seconded, and the commission approved the minutes of the January 26, 2011 workshop and the January 27, 2011 regular meeting by a 5-0 vote.

Chair Delisi introduced District 39 Representative Armando Martinez who gave a brief comment on the current legislative session.

**ITEM 7. State Highway 99 (Grand Parkway)**

**Various Counties** - Authorize the portion of the State Highway 99 (Grand Parkway) project that is located in Harris County with CONSTRUCT authority, and authorize the executive director of the department to enter into agreements with the counties in which the Grand Parkway is located for the development, financing, construction, and operation of the Grand Parkway, subject to the terms and conditions of the Market Valuation Waiver Agreement for the Grand Parkway entered into between the department and the counties (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 recommended by staff and presented by Assistant Executive Director for Engineering Operations John Barton. Comments were received from District 4 State Senator Tommy Williams, District 132 State Representative Bill Callegari, President and CEO of the Greater Houston Partnership Jeff Moseley, Katy Area Chamber of Commerce representative George Purvis, Katy Area Economic Development Council representative Anthony Francis, President of Cy-Fair Houston Chamber of Commerce Mary Evans, and West Houston Association Executive Committee Member Ted Nelson.

AEO  
112592

Transportation Code, §228.0111 establishes a process for providing local toll project entities with the first option to develop, construct, and operate toll projects located within the boundaries of the local toll project entity. In Minute Order 111410, dated June 26, 2008, the Texas Transportation Commission (commission) adopted policies relating to the implementation of this process, which determines whether the Texas Department of Transportation (department) or a local toll project entity will develop, construct, and operate a toll project located within the boundaries of the local toll project entity.

In accordance with the requirements of Transportation Code, §228.0111 and the policies included in Minute Order 111410, the department and the counties in which State Highway 99 (Grand Parkway) is located entered into a Market Valuation Waiver Agreement, effective March 25, 2009, in which the parties agreed on the terms and conditions for the development, construction, and operation of the Grand Parkway, agreed to waive the development of a market valuation of the Grand Parkway, and agreed to certain other provisions applicable to the development, construction, and operation of the Grand Parkway.

In accordance with the requirements of Transportation Code, §228.0111(g), on September 15, 2009, Harris County (county) elected to exercise its option to develop, construct, and operate the portion of the Grand Parkway located within the county (Project). On January 11, 2011, the Harris County Commissioners Court rescinded the September 15, 2009 action to exercise the county's option, effectively failing to exercise its option, and providing for the reversion to the department of the right to develop, construct, and operate the Project.

In Minute Order 112558, dated January 27, 2011, the commission approved the department's determination to exercise its option to develop, finance, construct, and operate the Project, and authorized the Project with DEVELOP authority.

The Market Valuation Waiver Agreement contemplates that the department will enter into one or more agreements with the counties in which the Grand Parkway is located concerning the development, financing, construction, and operation of the Grand Parkway. Those agreements will provide for the assignment of responsibilities for the development and financing of the various segments of the Grand Parkway, including provisions relating to the use of toll revenues from segments of the Grand Parkway to pay for the costs of other segments. Entering into those agreements will assist the department in the development, construction, and operation of the portions of the Grand Parkway for which the department is responsible, including the Project.

Under the Market Valuation Waiver Agreement, the department and the counties agreed that the Grand Parkway will be developed under definitive project agreements that provide that toll revenues from each segment of the Grand Parkway will not be used for any purpose other than the Grand Parkway until the ultimate scope is completed. The Market Valuation Waiver Agreement also provides that the department will be responsible for required environmental approvals, and that the counties and the department will cooperate in developing and implementing a process for right of way designation and acquisition.

The timely development and construction of the Project is a priority of the commission and the department as it will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing mobility and operational efficiency, increasing safety, increasing economic development opportunities, decreasing air pollution, and enhancing quality of life in the Grand Parkway corridor.

IT IS THEREFORE ORDERED by the commission that the Project is authorized with CONSTRUCT authority.

IT IS FURTHER ORDERED that the department is authorized to enter into agreements with the counties in which the Grand Parkway is located for the development, financing, construction, and operation of the Grand Parkway, subject to the terms and conditions of the Market Valuation Waiver Agreement.

### **ITEM 3. Discussion Item**

Discuss implementation of recommendations in the TxDOT Restructure Council report

This item was presented by TxDOT Executive Director Amadeo Saenz. The commission received comments for Assistant Executive Director for Engineering Operations John Barton.

### **ITEM 4. Aviation**

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

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

112593  
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, January 20, 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 \$1.1 million.

Note: Exhibit A on file with minute order clerk.

**ITEM 5. Public Transportation**

**a. Various Counties – Award federal §5310 funds, Special Needs of Elderly Individuals and Individuals with Disabilities Program, and award transportation development credits for FY 2011 (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 recommended by staff and presented by Public Transportation Division Director Eric Gleason.

112594  
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 Grants for Special Needs of Elderly Individuals and Individuals with Disabilities" (49 U.S.C §5310), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that grant funds are distributed fairly and equitably within the state.

The United States Congress has passed a Continuing Resolution for a five-month period; the FTA has available funds for this period. As soon as authorizing legislation and appropriation covering the remainder of the fiscal year or a portion of it has been enacted, the additional funds will be made available.

Awards to transit operators are calculated in accordance with the formula in Title 43, Texas Administrative Code, §31.31. Projects are selected at the district office level following a consultation process with all local parties, including any existing Metropolitan Planning Organizations, and a local planning, and development process. Projects also meet the requirements of inclusion in a coordinated transportation plan as required 49 U.S.C. §5310 and administered through the provisions of Transportation Code, Chapter 461. Project recipients recommended for award are described in Exhibit A which includes funding for transit vehicles, information technology, preventive maintenance, purchase of service and equipment.

Title 43, Texas Administrative Code, §5.73 establishes the process for which Transportation Development Credits (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;
- Information technology increase the value of the transportation assets by investing in new technology which complies with federal standards and provides better record keeping for reporting to various state and federal agencies;
- Preventive maintenance improves air quality by regularly maintaining vehicles at manufacturer scheduled intervals and increasing the value of the transportation assets by preserving the condition of existing fleet;
- Purchase of service will provide mobility options for elderly and disabled individuals seeking employment, training, and other essential services thus expanding economic opportunities; and
- Purchase of equipment will increase the value of the transportation assets by replacing worn equipment or purchasing new equipment which will supplement existing rolling stock or other capital inventory.

The commission finds that the projects in Exhibit A are eligible for funding and awards a total of \$3,732,794 in federal Formula Grant funds for Special Needs of Elderly Individuals and Individuals with Disabilities and 353,984 in TDC.

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 in Exhibit A, submit the necessary state application to FTA, enter into the necessary contracts for the FY 2011 program of projects.

Note: Exhibit A on file with minute order clerk.

**b. Various Counties – Award federal §5311 funds, Nonurbanized Area Formula Program for FY 2011 (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 recommended by staff and presented by Public Transportation Division Director Eric Gleason.

PTN  
112595

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.

The United States Congress has passed a Continuing Resolution for a five-month period; the FTA has available funds for this period. As soon as authorizing legislation and appropriation covering the remainder of the fiscal year or a portion of it has been enacted, the additional funding will be made available.

Awards to rural transit systems are calculated in accordance with the formula in 43 Texas Administrative Code §31.36(g)(3). The distribution of the FY 2011 awards is shown in Exhibit A.

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 available FY 2011 §5311 FTA allocation for the program as described in Exhibit A, submit the necessary state application to the FTA, and enter into the necessary contracts for the FY 2011 program of projects.

IT IS FURTHER ORDERED that the executive director or the director's designee is directed to amend contracts once additional funding is made available not to exceed the total award as described in Exhibit A and in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

c. **Various Counties** – Approve changes to previous awards, and a new award to designated lead agencies of public transit projects which support continuation of coordinated regional public transportation planning for FY 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 recommended by staff and presented by Public Transportation Division Director Eric Gleason.

PTN  
112596

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.

In Minute Order 112065, dated December 17, 2009, the commission approved the funding of approximately \$1.4 million in regional planning projects for FY 2011. In Minute

Order 112379, dated August 26, 2010, the commission approved a list of regional planning projects with revised funding.

IT IS THEREFORE ORDERED that this minute order supersedes the award for Planning Region 7 as listed in Minute Order 112379; and makes an award for Planning Region 20.

IT IS FURTHER ORDERED that \$104,000 is awarded to Central Texas Rural Transit District, as the lead agency for regional coordinated public transportation planning in state Planning Region 7, and \$99,605 is awarded to Jim Wells County, as the fiscal agent for regional coordinated public transportation planning in state Planning Region 20.

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.

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

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

PTN  
112597

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

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

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

The department has continued to monitor the progress of these projects to ensure that they comply with the criteria identified in the minute orders, the ARRA, and the project selection requirements established by FTA. As a result of these efforts, a proposed list of transit projects has been developed with revised funding, which is set forth in Exhibit A. Three projects reflect category award changes. There is no net change in the total transit funding program. No other previously approved public transit projects are affected. All

projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required.

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

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

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

Note: Exhibit A on file with minute order clerk.

**ITEM 6. Promulgation of Administrative Rules** Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

**a. Final Adoption**

**(1) Chapter 7 – Rail Facilities (MO)**

Repeal of §7.1, Definitions (General Provisions); Amendments to §7.10, Definitions §7.11, Comprehensive Development Agreements, §7.12, Construction and Maintenance Contracts, the Repeal of §7.13, Leasing of Rail Facilities and New §7.13, Contracts with Rail Operators and Leases (Contracts); Amendments to §7.20, Definitions, §7.21, Abandonment of Rail Line by Rural Rail Transportation District, §7.22, Acquisition of Abandoned Rail Facilities (Abandoned Rail); Amendments to §7.30, Definitions, §7.31, Safety Requirements, §7.32, Filing Requirements, §7.33, Reports of Accidents/Incidents, §7.34, Hazardous Materials - Telephonic Reports of Incidents, §7.35, Hazardous Materials - Written Reports, §7.36, Clearances of Structures Over and Alongside Railway Tracks, §7.37, Visual Obstructions at Public Grade Crossings, §7.38, Wayside Detector Map, List, or Chart, §7.39, Right to Inspect Railroad Property, §7.40, Enforcement of Safety Requirements, §7.41, Rail Safety Program Fee, and §7.42, Administrative Review (Rail Safety)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. (Commissioner Holmes was not present for the vote.) This item was recommended by staff and presented by Rail Division Director Bill Glavin.

RRD  
112598

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §7.1 and §7.13, new §7.13, and amendments to §§7.10-7.12, §§7.20-7.22, and §§7.30-7.42, all relating to rail facilities to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeal, and new section attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions,

approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the repeal of §7.1 and §7.13, new §7.13, and amendments to §§7.10-7.12, §§7.20-7.22, and §§7.30-7.42 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

**b. Proposed Adoption**

**Chapter 1 – Management (MO)**

**Amendments to §1.85, Department Advisory Committees (Advisory Committees)**

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 recommended by staff and presented by Research & Technology Implementation Office Director Rick Collins.

RTI  
112599

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.85, Department Advisory Committees, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §1.85 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: Exhibit A and B on file with minute order clerk.

**a. Final Adoption**

**(2) Chapter 15 – Financing and Construction of Transportation Projects (MO)**

**Amendments to §15.52, Agreements (Federal, State, and Local Participation)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. (Commissioner Holmes was not present for the vote.) This item was recommended by staff and presented by TxDOT Executive Director Amadeo Saenz.

112600  
GSD

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §15.52, Agreements, relating to federal, state, and local participation 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 §15.52 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: Exhibit A and B on file with minute order clerk.

**ITEM 8. Transportation Planning**

**a. Appoint two members to the Port Authority 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 recommended by staff and presented by Transportation Planning & Programming Division Director Jim Randall.

112601  
TPP

Transportation Code, Section 55.006, requires the Texas Transportation Commission (commission) to appoint a seven-member Port Authority Advisory Committee (committee) to advise the commission and the Texas Department of Transportation (department) on port issues and to provide a forum for exchange of information between the commission, the department, and committee members representing the Texas port system.

The department's administrative rules governing this advisory committee, Title 43, Texas Administrative Code, Section 1.84(c), provide that the committee members serve staggered three-year terms, unless removed sooner at the discretion of the commission.

The commission has determined that the individuals listed below fulfill the statutory requirements to serve as members of the committee for a three-year term expiring on February 28, 2014.

Eduardo A. Campirano	Port of Brownsville – Lower Coast
Tony L. Rigdon	Port of Victoria – Lower Coast

IT IS THEREFORE ORDERED by the commission that the individuals identified above are appointed as members of the Port Authority Advisory Committee until February 28, 2014.

**b. Approve the Fiscal Year 2010 Annual Report on the Economically Disadvantaged Counties Program (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 recommended by staff and presented by Transportation Planning & Programming Division Director Jim Randall.

112602  
TPP

Section 222.053(a), Transportation Code, defines an “economically disadvantaged county” as a county that has, in comparison to other counties in the state: (1) below average per capita taxable property value; (2) below average per capita income; and (3) above average unemployment.

Section 222.053(c) directs the Texas Transportation Commission (commission), when evaluating a proposal for a highway project in a political subdivision that consists of all or a portion of an economically disadvantaged county, to adjust the minimum local matching funds requirement after evaluating the political subdivision's effort and ability to meet the requirement.

Section 222.053(e) further directs the commission to report annually to the governor, the lieutenant governor, and the speaker of the house of representatives on the use of matching funds and local incentives and the ability of the commission to ensure that political subdivisions located in economically disadvantaged counties have equal ability to compete for highway funding with political subdivisions in counties that are not economically disadvantaged.

The Texas Department of Transportation has completed the Fiscal Year 2010 Annual Report on the Economically Disadvantaged Counties Program, which is attached as Exhibit A.

IT IS THEREFORE ORDERED that the Fiscal Year 2010 Annual Report on the Economically Disadvantaged Counties Program, as shown in Exhibit A, is approved by the commission and shall be presented to the governor, the lieutenant governor, and the speaker of the house of representatives as required by Section 222.053(e), Transportation Code.

Note: Exhibit A on file with minute order clerk.

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

112603  
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), the surplus revenue of a toll project or system, and payments received under Transportation Code, §§228.0111(g)(2) and (i)(2).

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 department district 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. The SH 121 toll project is located in the Dallas District. 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 that are to be funded with the SH 121 payments. In

Minute Order 111215, dated January 31, 2008; Minute Order 111439, dated July 31, 2008; Minute Order 111528, dated September 25, 2008; Minute Order 111553, dated October 30, 2008; Minute Order 111822, dated May 28, 2009; Minute Order 111854, dated June 25, 2009; Minute Order 111928, dated August 27, 2009; Minute Order 112047, dated November 19, 2009; Minute Order 112121, dated January 28, 2010; Minute Order 112273, dated May 27, 2010; and Minute Order 112568, dated January 27, 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: Exhibit A through C on file with minute order clerk.

#### **ITEM 9. Toll Roads**

##### **a. Travis and Williamson Counties - Establish new toll rate tables on SH 130 Segments 1-4 and SH 45 Southeast based on the 2010 Central Texas Turnpike System Traffic and Revenue Forecast Report (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. (Commissioner Underwood was not present for the vote.) This item was recommended by staff and presented by Texas Turnpike Authority Division Director Mark Tomlinson.

112604  
TTA

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

SH 130 is a four-lane, controlled-access toll road extending 49 miles from I-35 north of Georgetown to US 183 south of the Austin-Bergstrom Airport, and is an element of the Central Texas Turnpike System 2002 Project. The Texas Department of Transportation (department) plans to change the rate schedules for SH 130 to retain the current base toll rate for two-, three- and four-axle vehicles, but holds the four-axle toll rate for vehicles with any additional axles. The changes to the rate schedules result in an overall 25 percent rate reduction for four plus-axle trucks as an incentive to use SH 130.

SH 45 Southeast is a four-lane, controlled-access toll road extending 7.4 miles from I-35 to US 183/SH 130 in Travis County. The department plans to change the rate schedule for SH 45 Southeast to retain the current base toll rate for passenger cars and trucks, passenger cars with trailers, and unibody trucks, but holds the unibody truck toll rate for any tractor vehicles with trailers. The changes to the rate schedule results in an overall 25 percent rate reduction for four-plus-axle trucks as an incentive to use SH 45 Southeast.

The traffic consultant has analyzed the proposed changes to the toll rate schedule as part of an update to the Central Texas Turnpike System 2002 Project Traffic and Revenue Forecast, dated July 22, 2002, that provides for the new toll rate reduction. The proposed changes to the toll rate schedules for SH 130 and SH 45 Southeast provide toll rates at each tolling point as set forth in Exhibit A.

In accordance with Section 501 of the Indenture of Trust for the Central Texas Turnpike System 2002 Project, the Traffic Consultant has provided a certification that the adoption of the proposed changes in the toll rates for the 2002 Project, as well as any changes in the design of overall configuration and turnpike plans from that included in the Central Texas Turnpike System 2002 Project Traffic and Revenue Forecast dated July 22, 2002, will not adversely affect the ability of the commission to comply with its rate covenants in Section 501 of the Indenture.

Under Section 17(r) of the TIFIA Master Secured Loan Agreement for the 2002 Project, the commission may not amend or supplement the Central Texas Turnpike System 2002 Project Traffic and Revenue Forecast without the prior written consent of the U.S. Department of Transportation.

IT IS THEREFORE ORDERED by the commission that, subject to the approval of the U.S. Department of Transportation, the department is authorized to charge tolls on SH 130 from I-35 north of Georgetown to US 183 south of the Austin-Bergstrom Airport in the amounts stated in Exhibit A, effective March 1, 2011.

IT IS FURTHER ORDERED that the department is authorized to charge tolls on the SH 45 Southeast toll project from I-35 to US 183/SH 130 in the amounts stated in Exhibit A, effective March 1, 2011.

Note: Exhibit A on file with minute order clerk.

b. Establish a policy for the department to share in the revenue of a toll project when the department provides financial assistance from certain funding categories to pay for the costs of a toll facility of a public or private entity (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 1. (Commissioner Meadows

opposed.) This item was recommended by staff and presented by Chief Financial Officer James Bass.

112605  
FIN

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

Transportation Code, §366.301 and §370.301 authorize the Texas Department of Transportation (department) to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional tollway authority (RTA) or regional mobility authority (RMA), on terms agreed to by the department and the RTA or RMA.

Under Transportation Code, §222.103, the commission (1) may require the repayment of any money spent by the department for the cost of a toll facility of a public entity, and (2) shall require the repayment of any money spent by the department for the cost of a toll facility of a private entity. The commission thus, for public entities, has the flexibility to either require repayment of the financial assistance or to provide the assistance as a grant. For financial assistance provided in the form of a grant, the parties could, in the financial assistance agreement, provide for revenue sharing to the department in consideration of the financial assistance.

As a result of the previous discussions with staff, the commission has determined that a policy should be established that would require repayment of financial assistance provided [to a public entity] under Transportation Code, §222.103 from a statewide funding source, or would alternatively require participation in revenue sharing. This policy would not apply to financial assistance provided from funds allocated to metropolitan planning organizations and department districts (e.g., Category 2 - Metropolitan and Urban Area Corridor Projects, and Category 11 - District Discretionary).

IT IS THEREFORE ORDERED that if financial assistance is provided to a public entity under Transportation Code, §222.103 from a statewide funding source: (1) that assistance shall be repaid, or (2) the department shall require the entity to which the assistance is provided to agree to share project revenue with the department, in such amounts and for such period of time as is approved by the commission.

IT IS FURTHER ORDERED that the foregoing requirements shall not apply to financial assistance provided from funds allocated to metropolitan planning organizations and department districts.

**ITEM 10. State Infrastructure Bank (SIB)**

**a. Authorize \$60 million in unallocated state funds in the state highway fund to be deposited in the SIB and used to provide financial assistance for qualified projects (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 recommended by staff and presented by Chief Financial Officer James Bass.

112606  
FIN

A safe, efficient and modern transportation system is essential to maintaining a healthy economy and supporting economic development. However, budgetary constraints and limited availability of resources at all levels of government challenge Texas' ability to address transportation needs in a timely and efficient manner.

The Texas Legislature, in Transportation Code, Chapter 222, Subchapter D (enabling legislation), established the State Infrastructure Bank (bank), to provide financial assistance for urgently needed transportation projects, and authorized the bank to be funded through the provision of capital by the Texas Transportation Commission (commission).

Transportation Code, §222.072(b) provides that certain federal funds, the proceeds of bonds issued under Transportation Code, §222.075, loan repayments and investment income, state funds deposited into the bank by order of the commission, and other money received by the state that is eligible for deposit in the bank may be deposited into the bank and used only for the purposes described in the enabling legislation.

The provision of capital to the bank will result in the reduction of burdens and demands on the limited funds available to the commission and an increase in the effectiveness and efficiency of the Texas Department of Transportation (department), by allowing the bank to provide financial assistance to qualified projects.

The capitalization of the bank by the commission shall not be construed to be a commitment for future roadway construction, operation, or maintenance, nor shall such action be considered as authorization for right-of-way acquisition, construction funding or development of a transportation project. Decisions regarding the provision of financial assistance shall remain at the sole discretion of the commission and the department.

IT IS THEREFORE ORDERED by the commission that \$60 million in unallocated state funds in the state highway fund shall be deposited in the bank and used for the purposes described in the enabling legislation, and the executive director of the department shall administer these funds in the most feasible and economical manner in accordance with all applicable laws and requirements.

**b. Smith County –North East Texas Regional Mobility Authority (NETRMA) - Consider approving a revised loan term and interest rate for the SIB loan to the NETRMA in the amount of up to \$39.2 million to pay for the construction of Segment 3B of Toll 49 that was previously approved in Minute Order 112475, approve the connection of Segment 3B of Toll 49 with a segment of the state highway system, and authorize the executive director to enter into related agreements (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 recommended by staff and presented by Finance Division Director Brian Ragland.

112607  
FIN

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

In Minute Order 112475, the commission authorized the executive director of the Texas Department of Transportation (department) to enter into a financial assistance agreement with the NETRMA under which the loan would be amortized over a period of eight years, with a deferment of repayment for a period of five years from the disbursement date, at 4.18 percent interest per annum compounded annually during the deferment period.

To allow the department to obtain a lien on revenues used to repay the loan, and in accordance with the negotiated terms of the financial assistance agreement, the RMA must obtain an approving opinion from the Attorney General with respect to the note evidencing the loan. The Attorney General has indicated that in order to obtain the approving opinion, the NETRMA must demonstrate that the loan is capable of being paid in full from project revenues, rather than relying on the ability of the RMA to refinance the loan.

To obtain Attorney General approval of the loan, the executive director of the department has negotiated a revised amortization period of 28 years with 4.18 percent interest per annum for the first eight years and then increasing the rate to the 20 year Baa-Index 86 Delphis Hanover rate in effect in year eight plus 200 basis points for the remaining 20 years if the loan is not paid in full. The loan would continue to have a deferment of repayment for a period of approximately five years from the disbursement date as well as annual compounding during the deferment period.

Transportation Code, §370.187 provides that a RMA may not begin construction of a transportation project that will connect to the state highway system or to a department rail facility without the approval of the commission. Title 43, Texas Administrative Code, §26.31 et seq. prescribe the conditions for that approval. Title 43, Texas Administrative Code, §11.58 provides that the commission must approve a public or private entity's connection of a regionally significant highway to the state highway system.

Pursuant to 43 TAC §26.31 and 43 TAC §11.58, the NETRMA has submitted a request to the executive director to connect Segment 3B of Toll 49 to the state highway system in connection with the NETRMA's development and construction of the project.

Pursuant to 43 TAC §11.58(c), the NETRMA agrees to design and construct the portion of the project that comprises the connection to the state highway system in compliance with the standards prescribed in 43 TAC §11.58(d). The project is identified in a conforming transportation improvement program.

Pursuant to 43 TAC §26.32, the commission has determined that the project may be effectively integrated into the state's transportation system. The NETRMA is fully capable of awarding and managing the construction contract for the project in a cost effective and timely manner, consistent with applicable federal and state laws and regulations. The construction of the project will provide for the expeditious completion of a critically needed project within the Loop 49 corridor that will improve mobility in Smith County.

IT IS THEREFORE ORDERED that the revised amortization period of 28 years with interest at 4.18 percent per annum for the first eight years and at the adjusted interest rate (the 20 year Baa- Index 86 Delphis Hanover rate in effect in year eight plus 200 basis points) for the remaining 20 years if the loan is not paid in full, is approved.

IT IS FURTHER ORDERED that the connection of Segment 3B of Toll 49 with a segment of the state highway system is approved.

IT IS FURTHER ORDERED that the executive director of the department or his designee is authorized to enter into related agreements in connection with the financing and construction of Segment 3B of Toll 49.

**ITEM 11. Toll Equity**

Smith County – **North East Texas Regional Mobility Authority (NETRMA)** – Consider approving a revised loan term and interest rate for the loan to the NETRMA in the amount of up to \$90 million to pay for the development and construction of Segment 3B of Toll 49 that was previously approved in Minute Order 112498 (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 recommended by staff and presented by Finance Division Director Brian Ragland.

112608  
FIN

The Texas Department of Transportation (department) and the North East Regional Mobility Authority (NETRMA) have been proceeding with the development of the Toll 49 facility in Smith County, a project under the jurisdictional limits of the NETRMA.

The project is consistent with the Statewide Transportation Plan (Plan) and the Metropolitan Transportation Plan of the Tyler Metropolitan Planning Organization, and is listed in the FY 2008-2011 Statewide Transportation Improvement Program (STIP).

The project is the development and construction of Segment 3B of Toll 49 from SH 31 north to I-20. The proposed 10-mile toll facility includes two lanes of an ultimate four-lane toll road, with a connection to the existing Toll 49 facility at SH 31, and ramps connecting to I-20. The project is located within the boundaries of the NETRMA, and is subject to the market valuation and primacy requirements of Transportation Code, §228.0111. Pursuant to Transportation Code, §228.0111, the NETRMA has exercised its option to develop, construct, and operate the project.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

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

In accordance with Sections 27.53 and 27.54 of the toll equity rules, the commission, in Minute Order 112498, dated November 18, 2010, granted final approval of financial assistance in an amount up to \$90 million, in the form of a loan, to pay for the development and construction of Segment 3B of Toll 49.

In Minute Order 112498, the commission ordered that interest on the loan accrue from the date of disbursement at 4.18 percent per annum, compounding annually if not paid. The commission further ordered that if, at the end of the term of the State Infrastructure

Bank (SIB) loan approved for the project, any amount of the financial assistance cannot be repaid by NETRMA, that amount will be considered equity in the project, and repaid through the payment to the department in perpetuity of a share of revenues generated by Segments 1, 2, 3A, 3B, 4 and 5 of Toll 49, with the revenue sharing terms to be determined at the end of the term of the SIB loan.

To allow the department to obtain a lien on revenues used to repay the SIB loan and this loan, and in accordance with the negotiated terms of the financial assistance agreements, the NETRMA must obtain approving opinions from the Attorney General with respect to the notes evidencing the loans. The Attorney General has indicated that in order to obtain the approving opinions, the NETRMA must demonstrate that the loans are capable of being paid in full from project revenues, rather than relying on the ability of the NETRMA to refinance the loans.

The executive director of the department has negotiated, for both the SIB loan and this loan, a revised amortization period of 28 years with 4.18 percent interest per annum for the first eight years and then increasing the rate to the 20 year Baa- Index 86 Delphis Hanover rate in effect in year eight plus 200 basis points for the remaining 20 years if the loans are not paid in full. If the SIB loan is prepaid before the end of its term, the outstanding amount of this loan would continue to be subject to conversion to equity in the project if not paid in full at that time.

IT IS THEREFORE ORDERED that the revised amortization period of 28 years with interest at 4.18 percent per annum for the first eight years and at the adjusted interest rate (the 20 year Baa- Index 86 Delphis Hanover rate in effect in year eight plus 200 basis points) for the remaining 20 years if the loan is not paid in full, is approved.

**ITEM 12. Proposition 12 Bond Program**

**a. Discussion on the status of highway improvement projects to be funded with the proceeds of general obligation bonds issued under Transportation Code, Section 222.004 (Proposition 12 Bond Program)**

This item was introduced by Assistant Executive Director for Engineering Operations John Barton and a report was presented by Tyler District Engineer Randy Hopmann, P.E.

**b. Harris County - Approve revisions to the limits of the US 290/I-610 project previously approved for funding with the proceeds of general obligation bonds issued under Transportation Code, Section 222.004 (Proposition 12 Bonds) (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 recommended by staff and presented by Assistant Executive Director for Engineering Operations John Barton.

112609  
AEO

This minute order revises the limits of one previously-approved project in the Houston District to reconstruct the I-610/US 290 interchange (CSJ 027114217) in

accordance with the description contained in the Transportation Improvement Plan, as set forth in Exhibit A. This minute order does not change the scope of the project or the total amount of Proposition 12 bond proceeds allocated to the project.

Section 49-p, Article III, of the Texas Constitution (constitutional provision) provides that the legislature by general law may authorize the Texas Transportation Commission (commission) or its successor to issue general obligation bonds of the State of Texas in an aggregate amount not to exceed \$5 billion and enter into related credit agreements to provide funding for highway improvement projects.

Pursuant to the constitutional provision, the Texas Legislature, in House Bill 1, 81st Legislature, First Called Session, 2009, enacted Transportation Code, §222.004 (Enabling Act), the enabling legislation for general obligation bonds, notes, and other public securities that may be issued by the commission to fund highway improvement projects (Proposition 12 bonds).

House Bill 1 also amended Rider 60 to the appropriations to the Texas Department of Transportation (department) in Senate Bill 1, 81st Legislature, Regular Session, 2009 (General Appropriations Act), to allow the issuance of \$2 billion of these bonds. For FY 2010-2011, the legislature appropriated bond proceeds in the amount of \$90 million for right of way, \$60 million for engineering, and \$850 million to make progress payments on no more than \$1.85 billion in construction contract obligations for nontolled highway improvement projects, and appropriated \$1 billion in bond proceeds to be used to capitalize the State Infrastructure Bank (SIB) for the purpose of making loans to public entities.

In cooperation with the state's transportation partners, the department developed a list of highway improvement projects and work to be performed in connection with highway improvement activities to be funded with the portion of Proposition 12 bond proceeds not used to capitalize the SIB. This list was approved by the commission in Minute Order 112036, dated November 19, 2009.

IT IS THEREFORE ORDERED by the commission that the limits of the I-610/US 290 project are revised as set forth in Exhibit A.

Note: Exhibit A on file with minute order clerk.

### **ITEM 13. Proposition 14 Bond Program**

**Williamson County – Approve revisions to the limits of the SH 195 projects previously approved for funding with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (Proposition 14 Bonds) (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was recommended by staff and presented by Assistant Executive Director for Engineering Operations John Barton.

112610  
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 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 to exceed 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 28, 2010, the commission adopted Minute Order 112474, 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 said Minute Order.

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 and the project limits for the SH 195 in Minute Order 112474 to be revised 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 14. Transportation Development Credits (TDC)**

**Harris County - Award TDC to the Houston-Galveston Area Council (HGAC) for a feasibility study of an I-69 Relief Route serving the region, to revise its 2035 Metropolitan Plan and to update its Air Quality Conformity Determination concerning the feasibility of an I-69 Relief Route serving the port areas of the Houston/Galveston regions (MO)**

This item was deferred.

**ITEM 15. 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 16. Contracts****a. Award or Reject Highway Improvement Contracts****(1) Highway Maintenance and Department Building Construction (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 recommended by staff and presented by Construction Division Director Russel Lenz.

112611  
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 February 8 and 9, 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.

**a. Award or Reject Highway Improvement Contracts**  
**(2) Highway and Transportation Enhancement Building Construction (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 recommended by staff and presented by Construction Division Director Russel Lenz.

112612  
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 February 8 and 9, 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 17. Routine Minute Orders**

Commissioner Holmes made a motion, which was seconded, and the commission approved the following routine minute orders by a 5-0 vote. The items were recommended by staff and presented by Executive Director Amadeo Saenz.

**a. Donations to the Department**

**(1) Bridge Division Administration** – Consider a donation from the Precast/Prestressed Concrete Institute (PCI) for a department employee’s travel expenses to attend PCI’s 2011 Committee Days in Chicago, Illinois on March 23-25, 2011 (MO)

112613  
GSD

This minute order considers a donation of \$734.40 from the Precast/Prestressed Concrete Institute (PCI) for a Texas Department of Transportation (department) employee’s travel expenses to attend PCI’s 2011 Committee Days in Chicago, Illinois, on March 23-25, 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 \$734.40 by the PCI 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) Bridge Division** – Acknowledge a donation from the University of Buffalo for a department employee’s travel expenses to speak at the University of Buffalo in Buffalo, New York on February 21, 2011 (MO)

112614  
GSD

This minute order acknowledges a donation of \$718.70 from the University of Buffalo for a Texas Department of Transportation (department) employee’s travel expenses to speak at the University of Buffalo in Buffalo, New York, on February 21, 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 \$718.70 by the University of Buffalo 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 acceptance of the donation.

**(3) Travel Information Division – Consider a donation from the Arlington Convention and Visitors Bureau to provide food, beverages, admission and transportation to area attractions, by various sponsors, to the department for distribution to attendees of the 56th Annual Texas Travel Counselors Conference in Arlington on April 25-28, 2011, which the department is hosting (MO)**

112615  
GSD

This minute order considers a donation of an estimated \$47,000 from the Arlington Convention and Visitors Bureau (ACVB) to provide food, beverages, admission, and transportation to area attractions, by various sponsors, to attendees of the 56<sup>th</sup> Annual Texas Counselors Conference in Arlington, Texas, on April 25-28, 2011, which the department is hosting.

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 acceptance of this donation provides a significant public benefit and 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 an estimated \$47,000 by the ACVB 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.

**4) Waco District – Consider a donation from HEB Grocery Company LP for the cost to design and construct two proposed signal modifications creating the fourth leg of the intersections of SH 317 with both FM 439 (Lake Road) and Sparta Road in Belton and within the department's right of way (MO)**

112616  
GSD

This minute order considers a donation of an estimated \$100,000 from HEB Grocery Company, LP (H-E-B) for the cost to design and construct two proposed signal modifications, creating the fourth leg of the intersections of SH 317 with both FM 439 (Lake Road) and Sparta Road in Belton, Texas, and within the department's right of way.

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 \$100,000 by H-E-B 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. Eminent Domain Proceedings**

**Various Counties – noncontrolled and controlled access highways (MO)**

112617  
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

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO	PARCEL
Collin	US 75	7	0047-06-125	1
Collin	US 75	6	0047-06-12	1B
Dallas	SH 78	5	0009-02-056	29
Dallas	SH 78	2	0009-02-056	8
Fort Bend	FM 2218	1	2093-01-025	15
Tarrant	SH 26	4	0363-01-123	26
Tarrant	SH 26	3	0363-01-123	11

#### CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	JJ	0015-07-078	29
Gregg	SL 281	M	1763-03-039	15, 15E
Gregg	SL 281	LL	1763-03-039	1
Hill	IH 35	KK	0014-07-096	19,19TE
Liberty	SH 146	A	0389-01-040	27
McLennan	IH 35	MM	0014-08-082	20
McLennan	IH 35	II	0014-08-082	18,18TE
Tarrant	IH 820	F	0008-14-093	19
Tarrant	IH 820	G	0008-14-093	4A
Tarrant	IH 820	Z	0008-14-093	144
Tarrant	IH 820	H	0008-14-093	4B
Tarrant	IH 820	X	0008-14-093	153
Tarrant	IH 820	S	0008-14-093	58
Tarrant	IH 820	AA	0008-14-093	138
Tarrant	IH 820	EE	0008-14-093	136
Tarrant	IH 820	GG	0008-14-093	113

Tarrant	IH 820	HH	0008-14-093	26
Tarrant	SH 121	E	0364-01-119	620B
Tarrant	SH 121	B	0364-01-119	630
Tarrant	SH 121	I	0364-01-119	546
Tarrant	SH 121	K	0364-01-119	696
Tarrant	SH 121	C	0364-01-119	592
Tarrant	SH 121	U	0364-01-119	501
Tarrant	SH 121	FF	0364-01-119	694
Tarrant	SH 121	DD	0364-01-119	548
Tarrant	SH 121	CC	0364-01-119	547
Tarrant	SH 121	BB	0364-01-119	526
Tarrant	SH 121	Q	0364-01-119	545
Tarrant	SH 121	V	0364-01-119	542
Tarrant	SH 121	T	0364-01-119	708
Tarrant	SH 121	R	0364-01-119	693
Tarrant	SH 121	P	0364-01-119	517
Tarrant	SH 121	O	0364-01-119	715
Tarrant	SH 121	W	0364-01-119	557
Tarrant	SH 183	N	0364-05-038	673
Tarrant	SH 183	D	0364-05-038	642
Tarrant	SH 183	Y	0364-05-038	647
Tarrant	SH 183	J	0364-05-038	637
Tarrant	SH 183	L	0364-05-038	639

Note: Exhibits 1 through 7, A through Z and AA through MM on file with minute order clerk.

**c. Highway Designations**

**(1) Gregg County – Extend the designation of FM 2275 along a new location from SH 300 to US 259 in the city of Longview (MO)**

112618  
TPP

In GREGG COUNTY, the city of Longview has requested that the designation of FARM TO MARKET ROAD 2275 be extended along a new location from the present at SH 300 to US 259, a distance of approximately 4.4 miles (extension).

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the extension be designated as FM 2275 and incorporated into the state highway system.

The Texas Transportation Commission (commission) finds that the extension of FM 2275 will facilitate the flow of traffic, promote public safety, and maintain continuity of the state highway system and is necessary for the proper development and operation of the system.

IT IS THEREFORE ORDERED by the commission that the designation of FM 2275 is extended along a new location from its present terminus at SH 300 to US 259, a distance of approximately 4.4 miles, and the extension is added to the state highway system. In the event construction does not begin within 36 months of the date of this order, this order shall be null and void.

IT IS FURTHER ORDERED that if the extension is developed by an entity other than the Texas Department of Transportation (department), the maintenance, control, and jurisdiction of the extension will remain with the developing entity until the highway is opened to traffic as approved by the department.

(2) Travis County – Designate FM 973 on a new location southeast of Manor and redesignate portions of SL 212 and FM 973 in and near the city of Manor once construction of new alignment is complete (MO)

112619  
TPP

In TRAVIS COUNTY local officials have requested the designation on the state highway system of FARM TO MARKET ROAD 973 along a new location from SL 212 southward approximately 2.1 miles to existing FM 973. To maintain continuity of the state highway system local officials further requested that, upon completion of the construction of the new location, sections of the current location of FM 973 and SL 212 be redesignated.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended this action.

The Texas Transportation Commission (commission) finds that the designation of FM 973 and the described redesignations will facilitate the flow of traffic, promote public safety, and maintain continuity of the state highway system and is necessary for the proper development and operation of the system.

IT IS THEREFORE ORDERED by the commission that:

1. FM 973 is designated on a new location from existing SL 212 at Littig Road, southward approximately 2.1 miles to existing FM 973.
2. Upon completion of construction of FM 973 on the new location, the segment of SL 212 from US 290 to Littig Road is redesignated concurrently as SL 212/FM 973.
3. Upon completion of construction of FM 973 on the new location, the existing portion of FM 973 from SL 212 southward to the point where the new location intersects, approximately 1.3 miles, is redesignated as Business FM 973.

IT IS FURTHER ORDERED that in the event construction of the new location of FM 973 does not begin within 36 months of the date of this order, this order shall be null and void.

IT IS FURTHER ORDERED that if the project is developed by an entity other than the Texas Department of Transportation (department), the maintenance, control, and jurisdiction of the extension will remain with the developing entity until the highway is opened to traffic as approved by the department.

**d. Redesignation of Access Rights**

**Harris County - Authorize the redesignation of access control along the I-10 westbound frontage road east of Bingle/Voss Road in the city of Spring Valley to move the sole access point on the frontage road for the property owned by Ten-Voss, Ltd. from its existing location to a new location (MO)**

112620  
DES

In the city of Spring Valley, in HARRIS COUNTY, ON INTERSTATE HIGHWAY 10 (I-10), a designated controlled-access highway, access onto the westbound frontage road was permitted to the abutting property owner at a location as described by metes and bounds pursuant to Deed from West Memorial Park Office Limited Partnership to the State of Texas, recorded under File Number Y691426 of the Official Public Records of Real Property of Harris County, Texas.

Ten-Voss, Ltd., the current owner of the abutting property, has requested a redesignation of the control of access along their property line. The original access point is described in Exhibit A, attached hereto, and was located at the east end of a 9.760 acre tract as shown on Page/Sheet 6 of 6 of Exhibit A (original access point) and will become controlled whereby access is denied. Access will be permitted at the new access point as described in Exhibit A on Page/Sheet 2 of 6 and as shown on Page/Sheet 5 of 6 (new access point).

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 is necessary for the mobility, safety and operation of the state highway facility and authorizes redesignation of permitted access along 45.00 linear feet of the I-10 westbound frontage road from its original access point to the location described in Exhibit A on Page/Sheet 2 of 6 and as shown on Page/Sheet 5 of 6.

IT IS FURTHER ORDERED by the commission that the executive director or his designee is hereby authorized to enter into any necessary agreements with Ten-Voss, Ltd., containing terms consistent with the provisions of this order.

Note: Exhibit A on file with minute order clerk.

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

**(1) Dallas County - I-35E at Wintergreen Road in DeSoto - Consider the sale of surplus right of way to the City of DeSoto (MO)**

112621  
ROW

In the city of DeSoto, DALLAS COUNTY, on INTERSTATE 35E, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 5381, Page 392, and Volume 5537, Page 589, Deed Records of Dallas 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 DeSoto has requested that the surplus land be sold to the city for \$40,789.

The commission finds \$40,789 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 DeSoto, Texas, for \$40,789; 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) Chambers County I-10 at FM 563 in Anahuac - Consider the sale of surplus right of way to an abutting landowner (MO)**

112622  
ROW

In the city of Anahuac, CHAMBERS COUNTY, on INTERSTATE 10, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 97, Page 435, Deed Records of Chambers 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.

Faye Trant is an abutting landowner and has requested that the surplus land be sold to her for \$1,676.

The commission finds \$1,676 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Faye Trant for \$1,676; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(3) Harris County - US 59 at Hamilton Street in Houston - Consider the sale of surplus right of way to Metropolitan Transit Authority of Harris County (Metro) (MO)**

This item was deferred.

**(4) Sabine County - FM 1 at SH 184 in Bronson - Consider the transfer of surplus land and improvements to Sabine County**

112623  
ROW

In the city of Bronson, SABINE COUNTY, on FARM TO MARKET ROAD 1, the State of Texas (state) acquired certain land for an addition to a maintenance warehouse site by instrument recorded in Volume 178, Page 495, Deed Records of Sabine County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Section 202.021, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity with the authority to condemn the property, if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The appraised value of the surplus land is \$47,131. The Lufkin District has advised that maintenance of the surplus land for 20 years is estimated to cost the state \$63,585, which exceeds the value of the surplus land. The county has requested that the surplus land be transferred to the county in consideration of the estimated savings to the state of future maintenance costs.

The commission finds \$47,131 to be a fair and reasonable value for the state's rights, title and interest in the surplus land, and it is the opinion of the commission that it is proper and correct that the state convey to the county all of its rights, title and interest in the surplus land in consideration of the estimated savings to the state of future maintenance costs, which exceed the value of 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 transferring all of the state's rights, title and interest in the surplus land to Sabine County, Texas, in consideration of the estimated 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: Exhibit A on file with minute order clerk.

**(5) Tarrant County - I-35W and SH 121 in Fort Worth - Consider the conveyance of surplus right of way to the city in exchange for new right of way from the city and the donation to the state of the difference in value, which is more than \$500 (MO)**

112624  
ROW

In the city of Fort Worth, TARRANT COUNTY, on INTERSTATE 35W, the State of Texas acquired certain land for highway purposes.

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

The city of Fort Worth has conveyed to the state land on STATE HIGHWAY 121 needed for a state highway purpose (new land), described in Exhibit B, and desires to make a partial donation to the state of the difference in value between the new land and the surplus land.

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

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

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the city and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new land provided by the city, which is \$8.696 million, exceeds the value of the surplus land, which is \$3.959 million, resulting in a difference in value of \$4.737 million.

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

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

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

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

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land 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 Fort Worth, Texas, in exchange and as consideration for the conveyance of the new land and donation 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 on file with minute order clerk.

**(6) Webb County - US 83 at Palo Blanco Street in Laredo - Consider the sale of surplus right of way to the City of Laredo (MO)**

112625  
ROW

In the city of Laredo, WEBB COUNTY, on US 83, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 400, Page 473, Deed Records of Webb 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 Laredo has requested that the surplus land be sold to the city for \$76,517.

The commission finds \$76,517 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 Laredo, Texas, for \$76,517; 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.

**f. Load Zones & Postings**

**Hamilton, Jack And Milam Counties - Revise load restrictions on bridges on the state highway system (MO)**

112626  
BRG

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

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

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

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

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over the bridges described in Exhibits A and B be placed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The

executive director shall proceed with the erection of signs as appropriate, making the placement of these load limitations effective and operative.

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

**e. Speed Zones**

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

112627  
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 D on file with minute order clerk.

**ITEM 18. 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**

The commission did not meet in executive session.

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

There were no open comments.

The regular meeting of the Texas Transportation Commission adjourned at 10:39 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 February 24, 2011, in Austin, Texas.



JoLynne Williams, Chief Minute Order Clerk  
Texas Department of Transportation